OPEN MEETING MINUTES
Missouri State Board of Embalmers and Funeral Directors

August 25, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Tuesday, August 25, 2009 - 7:30a.m. to 7:31 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by Martin Vernon, Chairman, at 8:15 a.m. on Tuesday, August 25, 2009, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call
Board Members Present
Martin Vernon, Chairman
Gary Fraker, Vice-Chairman
Todd Mahn, Secretary
John McCulloch, Member
James Reinhard, Member

Board Members Absent
Joy Gerstein, Public Member

Staff Present
Becky Dunn, Executive Director
Lori Hayes, Inspector
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General
Connie Clarkston, Director of Budget & Legislation

Closed Meeting
Motion was made by James Reinhard and seconded by Gary Fraker to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination

materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Gary Fraker, Todd Mahn, John McCulloch and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Tuesday, August 25, 2009 - 9:28 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 9:28 a.m. on Tuesday, August 25, 2009. The meeting was called to order by Martin Vernon, Chairman, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

Martin Vernon, Chairman
Gary Fraker, Vice-Chairman
Todd Mahn, Secretary
John McCulloch, Member
James Reinhard, Member

Board Members Absent

Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General
Connie Clarkston, Director of Budget & Legislation
Sherry Hess, Division of Professional Registration

Public Present

Darlene Russell, CFL Preneed
Amy Battagler, Stewart Enterprises
Don Otto, MFDEA/MFT
Brad Speaks, Self/Speaks Family Legacy Chapels
Chris Moody, SCI
Stephen Zell, ACM
Representative Timothy Meadows, Legislature
Bill Stalter, Stalter Legal Services
DJ Gross, Duncn Funeral Home
Jim Moody, SCI
Ann Monaco Warren, Insurance Coalition
Tom Reichard, Professional Registration

Approval of Agenda
Motion was made by Gary Fraker and seconded John McCulloch by to approve the open agenda. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Executive Director's Report
Becky Dunn had nothing to report at this meeting.

Future Meeting Dates
Future meeting dates are scheduled as follows:

- September 2-3, 2009, 9:00 a.m.

Financials/Projections
Sherry Hess, Division of Professional Registration, appeared to present the board a financial summary of the board's appropriation and fund balance.
Connie Clarkston, Director of Budget and Legislation, gave an overview of the legislative and rulemaking process. Ms. Clarkston also provided an overview of the fiscal note relating to SB1.

Senate Bill 1 Implementation Process
The Board reviewed the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.

Motion was made by John McCulloch and seconded by Gary Fraker that preneed seller reporting fees be paid prior to August 28, 2009 is $2 per contract, and the new preneed seller reporting period is to be August 29, 2009 through August 29, 2010. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Motion was made by James Reinhard and seconded by John McCulloch that preneed seller reporting fee to be paid after August 29, 2009 will be set at $36 per contract. Motion carried with Gary Fraker, John McCulloch, and James Reinhard voting in favor of the motion. Todd Mahn voted "no" in opposition. Joy Gerstein was absent from the meeting in its entirety.

Motion was made by Gary Fraker and seconded by John McCulloch
Preneed Provider NonEstablishment - $100.00
Preneed Provider that holds a Funeral Establishment License - $10.00
Preneed Seller - $200.00
Preneed Agent - $50.00
Motion carried with Gary Fraker, John McCulloch, and James Reinhard voting in favor of the motion. Todd Mahn voted "no" in opposition. Joy Gerstein was absent from the meeting in its entirety.

Motion was made by Gary Fraker and seconded by John McCulloch that preneed provider reporting fees prior to August 28, 2009 be $0 (zero dollors) and with this reporting they set up the functions for funeral establishment/non funeral establishment. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Motion was made by James Reinhard and seconded by Gary Fraker to leave the amended provider/seller application fees at $25.00. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Motion was made by James Reinhard and seconded by John McCulloch to do Highway Patrol Background Check for individual applicants at this time and look into fingerprinting down the road. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Motion was made by James Reinhard and seconded by Gary Fraker to withdraw the previous motion relative to Highway Patrol Background Check for individual applicants and rescind the motion that the Board shall require background check on every individual applicant and, at the Board's discretion, may request the corporate entities to submit to background check for key individuals. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. John McCulloch did not vote. Joy Gerstein was absent from the meeting in its entirety.

Tuesday, August 25, 2009 – 12:02 pm – 1:10 pm Closed Session

The Board reviewed **Emergency Rules for Group 1 following 8-5-09 meeting.** If the Board has approved the rule to go forward, the word **APPROVED** appears before the rule. Approved emergency rules appear as pages 2-7.

APPROVED

Page 2 - Emergency rule: Preneed sellers and providers must be licensed and preneed seller agents must be registered in the State of Missouri to do business.

Title: Pre-need agent; requirements of the agent's seller

Purpose: This rule explains that any licensed pre-need agent in the State of Missouri must be selling pre-need contracts on behalf of a seller who is licensed in the state of Missouri.

(1) Any pre-need agent registered by the Missouri State Board of Embalmers and Funeral Directors to sell a pre-need contract for or on behalf of a seller must be the agent of a seller who is licensed to sell pre-need contracts by the Missouri State Board of Embalmers and Funeral Directors.

Authorized by: 333.340, 333.011(9), 333.320 and 333.325

A motion was made by Todd Mahn and seconded by Gary Fraker for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

APPROVED

Page 3 - Emergency rule: "Final Disposition" as defined in Chapter 193

Title: Use of term "final disposition" consistent with Chapter 193, RSMo

Purpose: This rule explains that use of the term "final disposition" in Chapters 333 and 436, RSMo shall be consistent with the definition of the term in Chapter 193, RSMo.

(1) For purposes of Chapters 333 and 436, RSMo, final disposition shall be defined in accordance with the definition contained in Section 193.015(3), RSMo.

(2) Use of the term final disposition in Chapters 333 and 436 shall be consistent with its use in Chapter 193, RSMo.

Authorized by: 333.340 and 333.011(10)

A motion was made by Todd Mahn and seconded by Gary Fraker for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

When reviewing **Group 2 - Page #4 Rule re: meaning of final disposition** later in today's meeting, a motion was made by James Reinhard and seconded by Todd Mahn to amend **Group 1- Page 3 - Emergency rule: "Final Disposition" as defined in Chapter 193** to include statutory authority of Section 436.405, and also, instead of saying Chapter 436 in subsection 1 and subsection 2, that it says Section 436.400 through 436.520; and under authority to say Section 193.015. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. John McCulloch was absent for this portion of the meeting. Joy Gerstein was absent from the meeting in its entirety.

APPROVED

Page 4 - Emergency rule: "Provider" includes funeral establishment that has agreed to undertake obligations of pre-need contracts pursuant to Chapter 436

Title: Provider to include funeral establishments engaged in pre-need

Purpose: This rule explains that a provider in a pre-need contract includes, but is not limited to, a funeral establishment that has agreed to undertake the obligations of a pre-need contract under Sections 436.400 through 436.520, RSMo.

(1) As defined by Section 333.011(10), the provider of services under any preneed contract pursuant to Sections 436.400 to 436.520, RSMo shall include any licensed funeral establishment that has agreed to undertake the

obligations of a pre-need contract pursuant to Sections 436.400 to 436.520, RSMo.

(2) Any provider who is a licensed funeral establishment who has agreed to undertake the obligations of a pre-need contract pursuant to Sections 436.400 to 436.520, RSMo, must meet all requirements of both a licensed

funeral establishment and a pre-need provider pursuant to Chapter 333 and Sections 436.400 to 436.520, RSMo.

Authorized by 333.340 and 333.011(10), RSMo

A motion was made by James Reinhard and seconded by Gary Fraker for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

APPROVED

Page 5 - Emergency rule: Licensed funeral director must report each seller for whom he or she is an agent.

Title: Funeral Director agent registration

Purpose: This rule establishes the reporting requirement for any funeral directors serving as sellers' agents.

(1) Any funeral director acting as a pre-need agent shall report the name and address of each pre-need seller for whom the funeral director is authorized to sell, negotiate, or solicit pre-need contracts to the Board on a form

prescribed by the Board.

(2) Any funeral director shall also identify him or herself as acting as a preneed agent on his or her biennial report form to the board by checking the appropriate box on the form prescribed by the board.

Authority: Section 333.340 and 333.325.4

A motion was made by James Reinhard and seconded by Gary Fraker for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

APPROVED

Page 6 - Emergency rule: Pre-need agents must take Missouri law exam.

Title: Certifying pre-need seller agents to take the Missouri law exam.

Purpose: This rule prescribes the process for certifying pre-need seller agents to take the Missouri law exam and a requirement for registration.

All pre-need seller agents registering with the board shall achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam. Successful completion of the Law exam shall be a prerequisite to registration. This exam may be taken any time after filing the Notice of Intent to Apply. Pre-need agent applicants must successfully complete the Missouri Law exam on or before December 31, 2009, prior to the expiration of the Notice of Intent to Apply. The Missouri Law exam covers knowledge of Chapter 333, RSMo and the rules governing the practice of embalming, funeral directing and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition and transportation of dead human bodies. The Missouri Law section also contains questions regarding Sections 436.400 to 436.520, RSMo relating to pre-need statutes and Chapters 193 and 194, RSMo relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations and Occupational Safety and Health Administration (OSHA) requirements as they apply to Missouri licensees. Notification of intent to take this examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination.

Authority: 333.340 and 333.325.5

A motion was made by Todd Mahn and seconded by Gary Fraker to approve the final drafted rule with amendment to remove the word "seller" from preneed seller agents throughout. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

APPROVED

Page 7 - Emergency rule: Financial welfare cause for injunction

Title: Danger to financial welfare is cause for injunction.

Purpose: This rule states that serious danger to an individual's financial welfare is cause for the State Board of Embalmers and Funeral Directors to seek an injunction pursuant to Section 333.335.1(2), RSMo.

(1) For purposes of Section 333.335, RSMo, the Missouri State Board of Embalmers and Funeral Directors shall be entitled to seek injunctive relief against any person from engaging in any business or practice authorized by a registration or authority, permit, or license issued under this chapter that presents a substantial probability of serious danger to the health, safety or welfare of any resident of this state or client or customer of the licensee or registrant.

(2) For purposes of Section 333.335, RSMo, serious danger to the welfare of any resident or client or customer shall include, but is not limited to, the financial welfare of the resident, client or customer.

Authority: Section 333.340 and 333.335.
A motion was made by James Reinhard and seconded by Todd Mahn for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

The Board reviewed **Emergency Rules for Group 1 following 8-5-09 meeting.** Emergency rules still needing approval appear as pages 8 – 11.

Page 8 - Emergency rule: Corporate ownership of a corporate licensee
Title: Corporate ownership of a corporation holding a pre-need provider license.
Purpose: This rule prescribes the requirements regarding corporate ownership of a corporation that holds a pre-need provider or seller's license.

(1) If the applicant for a pre-need provider or seller's license pursuant to Section 333.315, RSMo is a corporation or other legal entity, referred to as "applicant corporation" and it is owned by a corporation, referred to as "owner corporation":
   (a) each officer, director, manager or controlling shareholder of the applicant corporation shall be eligible for licensure as if they were applying for licensure as an individual; and

Authority: 333.340 and 333.315
After discussion was held on this emergency rule, Sharon Euler, Assistant Attorney General did the following rewrite for board approval.
REVISED – Page 8 - Emergency rule: Corporate ownership of a corporate licensee
Title: Corporate ownership of a corporation holding a pre-need provider license.
Purpose: This rule prescribes the requirements regarding corporation application for a pre-need provider or seller's license.

(1) A corporate applicant for either a seller or provider license shall certify to the Board that each of its officers, directors, managers and controlling shareholders would be eligible for licensure under Section 333.330, RSMo if he or she applied for licensure as an individual.
(2) The applicant shall have the burden to demonstrate to the Board that its officers, directors, managers and controlling shareholders would be eligible for licensure under Section 333.330, RSMo.

Authority: 333.340 333.320, 333.315 and 436.456
A motion was made by Gary Fraker and seconded by Todd Mahn to approve the revised drafted rule with amendment to add the words "In any proceeding," to the beginning of (2) above, and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

A motion was made by Todd Mahn and seconded by Gary Fraker for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Page 9 - Emergency rule: Licensees must file application for new license if change in ownership.
Title: New license required for change of ownership
Purpose: This rule states that a new license is required for a change in ownership of a pre-need provider or seller.

(1) The pre-need seller or provider's license issued by the board is effective for a specific name of a person or entity authorized to conduct business in Missouri. Whenever the ownership, location or name of the Missouri licensed pre-need seller or provider is changed, a new license shall be obtained.

(A) If a change of ownership is caused by the elimination of one (1) or more owners, for whatever reason (death, sale of interest, divorce, etc.) without the addition of any new owner(s), it is not necessary to obtain a new pre-need seller license. However, a new application for a pre-need seller license form shall be filed as an amended application within thirty (30) days after the change of ownership. This form shall be filled out completely with correct, current information.

(B) A corporation is considered by law to be a separate person. If a corporation holds a Missouri pre-need seller's license, it is not necessary to obtain a new pre-need seller license or to file an amended application for a pre-need seller license if the owners of a minority interest in the stock change. However, as a separate person, if the corporation begins ownership of an entity which holds a Missouri pre-need seller license or ceases ownership of an entity which holds a Missouri pre-need seller license, a new pre-need seller license shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

Authority: 333.340 and 333.320

A motion was made by Todd Mahn and seconded by John McCulloch, to have Sharon Euler rewrite the rule to provide a change of address form and charge $10. After discussion was held, Todd Mahn withdrew his motion and John McCulloch withdrew his second. Sharon Euler, Assistant Attorney General did the following rewrite for board approval.

REVISED – Page 9 - Emergency rule: Change I contact information

Title: Licensees shall be required to provide up to date contact information.

Purpose: This rule details the requirements for providers, sellers, and seller's agents for providing the Board with current contact information.

(1) Providers, sellers, and seller's agents shall keep the Board notified of their current address, telephone number, facsimile number, and e-mail address, as applicable, at all times.

(2) Providers, sellers, and seller's agents shall notify the Board within ten (10) business days of any such change by submitting written notice with the new information. The written notice shall comply with the Board's rules regarding written notice.

Authority: 333.340 and 333.320

A motion was made by Todd Mahn and seconded by Gary Fraker to approve the revised drafted rule with amendment to change "ten (10) business days" to "thirty (30) days", and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

A motion was made by Todd Mahn and seconded by Gary Fraker for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Page 10 - Emergency rule: Display of License

Title: Licenses issued by the Missouri State Board of Embalmers and Funeral Directors must be displayed.

Purpose: This rule states that pre-need sellers, providers and seller's agents must prominently display their license or registration to practice issued by the Missouri State Board of Embalmers and Funeral Directors.

(1) All licenses or registrations, and any and all duplicate copies thereof, issued by the Missouri State Board of Embalmers and Funeral Directors shall be prominently displayed at all times in a conspicuous location or manner easily accessible to the public for each office or place of business of the licensee or registrant.

(2) All licenses or registrations shall be available at all times for inspection by any duly authorized agent of the Missouri State Board of Embalmers and Funeral Directors.

(3) The Missouri State Board of Embalmers and Funeral Directors may cause a complaint to be filed with the Administrative Hearing Commission pur suant to Section 333.330, RSMo, for the failure of a

licensee or registrant to display his or her license or registration as required by Section 333.091 and this regulation.

Authorized by 333.340, 333.091 and 333.330

A motion was made by James Reinhard and seconded by Todd Mahn to approve the rule as drafted, and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Page 11 - Emergency rule: Normal market fluctuation resulting in a shortage in a preneed trust is not a basis for injunctive relief.

Title: Normal market fluctuation is not a basis for injunctive relief.

Purpose: This rule provides that normal market fluctuation that result in a shortage to a pre-need trust or joint account do not constitute cause to seek an injunction against a seller of a pre-need contract.

(1) Pursuant to Section 333.330.4, RSMo, the Missouri State Board of Embalmers and Funeral Directors shall not be entitled to seek injunctive relief against a seller if there is a shortage in the preneed trust greater than twenty percent of the total amount required to be held or deposited into the trust pursuant to Sections 436.400 through 436.520, RSMo in the pre-need trust that is exclusively the result of normal fluctuations in the market.

Authority: Section 333.340 and 333.330

It was the directive of the Board to stay with their original position that there is no need for this rule because this is already in the statute.

The Board reviewed the comments received from Joshua Slocum, Funeral Consumers Alliance, relative to his concerns about non-business activities. A motion was made by James Reinhard and seconded by Todd Mahn to have Sharon Euler and Earl Kraus, assist Becky Dunn, Executive Director, draft a response to Mr. Slocum that the Board is defining what it means to be in the business, by defining the scope of their authority, and there is no effort that this rule is to exercise control over somebody who is not in the business of funeral directing, and money is not the only determination to determine whether somebody is in the business or not. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

The Board reviewed **Group 2 rules**.

Page #1 Rule re: single premium annuity contracts

Title: Replacement single premium annuity contracts

Purpose: This rule states that while only single premium annuity contracts can fund an insurance-funded preneed contract, purchasers may purchase replacement single premium annuity contracts during the contract period.

(1) An insurance-funded preneed contract may be funded by an insurance policy or a single premium annuity contract.

(2) An insurance-funded preneed contract may not be funded by an annuity other than a single premium annuity contract.

(3) If a purchaser funds an insurance-funded preneed contract with a single premium annuity contract, the purchaser may replace the single premium annuity contract with another single premium annuity contract at any time in the duration of the preneed contract.

(4) Any replacement single premium annuity contract must meet all the requirements of the initial annuity contract, Chapter 333, Sections 436.400 to 436.520, RSMo and any other requirements under state or federal law.

Authority: 333.340 and 436.405

A motion was made by James Reinhard and seconded by Gary Fraker to approve the drafted as an emergency rule, and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Page #2 Rule re: activities that do not constitute preneed under Sections 436.400 to 436.520, RSMo

Title: Activities that do not constitute preneed under Sections 436.400 to 436.520, RSMo

Purpose: This rule identifies activities that do not constitute preneed under Chapter 436 and do not require regulation for preneed under Sections 436.400 to 436.520, RSMo.

The following activities do not constitute a preneed contract under the terms and conditions of Sections 436.400 to 436.520, RSMo:

(1) Sale of funeral merchandise where the purchaser takes immediate possession of the funeral merchandise;

(2) The preplanning of funeral arrangements with where there is no exchange of payment or anything of value for the future services; and

(3) Naming a funeral establishment as the beneficiary to a life insurance policy outside a preneed contract as defined by Section 436.405.1(7).

Authority: 333.340 and 436.405

A motion was made by Todd Mahn and seconded by Gary Fraker to approve the drafted rule, and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

#3 Rule re: types of financing available; other financing still preneed

Title: Preneed contracts with non-compliant financing mechanisms are still subject to the provisions in Sections 436.400 to 436.520, RSMo.

Purpose: This rule identifies the acceptable funding mechanisms for preneed contracts.

(1) Preneed contracts shall only be funded by:

(a) A preneed trust as defined by 436.405.1(8);

(b) An insurance policy or single premium annuity contract as defined by § 436.405.1(3); or

(c) A joint account as defined by § 436.405.1(4).

(2) Preneed contracts funded by any other mechanism shall be non-compliant with the requirements of Sections 436.400 to 436.520, RSMo. All non-compliant preneed contracts shall still be subject to regulation by the Board under Sections 436.400 to 436.520, RSMo.

Authority: 333.340 and 436.405

A motion was made by James Reinhard and seconded by Todd Mahn to approve the drafted rule, and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Page #4 Rule re: meaning of final disposition

Title: Final disposition shall be used consistently with definition in § 193.015(3)

Purpose: This rule explains the use of the term final disposition as it relates to preneed contracts under Sections 436.400 to 436.520, RSMo.

For purposes of Chapter 333 and,Sections 436.400 to 436.520, RSMo, the definition and use of the term final disposition shall be consistent with the definition of the term final disposition contained in Section 193.015(3);

Authority: 193.015, 333.340 and 436.405

This rule was approved in Group 1-Page 3 - Emergency rule: "Final Disposition" as defined in Chapter 193 earlier in today meeting.

A motion was made by James Reinhard and seconded by Todd Mahn to amend **Group 1-Page 3 - Emergency rule: "Final Disposition" as defined in Chapter 193**. previously approved at today's meeting to include statutory authority of Section 436.405, and also, instead of saying Chapter 436 in subsection 1 and subsection 2, that it says Section 436.400 through 436.520; and under authority to say Section 193.015. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. John McCulloch was absent for this portion of the meeting. Joy Gerstein was absent from the meeting in its entirety.

#5 Rule re: Cemetery exception

Title: Endowed care cemetery exception.

Purpose: This rule describes the exception to preneed contract requirements under Sections 436.400 to 436.520, RSMo for endowed care cemeteries.

(1) The provisions of sections 436.400 to 436.520 shall not apply to contracts or other arrangements sold by a cemetery operator for which payments received by or on behalf of the purchaser are required to be placed in an endowed care fund, as defined by Chapter 214, or for which a deposit into a segregated account is required under Chapter 214.

(2) The provisions of Sections 436.400 to 436.520, RSMo shall apply to the contract sold by the operator as described in (1) above if the contract or arrangement includes services that may only be provided by a licensed funeral director;

(3) This exception to the requirements of Sections 436.400 to 436.520,

RSMo shall be contract specific.

Authority: 333.340 and 436.410

A motion was made by Todd Mahn and seconded by James Reinhard to approve the drafted rule, and that there is a finding of confident and substantial evidence to support the need for this rule. After discussion was held, Todd Mahn withdrew his motion and Jim Reinhard withdrew his second.

A motion was made by James Reinhard and seconded by Todd Mahn to adopt Bill Stalter's proposal for substitute in #5 as follows:

Pursuant to RSMo. Section 333.310, a cemetery shall be exempt from the licensure requirements of RSMo. Sections 333.315 and 333.320 when all of the following conditions are satisfied:

1) The cemetery has a current and valid license issued pursuant to RSMo. Section 214.275;

2) All sales of merchandise made by the cemetery that would otherwise be defined as a preneed contract for funeral merchandise are made pursuant to a contract whereby such merchandise is either i) purchased in conjunction with an interment right or grave space subject to RSMo. Section 214.320, or ii) is to be delivered to an interment right or grave subject to RSMo Section 214.320 that is owned by the purchaser and identified in the contract;

3) The cemetery has not been found to be in non-compliance with RSMo. Sections 214.385 or RSMo. Section 214.387 by the Office of Endowed Care Cemeteries pursuant to a completed examination or audit; and

4) The cemetery does not offer for sale caskets or services that may only be provided by a Missouri licensed funeral director or embalmer.

Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

#6 Rule re: seller obligations

Title: Provider and seller obligations under Sections 436.400 to 436.520, RSMo

Purpose: This rule clarifies the duties of the seller of a preneed contract.

Except as otherwise provided in Sections 436.400 to 436.520 and any rules validly promulgated pursuant to those sections:

(1) The seller shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract;

(2) Alternatively, the preneed contract may permit the purchaser to make payment directly to the trustee or insurance company named in the contract in lieu of making payment to the trustee;

(3) All sellers of preneed contracts in the State of Missouri shall designate an individual manager in charge within the seller's business at a Missouri address who will accept notice regarding any actions of the Board on behalf of the seller. The designation shall be made in writing and provided to the Board. If the designee changes, the seller shall make the Board aware of the change in writing five (5) business days prior to the change in designee becoming effective, or if the seller does not have notice five (5) days prior, then within three (3) business days of the change in designee.

Authority: 333.340 and 436.415

A motion was made by James Reinhard and seconded by Gary Fraker to approve the drafted rule with amendment to change the last word of subsection (2) from "trustee" to "seller"; and in subsection (3) if the designee changes, the seller shall notify the board in writing within 30 days of the change. There is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Sharon Euler, Assistant Attorney General did the following rewrite for board's final approval.

(1) The seller shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract;

(2) A purchaser may make payment on any preneed contract by making the payment directly to the trustee, the insurance company, or the financial institution where the joint account is held, as applicable, in lieu of paying the seller.

(3) All sellers shall designate an individual to serve as manager in charge of the seller's business. This individual shall either reside or work within the state of Missouri. The seller shall designate the manager in charge in it initial application for licensure. If the manager in charge changes, the seller shall provide written notice to the Board within 30 days of the change.

A motion was made by Gary Fraker and seconded by Todd Mahn for final approval. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

The board reviewed the following.

Emergency Rule Regarding Filing of Annual Reports

Title: Filing of Annual Reports

Purpose: This emergency rule prescribes the Board's process for the filing of annual reports under the revised sections of Chapters 333 and 436.

For reporting year ending October 31, 2009, preneed sellers who were registered with the Board prior to August 28, 2009, may file an annual report as set forth in Section 436.021.2(3), RSMo (2000) to meet the annual report requirements of Section 436.460, RSMo, Supp. 2009.

Authority: 333.340 and 436.460

Emergency Rule Regarding Filing of Annual Reports

Title: Filing of Annual Reports

Purpose: This emergency rule prescribes the Board's process for the filing of annual reports under the revised sections of Chapters 333 and 436.

(1) For reporting year ending October 31, 2009, preneed sellers who were registered with the Board prior to August 28, 2009, may file an annual report as set forth in Section 436.021.2(3), RSMo (2000) to meet the annual report requirements of Section 436.460, RSMo, Supp. 2009.

(2) For all contracts entered into prior to August 28, 2009, preneed sellers who were registered with the Board shall, in addition to their annual report, pay the required fee for the annual report pursuant to 436.069, RSMo;

(3) Beginning August 28, 2009, the reporting period for seller annual reports shall run from August 28 through August 27 of successive years.

Authority: 333.340 and 436.460

A motion was made by James Reinhard and seconded by Gary Fraker to have Sharon Euler, Assistant Attorney General, rewrite a draft rule that will encompass dates for annual reporting period. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. John McCulloch did not vote for this item of the meeting. Joy Gerstein was absent from the meeting in its entirety.

#7 Rule re: clarification on pre-August 28, 2009 and post-August 28, 2009

Title: Grandfather clause

Purpose: This rule clarifies the treatment of contracts made prior to August 28, 2009.

(1) Violations of Chapters 333 and 436 occurring prior to August 28, 2009 shall be governed by the law as it existed at the time of the violation;

(2) Violations of Chapter 333 and Sections 436.400 to 436.520 occurring after August 28, 2009 related to a contract that existed prior to August 28, 2009 shall be governed by the law as it existed on August 28, 2009;

(3) Violations of Chapter 333 and Sections 436.400 to 436.520 occurring after August 28, 2009 related to a contract executed on or after August 28, 2009 shall be governed by the law as it existed on August 28, 2009;

(3) All preneed contracts executed on or after August 28, 2009 must meet all requirements contained in Chapter 333 and Sections 436.400 to 436.520 as the law existed on August 28, 2009.

(4) Preneed contracts entered into prior to August 28, 2009 remain valid after August 28, 2009 to the extent they were valid under Sections 436.005 to 436.071 prior to August 28, 2009.

Authority 333.340, 436.412 and 436.415

A motion was made by James Reinhard and seconded by Todd Mahn to approve the drafted rule. After discussion was held, James Reinhard withdrew his motion and Gary Fraker seconded.

A motion was made by John McCulloch and seconded by Gary Fraker to remove subsections (1) (2) and the first (3) from the drafted rule and approve subsections second (3) and (4) as drafted. There is a finding of confident and substantial evidence to support the need for this

rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

#8 Rule re: Provider and Seller requirements under the preneed contract

Title: Requirements for notice by provider under preneed contract

Purpose: This rule sets out the requirements for notice by a provider under a preneed contract.

(1) A provider shall notify the Board within 15 days of authorizing or agreeing to allow a seller to designate himself or herself as the provider under a preneed contract. Such notice shall be in writing and shall include:
   (a) Name and address of the seller;
   (b) Name and address of the provider;
   (c) License number of the seller;
   (d) License number of the provider;
   (e) Effective date of the authorization or agreement;
   (f) Signature of the seller, provider, purchaser, and, if applicable, the seller's agent;
   (g) Notice with the Board may be filed electronically but the original document shall be provided to the Board by mail following the electronic filing.

(2) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the last signature on the agreement;

(3) The contract must be signed by the purchaser, provider and seller or seller's agent of the preneed contract;

(4) If an agent of the seller signs the contract, the seller must also sign the contract but need not be present at the time it is signed with the purchaser;

(5) The purchaser of the preneed contract shall receive either a copy or original of the contract and upon request a copy of any agreements or contracts between the seller and provider regarding the purchaser's contract.

(6) If the provider and seller are the same legal person, the provider must still provide notice as required by this Rule to the Board that he or she is the provider for the seller. However, a contract between the seller and provider, if the seller and provider is the same legal person, is not required.

(7) If the provider and seller are the same legal person, the preneed contract and any other contracts or agreements necessary to the preneed contract must contain:
   a. One signature line indicating that signature belongs both to the seller and provider; or
   b. Separate signature lines for the seller and provider.

Authority: 333.3.40 and 436.420

After discussion, the drafted rule was broken into two (2) separate rules as follows:

First Part of Rule #8 as Rewrite Draft (Will make own Rule)

(1) After initial application, if there is a change in seller affiliation, the provider shall provide written notice to the board, pursuant to section 436.420.3, RSMo, that the provider has authorized a new seller to designate the provider on the seller's preneed contracts. This notice shall be provided to the board within fifteen (15) days after the provider authorizes the seller to act and the notice shall contain, at least:
   (A) Name and address of the provider;
   (B) License number of the provider;
   (C) Name and address of the seller; and
   (D) Effective date of the authorization or agreement.

(2) This notice may be provided to the board electronically, but the original signed document

shall be provided to the board by mail or hand delivery.

A motion was made by John McCulloch and seconded by Gary Fraker to approve the rewrite as drafted. There is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Second Part of Rule#8 (Will make own Rule)

(2) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the last signature on the agreement;

(3) The contract must be signed by the purchaser, provider and seller or seller's agent of the preneed contract;

(4) If an agent of the seller signs the contract, the seller must also sign the contract but need not be present at the time it is signed with the purchaser;

(5) The purchaser of the preneed contract shall receive either a copy or original of the contract and upon request a copy of any agreements or contracts between the seller and provider regarding the purchaser's contract.

(6) If the provider and seller are the same legal person, the provider must still provide notice as required by this Rule to the Board that he or she is the provider for the seller. However, a contract between the seller and provider, if the seller and provider is the same legal person, is not required.

(7) If the provider and seller are the same legal person, the preneed contract and any other contracts or agreements necessary to the preneed contract must contain:

a. One signature line indicating that signature belongs both to the seller and provider; or

b. Separate signature lines for the seller and provider.

A motion was made by Gary Fraker and seconded by James Reinhard to approve Subsection 2 – 7 as a rule of it own, with changes to subsections 3 and 4, where it says contract, to add the word "preneed" to make sure it is clear to be a preneed contract. Amend subsection 5 to read "(5) The purchaser of the preneed contract shall receive either a copy or original of the contract." Remove the rest of the line. There is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Todd Mahn was absent for this portion of the meeting. Joy Gerstein was absent from the meeting in its entirety.

#9 Rule re: Contract requirements

Title: Consumer contract requirements

Purpose: This rule identifies requirements of all preneed contracts.

(1) All preneed contracts and any agreements necessary to the preneed contract shall be in writing in Times New Roman or similar font in at least 8-point font size;

(2) A preneed contract can contain both guaranteed and non-guaranteed i tems. Any preneed contract containing both guaranteed and nonguaranteed items shall clearly identify in writing in the contract that the contract contains both guaranteed and non-guaranteed items;

(3) A preneed contract is voidable by order of a court of competent jurisdiction. Upon order of the court, the contract is voidable. Notice of the voidable contract must be provided to the seller and provider. The purchaser, upon notice, may then exercise the right to void the contract. Upon a valid court order and notice, a preneed contract is void.

(4) All money under the preneed contract, including but not limited to payments, interest payments, and fees, is recoverable by the purchaser only if the purchaser elects to void the contract following receipt of a valid court order and notice to the seller and provider;

(5) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the final signature of the provider, purchaser, seller's agent or seller on the agreement;
(6) The seller, or his agent, must provider the purchaser with a fully executed original or copy of the preneed contract within five business days of the effective date of the contract;
(7) All preneed contracts executed in the State of Missouri shall be accompanied by a disclosure sheet containing all necessary consumer disclosures on a form prescribed by the Board;
(8) Preneed contracts can be cancelled or rescinded pursuant to Sections 436.400 to 436.520. The process for concluding the affairs of the preneed contract that is rescinded or cancelled shall be the same and the purchaser, seller and provider shall have the same rights and obligations under cancellation and rescission.
(9) PUBLIC ASSISTANCE STAFF WILL CHECK
(10)In addition to all other requirements set out in Chapter 333 or Sections 436.400 to 436.520, RSMo, including but not limited to § 436.425 and any validly promulgated rule, all preneed contracts executed on or after August 28, 2009 shall:
(a) Be in writing;
(b) Be executed by a seller who is in compliance with Chapter 333 and Sections 436.400 to 436.520, RSMo;
(c) Identify the contract beneficiary and set out in detail the final disposition of the dead body and funeral services, facilities and merchandise to be provided;
(d) If the contract is trust funded, identify the preneed trust into which contract payments shall be deposited, including the name and address of the trustee thereof;
(e) If the contract is trust funded, identify the terms of the trust and related agreements among two or more of the contract seller, provider and trustee of the trust and that those individuals are in compliance with Chapter 333 and Sections 436.400 to 436.520;
(f) Contain the name and address of the seller, his or her agent, the provider and the purchaser.
(11)All preneed contracts shall be compliant with Chapter 333 and Sections 436.400 to 436.520 on or before December 31, 2009.
(12)Any contract that does not comply with the requirements of Chapter 333 and Sections 436.400 to 436.520 after December 31, 2009 shall be voidable.
DISCLOSURE SHEET AND REQUIREMENTS
Authority: 333.340 and 436.425

Sharon Euler, Assistant Attorney General, drafted the following rewrite for board review, by taking **#7 Rule re: clarification on pre-August 28, 2009 and post-August 28, 2009,** along with what is in **Second Part of Rule#8, subsections (2)-(7)** and **#9 Rule re; Contract requirements**, and combined them so all the contract requirements are in one rule.

#7 & 9

(1) All preneed contracts shall be in Times New Roman or a comparable easily read font and at least 8 point type.
(2) A preneed contract may contain both guaranteed and non-guaranteed items, but the preneed contract shall clearly identify those items which are guaranteed and which are not.
(3) A preneed contract is voidable by order of court of competent jurisdiction. Upon final judgment finding a preneed contract is voidable, the purchaser may then exercise his or her right to void the contract by providing written notice to the seller and the provider. The purchaser must exercise his or her right to void the contract within 30 days of final judgment.
(4) The purchaser must be provided a fully executed original or copy of the preneed contract within 30 days of the effective date of the contract.
(5) Preneed contracts may be either cancelled or rescinded pursuant to the provisions of sections 436.400 through 436.520, RSMo. The process for cancellation or rescission shall be the same and the purchaser,

seller, and provider rights and obligations shall be the same whether the contract is cancelled or rescinded.

(6) Preneed contracts effective and valid prior to August 28, 2009 shall remain valid and effective after August 28, 2009.

(7) Preneed contracts executed after August 28, 2009 shall comply with all requirements of Chapter 333 and Sections 436.400 through 436.520, RSMo. However, preneed contracts that were valid under the relevant provisions of Chapter 436 on August 27, 2009 may be used to enter into valid preneed contracts after August 28, 2009 so long as any additional requirements in Sections 436.400 through 436.520, RSMo, are provided to purchasers no later than December 31, 2009 by supplement addendum to the preneed contract.

A motion was made by James Reinhard and seconded by Gary Fraker to rescind the approval of #7, the second half of #8, and #9 and approve the rewrite language as drafted. There is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

A motion was made by John McCulloch and seconded by Gary Fraker for final approval of **First Part of Rule #8 - Rewrite Draft** above. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

#10 Rule re: trust funded contract requirements

Title: Requirements for deposit of and verification of payments

Purpose: This rule identifies what payments must be deposited into the preneed trust under a trust funded preneed contract and the seller's reporting requirements for deposits.

(1) The seller of a preneed contract funded by a trust shall deposit all payments received pursuant to the terms of the preneed contract into the trust within sixty days of receipt of the funds by the seller, his agent or designee.

(2) Within 30 days of request by the purchaser, the seller shall provide to the purchaser under a preneed contract, a written statement of all deposits made to the trust. The written statement shall include a detailed description of all deposits made by type of deposit and date of deposit. The written statement shall also include the principal and interest paid to date for the trust. The written statement shall be signed by the seller.

Authority: 333.340 and 436.430

A motion was made by James Reinhard and seconded by John McCulloch to take out this rule, as this rule does not add anything substantive that is not already in the statute. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

#11 Rule re: Trustee investment restrictions

Title: Trustee investment restrictions under a trust funded preneed contract

Purpose: This rule identifies the investment restrictions of a trustee under a trust funded preneed contract.

(1) A trustee shall not make decisions to invest any trust fund under a preneed contract with those individuals or entities contained in §§ 436.445(1) through (4), who are, or may be, related to the parties to that preneed contract or trust;

(2) The trustee investment restrictions contained in §§ 436.445(1) through (4) shall not apply to those individuals or entities related to the parties to other preneed contracts or trusts.

Authority: 333.340 and 436.445

A motion was made by James Reinhard and seconded by Gary Fraker to approve the rule as drafted. Motion carried with Martin Vernon, Gary Fraker, and James Reinhard voting in favor with John McCulloch voting "no" in opposition. Todd Mahn was absent for this portion of the meeting. Joy Gerstein was absent from the meeting in its entirety.

#11 ½ An additional potential emergency rule re: independent financial advisor is an agent of trustee

Title: Independent financial advisor is an agent of the trustee

Purpose: This rule clarifies that an independent financial advisor is an agent of the trustee in a trust funded preneed contract.

An independent financial advisor, as provided in section 436.440.6, is an agent, as provided in section 436.440, of the trustee.

Authority: 333.340 and 436.440.6

A motion was made by Gary Fraker and seconded by James Reinhard to approve the rule as drafted. Motion carried with Gary Fraker, and James Reinhard voting in favor with John McCulloch voting "no" in opposition. Todd Mahn abstained from voting as he was not a part of discussion for this portion of the meeting. Joy Gerstein was absent from the meeting in its entirety.

#12 Rule re: Insurance funded contracts

Title: Insurance funded contracts

Purpose: This rule identifies payment issues in insurance funded preneed contracts.

(1) Payments collected by or on behalf of the seller which must be promptly remitted to the insurer or the insurer's designee do not include administrative or other fees built into the preneed contract;

(2) The purchaser of an insurance funded preneed contract, may, upon agreement with the seller and provider, submit payments directly to the insurer or insurer's designee;

(3) For any overages under the preneed contract that exceed the costs under the contract, the overages shall be distributed:

a. To the estate of the beneficiary named in the insurance policy; or

b. If the policy holder received public assistance to the State of Missouri if the State of Missouri was named as beneficiary or to the estate of the beneficiary if the State of Missouri was not named.

Authority: 333.340 and 436.450

A motion was made by James Reinhard and seconded by Todd Mahn to have Sharon Euler and Earl Krause review this rule more closely and come back to the Board with another proposed rule at the next meeting. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Group 3 Rules – Page 1

Rule re: Requirements for Written Notice

Title: Requirements for Written Notification to the Board

Purpose: This rule details the requirements for written notification to the Board.
All written notice as required by Chapter 333, Sections 436.400 to 436.520 or any rule properly promulgated pursuant to Chapter 333 and Sections 436.400 to 436.520 shall include:

(1) The name of the seller and, if applicable the seller's agent;
(2) The current business address and telephone number of the seller and, if applicable the seller's agent;
(3) The license number of the seller and, if applicable, the registration number of the seller's agent;
(4) The name of the provider;
(5) The current business address and telephone number of the provider;
(6) The license number of the provider;
(7) The name of the purchaser;
(8) The current address and if available, the telephone number of the purchaser;
(9) The date the written notice was executed;
(10) The signatures of all parties necessary to the particular requirement for written notice.

Authority: 333.340, 436.456

A motion was made by John McCulloch and seconded by James Reinhard to take out this rule, as this rule is not an emergency. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Group 3 Rules – Page 8

Rule re: Fees

Title: Fees pursuant to Chapter 333 and Sections 436.400 to 436.520
Purpose: This rule sets out all fees contained in Chapter 333 and Sections 436.400 to 436.520.

(1) The following fees hereby are established by the State Board of Embalmers and Funeral Directors:

(A) Embalmer Practicum Student Registration Fee	$25
(B) Embalmer Application Fee	$200
(C) Embalmer Oral Examination Fee	$125
(D) Embalmer Reciprocity Application Fee	$300
(E) Embalmer Biennial Renewal Fee	$200
(F) Funeral Director Application Fee	$200
(G) Funeral Director Limited License Application Fee	$200
(H) Funeral Director Reciprocity Application Fee	$300
(I) Funeral Director Biennial Renewal Fee	$200
(J) Reactivation Fee (up to one year lapse)	$100
(K) Reactivation Fee (up to two year lapse)	$200
(L) Establishment Application Fee	$300
(M) Amended Establishment Application Fee	$25
(N) Establishment Biennial Renewal Fee	$250
(O) Reciprocity Certification Fee	$10
(P) Duplicate Wallhanging Fee	$10
(Q) Collection Fee for Bad Checks	$25
(R) Law Book Requests (after initial request)	$5
(S) Examination Review Fee	$25
(T) Background Check Fee (determined by MSHP)	$
(U) Provider License Application Fee	$
(V) Provider Biennial Renewal Fee	$
(W) Seller License Application Fee	$

(X) Seller Biennial Renewal Fee $
(Y) Seller Agent Registration Fee $
(Z) Seller Agent Biennial Registration Renewal Fee $
(AA) Seller Annual Report Fee $
(BB) Seller Annual Report Late Fee $
(CC) Seller Agent Law Examination Fee $

(2) All fees are nonrefundable.

(3) The provisions of this rule hereby are declared severable. If any fee fixed by this rule is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions of this rule shall remain in full force, unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission

Authority: 333.340

A motion was made by Gary Fraker and seconded by Todd Mahn to approve the drafted rule, and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety.

Adjournment

A motion was made by James Reinhard and seconded by Gary Fraker to adjourn. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent from the meeting in its entirety. The meeting adjourned at 8:27 p.m. on Tuesday, August 25, 2009.

Executive Director: Sandy Sebastian

Approved by the Board on: 6/14.16/10

ORIGINAL

MISSOURI STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

TRANSCRIPTION OF MEETING

DIVISION OF PROFESSIONAL REGISTRATION
3605 MISSOURI BOULEVARD
JEFFERSON CITY, MISSOURI

AUGUST 25, 2009
10:25 A.M. - 8:30 P.M.

CHAIRMAN: So, a couple of things here. And I'm just talking about me at the moment. I'm whirling. I feel like I'm in a tornado and I don't know beans about where we're going. So, I talked to Connie and I asked her, you know, this is -- I'm not saying we have to do this, but, in my mind, this is what they say makes sense at the moment. Now, if we need to pick that apart a little bit, let's do that and let's make some sense out of it, but what I asked Connie to do one more time -- I don't want -- and she understands that. I'm not asking her to give us that big lesson of how we got here, but explain to us one more time what they think is what we will need at this point for August the 28th in the money and then we've done a couple of things to -- I guess you could fill in the numbers.

MS. EULER: Well, I was going to see if -- Becky is closer.

CHAIRMAN: All right. So --

MS. DUNN: And one thing. This was put together based on what I thought our licensees would be. So, currently, we have about 350 sellers. I based this thinking we were going

to have as many sellers as we had funeral establishments. That's what I thought. So, this is a guessing game for me, so as we take these amounts into consideration, I fed these to the ladies based on what I thought might happen.

CHAIRMAN: And I think for the first year, it's just going to be a guessing game until we really see how it plays out. So, I guess, at that point, let's go one more time.

MS. CLARKSTON: Okay. One more time. What we're trying to do is set fees with the current appropriation that you have right now, not considering any new FTE, any new expenses. So, with that, what we believed we need to set was the provider license, provider/seller and agent registration fees. And at this time, we were not going to set the renewals fees for those three classes of licensure, but we were going to try to set the annual reporting fee so that sellers knew what they were responsible for submitting next renewal cycle for their reporting cycle. And so, we did not have individuals out there continuing to believe that they needed to charge $2 per

contract. Now, the questions have come up, is there a way that we could pull that money from somewhere else, and I'm going to get off a little bit here. Our only revenue source are licensees. We don't have the ability to pull money from anywhere else. So, it has to come from the licensure categories that we have with the fee structure that we're trying to establish, so that's application and renewal fees, and your contact reporting fees. So, what we figured for application fees for provider -- and when I say provider, what we classified that as was providers that were not establishments, and we set that fee at $100. For sellers, we estimated $200, and for agents, $50. Now, I'm hearing some discussion, if I may go so far as to say that there may be a small fee set for providers who are establishments to cover costs for processing the application. It's a one-time fee, and there would be no renewal fee charged for those providers.

MS. DUNN: According to the law, you can't.

MS. CLARKSTON: According to the law.

Okay.

CHAIRMAN: And I'll just even add, the discussion that I kind of heard around the room, that could be as much as -- it could be less, but, in my own mind, just speaking for myself, five to ten bucks, maybe closer to ten for that, to make sense out of it, so put ten bucks up there just for the fun of it.

MS. CLARKSTON: Neither of those amounts put this fund into sweet jeopardy, so if we set that small amount there, it does not put you in any kind of line to sweep that money to general revenue. Now, it could reduce the provider/seller/agent fees at some point, but that's totally up to you. It's still -- either way, I think you'll find is okay. Sharon?

MS. EULER: There is -- the law says no renewal fee for funeral-establishment providers. If there are providers that are not funeral establishments, the Board can impose a renewal fee.

MS. CLARKSTON: Correct. Correct.

MS. DUNN: And then would providers and agents have a Highway Patrol background

fee, Earl and Sharon?

MS. EULER: That's up to the Board. If the Board wants to --

MS. DUNN: I mean, it's a pass-through. It's not something we get and collect, but --

MS. CLARKSTON: That's the Missouri Highway Patrol.

MR. KRAUS: That's right. They would have to --

MS. DUNN: And right now, it's $9.

MR. KRAUS: -- make that happen themselves.

MS. EULER: Right. So, do they pay that to the Highway Patrol, or do they pay that money to you and then you send it to the Highway Patrol?

MR. KRAUS: They pay it to the Highway Patrol.

MS. HAYES: They pay it to us, but my question: If we collect a Highway Patrol for a provider -- the provider is a company, who are we doing the background check on? Normally, we would on an individual, but --

MS. DUNN: Okay. Then we wouldn't.

MS. HAYES: Just the agents?

MS. EULER: Well, unless you wanted to do a background check on --

MS. HAYES: The officers of the --

MS. EULER: -- the -- yeah. Officers or the person in charge or -- because, under the law, you can do that.

MR. MAHN: What's the maximum amount you can charge a provider that's not an establishment?

MS. EULER: Whatever you want.

MS. DUNN: It's whatever you want. To do business and not exceed our -- you know, our appropriation.

MR. MAHN: I mean, aren't they mainly, like, casket stores and things like that?

MS. EULER: Cemeteries.

MR. MAHN: Cemeteries acting as funeral homes.

MS. DUNN: So, what we estimated yesterday would keep us out of sweet, keep us legal. And by adding this $10, you would still be within a reasonable budget; right?

MS. CLARKSTON: Correct. And, again, it's important to realize that when we did

these projections, we projected you were pulling your -- you were spending your full appropriation. So, if that isn't true, then we'll still have time to lower these fees. A lot happens next spring with whether or not we get the decision item and whether or not you are spending your full appropriation, so we may have to adjust.

CHAIRMAN: You made the -- I think you made the comment that in this structure, if we -- which I think we already did, I think. But the $2 reporting from last year and all that, that is not built into that; correct?

MS. CLARKSTON: It is built into what we are looking at here. It's not built --

CHAIRMAN: Oh, it is? It is?

MS. CLARKSTON: It is built into this.

CHAIRMAN: Okay.

MS. CLARKSTON: What I heard earlier -- and correct me if I'm wrong -- was there was a motion to collect the $2 reporting fee and then after August 28th, take it up to $36. What -- in my mind, if you accept everything that's here, the thing the Board has not voted on or come to a conclusion on is the providers

that are establishment license fees.

CHAIRMAN: Okay. All right. Anything else we need to add into that?

MR. FRAKER: Can we fix that now?

CHAIRMAN: That's what the debate is right this minute.

MR. McCULLOCH: So, do you need a motion for the establishment fee?

CHAIRMAN: I guess we need a motion to go for this and accept it as it is, and go with it as of August 28th or whatever, or are we going to argue with the projections that they're saying this is what it takes to make this work, or --

MR. FRAKER: I'll make that motion.

MR. McCULLOCH: Second.

MS. DUNN: The motion that --

CHAIRMAN: That we accept it?

MR. FRAKER: Accept as --

MS. DUNN: A provider nonestablishment would be $100, an establishment -- a provider that holds an establishment license that is active is $10, sellers are $200, agents are $50?

CHAIRMAN: You make that motion?

MR. FRAKER: I make that motion.

CHAIRMAN: Gary makes the motion.

MR. McCULLOCH: John seconds it.

MR. REINHARD: I want some discussion on it.

CHAIRMAN: Jim wants some discussion.

MR. REINHARD: And my question is, if we make a provider that's not an establishment -- which would be a cemetery; correct?

MR. MAHN: Or a casket store.

MR. REINHARD: Or a casket store, are we imposing something on them that the Federal Trade Commission will say is unfair?

UNIDENTIFIED: (Inaudible.)

MS. DUNN: I asked that, too.

MR. STALTER: I don't think so. I think there's some kind of licensure oversight here. I mean, you've got the established funeral home already in the system, so -- and there's some additional processing, you know, for this. But then -- (inaudible) -- part of your system.

MS. EULER: Right. The funeral-establishment application, you've already voted. The nonestablishment-license

applicant, we need to look at more closely because there are more costs involved in that, and I think that's legitimate.

MR. MAHN: So, it needs to be higher.

(Several people talking simultaneously.)

MS. CLARKSTON: Okay. But, remember; right? And correct me if I'm wrong. I'll find it in here real quick, but that agent fee has to be set at half of the provider fee.

MS. DUNN: Half of the funeral-director's fee.

MS. EULER: Funeral-director's fee.

MS. CLARKSTON: Half of the funeral-director's fee. Okay.

MS. EULER: Yeah.

MR. McCULLOCH: But that thing, that's going to affect the cemeteries that you've just --

MS. DUNN: Yes.

MR. McCULLOCH: They're going to fall into that. You're not just getting the casket guys, cemeteries.

MR. MAHN: I don't have a cemetery. I don't have -- provider license is not cemetery, though. Why would I have a provider

license at my cemetery?

MR. McCULLOCH: They're saying you'll have to now.

CHAIRMAN: If you start selling preneed.

MR. MAHN: Oh.

MS. EULER: If you're selling preneed.

MR. MAHN: Oh.

MR. McCULLOCH: Oh, wait a minute.

MR. MAHN: Yeah. Well, I don't have to exactly invest as much as 436 because I can fall underneath 214, get my hand in the cookie jar that way.

MR. McCULLOCH: Make sure you speak into the mike on that one.

MR. MAHN: I say we raise it up.

MS. DUNN: Okay. So, we had a motion and --

CHAIRMAN: Gary made the motion.

MR. FRAKER: John seconded.

CHAIRMAN: We're still -- oh, yeah. He seconded. We were in discussion, though. So, anymore discussion? Are you ready to vote?

MR. MAHN: Why don't we put the whole thing under the umbrella of -- I mean,

approving it? I think we ought to approve one amount at a time.

MS. DUNN: Okay.

MR. REINHARD: Well, the motion is all of that, so you're going to have to get them to repeat them.

CHAIRMAN: And we've got a second. So --

MR. FRAKER: And this is all based on these projections.

CHAIRMAN: On these projections. And, actually, even in the discussion, there -- it's very -- probably probable that after one year of this, we will have to revisit this and look at it.

MS. DUNN: And maybe in six months if we don't have as many sellers as we thought.

MR. FRAKER: Folks, we don't have any sellers.

MS. DUNN: This is a guessing game.

MR. FRAKER: We've got to do this.

MS. CLARKSTON: Plus, I think it's also important to realize that from administration through the Board and to the licensees, I think we're all headed in the same direction.

We don't want these fees any higher than is necessary. And I may be speaking for the Board, and if I am, I apologize, but I think that we need to make sure that we can meet the obligations that you have and stay under sweet. That's the goal. We don't take any more than we need.

MR. MAHN: But from the general public, we're going to go up over 300 percent on them, which, there again, they're the ones that didn't do anything wrong these last couple years.

MR. McCULLOCH: But they aren't, actually.

MS. EULER: The contract fee is --

MR. McCULLOCH: They're going up on you.

MR. MAHN: Well, you're going to pass it on to them.

MS. EULER: Right.

MR. McCULLOCH: But you don't have to.

MS. EULER: You don't have to.

MS. CLARKSTON: But you don't have to.

MR. McCULLOCH: The law doesn't say that.

MR. MAHN: No, you don't have to, but, ultimately, they're paying the piper.

MR. McCULLOCH: Well, in my case --

MR. MAHN: Like these cemeteries.

MR. McCULLOCH: In your case, they don't have to.

UNIDENTIFIED: There's no place they don't in this world.

MR. McCULLOCH: But you've been paying it.

MR. KRAUS: And that may be true, but this whole scheme, this whole statute is more regulation on the industry, and more regulation costs more money.

MS. EULER: Right.

MR. KRAUS: And this is all fee funded, it's not general revenue, so that's where the money comes from.

CHAIRMAN: And the people that lost their money is going to have to pay to have a watchful eye over their money.

MS. CLARKSTON: But it's -- Todd, I will agree, it's not an ideal situation. It's not a pretty situation, but NPS was not a pretty situation. And what this Board and

what those that were at the Capitol requested was more enforcement. And I think that the general assembly heard us and we got more enforcement. That bill is not perfect. I think we'll all agree to that.

MR. MAHN: Right.

MS. CLARKSTON: But I think in order for this board to honor its enforcement authorities that have been granted by the general assembly, looking at the funding with Sherry and with Becky, I think that what we did was put in a two-year instead of a five-year --

MR. MAHN: Right.

MS. CLARKSTON: -- to say what we need to set these at, understanding that this Board is going to have to watch those very closely.

MR. MAHN: I'm just honing in on the provider nonestablishment. That's what I'm talking about.

MS. CLARKSTON: Okay.

MR. MAHN: You know, either a storefront, casket stores, anything that's down the street that's -- you know, trying to play funeral home, but really isn't.

MS. DUNN: But you still have --

MR. MAHN: I think, like Sharon said --

MR. REINHARD: He's got a hell of a point.

MR. MAHN: Well, go ahead.

MR. McCULLOCH: But you said something a while ago that maybe I was confused on, but you said you all based these projections on that you thought that every funeral provider out there -- establishment would be a seller; okay?

MS. DUNN: Because, see, right now, we have a bunch -- a number of funeral homes that do joint accounts.

MR. McCULLOCH: But I also don't think -- I think people are going to be smart enough to figure this out. Like, if they have several multiple locations, they're just going to have one seller, don't you think?

MS. DUNN: Okay.

MR. McCULLOCH: So, that number might be lower than you think.

MS. DUNN: So, we have to take that into consideration then. That was just my best guess and Connie's, but if the profession

doesn't feel that we're going to have 690 sellers, then we need to think about that right now.

MR. McCULLOCH: Oh, I definitely think you will not.

MR. REINHARD: No, you wouldn't.

CHAIRMAN: Let me add the flip side of what you just said, though. I personally operate, probably like you do, just on what you just described.

MR. McCULLOCH: Uh-huh.

CHAIRMAN: All on one seller. Now, when the audit trail starts up, do you really want to do all six of them at once? Is it worth $200 a location to avoid that?

MR. McCULLOCH: Well, it's going to happen anyway in my case, so it really doesn't matter.

MR. REINHARD: That's a good point, Martin.

MS. CLARKSTON: But are there other entities that are going to become sellers that are not currently funeral --

MS. EULER: Yes.

MS. CLARKSTON: Okay.

MR. OTTO: We're also getting -- I'm getting a lot of people that don't want to be sellers, and they realize under the new law they're going to be a seller, and they don't want to have to do the reporting requirements and they don't want to have to do -- have the fiduciary obligations of a seller, so they're looking actively to not be a seller under the new law at all.

MS. RUSSELL: That's impossible if they take an assignment of insurance from anybody that walks in that for public assistance that takes an assignment on insurance. I just tell them if you're going to take an assignment of insurance for somebody for a spend-down, you automatically are going to be seller.

MR. OTTO: We're looking for people who want to sign up, for example, with a third-party seller.

MS. RUSSELL: You're a seller. You have to do a preneed contract.

UNIDENTIFIED: Not if they sign up with a third-party contractor.

MR. OTTO: But not if there isn't a

third-party seller.

MS. RUSSELL: Oh, not if you're using a third-party seller.

MR. OTTO: Yeah. So, that's what they're looking at doing. They're looking for a third-party seller so they don't have to do all the reporting and all that.

(Several people talking simultaneously.)

MS. CLARKSTON: We've got court-reporter issues.

MS. EULER: Guys. Guys. Bang your gavel, Martin.

CHAIRMAN: Turn the recorder off a second.

MS. EULER: Don't say that.

MR. REINHARD: Just turn the thing off.

MR. KRAUS: No, we can't do that.

CHAIRMAN: No, I'm just -- too many conversations. That's all it meant.

MS. HESS: Becky, when you look at it, whether it's 690 or 350, it's not going to change your fund that much. The main funding source that's in these projections is the $36 contract fee.

MS. DUNN: Okay.

UNIDENTIFIED: Yeah.

MS. HESS: So, if we take that in half --

MS. DUNN: That was my concern.

MS. HESS: -- it does not detrimentally impact your funding.

MS. DUNN: Okay. Because, right now, we only have 350.

MS. HESS: So, we do have -- right. Right.

MS. CLARKSTON: Okay.

MS. HESS: The one that is going to really affect your fund is that $17,000 that we're projecting for your contracts, your annual reporting fee, and that's the one that we're going to have to wait and see, you know. I've heard industry talk, you know, because of the economy, is that going to affect it. You know, with all the other situations that has happened with the Board, is that going to affect it? That's going to be our guessing game. That's going to be, you know, will that $17,000 come to pass.

MS. DUNN: Okay. That was my concern because all I'm doing here is estimating

something that I don't know.

MS. HESS: Exactly. Exactly. Because the main thing -- the biggest estimate is that $17,000. The rest of it, the fees that we're talking now indicates this minimal revenue source for your Board.

MR. REINHARD: Okay. I call the question.

CHAIRMAN: Call the question. Gary made the motion, John seconded. Jim?

MR. REINHARD: Yes.

CHAIRMAN: Todd?

MR. MAHN: No.

CHAIRMAN: It still passes.

MS. DUNN: Okay. And something that I need to get on the record before we forget is that the annual reporting fee for providers as of August 28th, I hear the Board saying there is no fee for that annual reporting fee as of August 27th or 8th this year?

CHAIRMAN: For providers?

MR. McCULLOCH: The provider $30 fee?

MS. DUNN: Yes. I need to make sure we have a motion and a vote on that.

MR. FRAKER: I make the motion that

they don't provide it to you after August the 28th.

MS. DUNN: No. Before.

CHAIRMAN: No.

MS. EULER: No.

CHAIRMAN: The one before.

MR. FRAKER: Before the 28th. Okay.

MS. DUNN: The reporting period --

MS. EULER: The seller.

MS. DUNN: Provider.

MR. FRAKER: Oh, provider.

MS. DUNN: The $30.

MS. EULER: Oh, okay. All right.

MR. McCULLOCH: So, for the reporting fee of 2008-2009, that $30 fee is not going to be in effect?

MS. DUNN: That's correct. They have to report, but there is no fee attached to it.

MR. FRAKER: No fee.

MR. McCULLOCH: Pay your two bucks and -- okay.

MS. DUNN: That's -- yeah. For sellers.

MS. EULER: That's sellers.

CHAIRMAN: Yeah. That's seller -- two

bucks a seller.

MS. EULER: So, the Board will lose $20 for every provider.

CHAIRMAN: $30.

MS. DUNN: And we figured that. We didn't count that in. The other thing, at some point in time today, I've heard people discuss that we need to have functions for providers, establishment and nonestablishment, whenever the appropriate time is to bring that into a regular rule or an emergency rule.

CHAIRMAN: Didn't that just kind of do that?

MS. DUNN: No.

MS. EULER: No.

MS. DUNN: It didn't say we would have functions --

CHAIRMAN: Okay. But we have to do that. But that's what that means.

MS. DUNN: -- it just said we would have fees.

MR. FRAKER: Martin, let's -- while we're on that, let's do it. Let's do the functions then.

MR. REINHARD: Are you rolling this

all in one motion, Gary?

(Several people talking simultaneously.)

CHAIRMAN: So, Gary made the motion that there is --

MR. KRAUS: So, what is the motion?

MS. EULER: You want functions for providers, but not for sellers?

MR. FRAKER: Not for sellers.

MR. REINHARD: You're going to give them the latitude to make the functions?

MS. DUNN: I'm sorry. I didn't hear what you said.

MR. FRAKER: Well, they're going to have to apply. They're going to have to apply for a particular function.

MS. DUNN: Everybody has to make application.

MR. FRAKER: For a particular function.

MR. REINHARD: (Inaudible.)

(Several people talking simultaneously.)

MS. EULER: I don't know what functions. I think they're saying establishment/nonestablishment.

MS. DUNN: Yes.

MR. FRAKER: Yeah.

MR. REINHARD: So, there would just be two functions?

MS. EULER: Yes.

MR. FRAKER: Right.

MR. REINHARD: (Inaudible.)

MS. DUNN: And, Lori, do you have a concern?

MS. HAYES: They made a motion on the annual report, but no second. Is that what the discussion right now is?

MS. DUNN: Oh, okay.

CHAIRMAN: That's where we're at.

MS. HAYES: Okay. Okay.

CHAIRMAN: Because we were about to change the motion, which we did; right or wrong? You made the motion that there --

MR. FRAKER: I made the motion, but didn't get a second.

CHAIRMAN: Okay. Well, let's go back up then because we've kind of got two things going there. You're making the motion that providers that for the 2008-2009, that there's zero fee paid --

MR. FRAKER: Zero fee.

CHAIRMAN: -- with this reporting, and

set up the functions for --

MS. DUNN: As of August 28th.

CHAIRMAN: -- non and -- but --

MR. FRAKER: Yeah. I'll do that. Yeah. Let's make that one motion.

CHAIRMAN: Okay. One motion. There's the motion. Anybody second?

MR. McCULLOCH: Second.

CHAIRMAN: John seconds. Jim?

MR. REINHARD: Yes.

CHAIRMAN: Todd?

MR. MAHN: Yes.

CHAIRMAN: All right.

MR. KRAUS: What was second part of that, again?

CHAIRMAN: To do the functions as to the non and the establishment.

MR. KRAUS: Oh, okay.

MS. DUNN: Right now, we have functions for funeral homes, so we would have functions for providers.

MR. KRAUS: All right.

MS. DUNN: Lori, does that sound okay to -- okay. I just want to make sure the practical part is --

MR. FRAKER: Well, that would simplify this thing.

CHAIRMAN: I agree. It makes sense.

MR. KRAUS: And that will work in promo and all that?

CHAIRMAN: If you can A, B, C, D in the other, why couldn't you do that?

MS. DUNN: Promo?

MR. KRAUS: I don't know. I'm just asking.

MS. CLARKSTON: You have functions now; right?

MS. DUNN: Yes. For establishments.

MR. KRAUS: Okay.

MS. CLARKSTON: Yeah. We just have to --

MS. DUNN: For anyone, Promo is the licensing system that the Division has, and any changes that we make, we address them through the Division.

CHAIRMAN: Okay. Where are we at with this, or are we done with it?

MS. DUNN: Well, we're not setting any renewal fees.

CHAIRMAN: Can do that anyway, though.

MS. DUNN: Right. Have we addressed every fee type that we need to, Connie?

MS. EULER: Uh-huh.

MS. CLARKSTON: The only other thing, Sherry just pointed out, was the amended -- when you talk about amending the license, you said that there are some times the corporation changes.

MS. DUNN: Oh, yes.

MS. CLARKSTON: Okay. And that fee, do you want to leave that at $25 or how --

MS. DUNN: Yes. I mean, that's just reasonable.

MS. CLARKSTON: Okay.

MS. EULER: I think the Board needs to vote on that, though.

MS. DUNN: Okay. So, what the --

MR. KRAUS: And pen renewals are zero across the board?

MS. DUNN: Right now.

MR. FRAKER: Right now, yes.

MR. KRAUS: Okay.

MS. DUNN: So, currently, the Board has the ability by fee to amend a provider for $25 or amend a seller for $25, and we need a

motion to have that fee and application or amendment form. What would happen is, typically, you might have a corporation change or --

MR. REINHARD: I make the motion.

CHAIRMAN: Jim makes the motion.

MR. FRAKER: Second.

CHAIRMAN: Gary seconds. John?

MR. McCULLOCH: Yes.

CHAIRMAN: Todd?

MR. MAHN: Yes.

CHAIRMAN: Okay. What else?

MR. FRAKER: Let me ask a question, and going back just a little bit to these Highway Patrol background checks and so on and so forth of the agents. If this is personal -- just for an agent, or what did we decide?

MS. DUNN: We didn't. Because, right now, we do Highway Patrol background check for funeral directors, embalmers. We do them for persons -- a person.

MS. EULER: Uh-huh. Under the law, under the new law, you are authorized to check corporate officers, directors, shareholders, which you may not want to do in every

circumstance, or you may want to. MR. FRAKER: Why not, Sharon?

MS. EULER: Huh?

MR. FRAKER: Why not?

MS. EULER: Well, if it's a two-person or if it's a one-person owned corporation, it's easy to do. If the corporation is, you know, SCI or Stuart Enterprises where you've got thousands of people who would fall into that category, I don't think you -- it's not feasible to do it because you don't know who it is.

MR. KRAUS: And there's a difference in the level of control there, too.

MS. EULER: Right. Right.

MR. REINHARD: Well, we could go down the trail and work on this, can't we?

MS. EULER: Huh?

MR. REINHARD: We don't have to do that today.

MS. EULER: We don't have to do it today. Well, yes, you do because people are going to be applying for licenses and the Board needs to know who they need to collect money from.

MR. REINHARD: (Inaudible.)

CHAIRMAN: Yes, ma'am?

MS. RUSSELL: How much does it cost right now with the Highway Patrol background check?

MS. DUNN: Nine dollars.

MS. RUSSELL: Nine?

MS. DUNN: Now, a lot of professions, I will tell you, are conducting fingerprinting, which is $55.

MS. CLARKSTON: Something like that.

MR. REINHARD: Yeah. Let's really stir them up.

MS. DUNN: Well, the only thing about that, Jim, is that you will find --

MR. REINHARD: There won't be a funeral home left in Missouri, they'll all leave.

MS. DUNN: -- you will find that, many times, you may have an applicant that you only have what they've recorded that occurred in Missouri and your Missouri Highway Patrol background check will only capture what happened in Missouri.

MS. EULER: Right. So, they could

have done 20 years in Utah for stealing from old people and --

MR. REINHARD: (Inaudible.)

MS. EULER: -- all sorts of other things.

MS. DUNN: Well, this Board has taken action on individuals that made application that --

MS. EULER: Right. But we -- it's easier to deny a license at the front end than it is to take one away after it's been given. So, if you -- if somebody lies on their application and doesn't tell you about their convictions in Utah, you have no way to know. But if you do fingerprinting, that runs it through the nationwide system and you'll know.

MR. KRAUS: And the fingerprinting part of it --

UNIDENTIFIED: (Inaudible.)

MR. REINHARD: I agree. I agree. I think we're going way overboard.

MR. KRAUS: The fingerprinting part of it, I think the Board will need to address at some point.

MS. EULER: Yes.

MR. KRAUS: I don't know that you need to address that today, but you certainly need to address -- since, currently, background checks are done, then I think you probably do need to address that.

MS. EULER: Isn't there a statute about requiring fingerprinting?

MR. KRAUS: Let's not get into that.

MS. EULER: That's my recollection of it.

MS. DUNN: Okay. So, would the Board make a motion that we would do --

MR. KRAUS: That's why I said we'd eventually get to it.

MS. DUNN: -- Highway Patrol background checks?

MR. REINHARD: On all new applicants?

MR. FRAKER: I don't think that's enough.

MS. EULER: What would you like to see, Gary?

MR. FRAKER: Well, do the fingerprinting. Let's fix it while we're fixing it. Let's do it right.

MR. McCULLOCH: Just on new ones, or

are we going to go back and do them on everybody?

MR. FRAKER: On new ones. On new ones, not on --

MR. McCULLOCH: I think we do everybody if we're going to do that.

MR. FRAKER: Well, maybe so, but --

MS. DUNN: Well, you know what, you're going to get --

CHAIRMAN: Actually -- they're actually --

MS. EULER: You're going to get everybody. I mean --

MR. McCULLOCH: In other words, I don't think we should do that.

(Several people talking simultaneously.)

MR. KRAUS: That's true, because everyone needs to apply, but there actually is a board that is doing that. At their renewal, they're going back and having everyone for their renewal do fingerprinting so they can capture everybody, so there are boards that are doing it.

MR. FRAKER: I don't think -- (inaudible.)

MS. EULER: Yeah.

MR. McCULLOCH: You know, we tried that once before and it turned out to be a mess.

MR. FRAKER: Let's fix this while we're at it. MR. KRAUS: It's a lot of work for them.

MR. McCULLOCH: Well, not that, it just --

UNIDENTIFIED: (Inaudible.)

MR. REINHARD: Can we just -- I think we're really loading on a bunch -- I mean, I agree, Gary, that's probably not a bad idea, but can we just -- let's address what we've got here and not have to go down --

MS. EULER: Well, it's --

MR. REINHARD: -- because I'm wanting -- if you're going to do it on these guys, let's do it on everybody.

MS. EULER: Well, if you do it on these, you're going to hit most everybody. I mean, I think --

MR. McCULLOCH: You see, because everybody has got to renew their --

MS. EULER: Most people are going to

apply for a seller or a provider license.

MR. KRAUS: Everybody's got to apply.

MS. DUNN: Everybody has to apply.

CHAIRMAN: That's the big point right there.

MR. KRAUS: Yeah.

MS. EULER: So, if you're looking at going to fingerprinting, now would be an ideal time to do it.

MR. MAHN: And how do they -- how does the process work getting them fingerprinted? Do they got to go to the sheriff's department or what?

MR. REINHARD: Oh, hell, no. You've go to go the Highway Patrol office.

MS. CLARKSTON: Or other vendors.

MR. REINHARD: Or their vendors.

MS. DUNN: Lori -- well, Jim had to do it to become a board member.

MR. REINHARD: You had to go to the Highway Patrol office. You couldn't get your -- I tried to get the sheriff, and he'd fingerprint it, and we took it over here, and they said no, over there. Go to jail, do not pass go, don't collect $200.

CHAIRMAN: There are agencies or businesses or whatever out there that you can go to, kind of like the A.D. Banker for testing and stuff, that they just do electronic fingerprinting. You go stick your fingers on the scanner and they --

MR. MAHN: They do fingerprint -- right.

MR. REINHARD: How do you know that, Martin?

CHAIRMAN: Because I've seen it done.

MS. DUNN: There is a --

MR. McCULLOCH: Plus, how far down does this go?

MR. KRAUS: Up close and personal?

MR. REINHARD: Oh. I didn't know whether you had been there or --

MR. McCULLOCH: Hey, how far down does this go in a corporation situation? I mean --

MS. DUNN: That's what I --

CHAIRMAN: It was under pharmacy.

MR. McCULLOCH: All the board members? How many people are you going to include in this?

MS. EULER: That's the Board -- that's

Board call.

MR. REINHARD: (Inaudible.)

MR. McCULLOCH: You may not need to mess with this.

MR. REINHARD: I'm with you.

MR. MAHN: If they're corporate, are they --

MR. ZELL: I don't understand why couldn't say -- Sharon, you're sort of saying we're going to decide at the time. Let's see. You've got 500 people. Well, we're not going to let you do that, but you have seven, you're yes. I don't know how you do that unless you do everybody.

MS. EULER: Well, I mean, that's why the Board --

MR. ZELL: And what are we -- what are you going to capture that you're afraid of that we don't know now from the Missouri -- just from the Missouri?

MS. EULER: People with convictions in other states that would -- if the Board knew about them, the Board would deny them licensure here.

MR. ZELL: Okay. In the state of

Missouri, how many people would be new that haven't been here in a period of time? What are you going to capture? The one out of 100 or one out of 1,000?

MS. EULER: We don't know. We don't know.

MR. REINHARD: What kind of a background check do you -- (inaudible.)

MS. BATTAGLER: We do, but we don't do the fingerprinting, but we do several states. We do a full background where it goes across the nationwide because we -- (inaudible.)

(Several people talking simultaneously.)

MR. McCULLOCH: Well, that's the question: How far down are you going to go on this?

MR. REINHARD: Yeah. Where is the food chain?

MR. McCULLOCH: Are you just going to do you, Todd, and then get your wife in here, kids -- (inaudible.)

MR. FRAKER: I think we -- the only place we can fingerprint are those that are licensed, those that hold a funeral-director or embalmer license and that's it.

MR. MAHN: Or the -- (inaudible.)

MR. FRAKER: You can't fingerprint the janitor or --

MS. EULER: So -- no. No. We're not asking you to do that. But here's what happens, is I have -- hypothetically speaking, I have 14 felony convictions in 14 different states that I have served time for --

UNIDENTIFIED: Moral turpitude.

MS. EULER: Yeah. Full moral turpitude.

UNIDENTIFIED: Oh, my God, Sharon.

MR. REINHARD: Keep going.

MS. EULER: You know, I've got convictions for embezzlement, I've got convictions for abusing the elderly, I've got a couple of pedophile convictions.

MR. MAHN: You're a piece of work.

MS. EULER: Well, I've been busy. I've got all of these convictions out there, but they're in other states. And I haven't been in Missouri yet. Nobody here knows me. And so, I come into Missouri and I'm going to sell preneed and I'm going to make a lot of money. And I apply for my license and it

says have you been convicted, and I check the box no. If you don't fingerprint, you will have no way of knowing that. And if you say if you're a corporation, no fingerprinting, or you just fingerprint individuals, I say that's easy. I'll get a form from the Secretary of State, it's one page, and I'm going to form a corporation. I Am Not A Crook, Inc., and the corporation is going to apply for a license and you're not going to fingerprint me, and I'm the only person at the corporation, I get a license.

CHAIRMAN: I'll validate what she's saying. You mentioned a while ago one in a 100. In the last 90 days, there's been two that's went through that had we not have had other boards call us --

MS. DUNN: From other states.

CHAIRMAN: -- from other states and just say we've got information that somebody may be trying to work in your state --

MS. EULER: And people do that.

MR. ZELL: So, are you going to have to refingerprint every app renewal, because what about the stuff that you do in the two-year

period, or is it a one-time deal?

MS. EULER: But we have funeral directors who have done that in this state.

CHAIRMAN: That's true, too.

MS. CLARKSTON: Well, if I can address that, what I'm understanding, this came up with another board who --

MR. FRAKER: Well, while we're at it, let's fix it. We're not very far from -- (inaudible.)

MS. DUNN: Speak up, Connie, I can't hear you.

MS. CLARKSTON: Okay. This came from another board when we worked through the rule process that they are requesting our licensees be fingerprinted by the next renewal cycle, so they go get that and they submit and then we'll work out the details of that. But there is a program that the Highway Patrol is coming out with that once they implement the program, once we -- a board or an agency does a fingerprint, if there's any hits on that later on, there will be an automatic notification. So, you're getting the baseline now with the anticipation in a couple of years that there

will be an automatic hit and it won't be a reprinting, just as an --

MR. KRAUS: Because the prints are already on file.

MS. CLARKSTON: The prints are already on file. They already know who has been interested in it, and they will follow up with that. It will be an automatic notification, but that's not up and running yet.

CHAIRMAN: Don?

MR. OTTO: The agents is relatively an easy because that's always going to be an individual, so that's not a problem. But who are you going to fingerprint at SCI?

MS. EULER: I know. That's why I --

MS. DUNN: Jim Moody.

(Several people talking simultaneously.)

MR. MOODY: I'm not an officer of the corporation. And if you --

MS. EULER: We'll have each corporation designate who should be fingerprinted.

(Several people talking simultaneously.)

MR. OTTO: Well, and I understand your concern about getting around the law by -- but it's just a two-step process. If you say the

officers and directors are going to be fingerprinted and I'm the crook -- okay?

MS. EULER: Right. I know.

MR. OTTO: -- then I assign my brother-in-law, who is not the crook, to be the officer and director.

MS. EULER: I know.

MR. OTTO: And if you say, okay, the majority stockholder, well, there's not going to be one in a lot of cases, they'll be all little bitty ones, and even -- you know, it will be my sister-in-law, so --

MS. EULER: I know. That's what makes it so difficult.

MR. OTTO: I don't think you can do it. I just don't think you can practically do it very well with corporations for the seller and provider.

MR. KRAUS: I think it's true it's certainly difficult to do. Where I would think most of the concern would be is, again, that level -- who has what level of control, and I think that's for the Board to determine. If they want to address it all, what level of control is enough to where you care enough to

have that person fingerprinted and try to spell it out that way because there's going to be so many different situations, you're not going to be able to tailor a rule to fit all of them specifically.

MS. EULER: Right.

MR. KRAUS: But through something like that, you might be able to as best you can.

CHAIRMAN: The gentleman behind you.

MR. MOODY: Jim Moody, representing SCI, also Moody & Associates. This may sound self-serving, but you might want to consider an exemption for publicly traded corporations, which would cover us. I think this is regular rule-making stuff. I don't think you should do this in any emergency rules or to where you're trying to go down to the corporation level. I mean, the public doesn't know that you're doing this, and the public ought to have a right to look at your rules through the normal rule-making process. And maybe blending over, you did some rules last week where you talked about someone who might be eligible for licensure. And, again, that's the applicant corporation, I believe. But we

have the same issues with that. We don't know who you're talking about, you know, again, because we probably have got three levels of corporations; a big corporation, then the top-ranking units under the big corporation, and then we've got Missouri corporations who actually operate the facilities. And what you're doing here, I think, you know, the hole in all of this -- and I agree, we need to look at the applicant corporations, but if you're looking for a bad guy, all they have to do is create themselves as an owner corporation for somebody that doesn't have convictions in the applicant corporation, and you're not going to find them there anyway. As I understand it, you're going to the applicant corporation, not the owner corporation. If you start going to the owner corporations, there's probably no end to that.

MR. KRAUS: So, do you see that --

MR. MOODY: I believe we could consider possibly talking about publicly traded corporations being exempt.

MR. KRAUS: Do you see the protection for this public -- in the situation where

there's a publicly traded corporation being through just the shareholder setup and the protections there?

MR. MOODY: Well, SEC regulations. I mean, SEC regulations. I just -- I look at your administrative budget. I used to be a state budget director. If you go down this road, your fees are not going to be enough because you're going to have to set up a huge bureaucracy. Well, once you have the requirement, you've got to monitor it. Thank you for the opportunity to speak.

CHAIRMAN: That's all right. John, you had a comment, I think? I thought you raised your hand.

MR. McCULLOCH: I did, but I changed my mind.

CHAIRMAN: All right. Okay. So, where then in the -- that's all about fingerprinting. Let's go back. My question is in the Highway Patrol file, what -- is that active currently -- the Highway Patrol thing?

MS. DUNN: Yes. I -- we can do it on -- we do it on individuals and it's passed through, they pay it. So, an individual, to

me, appears to be easier, like Jim said, that if an agent is an individual, it appears to be that you would do a background Highway Patrol check, and that $9 is passed through.

CHAIRMAN: Okay.

MR. MAHN: So, if we were sitting here three years ago doing this, and we're going to let corporations that's got a lot of officers and you don't really know who is in charge, we're going to let them be exempt, NPS would have just got floated through that, too. We didn't really know who was in charge there, you know.

MS. EULER: Uh-huh.

MR. McCULLOCH: They were fingerprinted.

MR. MAHN: Well, they're going to be.

MR. McCULLOCH: When they started their insurance company, and it didn't change anything.

MS. EULER: Yeah.

MR. McCULLOCH: They went through all that.

MR. MAHN: Right.

MR. KRAUS: You do fingerprinting now

on individuals?

MS. DUNN: No.

CHAIRMAN: You do background checks?

MS. DUNN: Yes.

MR. KRAUS: Okay. That's what I thought.

MS. DUNN: Yes.

UNIDENTIFIED: Thieves are always going to figure out how to steal.

MR. REINHARD: Well, it's just like -- (inaudible) -- said, I mean, they get a different layer of corporation people and -- he must of been thinking on this a while.

MS. EULER: What you could do, I think, is to have a rule that says all individuals shall be fingerprinted and corporate officers or directors --

MS. DUNN: Wait, Sharon.

CHAIRMAN: The original question was -- for the court reporter then. The original question up here was: Do we do fingerprinting now, currently. And then we moved over here, so which -- who's following?

MS. DUNN: And the answer was, we do not currently do fingerprinting, we do Highway

Patrol background checks on funeral directors and embalmers.

MS. EULER: Applicants.

MS. DUNN: On applicants. I'm sorry.

MS. CLARKSTON: So, can I clarify? When you do background checks, you can't go through the vendor for the Highway Patrol. That has to come to the Board office and be a pass-through, where with when you do fingerprinting, you can go to the vendor --

MS. DUNN: Yes.

MS. CLARKSTON: -- and not have that come through the Board office and not be a pass-through. It's paid directly to the vendor who then pays the Highway Patrol and takes the Board out of the picture.

MS. DUNN: Well, you know, Tab is our expert, so I don't want to go on record on this, Connie, unless you know for sure.

MS. CLARKSTON: Okay.

MR. KRAUS: That was my understanding.

MS. CLARKSTON: That's my understanding from other rules that we have read is that when we establish the fee schedule for those doing fingerprints, that

they set the fee as determined by the Highway Patrol. We never see those fees here. Those go to the vendor --

MS. DUNN: Okay.

MS. CLARKSTON: -- and then the vendor pays the Highway Patrol.

MS. DUNN: Okay.

MS. CLARKSTON: So, it's by process more than it is by rule, if that makes sense.

MS. DUNN: Okay. Am I correct on the $9 pass-through, or is that paid -- okay.

MS. CLARKSTON: That, I don't know.

MS. DUNN: I'll verify that.

MS. CLARKSTON: Okay.

CHAIRMAN: Jim?

MR. REINHARD: I'll make a motion that we go ahead and do the background checks, not the fingerprinting this time, and look at the fingerprinting down the road.

CHAIRMAN: That's a motion.

MR. McCULLOCH: Second.

CHAIRMAN: There's a second. Todd?

MR. MAHN: Sure.

CHAIRMAN: Gary?

MR. FRAKER: (No audible response.)

MS. DUNN: And that was on agents, Jim?

MS. EULER: All of them.

MS. DUNN: All of them?

MR. REINHARD: All of them.

MS. DUNN: Okay.

MR. FRAKER: You know, just a -- (inaudible) -- to this, I see this right now as the time. We've got this open, we're talking about it, you know. Obviously, we can't fingerprint everybody, but I'd sure like to see this phased in over the next few years.

MR. REINHARD: Well, I mean, I think, give them one heart attack at a time. Don't --

MR. FRAKER: Yeah. And at the risk of not making it home tonight, you know, or being ambushed, I say that, but I still think it's --

MR. REINHARD: Well, you just had your birthday.

MR. FRAKER: Yeah, I know. I mean, I -- but I'd really like to see this thing phased in over the next few years. It's just -- it's the right thing to do.

MS. EULER: Well, what we're talking about right now is emergency rule. The Board can consider a permanent rule and talk about

the fingerprinting at a later date.

MS. CLARKSTON: And then, quite honestly, we might have a better feel from the Division perspective that we can share with this Board about how that's working for the other board that's collecting that up through the renewal period just as information for you.

CHAIRMAN: Okay.

MR. KRAUS: So, going back to the --

MR. McCULLOCH: Do we really need to have that much of an issue that we need to be concerned about this? I don't think so.

MS. EULER: Uh-huh. Well, two in the last 90 days?

MR. REINHARD: Hell, we gave them licenses.

MS. DUNN: No, we didn't.

MR. REINHARD: Oh. (Inaudible.)

MR. KRAUS: Well, and once the Board does -- down the road, once the Board does address fingerprinting, there are some statutory requirements to talk about, too.

MS. EULER: Right.

MS. DUNN: Okay.

CHAIRMAN: All right. So, are we done

with the -- yes?

MR. MOODY: Mr. Chairman, could I ask a question? Is what you're voting on here, and is it going to apply to corporations or individuals?

MS. EULER: Individuals.

MR. FRAKER: I think individuals at this time.

MR. MOODY: Individual applications.

MR. STALTER: Because I don't think that was clear.

MR. MOODY: Thank you.

MR. STALTER: I have the same question Jim had. I mean, are we talking about sellers or are we talking about agents?

MS. EULER: We're talking about anybody who applies who is an individual.

MR. STALTER: As an individual?

MS. EULER: Yes.

MR. STALTER: Okay. So, then you're saying if a seller -- as a seller, you apply as an individual, then you have to have a background check? But you're making it clear it doesn't apply to a corporate entity?

MS. EULER: Unless --

MR. STALTER: Unless what?

MS. EULER: Well, because corporate entities generally aren't -- don't have criminal backgrounds.

MR. OTTO: What if I'm a partnership or a sole proprietorship and I put it in my business -- my business is the seller.

MS. EULER: You are that sole proprietorship --

MR. KRAUS: That's an individual.

MS. EULER: -- that's an individual.

MR. OTTO: Well, that's what we need to clarify you're talking about --

MS. EULER: Yes.

MR. OTTO: -- because, I mean, the particular -- just like with funeral establishments, you know, if it says, you know, a business authorized to do -- you know, an entity authorized to do business in the state of Missouri.

MR. KRAUS: Well, maybe it's clearer to say anyone who is -- I just had it and then I lost it -- who is not an otherwise separate legal entity. I mean, if you're a person --

MR. OTTO: Maybe you just think -- I mean, agents are easy because they're always going to be individuals. That one is easy to deal with now if you think you need an emergency rule. And then the sellers and providers, which obviously needs to be thought about a little bit and maybe some input from other boards, make that a permanent rule. I mean, deal with it, but I don't know if you need an emergency rule on that.

CHAIRMAN: Any other comments?

MR. KRAUS: Well, yeah. But doesn't that circle us back around to --

MS. EULER: Yeah. We need an emergency --

MR. KRAUS: -- the fee and when people apply, do you do a background check and who pays for it?

MS. EULER: We need an emergency rule so we can consider the background check as we're issuing licenses, which we will be issuing while the emergency rule is pending before we have the permanent rules.

MR. KRAUS: Right.

MR. OTTO: Well, the emergency rule

could theoretically say that until a permanent rule is in effect, all agents will have the background check with the $9 pass-through or the fingerprinting, if that's what you want to do, and sellers and providers don't.

MS. EULER: Why would we not want to check on sellers and providers who are individuals?

MR. STALTER: Because we're going to have this financial examination, this whole process around the sellers. And it seems like --

MS. EULER: But --

MR. STALTER: But, see, what we keep talking about, people stealing money from the elderly. Usually, that happens when they're not even submitting the check to the seller. I mean, that -- and that, you know, we have individuals out there that we have to build something around, and that's what we're talking about background checks and maybe fingerprinting or something of that nature.

MS. EULER: Under the law, this Board has an obligation to make sure that they're issuing licenses to people who are qualified

for licensure. One of the disqualifications for licensure is conviction of a crime involving the things that are listed in the statute. Why would this Board not want to verify that its applicants that they're giving a license to meet that criteria?

MR. STALTER: Well, I think the thing is, are you going to have that kind of obligation for every single person involved with a corporation?

MS. EULER: I think the Board has the discretion to do that, but for the individuals that it's easy to do, why would the Board not do that? Why would the Board give a license to somebody who has a conviction that's available in the records? The Board gives a license to a person who has a conviction for senior abuse and embezzling and whatever else you want to throw in there, and the public finds out about that, will not the public say, Board, why didn't you run a background check to make sure of this before you gave them the license?

MR. STALTER: But don't you, on the application form that we have not yet created,

ask those questions: Do you have a conviction?

MS. EULER: Yes.

MR. SPEAKS: They just lie.

MS. EULER: They just lie.

MR. STALTER: And they just lie, yes. But they just lie, but then you can still jerk that license for falsification on their application.

MS. EULER: But that will take a year. And during that time, they can continue to practice.

MR. KRAUS: Right.

MS. EULER: Why would we not want to verify that at the beginning? Will there not be public outcry, why did you give this person a license, when you could have gone and done a background check and found out they've been stealing from people for years and have convictions for that?

MS. CLARKSTON: And to echo what you're saying, those same arguments will come up in the general assembly. That's something that they have set as a requirement for licensure. They're going to want some explanation if this Board does not verify, and whatever means that

is.

MS. EULER: What is readily available.

MR. KRAUS: Well, and going --

CHAIRMAN: Mr. Speaks?

MR. SPEAKS: I lived in Missouri in '95 and got licensed in '96 and, at that time, I had to be fingerprinted to get a funeral-director's license.

MS. EULER: Right.

MR. SPEAKS: And there was no -- you know, there was no problem. I didn't think, gosh, that's weird or, you know, God, what are they trying to pull on me or anything like that. You just go, well, okay, that's it. Go down, get my fingerprints and --

MR. OTTO: I'm not saying you don't need to do that -- look at a sole proprietorship or something. I'm just saying I don't know if, given the conversation here, if that needs to be an emergency rule right now, as opposed to going to the normal rule-making process where, like Jim said, you get --

MS. EULER: But the licenses will all be issued by the time the normal rule-making

process is done.

UNIDENTIFIED: But you're going to renew it each --

MR. KRAUS: But going towards a couple of the concerns that I've heard about corporations, what I'm hearing the Board is talking about doing, right now anyway, is requiring individuals and not separate legal entities to have a background check done, but dealing with the separate legal entities later so that we can get all that sorted out.

MS. EULER: Or the rule could say that individuals shall be required to be fingerprinted, and the Board may require corporations to submit fingerprinting of key individuals at their discretion.

MR. REINHARD: Well, do you want me to rescind my motion, he rescind his second, and then we add that to it?

MS. EULER: The Board's decision.

MR. FRAKER: I think that's --

CHAIRMAN: If you guys think that's the way to go.

MR. McCULLOCH: Say it again. How is it going to read, again?

MS. EULER: That the Board shall require background checks of every individual applicant and, at the Board's discretion, may request the corporate entities to submit to background checks for key individuals.

MR. FRAKER: I think that's good.

MR. REINHARD: I'll withdraw it, you can withdraw the second, and I'll add it to it.

MR. FRAKER: Second.

MR. REINHARD: He second it.

MR. FRAKER: Yes.

CHAIRMAN: Okay.

MR. MAHN: That what, we're going to do fingerprinting?

MR. REINHOLD: No.

MR. McCULLOCH: What if you're already did fingerprinting and you have it on file?

CHAIRMAN: Say yes or no because they already did and he said yes.

(Several people talking simultaneously.)

MR. McCULLOCH: Would they just be able to run it through and check it again so you don't have to through --

MS. EULER: We're not going to do the fingerprinting. It's the background check.

They'll put your name and your SSN --

MR. McCULLOCH: No, I'm just asking the question.

MS. EULER: I don't know.

CHAIRMAN: Well, that motion passed.

MR. KRAUS: I think they do it again. Until this new system is in place, I think they redo the fingerprinting process. Of course, we're not talking about fingerprinting right now, but --

MR. McCULLOCH: But don't they still have it on file?

MR. KRAUS: They do, but they -- it's my understanding they do a recheck of it to see if there's anything new that comes up based on the fingerprints that were submitted.

MR. McCULLOCH: That's what I mean, but you wouldn't physically have to go back in there and go through all that again? They've got it there.

MR. KRAUS: I think people do until this new system is in place.

MR. McCULLOCH: So, they don't have to.

MS. DUNN: Not in place yet.

MR. KRAUS: Not yet.

MR. McCULLOCH: It's not in place, but --

MS. DUNN: Not the new system.

MR. McCULLOCH: But they have your fingerprints on file.

MS. CLARKSTON: Yes.

MR. McCULLOCH: You know, they have to or they wouldn't be able to -- (inaudible.)

MR. KRAUS: It's my understanding they still have to take the fingerprints again from the person that's standing there, compare those with whatever they have on file, and then if they match someone, then they can match up the records. But, you know, you could have someone come in that says they're you who isn't really you, so they check.

MR. McCULLOCH: I got you.

MR. OTTO: So, just so I understand, so the Board, at its discretion, can go to SCI and say we want background checks on every one of your officers, directors, every one of your managers of every one of your funeral homes because we've decided that those are key people because this is solely in our discretion, while you, corporation #2, we're

not going to do anything.

MS. EULER: And then SCI can file a writ of prohibition saying that the Board has abused their discretion.

MR. OTTO: My personal view is I don't think that's how government should operate.

MS. EULER: Well, do you have a better proposal?

CHAIRMAN: I think it already passed.

MS. EULER: I think it did.

MR. OTTO: The easiest -- again, the easiest thing is what you suggested earlier. Any individual who is making an application will undergo background check. That's your emergency rule. You're going to deal with how you're going to handle the corporations later when you have more input.

MS. EULER: But the licenses will already be issued by then.

MR. OTTO: And any individual -- we were talking before. Any individual is going to have a background check. And the rule, you know --

MS. EULER: Well, I think it's already been voted on.

MR. KRAUS: Did something pass? I missed it.

MS. EULER: Yeah.

MR. KRAUS: What was it? It was the discretion?

MS. EULER: Yes.

MR. KRAUS: All right. Okay.

MS. DUNN: And Tab is here, and the Highway Patrol background fee of $9 is paid to us and then sent to the Highway Patrol, so that we call that a pass-through. The fingerprinting is --

MS. LENZINI: It's done through the electronic company.

MS. DUNN: And who -- is that throughout Missouri?

MS. LENZINI: Throughout the United States except for a couple of states. It's called L1.

MS. EULER: What's the charge?

MS. LENZINI: Connie, is it $54?

MS. DUNN: I thought it was close to $55.

MS. CLARKSTON: We're thinking about $55. That's what we're thinking. I don't --

I -- the fee rules don't set those out. It's usually as determined by the Highway Patrol, and I don't have the actual number, but it is around $55.

MS. RUSSELL: Tab, do you have them send you the two separate checks then when you're doing the funeral directors, or just one check and you, the Board, pays the $9?

MS. LENZINI: Yes.

MS. RUSSELL: One check?

MS. LENZINI: They pay -- the applicants pay us one fee of $209.

MS. RUSSELL: Thank you. That's what I wanted to know.

MS. DUNN: And then we have it spelled out on the application, this is what this is for, this is what this is for.

MS. RUSSELL: Thank you.

MS. DUNN: And we used to have the exam fee, but they're going to do that, so --

MS. RUSSELL: Okay.

CHAIRMAN: Okay. So, where are we at?

MR. KRAUS: Did we need to have a vote at all on the zero renewals? Is that necessary?

MS. EULER: No. I think we just leave -- we don't do a rule on that.

MR. KRAUS: All right.

CHAIRMAN: So, are we --

MS. DUNN: I think we're back where Connie left off. Have you completed your process?

MS. CLARKSTON: I think so, unless somebody has questions. I'm not sure where else to pick up and end it, so --

MS. DUNN: And you mentioned this when the attorneys weren't in the room about the emergency-rule process?

MS. CLARKSTON: Yes. Do you want me to go across that again?

MS. DUNN: Please. Real quick.

MS. CLARKSTON: Okay. Just like regular amendments and rules, we still have to receive department and governor's office approval. So, we can certainly, once -- and we have not -- at the same time, the regular rules need to be processed, so that means fiscal notes, small-business statements, and so forth. We will certainly give it, you know, utmost attention, but I'm fearful we may

not make Friday's deadline with getting all the approvals to file.

MR. KRAUS: Because some of that is outside of the Division's control?

MS. CLARKSTON: Yes.

CHAIRMAN: Okay. All right.

MS. CLARKSTON: Plus, we also have the small-business get-off-my-back act with the moratorium, and trying to meet those deadlines for filing, as well, which is about 80 rules.

MS. RUSSELL: So, are you saying on Friday, that the notice of intent to apply may not be on there for people because the rule may not have been able to have been approved?

MS. CLARKSTON: I'm telling you I'm not sure we can get through the governor's -- through the department to the governor's office and filed by Friday. So, what that --

MR. KRAUS: I think the form is not a rule, so the form could still be out there.

MS. RUSSELL: The form would be out there. Okay.

MR. KRAUS: But getting the rule on file --

MS. RUSSELL: Got you.

MR. KRAUS: -- is what we're talking about.

MR. SPEAKS: So, the form doesn't matter until the rule is in place then?

MS. EULER: Right.

MR. KRAUS: That's true.

MS. RUSSELL: Yeah.

MR. SPEAKS: So, you don't want people filling out that window when nobody can write preneed?

MS. EULER: Legally.

MR. SPEAKS: Legally. Is it ten days, Connie?

MS. CLARKSTON: Once I file, ten days.

MR. SPEAKS: So, is there a provision for how a company could help little old people that need to qualify for Medicaid spend-down during that ten-day window?

MS. CLARKSTON: I don't think I'm the person that you need to ask that.

MR. KRAUS: Well, maybe during that time, if you're concerned about that, maybe you preplan.

MR. SPEAKS: Do what?

MR. KRAUS: Preplan. And that's just a

thought.

(Several people talking simultaneously.)

MS. RUSSELL: I don't think that that's what you're saying, Earl, but she's worried about her 40 counselors come Friday, that they can't do business. You're saying that notice of intent is going to be on there. They can go ahead and apply and keep writing; is that kind of what the Board was looking at? Even though the emergency rule has ten days to go into effect, it was never the Board's intention to put somebody where they couldn't make a livelihood; is that right?

MR. KRAUS: It's my understanding that was never the Board's intent.

MS. RUSSELL: Okay. So, are you okay? Do you feel better now, Amy?

(Several people talking simultaneously.)

MR. KRAUS: But, you know, I mean, if you're asking, well, what law do I point to that says I can be in business today, that's a valid question.

MS. EULER: You should contact your own attorney about that.

MR. KRAUS: But that certainly is not

the Board's intent, from what I understand.

MR. MAHN: Call the AG's office.

MS. CLARKSTON: Okay. We've had a question from Bill Stalter that asked about the deadlines, and so I just want to clarify so we can kind of understand. We cannot file an emergency rule before August 28th in respect to this bill.

MR. KRAUS: Right.

MS. CLARKSTON: So, all the work we've done beforehand would not have clearly changed the fact, try to get through this process. So, once we file that rule, the emergency rule and the accompanying proposed rule, the emergency rule becomes effective ten days after the filing, if approved by the Secretary of State's office -- that's another approval process in this -- and then the regular rule will go through the regular rule-making process where it will be vetted with the public and comments can be received. Now, I am hopeful, once today's meeting is over with, that we can work with legal and get the final language and start what we need, and we will dedicate extra time -- again, allowable by

other priorities that we have, that small business, because there's 80 rules sitting out there, but to get those fiscal notes processed quickly, and we will make contact with the Department and then ask the Department to make contact with the governor's office to see if we can expedite. But once it leaves the Division, it's truly out of our control about how fast that moves. So, I'm hopeful that we can get that done within the next few days to the next week, but there is no promises on that.

MR. KRAUS: And we can certainly make those at the Division and above aware of the pressing need here, but we don't control their schedules, so --

CHAIRMAN: John.

MR. McCULLOCH: If someone writes a preneed from the 29th until this all goes into effect -- the emergency rules -- what are our attorneys going to recommend to the Board on how to discipline those folks, if any?

MS. EULER: It's a Board decision.

MR. KRAUS: It is a Board decision, and if I was that entity's attorney, I would

argue -- and I think it would be a good argument -- that, well, yeah, but Board, since then, this rule has gone into effect. We filed a notice of intent. That covers that time period, so you shouldn't do anything because I've done what the Board has -- everything the Board has asked me to do.

MS. EULER: Right.

MR. KRAUS: And I'm not the Board, but I think that would be a good argument.

MS. EULER: Yeah. And the emergency rules and the notice of intent.

CHAIRMAN: Hang on a second. Brad, you had a --

MR. SPEAKS: Well, that addressed my issue as, okay, the rule is not in effect giving you the authority to create a notice of intent yet, so how does filing a notice of an intent cover a company in that interim time? But if the answer is, well, everybody had the best of intentions for those ten days or however long it is, then, you know, there's no issue.

MS. EULER: If you steal -- use this opportunity to --

MR. SPEAKS: Yeah. If they use that as the opportunity to rob the bank, then that's different.

MS. EULER: -- steal money then we will discipline you. But if you conduct business as usual --

MR. SPEAKS: But if people show good faith, and you've done the right thing --

MS. EULER: -- per the notice of intent, I mean, I would think the Board would consider that in determining whether to pursue discipline or not.

CHAIRMAN: Don?

MR. OTTO: I appreciate that and I don't think this Board would intentionally go after anybody that was acting in good faith. But the violation of 436 is a felony; okay? And 436 says there shall be certain required disclosures on your contracts, and we don't have what those disclosures are yet, so that concerns me.

MS. EULER: Those are in the works.

MR. OTTO: I know. I know. But I -- right now -- but will they be in effect on Saturday if somebody comes in?

MS. EULER: I don't know.

MR. OTTO: And then if some consumer gets all upset and says, well, you didn't have the required disclosures, and happens to be best buddies with your local prosecutor. And so, now, you've got felony charges because your contract didn't meet the requirements of Chapter 436 when you couldn't meet the requirements of Chapter 436 because the rule wasn't in effect yet, you know. There are a whole lot of concerns during this gap between Friday and when the emergency rule goes into effect.

CHAIRMAN: And I think --

MR. KRAUS: There are, but there's absolutely nothing that anyone can do about that.

MS. EULER: Right.

MR. KRAUS: I mean, Saturday -- I mean, if we filed all these emergency rules on the 28th, if it went to the Division, it went to the governor's office, got approval, went to Secretary of State's office, got approval, everything went swell, it's filed, even if that happened, Saturday, the rule is not in

effect because it's not in effect for ten days. Nothing you can do about it.

MR. OTTO: If helping in that good-faith area, if we could have an addendum to attach to our contracts on Saturday that's been approved by the Board, even if the rule that authorizes that isn't in effect for ten days or whatever it is, if we could have something that I can staple to my contract that says the following things --

UNIDENTIFIED: Covers most of it.

MR. OTTO: -- then that sure covers my backside a whole lot more than what we've got right this second.

MR. KRAUS: Well, I know we're working on right -- in fact, I think Sarah is working on it this very moment -- a draft that we've been kicking around on a disclosure -- you know, an attachment of disclosures, which -- I'm not sure if that's what you're talking about, but --

MR. OTTO: Probably, but when will that be released for us to use?

MR. KRAUS: As soon as it's together and approved. We hope that during this

meeting, we would be able to bring that into the meeting and have the Board look at it and say if it's okay or not.

MS. EULER: Yeah.

MS. DUNN: And, Don, what I have found with the calls that are coming in, the Web site and e-mails are not going to capture this profession, so we're going to have to work very quickly through all the groups that we have to work with to do a mailing.

MR. OTTO: I think you're going to get a whole lot of people that, based on they're going to download that form and send it in on Monday.

MS. DUNN: The notice of intent?

MR. OTTO: Yeah.

MS. RUSSELL: Oh, yeah. They are. Uh-huh. Yeah. Friday. Yeah.

MR. KRAUS: Is that a bad thing?

MS. DUNN: Well, that's okay.

MR. SPEAKS: If the rule -- I mean --

MR. OTTO: It probably doesn't mean anything because the rule hasn't taken effect yet. That's our point.

MS. EULER: Yeah.

MS. DUNN: Yeah.

MS. EULER: But we can --

MR. KRAUS: But once the rule takes effect, don't you think the Board could accept those?

MR. SPEAKS: Well, yeah. That's what I'm hoping. I'm okay. I'm not a lawyer like Don. If you guys say, no, that's okay, I'll take that. There's a room full of people and the court reporter heard you say it.

MS. RUSSELL: Exactly.

MS. EULER: So, you're going to --

MR. SPEAKS: And, you know, what are you going to do, put me in jail because I helped a lady qualify for Medicaid? Good luck with that.

CHAIRMAN: Okay.

MR. REINHARD: I withdraw.

MS. EULER: So, this afternoon, we're going to look at group-two and group-three rules, and the consumer disclosure form if it's ready. Yes?

MR. KRAUS: Yes.

MS. DUNN: And what we have to decide is if we need to carry over to tomorrow for

open or not, because I have everyone on standby.

MS. EULER: Well, let's plow through and see what we can get through. And you don't have group-three rules yet, but you will.

MR. STALTER: When?

MS. EULER: Soon.

MR. KRAUS: I have the almost completely final draft right here.

MS. EULER: We just need to make a few changes to it.

MR. KRAUS: There's a couple of edits and then we're going to copy it and pass it out.

MS. EULER: Can we do that, like, before --

MR. KRAUS: Yeah.

MS. EULER: Like, in the next 15 or 20 minutes?

MR. KRAUS: Yes.

MS. EULER: We'll do that in the next 15 or 20 minutes.

CHAIRMAN: All right. We are adjourning for lunch. Be back at 1:00.

(Off the record)

CHAIRMAN: If somebody is an apprentice funeral director and he is going to sell preneed or she is going to sell preneed, that gives them the right to take the Missouri Law test a year in advance of just an apprentice funeral director just because they're a preneed agent. And that Law test is just as good then as it is at the end of the other one.

MS. EULER: Right. That's right.

CHAIRMAN: So, my thought, just purely from the apprentice point of view -- forget the agent point of view -- is I think we need to correct that and make it equal.

MS. EULER: So, the apprentice to take the Missouri Law at any time?

CHAIRMAN: -- so at the beginning of the apprenticeship --

MS. EULER: That would be fine.

CHAIRMAN: -- and the arts at the end of the apprenticeship.

MS. EULER: That would be fine.

CHAIRMAN: So, now Don has got --

MR. OTTO: I can tell you a lot of people would like to do that.

CHAIRMAN: So, I mean, at least it makes it equal, so -- and like I said, I don't know if this is the place that we address that or if that's just something that we fix later.

MR. KRAUS: If you change the current rule.

MS. DUNN: See, is that a cause for an emergency rule?

MS. EULER: No.

MR. KRAUS: No.

CHAIRMAN: Okay. So, we just fix it later then?

MS. DUNN: We would do it by regular rule.

MS. EULER: Uh-huh. But we should make a note of that.

MS. DUNN: Okay. I'll tell the attorney.

MS. EULER: I thought we had -- we need to make sure we do have an emergency rule that says the agent has until December 31; is that too late? Maybe we should say December 15 or some date to pass the Missouri Law? I don't know. I thought we had that in the

intent rule, but I don't see it.

CHAIRMAN: The 31st was what we originally said.

MS. EULER: Well, that's when -- that's --

MR. KRAUS: Well, if that's a part of what you're required to submit as a part of the application, then you would be subject to the December 31 deadline.

MS. EULER: Right. But the Board -- the notice of intent is good until December 31.

MR. KRAUS: Right.

MS. EULER: If you pass the test on December 31, well, then I guess you just take your chances with it.

MS. DUNN: What does that mean, take your chances?

MS. EULER: Well, because the Board won't be able to issue a license to that person on December 31 if they take the test and pass it at 3:30 in the afternoon. But, I guess, if you wait till the last minute to take your test, then you're just going to have to wait to get your agent license until the Board gets around to it.

MR. KRAUS: The same as someone who waits till the 31st to file their application.

MS. EULER: Right.

MS. HAYES: So, that's not a problem.

MR. KRAUS: It would be the same thing.

MS. HAYES: If they take the take the test on the 31st, it takes the conference, say, two weeks to get the result back.

MR. KRAUS: Then they have a problem.

MS. EULER: They won't be able to practice between January 1 and January whenever they get the test until the Board --

MR. KRAUS: Until the Board approves their application.

CHAIRMAN: As long as they pass the test by December 31st, that keeps them within the scope of the law.

MS. EULER: That's what we had talked about. Right. Right.

CHAIRMAN: They just don't have their license.

MS. EULER: Right. Right. But we didn't -- I don't see that. I thought it was written in here, but I don't see that, so we need to write that in the emergency rule on

notice of intent.

MR. KRAUS: And why did we write that in?

MS. EULER: Why? So that they know.

MR. KRAUS: Just informative kind of thing?

MS. EULER: Yeah.

MR. KRAUS: Okay.

MS. EULER: So, they don't think they have to pass it before October 31st.

MS. CLARKSTON: But, Sharon, don't you have that -- and I may be --

MR. McCULLOCH: It says somewhere.

MS. CLARKSTON: It's on -- on this document on page 6, and it's the certifying preneed-seller agents to take the Missouri Law Exam.

MS. EULER: Okay. There it is. I knew it was in here somewhere.

MS. CLARKSTON: Okay.

MS. EULER: Okay. Yeah. We'll get --

MS. CLARKSTON: I have a question about that, if I can ask. The sentence that starts up "The Missouri Law Exam covers knowledge of Chapter 333," is that an

information sentence or is that what the exam should cover for future? Because in my mind --

MS. EULER: I don't know the answer to that question.

MS. DUNN: I'm sorry; what was the question, Connie?

MS. CLARKSTON: The Missouri Law -- the sentence on page 6 of packet 1, about halfway down, it says, "The Missouri Law Exam covers knowledge of Chapter 333 and the rules governing." Is that an informational sentence or is it that that's what the Missouri Law Exam is going to be? And the reason I'm asking is if it's going to -- that's what it should include, can it say the Missouri Law Exam shall cover and then go into those, versus using a descriptive of this is what it covers right now and seems like it can be changed?

MS. DUNN: Well, and probably this was taken from the current reg.

MS. CLARKSTON: Okay. It may not be an issue then.

MR. KRAUS: Yeah. I don't know that that's meant to place an obligation on the

Board.

MS. CLARKSTON: Okay. So, it's more of a --

MR. KRAUS: I think here's what it's about.

MS. CLARKSTON: Okay.

CHAIRMAN: Mr. Otto?

MR. OTTO: This is on page 8. This is not one, I guess, you voted on. It doesn't have approved at the top. But the paragraph sub A, what this says, if you are an applicant corporation that's owned by an owner corporation, each officer, director, manager, and controlling shareholder of the applicant corporation, but if the applicant corporation is a corporation -- I mean, if the controlling shareholder is a corporation, that was -- I think that the intent here was the individuals have to be eligible for licensure, so I guess the question was, if the controlling shareholder is another corporation, does that language need to be clarified more?

MS. EULER: Well, and I think this language also needs -- this rule also needs to be clarified to talk about what the Board is

going to do about background checks for corporations. I know we talked about that before lunch, but this is the place to make -- to do that -- put this in the rule. You're staring at me blankly.

CHAIRMAN: Yes, sir.

MR. MOODY: Mr. Chairman, I raised some of the issues I raised -- Jim Moody, speaking for SCI. I raised some of the same issues that I raised earlier, you know. If you just want our folks to be of good moral character, et cetera, I don't have any problem with that. But we just have the fear that some way or other, we're not going to be able to comply with this -- you know, for shall be eligible for licensure, as if they were applying for licensure as an individual. I'm not sure I know what that means, because if you were applying for licensure as an individual, I presume you would have to submit the fee. To be eligible, you have to pay the fee. And, you know, if we want to say, you know, you can't have criminal convictions or anything like that, I think we ought to just say it. And we are still trying to sort out

corporately -- you know, again, we've got three levels of corporations, and who the owner is. And then we don't want -- well, I guess it doesn't apply to the owner corporation, it applies to the applicant corporation. But somehow or other, the applicant corporation is viewed as being the big corporation, the second-tier corporation in a three-tier, that would be a problem for us.

MR. OTTO: What if the officer of the applicant corporation is not -- one of the officers is not a resident of the state of Missouri?

MS. EULER: Well, I think that this is where we can figure out what to do here, and I wish I had magic language that was a good option. What we talked about before lunch about requiring background checks for individuals and corporations at the Board's discretion, as I thought about that some more and Earl and I talked about some of this over lunch, too, it would be better if we could come up with a bright-line test, you know, as to when the Board would exercise its

discretion. Usually, where this will come into play is with the smaller corporation where somebody knows that they aren't going to be eligible to apply for a license if they apply under their own name, so they form a corporation to hide behind the corporation shell. So -- because -- and that's the common place we see this. We may also see it -- I mean, NPS, you know, with multiple layers, but that's atypical. Typically, it's smaller corporations, but we don't want to run afoul of the Small Business Board because we don't want to pick on small businesses and not on large businesses.

CHAIRMAN: So, how do we fix it?

MR. McCULLOCH: His concern, I think, if I understand it, is, like, how do you know if you're eligible?

MS. EULER: Right.

MR. MOODY: How do you know if you're eligible and, you know, again, we don't want to get in the situation of our not having tens, hundreds of people, you know.

MS. EULER: Yes. Well, right.

MR. STALTER: Is it really an

emergency -- do we need this rule at this very point in time?

MS. EULER: Yes, we do.

MR. STALTER: And why is that?

MS. EULER: Because the licenses are going to be issued before --

MR. STALTER: They're not going to be issued for a long time because we're going to do this notice issue. We can still do emergency rules later down the road, but right now we need an emergency rule to keep everybody in business.

MR. KRAUS: But the notice of intent only takes you through December and the permanent rules won't be in place by then.

MR. STALTER: You get to define that. You're defining when -- how long that will last; right?

MR. KRAUS: The Board is, yeah.

MR. STALTER: Yeah.

MS. EULER: Uh-huh.

MR. STALTER: Well, maybe in the beginning of December, we can have an emergency -- we'd have some time to think about this and get other people --

MS. EULER: But the Board is going to need to issue licenses between October -- well, probably from the day we get the license application up on the Web site through December. We will not have a permanent rule in place during that time period, and it's not feasible for us to get more emergency rules done during that time period, either.

MR. STALTER: Why is it not feasible? I mean --

MS. CLARKSTON: Well, and maybe this is the clarity, if I may --

MR. STALTER: Yeah.

MS. CLARKSTON: -- is that if we set an emergency rule now, and the Board doesn't, and request notice of intent which then allows somebody to then fill out an application to apply, halfway through that, we can't say, oh, the requirements changed, now we want this. So --

MR. STALTER: Yeah, but right now, the notice is just -- I mean, everybody intends to do something.

MS. CLARKSTON: Correct. But the way the structure is set up, as I understand, is

that will immediately be followed by an application prior to December 31st.

MS. EULER: Right. As soon as we can get those forms --

MS. CLARKSTON: And with the rule process -- normal rule process takes six to nine months to get through.

MS. EULER: Right. And as soon --

MR. KRAUS: With regard to eligibility that you were going towards, does it help at all to work in a reference to 333.330, which are the reasons that the Board can refuse or deny?

MR. MOODY: I think that would be helpful.

MR. KRAUS: I mean, for felony and things like that. I mean, that might narrow it to what the Board is really concerned about, and then that doesn't talk about fees and things like that. I don't know. It's just a thought.

CHAIRMAN: That's why you're here.

MR. MOODY: Any clarification would be helpful, I think.

MS. EULER: Well, let me throw out

some kind of brainstorming ideas. We could do what we talked about earlier, which is, you know, we could have a check the box on the form that the corporation certifies that its officers and directors meet the criteria.

MS. DUNN: On what form?

MS. EULER: The application form.

MS. DUNN: Final application form?

MS. EULER: Uh-huh.

MS. DUNN: Okay.

MS. EULER: The permanent application form. We could give the Board authority to request fingerprints or background checks from corporate officers/directors. We could say everybody shall submit fingerprints or submit background checks for two people from the business or three people or some bright-line test.

MS. DUNN: Well, the first option you said -- the first option she said, if you have them mark a check box and they are not reflecting that accurately, then you have cause for discipline.

MS. EULER: Right.

MS. DUNN: And that sounds to me like,

even though that's the Board's decision, right now, that would be a good idea.

MS. EULER: Yes.

MS. DUNN: Because then you're not including your fingerprinting, which appeared to be some concern.

MS. EULER: But I also think the Board needs to be able to get background checks from corporate entities to comply with their statutory obligations, especially if we have good reason to believe that Bob is a convicted felon, or maybe we know that Bob is a convicted felon. I don't know. So, I throw those suggestions out.

CHAIRMAN: And those are suggestions to do specifically what to this?

MS. EULER: To have a rule that has more of an objective bright-line test as to how the Board is going to insure that its statutory obligations are met, to insure that the officers, directors, managers, and controlling shareholders are eligible for licensure as to background checks, you know, as to criminal activity.

MR. KRAUS: And I may be

misunderstanding where we're going with this. Is your understanding that this rule going towards such officers or directors being eligible, although not going through the process of determining eligibility, simply being eligible, and then if there's some question later on, then you'd look at whether, well, were they eligible?

MS. EULER: Right.

MR. KRAUS: You're not actually doing background checks on all these folks?

MS. EULER: Right.

MR. KRAUS: You're simply determining, well, you have to be eligible to pass that?

MS. EULER: Right.

MR. KRAUS: You don't have to actually pass; right?

MS. EULER: But what I'm wondering is if the Board needs the authority to ask somebody to do a background check if there is some question about whether they meet the criteria.

MR. OTTO: I have a question about how that process might work, Sharon, in your thought process. Would the Board have to meet

then and say, okay, Jones Funeral Home just applied to be a seller, they're a corporation. Is this Board going to vote to go after background checks on the officers/directors? Yes or no?

MR. KRAUS: Well, I mean, wouldn't that be addressed in the application process? Someone applies, the Board says, you know, I don't think -- they've got so-and-so listed here, and I don't think they're eligible for licensure, and they're a director, so they have to be. So, we ask them, hey, are you eligible. Show us that you're eligible. They provide something showing they are, or they refuse to --

MR. OTTO: Well, that was my question.

MR. KRAUS: -- or they show something they're not, and then maybe the application is denied, and then they appeal that and it goes to the AHC, and you see if they were eligible or not or if that's a valid reason to deny licensure.

MR. OTTO: Because, otherwise, you have every application coming before this Board for a vote.

MR. KRAUS: Well, you do anyway.

MS. EULER: You do anyway.

MR. OTTO: Well, but I mean if -- I mean, you guys, when somebody is applying with the funeral home right now -- okay -- and you would have to then make a decision on -- well, a seller. Not a funeral home, a seller, you would have to look at every seller application?

MS. EULER: Uh-huh. They do.

MR. OTTO: Every single -- this Board. Not the staff, this Board and vote --

MR. KRAUS: Yeah.

MS. EULER: Yeah.

MR. OTTO: -- are we going to want background checks on this person or are we going to want background checks on this one? And I don't -- I'm just wondering if you want to do that.

MS. EULER: The Board is who issues the license, not the staff.

MR. OTTO: Yeah, I know.

MS. EULER: And so, the Board has given staff some parameters to issue licenses, but if there is anything of any question or anything that raises concerns, the entire

Board looks at the application.

MR. OTTO: I'm just saying -- you may want to do this; I don't know. But you may be setting yourself up where you're going to have to review every single one of them.

MS. EULER: Uh-huh.

MR. OTTO: Individually, as a whole Board.

MS. EULER: Uh-huh.

MR. KRAUS: Right. And I wouldn't see that panning out as the Board sitting back and picking and choosing people on applications that they then require to go get a background check.

MS. EULER: Right.

MR. KRAUS: I think what their question or for information would be, show us that you are eligible for licensure because there is whatever concern. And then if that person chooses to submit to a background check to prove that element, then they can, but they certainly wouldn't have to. Does that make sense?

MS. EULER: Uh-huh.

CHAIRMAN: Yes, sir?

MR. MOODY: Mr. Chairman, if I could. Jim Moody, again, representing SCI.

MS. DUNN: Jim, would you go up to the microphone.

MR. MOODY: I will. I think I like the idea of the certification and that the rule then would be put something in front of the 1A saying that the applicant corporation shall certify that each officer, et cetera. And then maybe subsequent to that and maybe at somewhere else, say the Board has the authority to investigate or verify such certifications.

MS. EULER: The applicant has the burden of proof to show.

MR. MOODY: Yeah. I think we'd be okay with that.

MS. EULER: Yeah. We could do that.

MR. KRAUS: Okay.

CHAIRMAN: All right. Other than this particular rule that we're hung on there, so to speak, does anybody see any concerns in any of the rest of this, because I'm assuming we're going to have to go back on that one and do a little work.

MS. DUNN: Well, the Board already voted to approve --

MS. EULER: The Board voted to approve these, but had not seen the final language.

MR. KRAUS: Up through page 7.

MS. DUNN: Up to page 7.

MR. KRAUS: Up to page 7. I don't think the Board has approved the ones on pages 8, 9 -- or after page 7, essentially.

MS. EULER: Oh. The ones that the Board approved last week, they approved. The ones that they did not approve from the group-one licenses, they did not approve because they determined there was no reason to do an emergency rule on those for those rules right now.

MR. KRAUS: Okay.

MS. DUNN: So, the one we've just been debating doesn't even have substance?

MS. EULER: No. The Board can certainly add to that list of things, but we did not redo these because the Board determined last week that they didn't need to do an emergency rule on it right now.

MR. SPEAKS: Sharon, what happened to

B?

MS. EULER: I didn't type it.

MR. SPEAKS: Was that just stricken from the rule?

MS. EULER: There wasn't a B.

MR. SPEAKS: There was a B.

MR. STALTER: Yeah, there was a B, or else there wouldn't -- you wouldn't need the A.

MS. EULER: Yes, but I don't believe there was ever a version that had a B in it. This is a draft.

MR. SPEAKS: Yeah. Well, I'm just asking.

MS. EULER: Yeah.

MR. SPEAKS: And the reason was, A and B contradicted each other, if I recall correctly.

MS. EULER: And like I said, we didn't -- these rules --

MS. DUNN: That might be it, Brad.

MR. STALTER: Yeah, that was.

MS. DUNN: Because I remember that now.

MS. EULER: These rules that were not approved --

MR. SPEAKS: So, it's just it's gone?

MS. DUNN: Yeah.

MS. EULER: Yeah. These rules that were not approved were denied last week, so if we want to approve them, we can, but I'm just saying that these were the rules that, last week, we decided we didn't need to do, and so, we didn't make any tweaks to them.

CHAIRMAN: So, for my own clarification, pages 1 through 7 with the word "approved" simply means we're done with these?

MS. EULER: The Board needs to give them their final say-so because we approved them by oral motion, but the Board has not seen them in writing.

CHAIRMAN: Okay. So, we're at the point that we would like a motion to take care of the approved rules? Am I at that point or not?

MS. DUNN: That's correct.

MS. EULER: Yes.

MS. DUNN: But you still need to, you know, look at the ones you didn't approve.

MS. EULER: Right.

CHAIRMAN: Right.

MS. EULER: But we can take care of

pages 1 through 7 and be done with those.

MS. DUNN: Okay.

CHAIRMAN: Okay. Does anyone have any concerns about 1 through 7?

MR. McCULLOCH: Can we have a second to read through these? Has everybody already done all that?

MS. EULER: Go ahead.

CHAIRMAN: Go ahead.

MR. McCULLOCH: Has everybody else read all these?

MR. SPEAKS: We saw the earlier version before it was corrected.

MR. McCULLOCH: Yeah. Did you see any mistakes?

MR. SPEAKS: Just where it says approved. I have a question about number -- well, it's got number -- page 5. Brad Speaks, for the record, in regards to funeral director/agent registration. And maybe this is addressed someplace else, but this rule is requiring funeral directors who are agents to report which sellers they are affiliated with. Is there a place where nonfuneral-director agents report their sellers?

MR. McCULLOCH: I think so.

MR. STALTER: (Inaudible.)

MR. McCULLOCH: Yeah. I think the -- just me as a counselor and not an agent?

MR. SPEAKS: Right.

MR. McCULLOCH: Yeah.

MR. SPEAKS: Is that addressed someplace else?

MR. McCULLOCH: It is. I don't know where, but it's in here, though, someplace.

MR. SPEAKS: All right. Okay.

MR. OTTO: Well, there's a section that says anybody -- you have to be an agent for a seller --

MR. SPEAKS: But it doesn't say --

MR. OTTO: But it doesn't say, like, report item, no.

MR. SPEAKS: (Inaudible.)

MR. McCULLOCH: Are you sure?

MR. OTTO: Well, I'm looking.

MR. McCULLOCH: I mean, in here -- it's in here. It may not be in the rule, but it's in here.

MR. SPEAKS: Well, I'm just looking at the rules.

MR. McCULLOCH: Yeah, I think it's in here.

MS. EULER: Why don't we give everybody a chance to read through the rules and then we'll go through them one by one.

CHAIRMAN: More time, or are we ready?

UNIDENTIFIED: More time.

CHAIRMAN: Can we go? All right. It's been requested and we're going to do it that way, we're going to page number 2. Even though it's approved, what's the final language we need, Sharon, for the Board to say this one is good? Just that?

MS. EULER: Motion for final approval.

CHAIRMAN: Motion for final approval on page 2, the emergency rule.

MR. MAHN: Motion made.

MR. FRAKER: Second.

MR. KRAUS: Because we said last time there was substantially competent evidence for a rule and all that?

MS. EULER: We did that last time.

MR. KRAUS: Okay.

MS. EULER: I mean we can. It doesn't hurt anything, but we made those findings last

time.

MR. KRAUS: All right.

CHAIRMAN: All right. Todd made the motion, Gary makes the second. John? Yes. Jim? Yes. That one is done. Rule #3 or on page 3.

MS. DUNN: That's fine.

MS. CLARKSTON: (Inaudible.) I'm asking.

MS. DUNN: No, that's fine. If we want to do what we're supposed to do, so --

MS. CLARKSTON: The other thing with rules, and I'm sorry to kind of spring this on you, is that we also have to look at fiscal impact for the Board and for the public, for the licensees and for small business that may not necessarily be -- like, if there's additional record-keeping that they would have to do, copying of licenses for their records, those types of things. So, what I was hoping to help us when we leave here, to move things through rather quickly for the regular rule that accompanies the emergency, is to address any kind of fiscal impact of this. So, does anybody see any costs for the licensees for

this rule by what this rule is requiring? Okay. Is there any cost to the office? Okay. Will there be any costs to small business? Okay.

MS. DUNN: Well, I would like that comment from the audience.

MS. CLARKSTON: Okay.

MS. EULER: From the Board.

MS. DUNN: This is for the impact statement that we have to comply with the -- (inaudible.)

MS. CLARKSTON: Yes.

MS. EULER: Okay.

MR. KRAUS: So, yeah. That's good to have that from the audience.

CHAIRMAN: So, the same question to the public?

MS. DUNN: Yes.

MS. CLARKSTON: Yes.

MS. DUNN: And can you repeat your question, Connie?

MS. CLARKSTON: Okay. My question is: From the Board office perspective, from the State agency angle, will there be any costs to implement this rule?

MR. McCULLOCH: Costs for whom?

MS. CLARKSTON: For the Board -- to the Board.

MR. McCULLOCH: We've got to have a form and you've got to --

MS. CLARKSTON: Okay.

MS. DUNN: Well, the statute provision already --

MS. CLARKSTON: Okay. Regardless of the statute, this is a defined bailiwick. It says that the -- to sell a preneed contract on or behalf of the seller, must be an agent of the seller who is licensed. So, there won't be any costs that I see for application because that's covered in another rule. There won't be a cost to the agent because they will pay fees with another rule. But for small-business impact, as somebody implementing this as a licensee and as a small business, will there be an impact for them to do anything with this rule other than to just be aware?

CHAIRMAN: So, anybody in the audience?

MS. EULER: Bill says no.

MR. STALTER: I wouldn't think so.

But isn't another way of phrasing it, does this regulation impose any incremental costs above what the statute is --

MS. CLARKSTON: It could be -- presume that, so those are some things we're looking for. We have to report all of that.

MS. DUNN: And, Brad, this would be, like, you, as a funeral home.

MR. SPEAKS: Uh-huh.

MS. CLARKSTON: Okay.

MR. STALTER: I mean, I don't see any --

MR. OTTO: This one doesn't.

MR. SPEAKS: I don't see any. I don't think so.

MR. OTTO: Some of the others, but not this one.

MS. CLARKSTON: Okay.

MS. DUNN: So, is this going to be sufficient then, what we'll get?

MR. McCULLOCH: But what if you pay that fee for them?

MS. CLARKSTON: Okay. But the fee comes to --

MR. OTTO: That's under -- (inaudible.)

MS. CLARKSTON: -- that's another rule.

MR. OTTO: That's a different rule, yeah.

MS. CLARKSTON: You see what I'm saying? Because this rule just is an awareness rule. You have to be aware this is what you're going to have to report.

MR. McCULLOCH: Oh, okay.

MS. CLARKSTON: And then the other, you become licensed and then you report. So, it's kind of a -- I'll walk you through it; how about that?

MR. McCULLOCH: I'm going to trust you.

MS. CLARKSTON: You are?

MR. McCULLOCH: Yes.

MS. CLARKSTON: Wow. Did you get that on record? John trusts me.

MS. DUNN: What did he say?

MS. CLARKSTON: He's going to trust me.

MS. DUNN: Oh.

MS. EULER: Going to, not that he does currently.

MS. CLARKSTON: He's going to. We're working at it.

MR. OTTO: Yeah. After December 31st.

Sometime between October 31st and December 31st.

MR. McCULLOCH: Yeah. There you go.

CHAIRMAN: Okay. Did that finish what you need, Connie?

MS. CLARKSTON: For that rule, yes.

CHAIRMAN: For that, okay. Next one. Now, on page 3. Need the final motion to approve.

MR. MAHN: Motion.

CHAIRMAN: Todd makes the motion.

MR. FRAKER: Second.

CHAIRMAN: Gary makes the second. John?

MR. McCULLOCH: Yes.

CHAIRMAN: Yes. Jim?

MR. REINHARD: Yes.

CHAIRMAN: Yes. Okay. It is passed.

MS. CLARKSTON: The same question for that: Is there cost to the Board, is there cost to the licensee, and will there be an impact on small business? I don't see any to -- no, to all three of the above, I guess, is what I'm trying to say.

MS. EULER: Bill is shaking his head

no.

MS. CLARKSTON: Okay.

MS. EULER: Brad concurs.

MR. SPEAKS: Clarification -- (inaudible) -- yeah.

MS. EULER: I can's see you all, so I'm not --

(Several people talking simultaneously.)

CHAIRMAN: Does everybody else in the public chairs concur that there's no cost? I see head shaking yes, so that's where we want to be. Finished?

MS. CLARKSTON: On that one, yes.

CHAIRMAN: All right. Page 3 is done. Page 4, motion for final approval?

MR. REINHARD: I'll make a motion to approve the rule.

CHAIRMAN: Jim makes the motion. And second? MR. FRAKER: Second.

CHAIRMAN: Gary makes the second. Todd?

MR. MAHN: Yeah.

CHAIRMAN: Yeah. John?

MR. McCULLOCH: Yes.

CHAIRMAN: Yes. All right.

MS. CLARKSTON: Okay. On this, I don't see an impact to the office, I don't see impact to the licensee because that comes under another rule because they'll need to be licensed with the Board, but would there be impact to small business or is this just an awareness for small business?

UNIDENTIFIED: (Inaudible.)

MS. CLARKSTON: Just awareness.

CHAIRMAN: General public? Is there cost or just awareness?

MR. STALTER: Awareness on my part.

UNIDENTIFIED: I don't see any cost.

MR. OTTO: No cost.

CHAIRMAN: All in favor? All right. So be it. Page 5, motion for final approval.

MR. REINHARD: I make a motion for final approval.

CHAIRMAN: Jim makes the motion.

MR. FRAKER: Second.

CHAIRMAN: Gary seconds.

MR. MAHN: Yes.

CHAIRMAN: Todd, yes.

MR. McCULLOCH: Yes.

CHAIRMAN: John, yes. It's approved.

MS. CLARKSTON: On this one, for the office, how will the reporting occur? Will it be hard copy? Will it be via e-mail, fax, by phone, a combination of the above?

MS. EULER: It will be on their forms provided by the Board, and their application fee or their renewal fees.

MS. DUNN: And if it would change after they make application or renewal, then they would -- could send in a letter documenting, like, funeral-director charge.

MS. EULER: Uh-huh. Yes. Or an e-mail. Right.

MS. CLARKSTON: Okay.

MS. DUNN: So, it would be a form or it could be an e-mail or a letter.

MS. CLARKSTON: So, with that, then there's going to be processing by the staff, so we'll have to show some cost for FTE, but I can work with you on that.

MR. STALTER: Wouldn't that be part of the normal process, though?

MS. EULER: Uh-huh.

MS. CLARKSTON: And we could defer to the other rule and that's fine. We've done

that before with the other fiscal note. Just say that it also includes costs covered in this rule with the title, so that's fine. But for small business, we can't refer to the other rule, we're going to need this one to stand on its own, so --

MS. EULER: But this rule doesn't require them to do anything additional.

MS. CLARKSTON: It says it shall report. It's looked at as an independent rule, not that it's in conjunction with another rule. So, with that, if that's truly want you wanted or this Board decided was that they shall report pursuant to the other rule, that's fine. But, for right now, the way this reads is they shall report the name, so that puts some onus back onto the funeral director acting as the agent to let us know. So, they're going to either have to spend time reporting, sending an e-mail, faxing, or whatever.

MS. EULER: Okay.

MS. CLARKSTON: So, there's some documentation that they're going to have to send us.

MS. EULER: Okay.

MS. CLARKSTON: So, is that what I would see would be just the cost to do the reporting via those four avenues?

MS. EULER: Uh-huh.

MS. CLARKSTON: Okay.

CHAIRMAN: Any clarity from the public in costs?

MS. RUSSELL: (Inaudible) -- notify, you know, the Board that there's a change about who you're selling for. What do you think, Bill? I'm not --

MR. STALTER: It's a nominal, I think, to me.

MS. RUSSELL: (Inaudible.)

MR. STALTER: Yeah.

MS. EULER: The what?

MS. RUSSELL: The e-mail or cost of a stamp is what you're going to have.

MR. STALTER: (Inaudible.)

MR. OTTO: Extra ink for checking that box.

MS. RUSSELL: What?

MR. OTTO: Extra ink in your pen for checking that box.

MR. STALTER: Well, that's an only change, though. I mean, you would have to have a --

MR. REINHARD: Yeah. Why would you have that on the test?

MR. STALTER: Give them the notice of the circumstances -- (inaudible.)

MR. OTTO: Yeah. Yeah. It's so small, it's --

MS. CLARKSTON: But it would be in writing, it wouldn't be by phone call?

MS. EULER: Right.

MS. DUNN: No, it would have to be in writing.

MS. CLARKSTON: Okay.

MS. RUSSELL: Is there still the rule that less than $500 -- (inaudible.)

(Several people talking simultaneously.)

MS. CLARKSTON: That's the fiscal notebook for the small business. It's everything.

MS. RUSSELL: Everything. Okay.

MS. CLARKSTON: Almost to the point of the ink in the pen.

(Several people talking simultaneously.)

MS. CLARKSTON: And this, I will tell you, will take us the most time to complete are these small-business statements.

CHAIRMAN: Okay. I think we're done with page 5; right?

MS. CLARKSTON: Right.

MS. EULER: Uh-huh.

CHAIRMAN: All right. Page 6, final approval.

MR. MAHN: I make the motion.

CHAIRMAN: Todd makes the motion.

MS. EULER: I have one typo. It says all preneed seller agents, and it should just be preneed agents.

MR. KRAUS: So, you just want the word "seller" out of there?

MS. EULER: Yes.

CHAIRMAN: Your motion included taking that word "seller" out of there; right?

MR. MAHN: Yes.

CHAIRMAN: That's what I thought.

MR. REINHARD: Well, hell, she don't speak -- speak up.

MR. FRAKER: Yes.

CHAIRMAN: Gary seconds the motion.

MR. McCULLOCH: While we're doing that, can we lower the percentage for certain agents by rule? Just kind of pick and choose.

MR. REINHARD: If you're over 60.

MS. EULER: If you work for John McCulloch? Is that the rule you're looking for, John?

MR. McCULLOCH: I was having a little -- I would have a little concern about a few people passing this thing, but that's okay.

CHAIRMAN: Well, we've got a motion and a second, so the left side of the table, yeses or nos?

MR. McCULLOCH: Yes.

MR. REINHARD: Yes.

CHAIRMAN: Yes and yes. So, final approval is approved. Any costs to the Board?

MS. CLARKSTON: Okay. And this may tie into another rule and that's fine, but this one, it has the appearance of paying an examination fee, travel to an exam site. Your examination forms, are they notarized?

MR. REINHARD: You've got to take a class with Don Otto. That's a cost.

MS. CLARKSTON: Okay. That's not

required in your rule.

MR. REINHARD: Well, we're going to make it. Should we add that to it, Don?

MR. OTTO: You get lunch. If you take my class, you get lunch in a paper bag.

MR. MAHN: I thought we were going to set up our own testing spot.

MS. DUNN: So, can I get those clarified on exactly what we require?

MS. CLARKSTON: Okay. If I were an applicant coming to take this exam -- and that's the way I look at these rules -- what would I have to do?

MS. DUNN: You have to --

MS. EULER: It has to be notarized.

MS. CLARKSTON: It does have to be notarized?

MS. EULER: Uh-huh.

MS. HAYES: Just the application, not the --

MS. EULER: Right.

MS. CLARKSTON: Okay. Hold on. When you say just the application, not the what?

MS. HAYES: Oh. What they take for the conference.

MS. CLARKSTON: Okay.

MS. DUNN: Yeah.

MS. CLARKSTON: But your application to the Board is notarized?

MS. EULER: But that's under another rule.

MS. DUNN: The agent application.

MS. EULER: That's under another rule.

MR. REINHARD: Why are you trying to disguise it? Just add it on this one.

MS. DUNN: Well, see, but it appears to have double costs then.

MS. CLARKSTON: Okay. But for small business, I'm going to have to overlay it, so it's okay.

MS. EULER: Right.

MS. DUNN: Okay.

MS. EULER: Because the application is under another rule, so that wouldn't be a cost of this rule.

MS. CLARKSTON: For a fiscal note, it wouldn't be a cost, but small-business impact, it would be. I have to report it.

MS. EULER: Okay.

MR. KRAUS: And we do small-business

statements for emergency rules; right?

MS. CLARKSTON: But in order to file an emergency, as I'm understanding, we want to go ahead and file the original where we don't have to file an emergency on --

MR. KRAUS: File the regular with it?

MS. CLARKSTON: We don't have to file small business on the emergency, we have to file it on the accompanying rule.

MR. KRAUS: On the accompanying regular rule?

MS. EULER: Uh-huh.

MR. KRAUS: Okay.

CHAIRMAN: Who dreamed all this stuff up?

MS. DUNN: The small business --

MR. KRAUS: Legilature.

MS. CLARKSTON: Can I guarantee that it wasn't me?

MR. MAHN: Is there a licensing --

MR. KRAUS: Your representatives.

MR. MAHN: -- certification or anything for the people that are giving the exam? I mean, giving the course?

MS. DUNN: Giving the --

MR. MAHN: The course of it. Can anybody just give a course on it?

MS. EULER: Uh-huh.

MS. DUNN: Well, the Board utilizes -- it goes through the International Conference --

MS. EULER: No. He's asking about a prep course.

MR. MAHN: Yeah. (Inaudible.)

MS. EULER: Yes. Anybody can do a prep course.

MR. REINHARD: He's wanting to throw his tent up against Don.

MS. CLARKSTON: Okay. But in all actuality from the small-business side, it does raise a question if the majority of licensees, which a small business would consider a licensee to be a small business, are they expending costs on a course? I mean, is that a typical thing?

MS. DUNN: We don't know.

MS. CLARKSTON: You don't know?

MS. EULER: We don't know.

MS. CLARKSTON: It's not anything we require.

MS. BATTAGLER: No, it's not required,

but because of this --

MR. McCULLOCH: They will.

MS. BATTAGLER: -- we will -- we've already talked -- had somebody call Don and ask about holding a course for every one of our people because they've got a short window to learn everything there is to know that they didn't have to know most of this before. There's a lot more detailed information on there. We are going to require them to take a course.

MS. CLARKSTON: Okay. Then because of that, does anyone have an estimate on what that -- outside the travel expenses, what that will cost?

MR. REINHARD: How much is your course, Don?

MR. MAHN: How much is it?

MR. OTTO: The course costs $130 a person.

MR. REINHARD: You could do it for $70?

MR. MAHN: $125?

MR. OTTO: But the real -- I mean, under the rule, the cost, I don't think, is the course, it's the exam fee.

MS. CLARKSTON: Okay. But for small-business impact, though, because we're requiring agents now to take that --

MR. OTTO: You're not required to take my class, you're required to --

MS. CLARKSTON: No. We're requiring them to take the exam.

MR. SPEAKS: That's small-business impact.

MS. BATTAGLER: It is a small-business impact because you've got so many people that you've got to get up and going in a short amount of time. You've got to have a way to get it done.

MS. CLARKSTON: We have to look at outside our fees what would maybe charge as a small business to get this -- (inaudible.)

MR. REINHARD: It wouldn't pay just for a license if we could get -- (inaudible.)

MS. BATTAGLER: Huh?

MR. REINHARD: What would you pay me for the license -- (inaudible.)

MS. BATTAGLER: We could negotiate.

MR. REINHARD: Skip the course and the test.

MS. EULER: Do you want to go on to the next rule -- (inaudible.)

(Several people talking simultaneously.)

CHAIRMAN: Yeah. Number 7 or page 7.

MR. MAHN: Please, don't record that.

CHAIRMAN: We'll back up on the other part of it, but final approval for #7, page 7.

MR. REINHARD: I make a motion we final approve it.

CHAIRMAN: Jim makes the motion.

MR. MAHN: Second.

CHAIRMAN: Todd seconds. Gary?

MR. FRAKER: Yes.

CHAIRMAN: John?

MR. McCULLOCH: Yeah.

CHAIRMAN: You have final approval, and that's where we stop.

MS. EULER: All right.

MR. REINHARD: Well, good. We can leave now.

CHAIRMAN: Now, we have --

MS. EULER: The other rules on here, if you want to look at them again, you can.

CHAIRMAN: The page 8 rule on the corporate, that needs -- that's going back to

be relooked at a little bit; is that -- did I get that feeling?

MS. EULER: My understanding is we were going to strike what's currently in the rule and, instead, we were going to say that each corporate applicant shall certify -- will check the box on the form or something like that, so certify to the Board that its officers, directors, managers, and controlling shareholders are eligible for licensure as set out in Section 333 -- is it 321?

MR. KRAUS: 330.

MS. EULER: 330.

MS. DUNN: Do we need an emergency rule for --

MS. EULER: Yes.

MR. KRAUS: And that the applicant has the burden of proof on that.

MS. EULER: Yeah. And the applicant has the burden of proof. Yes, you need an emergency rule on that.

MR. KRAUS: Okay.

CHAIRMAN: I want to go back to the general public for a minute because this one, obviously, had quite a stir. Do you all have

comment on that thought, doing it that way?

MR. OTTO: My comment is, again, like you said, what -- it would be nice if you knew specifically what requirements you're really applying to. But, for example, to be a seller, you have to be a resident of the state or authorized to do this.

MS. EULER: Right.

MR. OTTO: Well, does that mean every officer and director?

MS. EULER: No.

MR. OTTO: Okay. I just --

MS. EULER: The seller is the corporation.

MR. OTTO: But if the seller is -- the seller is the corporation, but if it says all the owners, officers, and directors --

MS. EULER: And that's why I referenced the disciplinary statute.

MR. OTTO: Yeah. Just the disciplinaries.

MS. EULER: Uh-huh.

MR. OTTO: Okay. I mean, that's good. Just so it's real clear and we can look it up.

MS. EULER: Right.

CHAIRMAN: Any other comments? Okay. So, do you need to -- that needs to go back for the correct wording?

MS. EULER: If the Board will --

CHAIRMAN: Or can we just approve that one --

MS. EULER: If the Board will approve that finding there's competent and substantial evidence to support the need for this rule, then we can go out with that and draft the language.

CHAIRMAN: Okay. Yet today?

MS. EULER: Yet today. If Becky had a computer for me, I would sit here and do it while we were doing other stuff.

CHAIRMAN: Okay. Everybody -- need a motion for that.

MR. MAHN: First.

CHAIRMAN: Todd makes the motion.

MR. McCULLOCH: Second.

CHAIRMAN: John seconds the motion. Jim?

MR. REINHARD: Yeah.

CHAIRMAN: Gary?

MR. FRAKER: Yes.

CHAIRMAN: All right. So, we have approved it with that language so you can go back to that. Now, we'll back up. We went ahead and kind of moved on there for a second.

MS. CLARKSTON: Sorry.

CHAIRMAN: No, that's okay. Okay. So, we're back to page 6 because we were talking about the course.

MS. CLARKSTON: And what I want to explain is on fiscal impact, we have to report direct costs for our Board and for the licensees. When you talk about small-business impact, it could be arrayment of costs to comply with the rule that may not necessarily come directly to this Board. So, in the example that I've used with other boards that we've done training on, let's say that there was a rule that said everyone that attended your meeting had to wear green shirts. There's no cost to the Board. You're not getting any of their money, but for someone to go purchase a green shirt, there's travel expenses to go to the store to purchase the green shirt, time to be there to find your green shirt, and then purchase it and come

back. So, that's an impact. It may not be direct to you. So, keep in mind that when you do fiscal impact on a fiscal note, that's a separate thing to report. They want to know public and private costs for that specific rule. Small-business impact is just that, what kind of impact is it on the business. And the Small Business Regulatory Fairness Board has looked at this agency and said all licensees are considered to be a small business. So, if you had to go out as an individual and implement this rule, what would the impact be to you? Would you have to change letterhead? Would you have reporting requirements? Would you have additional mailings?

MS. DUNN: So, we need to go on what she had based her statement on that they will pay -- will you pay for mileage?

MS. BATTAGLER: Oh, yeah.

MS. DUNN: So, they'll pay for mileage and they will pay for --

MS. BATTAGLER: We'll pay for their lunches, we'll pay for their time away because that's their hourly wage.

MS. DUNN: Oh, okay. So, they get an hourly --

MS. BATTAGLER: During -- well, some are and some aren't. It depends on what area they're -- how long they -- (inaudible.)

MS. DUNN: So, the exam or the class fee --

MS. BATTAGLER: Oh, the class fee. The exam fee comes under a different rule, doesn't it?

MS. CLARKSTON: Okay. Yes, it will. So, what about overnight expenses? Is there hotel expenses that will be paid?

MS. BATTAGLER: I don't believe --

MS. RUSSELL: How long does the test usually take -- the normal, average amount of time for the person to take the test, Lori?

MS. HAYES: You get an hour.

MS. DUNN: Oh, the Missouri Law takes an hour, but we're talking about the class.

MS. RUSSELL: Oh, okay.

MS. DUNN: Sorry, Darlene. I don't know how long the class takes.

MS. BATTAGLER: That's something we would have to ask Don. It's going to be

several hours, and it could be a couple of days. Who knows?

MR. ZELL: It's an all-day.

MR. REINHARD: Do you have to have a license to give the class?

MS. DUNN: No.

MR. MAHN: Do you have to be certified to give the class?

MS. DUNN: No.

MR. MAHN: You don't?

MS. EULER: No.

MS. CLARKSTON: Okay. So, when you're saying all day --

MR. SPEAKS: It just has to be done -- (inaudible.)

MR. MAHN: So, districts could give them?

MS. EULER: Anybody could do it.

MS. CLARKSTON: Don, how long does the class take -- the prep course?

MR. OTTO: It starts at 10:00 and ends about 5:00.

MS. DUNN: So, it could require lodging?

MS. BATTAGLER: I don't see where it

would if it -- I mean, it could, I guess, if you've got somebody coming from a long distance away, like, we were talking about some other --

MR. KRAUS: Yeah. It would depend on where you're traveling from.

MR. OTTO: And this hasn't come up yet really, but we're willing to go out on the road and meet the folks somewhere else and negotiate prices per group where we're not providing lunch and -- you know.

MS. CLARKSTON: Okay. That takes you down a different road.

CHAIRMAN: And you moved -- your class, you move to different sites and locations throughout the state, don't you?

MR. OTTO: Not anymore. We stopped doing that a while ago because the attendance was too spotty.

CHAIRMAN: Okay.

MR. OTTO: So, now we do it once a month every month here in Jeff City, but if there is sufficient demand where somebody says we've got 20 people who want to take it Springfield, will you come down, we'll sure --

we'll do that.

MS. CLARKSTON: Okay. So, if you travel, then there is going to be travel expenses for you, as well. Will there be overnight stay?

MR. REINHARD: He doesn't count because he's --

MR. OTTO: No, don't worry about it. No, don't worry about it.

MS. CLARKSTON: It's not that I -- excuse the term -- want to worry about you, but I have to report it, so we need to have a conversation.

MR. SPEAKS: People take the class and then --

MR. OTTO: We have no expenses that won't be covered.

MS. CLARKSTON: That's not what they're asking. It's an impact to --

MR. McCULLOCH: But it's an impact. If you're a small business -- (inaudible.)

(Several people talking simultaneously.)

MS. BATTAGLER: But his expenses will be covered by our fee.

MS. CLARKSTON: It doesn't matter.

MR. OTTO: It's really their fee.

MR. KRAUS: I think what Connie is asking about --

(Several people talking simultaneously.)

MS. CLARKSTON: I understand, but there's two different things. You've got people -- people traveling to Jefferson City to take the prep course.

MS. BATTAGLER: Well, what you said --

MS. CLARKSTON: And then he's traveling from Jefferson City to wherever, so he's impacted. He's got travel, whether the expenses are paid to or not.

MR. REINHARD: I'm going to start telling the families that. When I have to travel to get a body, I'm going to tell them it's impact. I mean, I need more money.

MR. STALTER: Connie, is this -- (inaudible) -- by regulation or -- (inaudible.) I mean, this is just set out what's in the -- (inaudible.)

(Several people talking simultaneously.)

MS. DUNN: Hey, Bill, we didn't hear your question.

MR. STALTER: I'm trying to figure out

whether this cost is imposed by the regulation or by the statute. I mean, the regulation just has spelled out what the test is going to cover; right?

MR. KRAUS: I don't think it has to be either of those. I think what Connie is trying to address on her form for the Small Business Regulatory Fairness Board is any potential impact on any small business that arises from the statutes and rules, even if it's elective.

MR. STALTER: Yeah. But we're talking about this regulation, though, right now.

MS. CLARKSTON: Okay. With every regulation, I have to file a small-business statement regardless of whether or not it's in the statute or not.

MR. STALTER: Okay.

MS. CLARKSTON: So, in order for us to meet the requirements of the law regarding the filing of rules and Small Business Regulatory Fairness Statements, I have to file the statement.

MR. KRAUS: Right. So, if, from a particular regulation, the majority of small

businesses would elect to do a particular thing that's going to cost them something, even though they're not required to, that's something Connie would have to put down.

MR. OTTO: Is it possible to put that as undetermined at this time?

MS. CLARKSTON: I can try that, but I can tell you from the other scrutiny that we have received from the Small Business Regulatory Fairness Board, we are likely to get criticized about how we have handled the involvement of small business. Now, I'm not trying to pick on anyone or businesses or any of that. I'm asking the question of how people will be impacted because that is a requirement that we have to report. The Small Business Regulatory Fairness Board became -- went into effect, like, in 2005. That board has been now fully appointed. They are up and running. They are watching rules very, very closely. We have to file with them prior to going to the Joint Committee on Administrative Rules and the Secretary of State's office. They are sending out alerts to small business, and they ask small businesses what this is

going to cost them, so they follow up with that.

MR. OTTO: Well, I would say this, from our small business with the association, there is no incremental cost increase because we would be -- we would do that for anybody, anytime, anyway.

MS. CLARKSTON: Okay. But what I'm trying to say to you, Don, it doesn't matter what it costs, it's how we do the impacting as a business.

MR. SPEAKS: Not you, maybe some level to the funeral home.

(Several people talking simultaneously.)

MS. CLARKSTON: Or another -- let's take it out of the association offering the course. Let's take it to anybody offering this course.

(Several people talking simultaneously.)

MS. CLARKSTON: Exactly. What will -- because of this law --

MS. DUNN: But, Connie, he's going to get money because of this law.

MS. CLARKSTON: Correct. As will any other small business that will decide to do

that. There is nothing that says in Missouri laws, that I've seen or that I know, that says the association is the only person that can offer this course.

MS. EULER: Correct. Correct.

MS. CLARKSTON: But as a provider that offers a course, in a small business, what will the impact to him be? It will be that there will be additional people coming to that site. Will it require that they rent out bigger conference rooms? I don't think so, but I don't know that. Will they have additional printed material that they need to provide? Potentially. If they are providing lunch, has their lunches increased? Have their breaks increased? What kind of record-keeping? Are they doing additional mailings to you as the employer that they have not done before or more than they've done before? Those kinds of things are what I'm talking about impact, not necessarily if you're paying him directly, it's what does he have to do as someone that's been involved in this to be impacted. And I know it seems like a very far stretch, but I can tell you

that our rules are followed very, very closely. And if we want this to go as smoothly as possible, we need to have these conversations. Now --

CHAIRMAN: So, what else adds to it?

MR. McCULLOCH: Well -- (inaudible) -- definitely going to be impacted.

MR. OTTO: (Inaudible) -- is going to have to be sending us a lot more Subway sandwiches.

MR. STALTER: Can you state the -- (inaudible) -- per individual or anything like that or -- (inaudible.)

MS. CLARKSTON: It doesn't have to be per business, and I will not put out that the Missouri Funeral Directors and Embalmers Association is going to make X amount of dollars off of this. That's not where this is going. But it is recognizing the fact that there will be an increased enrollment to that course. If they decide to travel, there's going to be costs for them. Now, whether or not they come out ahead of that, that's totally their bailiwick, not the intention of this statement.

MS. BATTAGLER: Well, we'll need to say that there's also, you know, these people work on commissions. Most of them do, so you're going to have an entire day where they can't sell. They're also going have study time where they can't do anything, call people, writing stuff. I mean, there is going to be a pretty good impact.

MR. SPEAKS: There's going to be a hotel because the class is one day and you'll take your test the next day and stay overnight in Jeff City.

MS. BATTAGLER: No. The test will be a different cost.

MR. OTTO: (Inaudible.)

MR. SPEAKS: They don't have to, but they probably will, some of them.

MS. BATTAGLER: The test will be a different cost and, again, associated with this specific rule, which is fine.

MS. CLARKSTON: This conversation will come back up for the next rule, but --

MR. KRAUS: Well, and, Connie, as we go through these, is the goal to identify each and every individual cost that may be

involved, or is that the ultimate goal, and today do we want to get a feel from the public of what all the types of costs are and then when we complete this form, extrapolate from that or what?

MS. CLARKSTON: That's what I'm trying to do is be able to get a handle right now on what kinds of costs are out there and impact there is so that when we move to complete these form, that we're not held up trying to make phone calls to find out what the impact is.

MR. KRAUS: Right.

MS. BATTAGLER: Could I say that it could potentially be an average? It could potentially be an average of $500 a person. That's throwing a number out there, but, anyway -- and some are going to have hotels, some are going to have food, you've got personal expenses, you've got mileage, you've got time away from --

MR. OTTO: A day off work. I don't think -- (inaudible.)

(Several people talking simultaneously.)

MS. BATTAGLER: Yeah.

MR. McCULLOCH: What happens if they don't like the amount?

MS. CLARKSTON: They can call a hearing.

MR. McCULLOCH: And say --

MS. CLARKSTON: Then have us justify. The question has been asked, what if they don't like what we've provided. This Board has the ability to go -- well, a couple of things. They have the ability to request the promulgating agency to come in for a hearing. Those hearings are much like legislative hearings. There are a couple members of the general assembly that will sit on that board, and they can ask a range of questions directly related to the rule. They can go back to the bill. There is no limit on what they can ask. Now, again, I go back to Gary's statement, if you've done nothing wrong, you have nothing to hide, so I think that we would present what we have put together and what we know if that should happen. If they are not satisfied with that, they do not have the ability to stop a rule like the Joint Committee on Administrative Rules does, but

they could argue and submit a comment or a request to the Joint Committee on Administrative Rules to call for a hearing to stop a rule. So, it could impact a ruling, and it could stop the process.

MR. McCULLOCH: But they understand there's a certain amount of expense that goes into --

MS. CLARKSTON: They do, and so, they're not asking for, say, that we attach a dollar figure to it, although I think that's helpful. They want to say have you thought of, have you tried to lessen the burden on your small businesses. And those are the things that they look at.

MS. DUNN: So, Connie, a rule is a clarification of the law, and if it's already in the law, then if they challenge the rule, we would just implement the law to the best that we could?

MS. CLARKSTON: Right. And one of the things that we will try to work with as we do -- as we build those small-business statements is to indicate that it is dictated by a law, and this rule is just carrying out the

specifics of the law. But because there's a rule being promulgated, the requirements are then different. It doesn't say in the Small Business Regulatory Fairness portion of 536 that because if you're restating Missouri law, you don't have to fill out a statement. It says every rule, you have to consider the impact and how do you lessen the burden on small business.

MS. DUNN: Did the moratorium affect emergency rules, too?

MS. CLARKSTON: No.

MS. DUNN: Okay.

MS. CLARKSTON: But it is going to affect the accompanying rules that you send through, so we're going to have to answer a few more questions on -- Becky asked about the moratorium. The Small Business Get Off My Back Act that was just passed and will go into effect next Friday -- this next Friday -- puts a moratorium on rules for four years. And it says that if you file a rule, it has to meet certain requirements. And one of the things that we were successful in getting added to the bill was the ability to file a rule if it

affects the health, welfare, and safety of the public. So, I think these rules will come under that. Or if they're tied to a piece of legislation, which this one does, as well. So, we will work with providing those statements. We're not sure what they're going to ask for. We're not sure what requirements we'll have to meet to fulfill that documentation, but we will be working with that with these rules.

CHAIRMAN: Okay. So, on page 6, we were talking about testing. Have you got --

MS. CLARKSTON: I think I have a really good idea.

CHAIRMAN: Do you have everything you need on that?

MS. CLARKSTON: I think I have a really good idea, so I think I can build you a statement on that one.

CHAIRMAN: All right. So, that takes care of page 6. Page 7.

MS. CLARKSTON: Okay. This -- oh, sorry. You need to --

CHAIRMAN: Well, we've already done our part.

MS. CLARKSTON: Oh, you've done your part, this is my part.

CHAIRMAN: We've done that. We're just waiting for you.

MS. CLARKSTON: Okay. When you talked about that you're entitled to seek injunctive relief, what costs are with that for the agency? What does it cost for an attorney?

CHAIRMAN: Sounds like zero to me.

MS. DUNN: No. No. No.

MS. CLARKSTON: I was going to say.

CHAIRMAN: No, I'm just kidding.

MR. OTTO: Well -- oh, I'm sorry. This rule just gives you the right to do it. Does that -- I mean --

MS. CLARKSTON: We're trying to be really careful with these statements to think about reporting everything, even if it's not a direct that the Board shall or that a licensee shall, to think about why we promulgated it and how it's going to impact people.

MR. OTTO: I'm trying to be logical. I apologize.

MS. CLARKSTON: Okay.

MR. OTTO: I apologize.

MS. CLARKSTON: Can I just tell you that it's a bill, and that's all I can tell you.

MR. OTTO: I will stop trying to make sense of it.

MS. DUNN: This would be -- we need to really ask Sharon how many hours it takes for the AG. I can tell you what the hourly fee is.

MS. CLARKSTON: Okay.

MS. DUNN: But by the time we utilize the attorney general's office and then their peers and then go through the court system, I really need to ask Sharon what they -- how many hours gets put into that.

MS. CLARKSTON: Then from a small-business perspective, and I understand --

MS. WARREN: At least ten --

(Several people talking simultaneously.)

CHAIRMAN: We don't have a quorum, but that's okay. This is about the public.

MS. CLARKSTON: Ten or more hours, an average of ten?

(Several people talking simultaneously.)

MR. STALTER: Oh, I would say more

than that.

MS. WARREN: It would be ten -- at least ten.

MS. CLARKSTON: At least ten. Okay. All right. And we can do a range in our fiscal note of what its --

MS. WARREN: I said at least ten, but that's just to get it going. We have 30 or 40 hours on it -- (inaudible.)

MS. CLARKSTON: Okay. So, if I looked at that, if it were noncontested and you were working that out, and it went through from start to finish for noncontested, would that fall within the ten-hour range?

MS. WARREN: (Nods head affirmatively.)

MS. CLARKSTON: Okay. If it were contested, then I would see, start to finish, maybe 40 hours, is what you said? Is that an average, a ballpark at this point?

MS. WARREN: Ballpark, 40 or 50.

MS. CLARKSTON: We'll do 50 to -- and then we'll do a range when we do the estimate. Okay. And then for the licensee, there is no cost to pay for the injunction, though. They may have cost that comes on the impact side,

which would be their own legal counsel and --

MS. WARREN: And that would parallel everything.

MS. CLARKSTON: I'm sorry?

MS. WARREN: The hours would parallel --

MS. CLARKSTON: Okay.

MS. WARREN: -- (inaudible.) The same amount of part time, same amount of research, same amount of pleading.

MS. CLARKSTON: Okay.

MS. WARREN: Same amount of negotiating.

MS. CLARKSTON: Okay. And then the small business would be closed, and that's undeterminable, but it has to be reportable, that they would not be able to conduct business. Now, I also quickly go to mind any employees that they may have would be out of business and, now, that could be our licensees that wouldn't be earning any wages, but -- and I'm not an employer person, an HR person, but I would assume that that business, if they are under injunctive relief, do they still have to pay for insurance, Workers' Comp, all of those

things? Is that still the responsibility of the owner, or how does that work? I know that's a far-stretch place to put for a small business, but it's something that we quickly go to.

MR. KRAUS: Yeah. I mean, those responsibilities aren't going anyplace else if they still have employees and it's --

MS. DUNN: Does a small business --

MR. KRAUS: Still have those requirements.

MS. DUNN: -- group ever think about what this is doing to the consumer if you don't do this?

MS. CLARKSTON: I can tell you that 536 requires that Small Business Regulatory Fairness statements be filed with every rule and we explore the impact to small businesses.

MR. STALTER: Can I add something to this? This whole regulation is just to add that word "financial" to an existing statute. This all has to do with a discussion of how we want to make clear that when we're talking about the welfare of an individual, we're adding just the word "financial" to it,

meaning is it really necessary to have this regulation in the first place?

CHAIRMAN: Bill, come on. It's already approved.

MS. DUNN: What do you think, Earl?

MR. KRAUS: I think it's already done.

MR. STALTER: Well, I know, but that's the objection I wrote last time, too.

MR. KRAUS: I mean, and I don't think -- I think Connie is trying to get this down because the Small Business Regulatory Fairness Board has been very insistent on this kind of stuff and we're trying to comply as much as we can with the requirements so that when they actually grade all the different agencies, which they do, then we're complying.

MR. STALTER: I understand, but I don't think --

MR. KRAUS: I don't think the fact that there are costs is any reason not to have a rule.

MR. STALTER: Well, part of this is, how often -- how many of these regulations do you want to send Connie through? To say, you know, are they critical, are they emergency,

do we need to justify each one of these?

MR. KRAUS: I think that's true, but on this one, I think the Board has, so --

CHAIRMAN: Okay. Any more impacts? Do you see any impacts? I mean, they've already, obviously, listed the legal issue of an injunction. Do you feel good about what you've got or do you need more?

MS. CLARKSTON: That one is okay. If I need more, I'm certainly not too ashamed to pick up the phone and call and ask.

CHAIRMAN: All right. So, that finishes page 7. Since the entire Board, other than Gary and I, are gone, I think this calls for take a break.

(Off the record)

CHAIRMAN: The emergency rule for the corporate ownership, the new page 8.

MS. DUNN: No.

CHAIRMAN: No, they didn't close it.

MS. DUNN: Oh, sorry.

CHAIRMAN: Oh, I thought we did. No, we're in open. I'm sorry. No, it's okay. I don't care. I was thinking it had to be, but --

MR. REINHARD: Go ahead, explain page 8.

MS. EULER: Okay. This is the rewrite of this rule. Don brought up just now that he thought it was -- #2 would lead people to believe like they had to submit proof when they sent in their application when, in reality, it means they only have to, if there is a question, that the applicant has the burden of proof and not the Board.

MS. DUNN: Now, this is one you brought up, too, Jim; right?

MR. MOODY: It is. I think this is a big improvement, though. And I think if you could affirmably state on #2 that an applicant, upon request of the Board.

MR. OTTO: Yeah.

MR. MOODY: Yeah. I agree that I don't think you want all that stuff --

MR. OTTO: Yeah. You don't want people sending that in if they don't have to.

MS. EULER: Yeah. Okay. Right. We can do that.

MR. REINHARD: All right. So, I move to approve the rule.

MS. DUNN: Well, we've got to make sure it's in that format.

CHAIRMAN: Correct.

MS. DUNN: I want to make sure I understand -- (inaudible.)

MS. EULER: I think rather than upon request of the Board, I think we say in any hearing, the applicant shall have the burden of proof.

MR. OTTO: Don't limit yourself to hearing, maybe, but any proceeding.

MS. EULER: Yeah. In any proceeding.

MR. OTTO: Any proceeding, yeah.

MS. EULER: Yeah.

CHAIRMAN: Any other comment?

MS. EULER: Do you find competent and substantial evidence to support the need for this rule?

CHAIRMAN: Do we find competent and substantial evidence that we need this rule, and I need a motion to accept it.

MR. FRAKER: I make the motion.

CHAIRMAN: With the changes?

MR. FRAKER: With the changes.

MR. MAHN: Second.

CHAIRMAN: Gary made the second -- or the motion, Todd made the second. Mr. Reinhard, are you happy?

MR. REINHARD: Yeah.

CHAIRMAN: John?

MR. McCULLOCH: Okay.

CHAIRMAN: All right. So, can we do final approval or does it still have to come back?

MS. EULER: Yeah. No. You can do final approval.

CHAIRMAN: Do I have a motion for a final approval with the motion made a while ago?

MR. MAHN: Yes. Motion.

CHAIRMAN: Todd makes the motion.

MR. FRAKER: Second.

CHAIRMAN: Gary makes the second.

MR. McCULLOCH: Yes.

CHAIRMAN: John says yes. Jim says --

MR. REINHARD: Yes.

CHAIRMAN: -- yes. Connie, would you like to see your financial impact that might be with this?

MS. CLARKSTON: This will impact for

the Board, I don't see any. I don't see any for the licensees, but what kind of small-business impact is there?

UNIDENTIFIED: (Inaudible.)

MS. CLARKSTON: Well, let me back up. The certification to the Board would still be the same as in writing. Are you asking for that to be --

MS. EULER: It would be on the application form.

MS. CLARKSTON: Okay. So, we refer to the application form. Okay. So, for small-business impact --

MR. OTTO: Could be a bunch if we have to run background checks at our expense on all of our officers, directors, shareholders, and come up with whatever supporting paperwork it takes to meet because we have the burden of proof that these people didn't violate the law.

MS. EULER: But that would come up only if the Board denied your application.

MS. CLARKSTON: But we have to report it.

MS. EULER: Yeah.

MR. OTTO: I know.

MS. EULER: But I'm just saying that --

MR. OTTO: Oh, I know the real world, but I'm thinking for purposes of this silly --

MS. EULER: Right. But I want Connie to understand on the fiscal note --

MR. OTTO: Well, it's not her fault, it's the -- of course, you've got to do what she's got to do, but I still think it's silly.

MS. EULER: -- for Connie to note that it's not for every application.

MS. CLARKSTON: Okay. Outside background checks. Is there anything else?

CHAIRMAN: General public? Anybody see any costs?

MS. CLARKSTON: So, is there cost to the Secretary of State's office to become a corporation? Do they have application fees?

MR. MAHN: Oh, my God.

CHAIRMAN: Oh, yeah.

MS. CLARKSTON: (Inaudible.)

MS. EULER: That's not under this rule. They are a corporate applicant.

MS. CLARKSTON: They already are, so --

MS. EULER: Yes.

MS. CLARKSTON: Okay.

CHAIRMAN: So, hearing no other comments, I would say, unless you have other questions, that supports it. Number 8 is done with final approval. Number 9 -- page 9.

MR. KRAUS: Eight is done?

CHAIRMAN: Yeah. Sharon redid the -- and, actually, there were some changes even to that.

MR. KRAUS: Okay.

CHAIRMAN: So, you can get her notes, but we even did final approval. It's final approval. It's done --

MR. KRAUS: And I like it.

CHAIRMAN: -- with the changes and Connie's issues.

MR. KRAUS: Awesome.

CHAIRMAN: Okay. Okay. Any questions on page 9?

MR. McCULLOCH: On number one there where it's talking about you have to have -- get a new license whenever the ownership, location, or name of the Missouri licensed preneed seller providers change, if you move across the street, is that what that means?

MS. EULER: Uh-huh. This mirrors what

the establishment rule is, so, yes.

MR. McCULLOCH: That's not good. So, when you move your office upstairs, you've got to go file and pay all these fees again? You're still in Missouri, you're still --

MS. EULER: Well, for -- so, are you okay with it for providers, just not sellers, because, you see, this -- since we decided not to do an emergency rule on this last week, we did not change this language at all because it only talks about sellers, but it should talk about sellers and providers. So, does the Board want this rule to be for sellers and providers?

MR. McCULLOCH: So, again, if the provider -- and let's say I have a funeral home in town here, and I build a new location and I move out to a different location --

MS. EULER: Uh-huh. You need to --

MR. McCULLOCH: -- shouldn't I just do a change of address?

MS. EULER: You need a new funeral-establishment license then.

MR. McCULLOCH: Because I have to have them inspected and go through all that?

MS. EULER: Uh-huh.

MR. McCULLOCH: Okay.

MS. EULER: And it's up to the Board to decide if you want this process for sellers and providers like we have for funeral establishments. If you don't, you don't have to.

MS. BATTAGLER: The same thing for the seller, though, they're just moving to a different -- if they're not a provider, they're just a seller, they move to a different -- say their lease is up at one place and they go to another place, but it's still in Missouri, do they have to apply for a new license or an amended? What if they change the address?

MS. EULER: Under this law, they would need to apply for a new license, but if the Board doesn't want that -- like I said, we didn't look at this rule last week. We looked at it for topic and decided we didn't need an emergency rule on it.

MS. DUNN: Do we have a rule or is there -- and I'm sorry if I don't know. Is there a way that we can just request amended?

MS. EULER: You can just request that they notify the Board of a change of address, and you could do a change-of-address form.

CHAIRMAN: What happens under -- I can't remember. What happens under the current registration program if somebody moves?

MS. EULER: There isn't --

CHAIRMAN: There is not?

MS. EULER: No.

CHAIRMAN: So, that's only on establishments then?

MS. EULER: Uh-huh. But there's -- this is totally up to the Board. If you wanted to just do a notice of change of address with, you know, your new phone number, your new address, your new e-mail address, your new fax number, you could do that.

CHAIRMAN: Well, I would think you would for sure want that at a minimum, wouldn't we?

MS. EULER: Do you want a new license?

MR. McCULLOCH: I think you're going to want that information. I was more concerned about having to go back and pay all these fees again just because you're just

changing your address because the lease came due or whatever. I do understand if they're building a new building and they're moving the actual funeral home, I can see that.

MS. EULER: Uh-huh.

MR. McCULLOCH: You've got to go through all the inspections and that probably is legit there.

CHAIRMAN: I guess from the chance of sounding petty and from the impact thoughts, obviously, if a new license has to be printed, you're going to have to change all your filings, you've got to send new licenses. We wanted at least $10 on this deal up here. I would think there would be some kind of an application fee that would go with that for changing it.

MR. McCULLOCH: For, like, just a change of address?

CHAIRMAN: For something, wouldn't there?

MR. McCULLOCH: People understood that it was going to cost them $200 versus $10, I think they would appreciate the --

MR. OTTO: Well, I mean, I know that

this was modeled after the funeral-establishment section in 333, but the funeral establishment makes sense because you've got -- if you're a funeral establishment A and you built a new building, that's a different funeral establishment that needs to be relicensed. But for a seller that is a third-party seller, for example, that's leasing space on the third floor of the Equitable Building that moves to the fourth floor of the Equitable Building, they should not have to be relicensed. They should have to notify the State Board that your address has changed.

MS. EULER: Well, if somebody wants to make a motion, we can rewrite the rule.

MR. REINHARD: Can't we just tell you to wait till next year?

MS. EULER: No.

CHAIRMAN: Public comments? What do you all think? Do you think that there is credibility for new licensure there or --

MS. BATTAGLER: Well, the change of ownership, absolutely. Absolutely. That's a given.

MS. EULER: Well, but that's -- we don't need a rule on that because --

MS. BATTAGLER: Yeah. It's -- that's self-evident.

MR. MAHN: Sorry, Don.

MR. OTTO: That's already -- yeah. That's built in.

MS. EULER: Yeah.

MR. STALTER: I'm just going to raise this again, but why is this an emergency rule?

MR. REINHARD: Throw the rule out.

MS. EULER: Huh?

MR. STALTER: Why is it an emergency rule? I thought it was --

MS. EULER: Because --

MR. STALTER: I thought they rejected that last time because they didn't see it as an emergency rule.

MS. EULER: That is true, but they decided to take it back up again.

MR. REINHARD: Who are they?

MS. EULER: You all.

MR. REINHARD: I didn't want it.

CHAIRMAN: Well, I did it then because I said page 9.

MR. KRAUS: Yeah, he's the chairman this year.

MR. REINHARD: Flog him.

MR. STALTER: Well, for the next time, could you ask somebody, do you want to take up page 9 or make page 10?

CHAIRMAN: I can.

MR. STALTER: Okay.

CHAIRMAN: It was assumption made. So, I'll ask that question now then. Do you all want to take up page 9 or do you want to leave page 9 alone? So, somebody make a motion.

MS. EULER: So --

MR. MAHN: Well, it's page --

CHAIRMAN: I guess, did we leave it -- I need my notes from last week. Did we just leave it in that sense, or, legal, help me. Do we just leave it alone or what do I do?

MS. EULER: You can --

MR. KRAUS: Last time, the ones on pages 8 to 11 were those that were determined that you did need emergency rules, but you still needed to approve them, because we was told.

MS. EULER: No.

MR. KRAUS: Yeah.

MS. EULER: What I have in my notes is that they decided they didn't need these as emergency rules, so they were rejected.

MR. KRAUS: That's not what I have.

MS. EULER: Ooh.

MR. MAHN: Well, let's see who supersedes who here.

MR. KRAUS: But that doesn't really matter. I mean, you can decide sitting here now --

MS. EULER: Right. Absolutely.

MR. MAHN: That's what I want to see.

MR. KRAUS: -- what you want.

MS. EULER: Absolutely.

MR. MAHN: It's like in a courtroom.

MS. EULER: Huh?

MR. MAHN: It's like in the courtroom.

UNIDENTIFIED: Yeah.

MR. MAHN: Here comes the judge.

MS. EULER: So, you can approve this rule, you can say we don't need this rule and reject it, or you can direct us to write a new rule to provide for a change-of-address

form.

MR. MAHN: That's all it needs. Just provide a change-of-address form and charge them ten bucks. I make a motion we do that.

MR. McCULLOCH: Second.

MR. KRAUS: As a regular rule?

MR. MAHN: Yeah. Go.

MS. EULER: As an emergency rule?

MR. MAHN: Emergency, regular, I don't care what you want to call it.

MR. REINHARD: But if you have a change of ownership --

MS. DUNN: Well, it makes a difference right now.

MR. KRAUS: It matters.

MR. REINHARD: If there's a change of ownership, do we go --

MS. EULER: You need a new license.

MR. REINHARD: Right.

MR. MAHN: We're already talking about it, so make it emergency.

UNIDENTIFIED: Woo. Woo. Woo.

MR. MAHN: Feel like it's emergency anyway, they're talking about it.

MS. HAYES: I have a question. We

have an amended B now. Does that have anything -- or do you consider it an amended application or is it --

MS. EULER: No.

MS. HAYES: Is it something different than amended?

MS. EULER: It's -- I think we just call it a change-of-address form. Notice of change of address. I mean, you could call it an amended.

MS. DUNN: What constitutes an amendment then? MS. EULER: You could call it an amended.

MS. DUNN: I mean, for us internally, I just wondered what an amendment means then to a seller and a provider.

MS. EULER: Yeah. I mean, you all can decide that.

MS. BATTAGLER: And wouldn't you have to provide a new certificate with the new address and everything on it?

MR. KRAUS: Right.

MS. BATTAGLER: So, that would be amended.

MS. DUNN: For a corporation change,

not for an address change. Or what are we talking here?

MS. EULER: I don't know. Don't you print the address on the license?

MS. BATTAGLER: But the address is on the license and you have to post that.

MR. KRAUS: Right.

MS. DUNN: Right.

MS. BATTAGLER: So, if it has the wrong address, you need to have a new license.

MS. DUNN: Right.

MS. BATTAGLER: I mean -- (inaudible) -- but I don't think it's an emergency rule.

MS. EULER: And do you want to include agents, that they need to submit a change-of-address form to the Board, as well?

MR. MAHN: Yes.

MR. McCULLOCH: You'll get that at the next renewal each year.

MS. CLARKSTON: The problem is, is normally we mail that renewal.

MR. McCULLOCH: Dang it.

MR. KRAUS: Oh, that we do -- yeah. Yeah, I'm pretty sure.

(Several people talking simultaneously.)

CHAIRMAN: Okay. So, I was trying to settle the debate and I was looking for my notes, but I can't find them. But, anyway --

MR. ZELL: Can I ask a question? This is an emergency rule to stay in business in ten days or whatever the magic thing is; correct?

MS. EULER: No. This is an emergency --

MR. ZELL: Everyone is going to have to file a whole new application --

MS. EULER: This has nothing to do with the notice of intent. This is an emergency rule that says once you've been granted a license and you move or you change your phone number, you need to let the Board know.

MR. ZELL: When will the license be granted?

MS. EULER: Whenever the Board reviews the application and grants the license.

MS. DUNN: Well, right now, it's by December 31st.

CHAIRMAN: Yeah. December 31st at this point.

MR. ZELL: So, if someone files an application and moves between now and then, is this what this is going to cover?

CHAIRMAN: It would.

MS. EULER: Or if the Board gives them a license, then this would cover that.

CHAIRMAN: Okay. So, I got lost in the translation. Are we -- is this an emergency rule that we're going to work on or come up with an answer here, or we're done with it?

MS. EULER: I'm drafting one now.

MR. MAHN: I made a motion.

MS. EULER: We've got a motion.

CHAIRMAN: Todd made the motion to do away -- go on, or what was your motion?

MR. MAHN: My motion was to let them do a change of form, you know, of address.

CHAIRMAN: Okay.

MR. MAHN: And give them ten bucks fee for having to do the paperwork on it, and --

MS. DUNN: Well, right now --

MR. MAHN: Why do they got to apply for a whole new license if they're moving --

MS. DUNN: No. An amended application is $25 now. I mean, an amended registration.

MR. MAHN: That's still less than $200.

MS. EULER: Do you want it to be an amended application?

MR. McCULLOCH: Does it apply to everything?

UNIDENTIFIED: I don't want to charge.

MR. McCULLOCH: Does it apply to everything? Does it have to apply to change of address?

MS. DUNN: No. I think that there's --

MS. EULER: Here's what I have written as a proposed rule based on the discussion. One, providers, sellers, and agents shall keep the Board notified of their current address, phone, fax, and e-mail addresses at all times. That should be phone numbers, fax numbers, and e-mail addresses at all times. Two, providers, sellers, and agents shall notify the Board within ten business days of any such change. And then three was going to be the notification must be in writing, the notification must be on a form described by the Board, the notification must be an amended application, whatever you want me to do.

MS. DUNN: I don't think a change of

address should -- what constitutes an amendment right now, Lori, to a registration? A corporation change?

MS. HAYES: Officer change -- yeah. D/B/A name change.

MS. DUNN: For a seller?

UNIDENTIFIED: Not for the seller.

MS. DUNN: Because a provider is going to be an establishment, so that means that --

MS. RUSSELL: Lori, if a seller, one of the partners passes away, would that be, like, amended? Is that when you would do an amended on the seller registration if it was a --

MS. HAYES: (Inaudible.)

MS. RUSSELL: No? Change of ownership?

MS. HAYES: (Inaudible.)

MS. DUNN: It depends on the corporation.

MS. RUSSELL: A sole proprietorship would?

MS. HAYES: Yeah.

MR. OTTO: Under current law, with a funeral establishment, if you eliminate one or more owners, you would file an amended

application. You don't have to be relicensed, you just file an amended application.

MS. DUNN: Right.

MR. OTTO: If you eliminate one or more owners. If you add an owner, you have to file -- you have to be relicensed. But if you're a corporation, the changing of the stock does not constitute a new ownership. I think -- and somebody has got to go check on me. I think if a funeral establishment changes name, you have to give the Board notice within 30 days. So, I'm just -- it would be nice if things were consistent. You know, I know I'm not 100-percent positive, if somebody has got the rule. I'd hate it to be 30 days for this and ten days for that.

CHAIRMAN: Do we charge a fee for that? Is there a fee for that?

MS. DUNN: For an amendment?

CHAIRMAN: For an amendment?

MS. DUNN: For a d/b/a.

CHAIRMAN: Like, the $25; is that what you were talking about?

MS. DUNN: I just don't -- (inaudible.)

MR. McCULLOCH: So, Sharon, what you

were talking about a few minutes ago, is you're just going to put in there that you just have to notify --

MS. EULER: Right.

MR. McCULLOCH: Just put the responsibility on that person within a certain amount of time, but no fee or anything involved so we could do it.

MS. EULER: Just notify the board. File a change-of-address form.

MR. REINHARD: If applicable, because some of those people don't have e-mail addresses. They're going to think we've got to get a computer now.

MS. EULER: Right. Yeah.

(Several people talking simultaneously.)

MS. CLARKSTON: So, Sharon, I just want to play devil's advocate. So, they have to do it on the form, they can't just send you a letter that says --

MS. EULER: I don't know.

MS. CLARKSTON: Okay.

MS. DUNN: Well, it said or as prescribed by the Board.

MS. EULER: That's what I'm asking.

That's what I'm asking, what you want me to say for number three. Do you want me to say a form prescribed by the Board? Do you want me to say such notice shall be in writing?

MS. DUNN: In writing.

MR. McCULLOCH: Just in writing.

MR. MAHN: I withdraw my --

MR. McCULLOCH: I'll withdraw that second.

MS. DUNN: Lori, is that what we're talking about is an address change.

CHAIRMAN: So, from the Board perspective, is -- or administrative perspective, does it make sense that this be just with a note? I mean, obviously, you want to know where these folks are. They've got the money. So, does it make sense that it be a Board form and it's a little more to it than just, oh, yeah, by the way, and I moved?

MS. EULER: Well, I can tell you that for my law license, when I change my address, I just send them a notice saying here's my new address. Here's my new address, phone number.

MR. REINHARD: But you're not -- you don't have any money involved.

CHAIRMAN: Yeah, but you didn't take $2 million with you.

MS. EULER: I might have. If I'm a lawyer in private practice.

MR. McCULLOCH: But the guy that's going to do that is not going to fill out your form anyway.

CHAIRMAN: Well, that's true, but at least we have the grounds to go get him because he didn't.

MR. McCULLOCH: Well, you still do because that's part of the deal. He has to notify.

MS. EULER: Martin, if I'm a lawyer in private practice with a trust fund, I might have millions of dollars.

CHAIRMAN: Yeah.

MS. CLARKSTON: But if you require a form versus a written notification, then you have -- you're going to have to say that no one can --

MS. EULER: Yeah.

MS. CLARKSTON: For small-business impact, you're going to have to obtain the form, you're going to have to fill that form

out, and then send that back to us. Can we eliminate a step on that?

MS. EULER: If we just say --

MS. CLARKSTON: And other boards do paper and form combination things all the time.

MS. EULER: If we just say written notice, we can provide a form that they can use if they want to, or if they want to just send in a letter, they can.

CHAIRMAN: Okay. Should there be a fee, yes or no? I mean, I know --

MR. McCULLOCH: No fee.

UNIDENTIFIED: I don't think so.

MS. EULER: Okay. I'm going to hand this to Sarah to have her type it up. Da, da, da, da, da, da, dum. Dum, dum, dum, dum.

SARAH: Is this replacing something? Is it new?

MS. EULER: It is replacing this one.

SARAH: Page 9?

MS. EULER: Uh-huh.

SARAH: Okay.

MS. DUNN: Hey, John, when you say no fee, is that just for address changes?

MR. McCULLOCH: Yeah. That change of

address.

MS. DUNN: Okay. That's all that that consisted of?

MR. McCULLOCH: I think so.

MS. DUNN: Okay.

MS. EULER: Okay. Sarah is going to go type that up. Jim is handing out the final version of the corporate thing which you've already approved, so you don't need to reapprove it unless you want to.

MS. HAYES: So, is there a motion on that form -- (inaudible.)

MR. McCULLOCH: His motion?

MR. MAHN: I withdrew mine.

MR. McCULLOCH: Yeah. We withdrew that first one.

MS. EULER: Do you want to wait until Sarah has it typed up and brings it back in and we can vote on the final one? Okay.

CHAIRMAN: So, that was nine. So, now, on ten, was this one under nonemergency? No. We said they were all emergency; right?

MS. EULER: Uh-huh.

MS. DUNN: Well, the Board didn't --

MS. EULER: We did not -- I think that

this is already covered by a statute, which is why we decided we didn't need a rule on it last time.

MS. DUNN: I say good.

CHAIRMAN: This is the one where it was, like, when the inspectors walk in with their sheet and all that stuff, and put your license up on the table while you're talking.

(Several people talking simultaneously.)

MS. DUNN: That you put it out like this when you're writing a preneed.

CHAIRMAN: But I think didn't we say that we ended up using it more in the context of when the inspectors walk in with here's the sheet and here's who's supposed to be assigned to -- or who has been --

MS. EULER: Uh-huh.

UNIDENTIFIED: Yeah. Hang them on the wall.

MS. EULER: The statute says that you have to display your license at your place of business. And so, the Board decided that since the statute said that, we didn't need a rule to define it any further.

MS. BATTAGLER: Does the statute also

say the registration certificates have to be thus --

MS. DUNN: Yes.

MS. BATTAGLER: So, all 50 of my counselors have to have one at each one of the ten locations?

MS. EULER: Well, they can carry it with them.

MS. DUNN: Where is that?

MS. EULER: Or they can post it at your home office.

MS. BATTAGLER: That's what I was going to ask, if it was posted at the home -- the main office that they work out of --

MS. EULER: Yeah. That's what we decided last week.

MS. BATTAGLER: -- and then have a listing at the other offices of where their license is located?

MS. EULER: The statute says all licenses or registrations issued pursuant to this chapter shall be displayed at each place of business.

MR. MAHN: That's what we decided.

MS. EULER: That's what the statute

says. And we decided that -- we talked about whether that meant every place where they sold, or if it was just at their home office, and I -- my recollection is the decision was either is fine. If you want to display it at the funeral home, you can. Or it's on display at the home office.

CHAIRMAN: I remember --

MR. MAHN: So, how is the inspector supposed to go in and inspect it then?

MS. EULER: Because that's where they go, they go to the home office.

MS. DUNN: Well, because the thing is, if the agent works at 15 funeral homes and we have to issue duplicates for all those, I mean, that's -- there's a cost impact, so --

MS. EULER: And the inspector is going to go to the home office to inspect.

MR. REINHARD: I thought we -- no.

CHAIRMAN: There's something in my mind I'm remembering that if we tied -- or the thought that we could tie it to the seller's registration.

MS. EULER: Right.

CHAIRMAN: Wherever the seller's

address was made sense because they have to list that they're an agent to that seller.

MS. EULER: Right.

CHAIRMAN: Does that make sense with you all?

MS. BATTAGLER: It makes sense, only we -- I think for D.W. Newcomer's, we list each individual location as a seller, not just the D.W. Newcomer's, if I remember right, because every single one of them has their own seller registration right now posted in each building.

CHAIRMAN: So, does the counselor -- is the counselor assigned to one location or do they go --

MS. BATTAGLER: No. They have ten locations they consult for, all through D.W. Newcomer's Sons, but --

MR. REINHARD: You've got one. You've got one. You have one.

MS. BATTAGLER: One doing business as ten different ones.

MS. HAYES: You have one preneed seller.

MR. STALTER: Yeah.

MS. BATTAGLER: We have one preneed seller, because we had to -- I think we had to do --

MS. DUNN: You may have a license posted at every home, but they may be the same license.

MR. STALTER: (Inaudible.)

MS. HAYES: Right. You have one seller, but you have providers for each location? Is that --

MS. BATTAGLER: Each provider -- I know that each one has a provider, but I thought he told me had a seller, also, because we had to get another one when we put up a building over at Floral Hills East, too.

MR. STALTER: Over where?

MS. BATTAGLER: Floral Hills East down in Lee's Summit. We had to get a new one posted. I see it every time I go down there.

(Several people talking simultaneously.)

MS. DUNN: What we may have done is printed duplicates for you so that you could post them at each location.

MS. BATTAGLER: Okay. Okay.

CHAIRMAN: Do you know -- and this may

be in areas that you don't work in. But, like, do you have embalmers that move from this location to this location, because their licenses are posted in all locations, so --

MS. BATTAGLER: And that -- because I see some that work at -- you know, they'll either be in Kansas City at one location or they'll help out once in a while.

CHAIRMAN: Even funeral directors, have you got multiple funeral-director licenses throughout the locations, too?

MS. BATTAGLER: And I think it's ridiculous to have to have one -- I don't know. I don't know.

CHAIRMAN: And I'm not trying to be silly, I'm, like, trying to be equality here.

MS. BATTAGLER: I understand what you're saying and, yes, they do -- (inaudible.)

UNIDENTIFIED: There will be an inspector out there tomorrow.

MS. BATTAGLER: But I -- (inaudible.) They have them posted in each on.

(Several people talking simultaneously.)

MS. EULER: I believe Mr. Otto would like to speak.

CHAIRMAN: Yeah. Go ahead, Don.

MR. OTTO: Notice I held my hand up. Wasn't I polite, though?

CHAIRMAN: I saw it, too.

MR. OTTO: I was polite. A preneed agent might be a preneed agent for multiple sellers.

MS. EULER: Yes.

MR. OTTO: So, well, the suggestion that the preneed agent's license should be kept at the seller's -- I mean, you know that doesn't eliminate the multiple-license problem.

MS. EULER: No. But that's the same as a funeral director who works at four different locations.

MR. REINHARD: (Inaudible) -- whatever.

MS. HAYES: Okay. I'm just going to use APS. John's home office is here in Jeff City, but he sells for Jim's location in Paris. All of his agents licenses are going to be displayed at his, at APS here in Jeff. When we go to Jim's, is that -- that's fine? MS. EULER: Well, that's the question.

MR. REINHARD: Well, let's make it as

simple as possible.

MR. OTTO: I think the preneed agent's license ought to be displayed at their primary location of business wherever that is.

MS. EULER: And that's what the decision of the Board was last week, and the Board decided that they didn't need a rule on it right now because the statute says shall be displayed at each place of business.

MS. DUNN: And then the Board's directive was going to be what we had determined last week at the main place of business, but Don is saying --

MR. MAHN: I don't think that's what we decided last week.

MR. REINHARD: I think that's what we decided.

MR. MAHN: I think we said we wanted them hung up at every location they're selling.

MR. McCULLOCH: What's that going to help anybody realistically? If you have a problem with that agent now --

MR. MAHN: I don't know. It doesn't help --

MR. McCULLOCH: Well, I'm just

bringing this up.

MR. MAHN: -- having an embalmer's license at every location, either. You can pull rank over an agent.

MR. McCULLOCH: Well, you shouldn't, but you didn't argue good enough. We're arguing now.

MS. EULER: Lori, from an inspector's point of view, what will be easiest for you?

MS. HAYES: Well, I'm kind of with Todd.

MR. MAHN: I think it should go embalmer, funeral director, agent.

MR. McCULLOCH: What good is it going to do you? If you have a problem with that person, you're going to come back here and look it all up anyway and find out where they go. What good does it have to have all these licenses up there which no one ever looks at?

MS. HAYES: I thought the discussion was the consumer. When the consumer goes into Jim's funeral home, and one of John's agents will be at his funeral home writing up a contract, for that consumer to be there right sitting there doing the contract to know that

this person is licensed as a preneed. How is the consumer going to know?

MR. MAHN: If they have to have proof of it, it's right there on the wall, just like the funeral director and embalmers.

MR. McCULLOCH: They aren't willing to do that, guys. That doesn't work back in the real world. He, number one, is not going to let you sit there and write it up if I'm not licensed anyway. That's the first thing.

MS. HAYES: Well, what if you --

MR. McCULLOCH: I'm just going to go in somebody's funeral home and just sit down and start writing up a contract? That doesn't happen.

MR. MAHN: I think last week, we made it -- we thought it would be simpler for our inspectors to go out and inspect funeral homes and be able to look at the list and check off the names, just like the funeral directors, the embalmers, agents, verify everything is fine and walk out.

MR. McCULLOCH: They've got them right here on the computer. They know where they are. They've got all their addresses if they

want to know where they live. They've got all of the sellers that they -- the providers they sell for. It's all right there.

MR. MAHN: Well, that's fine with me as long as the funeral directors and embalmers licenses are off the walls, too.

MR. McCULLOCH: I agree with you. What good does that do?

MR. MAHN: Can we make that motion? I'm just checking.

MR. McCULLOCH: The funeral directors haven't done a very good job of, you know, protecting their interests.

MR. MAHN: Well, if we had to do a license, we're not going to worry about that.

MR. REINHARD: Well, if we had got on the ball with the Federal Trade Commission -- (inaudible.)

(Several people talking simultaneously.)

MS. EULER: All right. So, what's the decision?

CHAIRMAN: Well, is there any validity -- I'm trying to see where I can see fallacies. Okay. Like, an inspector would go in, he would look at contracts, he would go

looking at logs to cross-reference things in the -- off of the contract to who was the embalmer, looking at the log, checking to see if the license was in there. Is that important in the aspect of preneed, because, obviously, they're going to be looking at pulling preneed contracts, looking to see who wrote them, who signed them. Do they need to be able to cross-reference and look -- I mean, maybe it's not important.

MR. McCULLOCH: Don't you have all that on your computers, probably?

MS. HAYES: We don't take computers with us.

MR. McCULLOCH: You don't take them? Can you call back to the office and have someone look it up if you have a question about a case?

MR. REINHARD: We don't have much staff.

CHAIRMAN: Go ahead.

MS. BATTAGLER: Is there a way that it can be worded somehow -- and I'm not an attorney, but is there a way it can be worded somehow that should it be requested to produce

the license, you need to produce it within a certain amount of time or get the registration, whatever it is. So, if it's somewhere other than the main selling location -- like I said, I don't know how to word it -- but if you just post it at the main location where they're selling, and then if they sell at other locations, they have to be able to provide proof if it's requested?

MS. EULER: Well, we had talked about last week that they will all get pocket cards -- you know, pocket cards.

MR. REINHARD: (Inaudible.)

MS. EULER: That they would have that with them at all times. I mean --

MR. REINHARD: But that doesn't help her when she does an inspection.

MR. OTTO: I agreed with the Board's decision last week that this is not an emergency-rule situation. Now, the statute says what it says. It may turn out three or four months from now, after your inspectors are out there, that there is a problem that needs to be clarified and you need to address it in a rule. But the statute covers this.

It may be subject to some interpretation that might result in your -- the need to do a rule a few months down the road, but I agree with the Board's decision last week that this is not an emergency-rule situation.

CHAIRMAN: Okay. Do you join us?

MR. REINHARD: I second that.

CHAIRMAN: That wasn't a motion, but that's --

MR. REINHARD: All right. I make a motion.

MS. GROSS: Just that it needs to be displayed?

MR. REINHARD: Table it. Let's put it off to some other day.

CHAIRMAN: Hang on.

MS. DUNN: Wait. D.J. is --

CHAIRMAN: D.J. has got the floor.

MS. EULER: No. D.J. is speaking.

MS. GROSS: You know, I just -- to put -- they are to be displayed by law -- the new law, but, also, I mean, wasn't the law changed for consumer protection? I mean, isn't that -- and the consumers that come in and we display our licenses, all the embalmers, all

the funeral directors, in all the five locations. But if the consumer walks in and everybody that's doing business right, this law isn't going to change the way you're doing business too much because you're doing it on the up-and-up. But there are places where there are people that are acting as funeral directors that are not licensed, and putting themselves out to be what they're not. So, if there is a license, wouldn't that be better, whether -- I mean, where if they're there or if they have a badge or something? I mean, I know you don't want the badges, but --

MR. REINHARD: Well, what does it cost to get a duplicate license?

MS. HAYES: There's no charge.

MR. REINHARD: Nothing?

CHAIRMAN: Just call and order it.

MS. EULER: Well, there's cost to the Board.

CHAIRMAN: The issue, I think -- I think the big issue is -- I'm not picking on you, but the big guys, you know, they're going to need a wall as big as from here to there in every location.

MS. BATTAGLER: Well, not to mention there's -- I mean, to be compliant, there's an extra minimum of 4,500 bucks we're going to pay just to duplicate license or duplicate fees to get everybody --

MS. HAYES: There is no charge for duplicates.

MS. BATTAGLER: Huh?

MS. HAYES: There is no charge for duplicate licenses.

MS. BATTAGLER: It says there is. We were looking at --

CHAIRMAN: Well -- no, there's not, is there? Like, if you call, you need, like, five people.

MR. REINHARD: No. You're looking at that other thing.

MS. BATTAGLER: Is that a different kind of duplicate?

MR. REINHARD: Yeah.

MS. EULER: Yeah.

CHAIRMAN: Yeah.

MS. BATTAGLER: Okay. So, there's no fee to get all those others?

(Numerous people answer no.)

CHAIRMAN: No. It might be to buy frames or something to put them in, but --

MR. REINHARD: So, start taking the pictures off the wall.

MS. BATTAGLER: All right. I call it that there is no charge for it. The simple reason I was complaining.

MS. EULER: You take it back?

MR. MAHN: Any barbershop you go into, everybody has got their license hanging on a wall.

MR. REINHARD: All right.

(Several people talking simultaneously.)

MR. REINHARD: Let's make a motion that if --

MR. McCULLOCH: But that doesn't make it right just because that's the way they do it.

MS. DUNN: There is a duplicate license fee in there.

UNIDENTIFIED: Yeah. Just because they screwed up, don't penalize the rest of us.

(Several people talking simultaneously.)

MS. DUNN: So, if you have -- and I'm just saying --

(Everybody talking simultaneously.)

MR. REINHARD: -- I make a motion that we have to put it on the wall at the location that you're working out of.

CHAIRMAN: We have a motion on the floor by Jim that it has to be on the wall at the location where you're working --

MR. REINHARD: That you're working out of. And if they work out of more locations, just get a duplication and put it up there.

MR. MAHN: Second.

MS. EULER: So, you want to approve this rule?

MR. REINHARD: Yeah. Page 9.

MS. EULER: Ten.

MR. REINHARD: Oh.

MR. MAHN: Second.

CHAIRMAN: Todd seconds.

UNIDENTIFIED: Are they saying on the wall?

MR. McCULLOCH: So, my understanding is I'm a counselor --

MR. REINHARD: Right.

MR. McCULLOCH: -- I'm working for you.

MR. REINHARD: It's your

responsibility --

MR. McCULLOCH: I'll put my license up on your wall?

MR. REINHARD: Right.

MR. McCULLOCH: But if I also work with him, I go over there and put my license up on his wall?

MR. REINHARD: Right.

MR. MAHN: Exactly.

MR. McCULLOCH: Okay.

MS. EULER: So, that's a motion to approve ten.

MS. GROSS: And I'm being serious. Are you saying really on the wall, because we display ours on the fireplace mantel --

MS. EULER: That's fine.

MS. GROSS: -- because people actually look at that.

MR. McCULLOCH: No. It says on the wall; you've got to be on the wall.

MS. GROSS: I'll give you a piece of string and attach it to the frame.

MR. MAHN: Bricks and mortar.

MS. EULER: Conspicuous location.

MS. GROSS: Well, that's pretty

conspicuous, though.

MS. DUNN: So, does this constitute an emergency rule?

MR. McCULLOCH: I think in the bathroom -- (inaudible.)

MR. REINHARD: Or a ring binder.

MR. MAHN: What difference does it matter?

MS. EULER: And included in your motion is that there is competent, substantial evidence to support the need for this rule?

MR. REINHARD: And there's -- probably so.

CHAIRMAN: Okay. We did that. Now, Gary?

MR. FRAKER: Yes.

CHAIRMAN: John?

MR. REINHARD: Yes?

MR. McCULLOCH: Yes.

CHAIRMAN: Yes. Okay.

MR. KRAUS: That is an emergency rule or it's not?

MS. EULER: It is.

CHAIRMAN: It's passed.

MR. KRAUS: Okay.

(Several people talking simultaneously.)

MR. REINHARD: It was down the road last week, and now it's back in the --

MS. DUNN: So, are we going to talk about this law and its impacts on --

MR. REINHARD: What happened to down the road?

CHAIRMAN: Oh, I'm sorry. I forgot the best part.

(Several people talking simultaneously.)

MS. DUNN: Well, the thing is, I want to make the statement that it may cost $5 a license.

MR. KRAUS: But that's for the Board, not for small business.

MS. EULER: For the registrant.

MS. DUNN: We have a fee for the -- you want to know what the cost to the Board is?

MS. EULER: There's a fee for a duplicate license fee that they could charge if they wanted to.

MS. DUNN: Because if we have to issue 25 agent licenses, we may -- I mean, we have the authority to charge for a duplicate. We have not, but if we need the money, we may

need to start charging for those, so --

MS. CLARKSTON: And that fee is set at $5; correct?

MS. DUNN: Yes.

MS. BATTAGLER: It says $10 on here.

MS. DUNN: It's not on there?

MS. BATTAGLER: It's $10 on here.

MS. DUNN: Oh.

MS. CLARKSTON: Where do you --

MS. DUNN: Well, we haven't charged that, either.

MS. CLARKSTON: Are you talking about the fee?

MS. BATTAGLER: Is that that -- oh, wait. That's for any certificate. Which one is that?

(Several people talking simultaneously.)

MS. CLARKSTON: So, who processes those in your office? Who processes the duplicate? Is it the technician?

MS. DUNN: Well, it's going to be Lori on this one.

(Several people talking simultaneously.)

MS. CLARKSTON: For the licensees, fiscal impact will be notification to the

Board or a request for duplicate; right?

MS. EULER: Yes.

MS. CLARKSTON: Okay. For small business, it would still be notification to the Board and requests for duplicate --

MS. EULER: Cost.

MS. CLARKSTON: -- costs for display?

MS. EULER: Display? Do you frame them?

(Several people talking simultaneously.)

MS. CLARKSTON: Okay. Is there any others to the business besides notification, requesting the duplicate for those who need the duplicate, obviously, that would be to the business, I would assume, or to the licensee, either way, we're going to have to show cost for that.

MS. EULER: What about --

MS. CLARKSTON: And then cost for display.

MS. EULER: What about time to make the request?

MR. REINHARD: How about the nail that goes in the wall that hangs the picture? What about the time it takes to hang the picture on

the nail?

MS. EULER: Don't forget the toothpaste to fill in the hole on the wall.

MR. MAHN: What about the frame you put it in?

MR. KRAUS: If it's a fireplace, you have to drill a hole.

MR. REINHARD: It comes with a frame. It's got a little border.

MR. MAHN: No, like a glass frame.

MS. EULER: You have to get a different kind of toothpaste for that.

MR. MAHN: I know how you probably do it over there in Paris.

CHAIRMAN: Okay. You've got the revised version of page 9, so back up.

MR. McCULLOCH: Hey wasn't it suggested we just get all these day things the same instead of ten to 30? Someone suggested that, so that we don't have to remember all these -- is that a big deal being ten days?

MS. EULER: No.

MR. McCULLOCH: Can it be 30 because everything else is 30?

MR. OTTO: Everything else is 30 for

funeral establishments and for funeral directors, embalmers.

MS. EULER: No. I just made up ten business days. That would give people two weeks.

MR. McCULLOCH: Can we just say 30 and, that way, it goes along with everything else?

MS. EULER: Yeah.

MR. McCULLOCH: It makes it easier.

MR. REINHARD: Can we save a tree and everybody cross that out?

MR. McCULLOCH: Let's do.

MS. EULER: Thirty days. Thirty days, not 30 business days.

MR. McCULLOCH: Thirty days.

MR. MAHN: So, mark that out.

MR. McCULLOCH: So, take off business.

CHAIRMAN: So, no business. It's 30 days.

MR. MAHN We've got Al Gore sitting over there, saving a tree.

(Several people talking simultaneously.)

CHAIRMAN: Okay. Does that take care of that? MS. EULER: You need to vote.

CHAIRMAN: We need a final approval.

MS. EULER: And you need to find competent, substantial evidence to support the rule.

CHAIRMAN: Just all those good things to support the rule. Do I have a motion?

MR. MAHN: First.

MR. FRAKER: Second.

CHAIRMAN: Second for Gary. Jim?

MR. REINHARD: Yes.

CHAIRMAN: Yes. John?

MR. McCULLOCH: Yes.

CHAIRMAN: Yes. Okay. Connie, did we already do that?

MS. CLARKSTON: I think that we can pull enough information from another rule to fill this statement out, so I think we're okay.

CHAIRMAN: Okay. So, that is good. We already did page 10.

MS. DUNN: Did you get the current statement put on that? The substantial --

MS. EULER: Competent and substantial evidence.

UNIDENTIFIED: About what was said. All that good stuff, I believe, is what Lori

said.

MS. DUNN: Okay. Sharon, would you repeat that?

CHAIRMAN: Good.

MS. EULER: The Board -- included in that motion -- and, Board, correct me if I'm wrong -- included a finding that there was competent and substantial evidence to support the need for this rule; correct?

MR. MAHN: Yes.

MS. EULER: All right. That was a yes.

MS. DUNN: Okay.

CHAIRMAN: Actually, #11. We're done with #10.

MS. EULER: On #11, last week, the Board decided we did not need an emergency rule on this.

MR. REINHARD: Then why are we --

MS. EULER: Because this is already in the statute, but if the Board wants to reconsider it, they certainly can.

CHAIRMAN: So, is everybody happy with staying with no need for a rule?

(Numerous people answer no.)

CHAIRMAN: Everybody says no, so we'll

take that as a motion with all yeses.

MS. EULER: Okay.

MR. MAHN: Done.

MS. EULER: With group two.

MS. DUNN: Motion to stay with their original position. I just want to make sure the court reporter had it.

MS. EULER: All right. We have group-three rules. Do you want to --

MR. KRAUS: What about group two?

MS. EULER: I thought that was group two? Oh, that was group one.

MR. REINHARD: I like your thinking, Sharon.

MS. EULER: Did we do the notice-of-intent rule? We did that, didn't we? Martin?

CHAIRMAN: Yes, ma'am?

MS. EULER: We finally approved the notice-of-intent-to-apply rule; correct?

CHAIRMAN: I believe so.

MS. EULER: I think we did that last week.

MR. KRAUS: We did.

CHAIRMAN: That was all done.

MR. KRAUS: There was a change to the reporting or the annual-report part of that to address the fees.

MS. EULER: Okay. Do we have that finally approved? Do we have that written up?

MR. KRAUS: I don't think so. I don't think so. Not yet.

MS. EULER: Can we get that written up so we can get that finally approved? Do you want to address Josh Slocum's comments?

MS. DUNN: I do. Because I -- (inaudible.)

MS. EULER: Because that's about group-one rules. Mr. Chairman, do you want to address this next?

(Several people talking simultaneously.)

MS. DUNN: Does everyone have Josh Slocum's e-mail?

CHAIRMAN: That would be great. Yes. Okay. We are being requested to address Josh Slocum's e-mail.

MS. DUNN: Does everyone know who Josh Slocum is?

MR. MAHN: Did he get his underneath the proper time, actually acknowledge that

they're even here? Don't you have to have them in by Friday?

MS. DUNN: No.

MR. MAHN: No?

MS. DUNN: I mean, we were sending out documents during this meeting and he was receiving them, so --

MS. EULER: Here. Josh is executive director of the Funeral Consumer Alliance. And would you like my response to this, Mr. Chairman?

CHAIRMAN: Please.

MS. EULER: He specifically is concerned about the Board relating nonbusiness activities. And it seems to me that the rule that he seems to have a problem with, the Board is defining what it means to be the business of funeral directing, which is proper use of their authority of rule-making. And so, I think the response to Mr. Slocum is simply that the Board is defining what it means to be in the business, so they are defining the scope of their authority, and there is no effort that I see in this rule to exercise control over somebody who is not in

the business of funeral directing.

MR. REINHARD: Here we go again.

MS. EULER: But, merely, they're saying that money is not the only determination to determine whether somebody is in the business or not. That would be my comment. I don't know if anyone else would like to add to that or not, but --

MR. REINHARD: I make a motion to withdraw the rule.

MR. MAHN: I concur.

MR. REINHARD: With that motion?

MR. MAHN: Yeah.

MS. DUNN: Well, we've got several questions to address here, and if the Board is okay with that response, then I would ask that Sharon assist me and to make sure I get the response worded correctly.

MR. MAHN: Do we need to make a motion?

MR. REINHARD: To withdraw the rule.

MS. DUNN: We have several here, so --

CHAIRMAN: Do you just want a motion that Sharon help you respond to these; is that what you're saying?

MR. REINHARD: Here come a subpoena

again.

MS. DUNN: Well, I think we need to publicly discuss them.

CHAIRMAN: Each one of them?

MS. DUNN: Yeah.

CHAIRMAN: Just go each one of these.

MS. EULER: Well, the answer to number one --

MR. REINHARD: You had to pay for your own air flight, didn't you?

MS. EULER: -- is the Board is not attempting to regulate any funeral-related activities that are not part of the commercial sphere. The purpose of this addition to the rules is to define what it means to be in the business. And what parties and under what circumstances the Board would fall under this rule, the Board needs these inquiries from the public as to what constitutes the business of funeral directing, and this rule helps define what is the business of funeral directing. Those would be my suggestions. Now, if the Board wants to discuss that, they may have further suggestions.

CHAIRMAN: Any further discussion or

suggestion?

MR. REINHARD: I make a motion that Sharon helps Becky respond to Josh.

MS. EULER: Does the Board concur with my comments?

(Several people talking simultaneously.)

MR. REINHARD: Yeah. That's fine.

MR. MAHN: Yeah.

MR. REINHARD: Because you're defining it.

MS. EULER: Uh-huh.

MR. REINHARD: And we're only governing the people that have licenses.

MS. EULER: Right. Does anybody from the public have any comments?

MR. OTTO: Well, just as we have pointed out before, we would somehow like to make it clear that you can be in the business of funeral directing and not necessarily be getting it directly from a consumer. The instances that we have run into are the casket store that does all the funeral arrangements, is acting as a funeral director, but says I don't charge for that. It's all free if you buy a casket from them. Or the minister that

does everything is acting as a funeral director doing everything. And he says, but I do that for free, I don't charge for that as long as you make a donation to my church.

MS. EULER: Right.

MR. OTTO: We want those people to be covered. Likewise, we also don't think somebody should get out of this who is a licensed funeral director who says I don't have to follow the rules on this particular funeral because I didn't charge this particular family, you know.

MS. EULER: I received a donation, but I didn't send them a bill.

MR. OTTO: Yeah. Or something -- or even I did this one for free. He legitimately did it for free.

MS. EULER: Uh-huh.

MR. OTTO: He didn't get anything. I'm sorry. If you're in the business of funeral directing, just because you did some funeral free, you should still follow the rules.

MS. EULER: And money isn't the only defining factor to determine whether you're in

the business or not.

MR. OTTO: Yeah. So, that's what we're -- those are the two things we're concerned about on both ends, that people don't try to get around being licensed because they say I never got any money directly, and also that a person doesn't try to get out of their obligations to the consumer by saying I -- you know, you could screw up a funeral really bad, but then not charge them, and say, well, you can't come and discipline me because I didn't take any money from that consumer, and that's not right, either.

MS. EULER: Right. Anyone else have a comment?

CHAIRMAN: So, what do we need? Did we have a motion that you and then --

MR. REINHARD: To let Sharon aid Becky.

MS. EULER: And I'm sure Earl will assist with that, as well.

MR. REINHARD: Okay.

MR. KRAUS: What am I assisting on?

MR. REINHARD: Earl and Sharon --

MS. EULER: That's what happens when you step out of the room.

MR. REINHARD: -- aid Becky in a response to Josh Slocum.

CHAIRMAN: So, there's your motion. Somebody second?

MR. MAHN: Second.

CHAIRMAN: Todd seconds. Gary?

MR. FRAKER: Yes.

CHAIRMAN: John?

MR. McCULLOCH: Yes.

CHAIRMAN: All right. So, you all will take care of that because we agree with your comments.

MR. REINHARD: And then will you represent us when the Federal Trade Commission comes -- can I get that in writing, Sharon?

CHAIRMAN: The what?

MR. STALTER: For a fee.

MR. REINHARD: Are we going to go on two --

MS. EULER: Yes.

MR. REINHARD: -- or three?

MS. EULER: Two.

MR. REINHARD: Would you like to do three?

MR. MAHN: Can we do them both at the

same time?

MS. EULER: I'd like to do three and be done, but I'm going to start with two. Okay. On the group-two rules, Earl and I looked at these yesterday and, from a legal perspective, we think they're fine. Is that an accurate statement, Earl?

MR. KRAUS: Yeah. Although I think we looked at these before, too, and we looked at group three yesterday.

MS. EULER: Oh. No. We looked at group two.

MR. KRAUS: We probably looked at both of them. That doesn't matter.

MS. EULER: Yes. But we looked at group two, whether it was yesterday or some other day, and have concluded that they are legally okay and that they seem to represent the -- what we heard the Board to be saying. So, shall we start with page 1, Mr. Chairman?

CHAIRMAN: We should.

MS. WARREN: Sharon, do these relate to the e-mail that we sent in on this one? Do you have that?

MS. EULER: Yes. We looked at those.

MS. WARREN: Okay.

MS. EULER: But the Board has not looked at them and really --

MS. WARREN: Okay. And this is it, yeah. Yeah.

CHAIRMAN: These are the rewrites from all of our discussion last week; correct?

MS. EULER: Yes.

CHAIRMAN: So, I guess, actually -- Don?

MR. OTTO: Well, I'm just -- I think there's a typo on page 6 on one of them.

MS. EULER: The Russian spelling of registration?

MR. OTTO: Yeah. Oh, no.

MS. EULER: Oh.

MR. OTTO: I can't spell, so I don't catch those.

CHAIRMAN: Does everybody want a minute or two to read these, or what do you want? One at a time?

MS. DUNN: Yeah. I think everybody needs to read each one before we --

CHAIRMAN: All right.

MS. DUNN: We can take the first one

and read it.

CHAIRMAN: All right. Read the first one and then we'll get -- see what we think.

MS. EULER: Yes.

MR. MAHN: Is this saying that people cannot make payments into an annuity for a prearranged burial plan?

MS. RUSSELL: Martin?

CHAIRMAN: Yes.

MS. RUSSELL: This one, Todd, is from my discussion with the Department of Insurance because of the words "single annuity." The Department of Insurance did say that they would be flexible and allow us to have a replacement annuity for those multiphase that are going into annuities, so you can replace it, so this was a good thing considering what the statute had -- the way the statute was written in there.

MR. MAHN: What do you mean, you can replace it?

MS. RUSSELL: So, for instance, the John Doe comes in and starts an annuity.

MR. MAHN: Right.

MS. RUSSELL: Preneed contract.

MR. MAHN: Making payments?

MS. RUSSELL: Using an annuity. Puts in $1,500. The next month, John Doe comes in and gives you another $500 --

MR. MAHN: Right.

MS. RUSSELL: -- you'd have to have two annuities then.

MR. MAHN: Uh-huh.

MS. RUSSELL: The next week, John Doe comes in with another one -- another $500, you'd have to have three. You could have ten --

MR. MAHN: Put all in one annuity?

MS. RUSSELL: He said then that you could just go ahead and take those annuities and make just one. You could replace it. So, when John Doe comes in with $1,500, the next week, he comes in with $500, you now just have a $2,000 one annuity.

MR. MAHN: You can deposit on the original annuity, is what you're saying?

MS. RUSSELL: And replace it. Replace it.

MS. BATTAGLER: Replace it. Replace it with one that has the whole dollar amount

together.

MS. RUSSELL: So, this is good.

MR. MAHN: Right.

MR. STALTER: It helps correct a problem in the statute.

MS. RUSSELL: Yes. Yes.

MR. MAHN: Why would they need to replace it, though? They can't just add money to the current annuity?

MS. RUSSELL: No. The law -- the statute is what the statute is, and we tried everything to get that changed. The Department of Insurance would not back off.

MR. MAHN: You can't add money to the annuity?

MS. RUSSELL: No.

MR. MAHN: What if it's not a guarantee?

MS. RUSSELL: No.

MR. MAHN: And we can't start a nonguaranteed annuity?

MS. RUSSELL: You can have one, single. You can have three single, but you cannot --

MR. STALTER: Where did that language

come from?

MS. BATTAGLER: You cannot keep adding to the --

MS. RUSSELL: Pardon?

MR. STALTER: Where did the language come from -- the single-payment annuity from that? No, from this section. I mean, how do you not add it in the later stages of the statute? Where did it come from?

MS. RUSSELL: The Department of Insurance, we had several amendments in there to allow for flexible annuity, and they did not want it. They kept taking it out. I -- you know, I tried.

CHAIRMAN: Well, part of that was what Mark was saying was that because a flexible-premium annuity is -- it's more for payback later down the line, being an annuity, as opposed to, like, creating, and that's why he couldn't deal with that.

MS. RUSSELL: And I think the whole thing with the Department of Insurance is the misunderstanding between the difference between the variable and the fixed annuity and where that crossed in during the legislation,

and the law is what the law is, you know. So, we have to work with what it is, and I think this was -- helped clarify some things.

MR. KRAUS: Well, didn't he say that if it's going to be a multiple payment, then why don't you just get an insurance policy?

MS. RUSSELL: Well, which is -- annuity is an insurance policy, you know.

MR. KRAUS: Yeah.

MR. STALTER: It's an insurance contract, yeah.

MS. RUSSELL: It's an insurance contract, so --

MR. KRAUS: An insurance contract, yeah.

MR. MAHN: The only difference is, is that it's not a big, huge payment. If they can only afford to put 50 bucks in an annuity, and you're not guaranteeing it, why is that a problem?

MR. STALTER: That's what we were asking a few weeks ago, why it was a problem.

CHAIRMAN: It was, though.

MS. RUSSELL: It was a big discussion, Todd.

CHAIRMAN: It was.

MS. RUSSELL: And this was the Department of Insurance and Earl and them working together to at least give us some --

MR. MAHN: But if you're not guaranteeing it, why do they even care what a family puts into it? Is that the fight that you had with them?

MS. RUSSELL: I did. I had a lively discussion, and Earl can tell you I explained it and the answer that they gave me over and over, and Earl said it, too, a law is the law, you know, so I accepted it.

(Several people talking simultaneously.)

MR. KRAUS: Yeah. And then we're not going to -- we shouldn't tread on insurance's deal, and that is where they are on it.

CHAIRMAN: They did say that. He said the only answer was if somebody -- like she said, if somebody brings you $1,000 and then he -- whether it's the next day or two months or whatever, and brings you another $1,000, your company cancels that contract and writes a new one for $2,000.

MR. MAHN: Okay.

MR. REINHARD: Okay. I make a motion, since it's so damn good, that we make this a rule and put it under the -- what act -- the clarified incompetent bunch of fools making rules.

MS. EULER: Competent and substantial evidence to support the need for the rule.

MR. REINHARD: Okay. So moved.

MS. EULER: And as an emergency rule? As an emergency rule, Jim?

MR. REINHARD: Did you like that one?

CHAIRMAN: As an emergency?

MS. EULER: As an emergency rule?

MR. REINHARD: As emergency, not down the road. We're talking about on fire now.

CHAIRMAN: All right. There's your motion. Second?

MR. FRAKER: I'll second it.

CHAIRMAN: Gary seconds. John?

MR. McCULLOCH: Okay.

CHAIRMAN: Todd?

MR. MAHN: I don't have a choice. Yes.

CHAIRMAN: Okay.

MR. REINHARD: Well, if you'd attend the meetings like you're supposed to, you

would know what's -- you would be up on this.

CHAIRMAN: Do you want final approval on that?

MR. REINHARD: Yes.

MS. WARREN: I need the -- where I know what the motion was because my husband was calling to find out what the motion was, and I said you're talking to me at the same time we're doing it. So, I need -- he said, well, have them say it again.

CHAIRMAN: The motion is take it as you see it to approve it as an emergency rule.

MS. EULER: To approve the --

CHAIRMAN: Just -- no. Just the first one, page 1, on #2.

MS. WARREN: Page 1, #2?

CHAIRMAN: Single-premium annuity.

MS. WARREN: Does everyone have a copy of our comments that went through?

MS. EULER: Yes.

MR. McCULLOCH: Do you all have a problem with the way it's written; is that it?

MS. WARREN: I don't know. I am not up with where you're at. Our comments on page 1, #2, we have concerns since it borders on

requiring a license -- (inaudible) -- to only sell preplanned -- (inaudible.) This may be not what it intended, but it leans heavily towards that. Is there any purpose to having this in there? This is on #2. Number 2 is an insurance-funded preneed contract may not be funded by an annuity other than a single-premium-annuity contract. Our comment is: This concerns us. It borders on requiring a licensed funeral director to only sell preneed funerals. This may not be what they intended, but it leans heavily towards that. Is there any purpose to having this in there? And for #3, #3 says if a purchaser funds an insurance-funded preneed contract with a single-premium-annuity contract, the purchaser may replace the single-premium-annuity contract with another single-premium-annuity contract at any time and the duration of the preneed contract. Our comment is -- to #3 is to -- is this to allow final-expense sales? Most insurance companies will not allow a funeral home to be named as a beneficiary since it limits the freedom of choice. Also, how does this follow along with

Section 436.450.7(1)? This is all on page 1. And I'm Ann Warren with Inglish & Monaco, with the Missouri Insurance Preneed Coalition, the group of companies that include Homesteaders, et al. And everybody has got a copy of this? It's an e-mail that Mark sent to Lori on Friday, August 21st, 4:47 p.m. The comments to the draft rules; that's what it looks like. Does everybody have a copy of that?

MS. DUNN: I thought Lori made a copy for everyone.

MS. HAYES: Yeah. They're handed out.

MS. RUSSELL: They were in the beginning.

MS. EULER: And as a response for you, this rule was done last week with input from Mark Stahlhuth from Department of Insurance, and the law is now that selling insurance-funded contracts, you need to have a seller's license and they need to be sold -- the contract needs to be sold by a registered sales agent. So, it may be that it borders on requiring a licensed funeral director to sell preplanned funerals, but that's what the law requires.

MS. WARREN: Okay.

MR. REINHARD: Only like the statute, but not --

MS. EULER: Right. The statute.

MR. REINHARD: -- but not the statute where we've got -- (inaudible.)

MS. EULER: Right.

MS. WARREN: Okay.

MS. EULER: Okay.

CHAIRMAN: So, any other comment? Okay. We voted, and so, we took care of the finally approving. Now, we did not do the final approval, though.

MS. EULER: We don't need to do a final, final, because if you approved this, we only needed --

CHAIRMAN: You're just looking for the approval on this one today?

MS. EULER: We need to do the final, final approval only if we change something and we type it up. This one, we don't need to do that.

CHAIRMAN: Okay. All right. So, it's just approved?

MS. DUNN: And did you provide the

statement to the court reporter?

CHAIRMAN: In the motion.

MS. EULER: It's in the motion.

MS. DUNN: Okay.

CHAIRMAN: In the motion. Now, do you need to do?

MS. CLARKSTON: Okay. Yes, I do.

CHAIRMAN: Okay.

MS. CLARKSTON: Okay. I don't see any cost to the Board, unless I'm missing something, but I would see -- well, maybe I'll back this up a minute. Although it's going to be addressed in another rule with the seller, there is going to be a cost for insurance companies to comply with becoming sellers based on the law and this implementation of this rule. So, am I missing it? Okay.

MS. EULER: This is simply informing people about how annuities can be used to fund an insurance-funded preneed contract.

CHAIRMAN: I think maybe where you were getting ready to go was it would be correct if they chose to fund it that way, which will be a minority of the policy -- of preneed, but -- so --

MS. CLARKSTON: Even though this rule wasn't requiring, for a business impact, though, that changes -- that funding source on how they do business. You're looking at me like I'm speaking Greek.

MS. EULER: I don't see that.

MS. RUSSELL: I think, Connie, that that comes under when you have to register as a seller.

MS. CLARKSTON: Okay. Sorry.

MS. RUSSELL: No insurance companies are registering as sellers, necessarily. They don't have to.

MS. CLARKSTON: Okay.

MS. RUSSELL: So, this is just for information rule.

MS. CLARKSTON: Okay.

MS. RUSSELL: This doesn't require them to do anything; am I right, Sharon?

MS. EULER: Correct.

MS. CLARKSTON: Okay.

MS. EULER: Correct. This is simply telling them what they can and cannot do after they are licensed.

MS. CLARKSTON: Okay.

MS. RUSSELL: That one was an easy one for you.

MS. EULER: Whoosh. Right.

MS. CLARKSTON: It still requires paperwork.

MS. RUSSELL: Oh, no.

MS. CLARKSTON: There is nothing easy about this process.

MR. MAHN: Do we need to vote on that?

MS. RUSSELL: I think we did.

MS. EULER: We already did.

MR. MAHN: The whole thing?

MS. EULER: Yeah.

MR. MAHN: Okay.

MS. EULER: We're ready to move to page 2.

CHAIRMAN: Page 2, rule #2.

MR. KRAUS: Sharon, if I can jump in, on the group-two rules, isn't this the group that we didn't get to when we were reviewing section by section and they haven't voted on these yet?

MS. EULER: Correct.

MR. KRAUS: Okay. So, we're voting on each of these as we go along?

MS. EULER: Right.

MR. KRAUS: All right.

MS. EULER: But they voted on page 1.

MR. KRAUS: All right.

MS. EULER: So, we're ready to move to page 2.

MR. MAHN: Do we have to vote on these -- just a question -- one at a time?

MS. EULER: Yes.

MR. MAHN: Or can we do it as a whole? They're pretty self-explanatory. I mean, I think we could --

CHAIRMAN: But we still have to do the official --

MS. EULER: It's up to you.

MR. MAHN: One-at-a-time vote?

MR. KRAUS: Yeah. I think we could do them one at a time, don't you?

MS. DUNN: I would prefer.

MR. MAHN: That's fine. I'm just curious.

MS. EULER: But we can zip right through them. CHAIRMAN: Okay.

MR. REINHARD: Come on, Zippy.

CHAIRMAN: Read the rule.

MS. EULER: I'm not in charge of this meeting.

MR. MAHN: Be a first.

MS. EULER: Has everybody read this rule #2?

MR. MAHN: Yes.

MS. EULER: Would you like --

MR. MAHN: I make a motion we accept it.

MS. EULER: And is that with the finding of competent and substantial evidence to support the need for the rule?

MR. MAHN: Yes.

CHAIRMAN: Okay. So, there's the motion.

MR. FRAKER: Second.

CHAIRMAN: Gary seconds. Jim?

MR. REINHARD: Yes.

CHAIRMAN: John?

MR. McCULLOCH: Yeah.

MR. MAHN: Do you know where we're at?

MR. REINHARD: In Jeff City.

MR. MAHN: We're at the Board office.

CHAIRMAN: You know we're on page 2?

(Several people talking simultaneously.)

MR. McCULLOCH: No, I don't. No, that's fine. I read it, I couldn't understand it. I'm fine with it.

MS. EULER: Okay.

MR. MAHN: Wow.

MR. McCULLOCH: I thought that's what we voted on a while ago.

CHAIRMAN: Okay. So, there's your approval on that one.

MS. CLARKSTON: Okay. Don't see a cost to the Board, cost to licensee, impact to small business?

MS. EULER: No.

MR. MAHN: None.

MS. EULER: Does anybody from the public see impact on small business? I see heads shaking no.

MR. MAHN: No.

CHAIRMAN: Okay.

MR. REINHARD: Then I make a motion we accept this rule #3. It's all --

MS. EULER: Todd already -- oh. Oh, no. We're moving on. Sorry.

CHAIRMAN: No, that was #2.

MR. MAHN: He just made a motion on #3

now.

CHAIRMAN: Oh. Jim did #3?

MR. REINHARD: Yes.

MR. MAHN: Yeah. I second #3.

MS. WARREN: I have comments on #3.

CHAIRMAN: Okay. But since we got a motion, go ahead and do the second, whoever did it.

MR. MAHN: We got -- second.

MR. REINHARD: Well, I mean, have discussion.

CHAIRMAN: Okay. Then we'll have the discussion.

MS. EULER: Uh-huh.

CHAIRMAN: Okay. Go ahead.

MR. REINHARD: Go ahead. Hold it.

MS. WARREN: Okay. Well, you can't see me, but you can hear me. Okay. On page 3 -- oh. Ann Warren. Okay. Page 3 regarding sellers' obligations. On number one, needs -- we need to have added "except in the case of an insurance-funded preneed contract, all payments shall be paid directly to the insurance company by the purchaser."

MS. EULER: I don't think that matches

--

MS. RUSSELL: You're on the wrong -- yeah.

MS. WARREN: I'm not on the right one?

MS. RUSSELL: Yeah. Yeah.

MS. EULER: The comments don't match.

MS. WARREN: Okay.

MS. RUSSELL: I think it's for the next one.

MS. WARREN: Okay. It says page 3.

MS. EULER: Yeah. But this is a new version.

MS. RUSSELL: We're on page 2.

MS. WARREN: Okay.

MS. EULER: It's on seller obligations, which is page 6.

MS. WARREN: Okay. So, this would be page 6 then?

MS. EULER: Yeah.

MS. WARREN: Okay. Then I'll withdraw that and wait till page 6 then. Thank you very much.

MR. REINHARD: Cancel hers.

(Several people talking simultaneously.)

CHAIRMAN: Okay. Well, we've got a

motion, we've got a second. Gary?

MR. FRAKER: Yes.

CHAIRMAN: John?

MR. McCULLOCH: It's okay.

CHAIRMAN: All right. Approval for #3. Connie?

MS. CLARKSTON: Okay. Don't see any cost to the Board, don't see cost to licensees, or an impact to small business?

MS. EULER: No.

MR. MAHN: Perfect. I make a motion we accept #4.

MS. EULER: Didn't we do this rule earlier?

MS. RUSSELL: I know. It's going to hit.

MR. MAHN: Four is pretty simple.

MS. EULER: Isn't #4, isn't that part of what we approved in group two?

MR. STALTER: Yeah. It's 333. You've got two of them in there, 333 and 436, so -- and we've already approved the other one.

MR. MAHN: So, we can just skip it?

MS. EULER: I don't think we need two rules.

MR. MAHN: No.

MS. EULER: Do you see any reason to have two rules, Earl?

MR. KRAUS: No. As long as the earlier one actually says for the purposes of both chapters.

MS. DUNN: Right.

MS. EULER: Well, let's find it and see what it says. That's what I would --

MR. REINHARD: So --

MR. KRAUS: Which I can't imagine it doesn't.

MR. REINHARD: So, you need a motion to not to reject this?

CHAIRMAN: Well, as soon as she determines whether the correct verbiage is --

MS. EULER: On the rule you already approved in the group-two rules on page 3, it --

MR. KRAUS: Yeah, it does.

MS. EULER: -- group one. I'm sorry.

MR. KRAUS: Group one.

MS. DUNN: It does have both chapters.

MR. KRAUS: Yeah.

MS. EULER: But it doesn't have the

authorized by, so we would need to change the authorized-by provisions to make sure it's 436, as well as 333. Do you see what I'm saying?

MR. KRAUS: Authorized by --

MS. EULER: The statutory authority for the rule.

CHAIRMAN: This has 193.015 and the other one doesn't.

MR. KRAUS: Oh. Right. Right. Right.

MR. REINHARD: So --

MS. EULER: Yeah.

MR. REINHARD: -- do we have to go back and vote on that rule then?

MS. EULER: I would.

MR. REINHARD: So, we need to go back and make a motion to approve --

MS. EULER: That you add the authority of 436.405.

MR. REINHARD: To --

MS. EULER: The rule on group one, page 3.

MR. REINHARD: Yeah. Group -- got that?

MR. KRAUS: And those -- and the

references in that to 436 should really be to the specific sections.

MS. EULER: Yes.

MS. CLARKSTON: Do you also want to add the authority to 193, Sharon?

MR. REINHARD: So, how is she going to do that?

MS. EULER: Actually, the Board doesn't have authority to enact rules under 193.

MS. CLARKSTON: You're right, they don't. But, typically, that authority section isn't just limited to the rules of the Board's authority. Sometimes, they reference the other statute that defines.

MS. EULER: That would be fine to do then, just so long as nobody thinks we're exercising Department of Health authorities.

MS. CLARKSTON: No. Because they'll look at that and then have to go further to -- (inaudible.)

MS. DUNN: Okay. So, what is the motion?

MS. EULER: The motion is to amend page 3 of the group-one rules to include

statutory authority of Section 436.405, and also, instead of saying Chapter 436 in sub 1 and sub 2, that it says Sections 436.400 through 436.520.

MR. KRAUS: And under authority to say Section 193.015.

MS. EULER: Correct.

MR. REINHARD: And that's my motion.

CHAIRMAN: That's his motion.

MR. MAHN: Second.

MR. REINHARD: Thank you for speaking to that.

CHAIRMAN: Todd seconds. Gary?

MR. FRAKER: Yes.

CHAIRMAN: All right. So, we just changed that, and lose that one.

MS. EULER: Page 4 is gone. All right.

MR. REINHARD: Well, I'll make -- that's self-explanatory.

CHAIRMAN: Okay. Number five.

MR. MAHN: You made a motion?

MR. REINHARD: Yeah. I'll make a motion.

MR. MAHN: Second.

CHAIRMAN: Motion and second to accept

#5?

MS. EULER: And to find that there is competent and substantial evidence to support the need for this rule?

MR. MAHN: That's what we're going through them for; right?

MS. DUNN: Yeah. But we have to make that statement for the court reporter's record.

MR. MAHN: Do we have to make it?

MS. EULER: You have -- the Board needs to --

MR. MAHN: A Board member to say what she just said?

MS. EULER: The Board needs to find that there is competent and substantial evidence and support --

MR. MAHN: You need to amend it, Mr. First.

MR. KRAUS: But you can incorporate that into your motion.

MS. EULER: Right.

MR. REINHARD: Go ahead.

MR. KRAUS: You don't have to say the words.

MS. EULER: Right.

MR. MAHN: Okay. Okay. And all that.
MR. KRAUS: Just say yeah, what she said.
MS. EULER: Right.
CHAIRMAN: Did you first?
MR. REINHARD: I second.
CHAIRMAN: Okay. So, Todd is first, Jim seconded.
MR. FRAKER: Yes.
CHAIRMAN: Gary says yes. So, approved on #5.
MR. STALTER: Are you going to take comments on #5 then?
MS. EULER: Sure.
MR. STALTER: Now --
MS. EULER: We have your written comments on this, Bill, just FYI.
MR. STALTER: Yeah, I know. So, is it -- they're rejected then; right?
MS. EULER: Yes.
MR. STALTER: Okay. That's easy enough. We'll just keep going then.
MR. MAHN: No comments after 4:10.
MR. REINHARD: Damn, that was bad.
MS. EULER: Do you have any other

questions, Bill? But we thank you for your input. We considered your input, your comments.

MR. STALTER: I know. I was a little late this time. I apologize.

MR. MAHN: I hope you didn't sit here all day for that.

MS. EULER: The Board had your comments available to them and they carefully reviewed them and considered them.

MR. STALTER: Oh, okay.

CHAIRMAN: Okay. Connie.

MR. KRAUS: Number #6.

CHAIRMAN: No, #5.

MS. EULER: No. We're on -- still on #5.

MR. KRAUS: Oh. Right.

MS. EULER: Connie needs to do her questions on #5.

CHAIRMAN: Number five. Connie. All right.

MS. CLARKSTON: Okay. Fiscal note to the Board.

MR. REINHARD: Now, you can go ahead, Connie.

MS. CLARKSTON: Fiscal note for a licensee and impact to small business. I don't see it so much for the Board or for our licensees, but I am concerned about impact to the cemetery operators and what that might be.

MS. EULER: This is actually very beneficial to the cemetery operators because it clarifies that they are under cemetery law and that there's no longer an overlap between cemetery law and preneed law. So, it clarifies what belongs under 214 and what belongs under 436, and, previously, that was not clear. And, arguably, cemetery operators were subject to both laws.

MS. DUNN: And Steve can comment on that, as well.

MR. ZELL: I don't think they'll want to comment.

MS. EULER: Do you see any impact of this rule on small-business cemetery operators?

MR. ZELL: As far as costs, no.

MS. EULER: Bill, do you see any costs to small-business cemetery operators?

MR. STALTER: Do I?

MS. EULER: Yes.

MR. STALTER: Yeah, I do. I think you have a problem. When we talked about it on August 5th and then again on August 11th, in terms of, you know, their payments on a preneed sale don't go into an endowed-care trust, and there isn't a segregated account.

MR. McCULLOCH: I was going to say, they don't have that anymore; right?

MR. STALTER: They don't exist. That's why we're trying to get through the proposal some way so that a cemetery operator will know that they're not subject to 436. But at this point, it -- they could be subject to both 214 and 436. I think this is just a drafting error in the statute and by an emergency rule trying to clarify it so that they know they can set up their contracts for 214 and not 436.

MS. EULER: And that is the idea behind this rule and the statute.

MR. STALTER: But you're parroting the statute and that's what the problem is.

MS. EULER: Well, if they sell it under 214, where does the money go?

MR. STALTER: It doesn't go into an

endowed-care trust.

MR. ZELL: What are you selling?

MS. EULER: But where does it go?

MR. ZELL: What are you selling?

MR. STALTER: Let's say that you're selling -- what got all the discussion last time -- a vault. You're selling a vault.

MS. EULER: Uh-huh.

MR. STALTER: And that has to either go into an escrow account or a trust.

MS. EULER: Okay. And is an escrow account or a trust not a segregated account?

MR. STALTER: A segregated account was defined under 214, and it's gone.

MS. BATTAGLER: It's gone. It no longer exists in Chapter 214.

MS. EULER: Okay.

MR. MAHN: Bill, would this be like a cemetery, again, a provider nonestablishment license?

MR. STALTER: Yeah. In other words, if --

MR. MAHN: But they would fall under 436 then; correct?

MR. STALTER: Yeah. And what we're

trying to say, you know, the discussion -- I don't know whether you were here that day, Todd, or not, but we said we can see where if a cemetery sold that vault in conjunction with a space sale, then we could see that would be appropriate to put them under 214. If they're just selling the vault without a space sale, that would be just like, you know, the funeral home selling it. So, then you say 436.

MR. MAHN: But if it's a vault sale, regardless if there's a plot sold or not, why would it not go under 436?

MR. STALTER: Well, that's the issue. I mean, if it's got a space tied to it, then you can say then they appropriately could put it under 214.

MR. MAHN: Which would enable them to not invest as much money; correct?

MR. STALTER: That's -- yeah.

MR. MAHN: The same way with the headstone and the grave opening and all those other things?

MS. EULER: Well --

MR. MAHN: It seems, in most cases, falls short when there's issues with

cemeteries; am I correct?

MR. STALTER: I can't hear you. Say what now?

MR. MAHN: It seems, in most cases, it falls short when there's incidents with cemeteries, that they're always short in those funds?

MR. STALTER: Well, I mean, it's hard to say that because there hasn't been a funding mechanism other -- for vaults before now.

MS. EULER: So, Bill --

MR. MAHN: Where were they putting headstone money into; their segregated account?

MR. STALTER: Well, either -- segregated account.

MR. MAHN: And they're only putting in the wholesale amount; correct?

MR. STALTER: Yeah.

MR. MAHN: So, under a new owner, if they got 15, 20, 30 headstones underneath there, the new owner was going to have to provide those headstones at the wholesale amount?

MR. STALTER: Under the old statute,

but now it would be 80 percent under a trust.

MR. MAHN: Eighty percent of it. Okay.

MR. REINHARD: They're segregated to cancel out.

MS. EULER: That's what they're saying. So, Bill, would it address your concerns if the Board took out subparagraph 1 of this rule so it simply said that the provisions apply to a preneed contract sold by a cemetery operator if it includes services that may only be provided by a licensed funeral director?

MR. STALTER: I mean, now you're saying that -- are you exempting all cemetery operators?

MR. MAHN: I don't think you want to do that.

MS. EULER: Well --

MR. STALTER: You know, that's why I tried to cover those bases with the proposal.

MS. EULER: Yeah. And we looked at your proposal and we were confused.

MR. OTTO: Part of it -- I mean, we talked about this last time. Sharon, I think you weren't here for part of it. 436 was

written with the assumption that 214 was going to get passed as it was proposed, and it didn't.

MS. EULER: Right. We know that.

MR. MAHN: And mirror 436.

MR. OTTO: And mirror 436, yeah.

MR. MAHN: And then it got watered down.

MR. OTTO: And then it got clobbered.

MR. MAHN: Watered down; right.

MR. OTTO: Now, the 436 language is kind of hanging out there, it doesn't make as much sense.

MR. MAHN: I think it would be a good idea to bring Tom in from endowed care and get his opinion on this. Maybe not now, but tomorrow.

MS. EULER: Why not?

MR. MAHN: Well, if he's available, bring him in now.

MS. EULER: Maybe Becky could contact him and see if he's available to speak with us.

MS. DUNN: Okay.

CHAIRMAN: Well, let's just put this one on hold for the moment then and turn the

page.

MS. EULER: Yes.

MR. MAHN: I retract my motion.

CHAIRMAN: Okay.

MR. MAHN: I don't know who seconded it.

MR. REINHARD: I did. I'll retract mine, too.

MR. MAHN: Withdraw it.

MR. REINHARD: So, we'll just go back to it.

CHAIRMAN: All right. So, we're tabling #5 and we'll come back.

MS. EULER: On #6, the -- on subparagraph 2, I believe, there's a typo where it says, alternatively, the preneed contract may permit the purchaser to make payment directly to the trustee or insurance company in lieu of making payment. It should say seller instead of trustee.

MS. DUNN: Do we want to modify all these business dates? I mean, we've got five months.

MS. EULER: What's the notice requirement for the funeral director in charge?

MS. DUNN: I believe it's 30, but I'll check. Do you know?

MR. OTTO: It is 30 if the funeral director in charge is going to be different for more than 30 days, you have to notify the Board within 30 days.

MS. DUNN: Right.

MR. REINHARD: Do you want to let her make her comment in the microphone?

CHAIRMAN: Oh, go ahead.

MS. WARREN: Are you ready?

CHAIRMAN: Yes.

MS. WARREN: Under the seller obligations, we're asking that it be added that except in the case of an insurance-funded preneed contract, all payments shall be made directly to the insurance company by the purchaser. There is no need to make it part of the preneed contract if it is stated in the rule. By not putting it in the rule, you are allowing a third party to have access to that money, which opens up an opportunity for theft. So, we're asking that except in the case of an insurance-funded preneed contract, all payments shall be made directly to the

insurance company by the purchaser.

MS. EULER: Well, I think we want the purchaser may make payments to trusts -- directly to the trust, as well. But, ultimately, it's the seller's obligation to make sure that the money goes where it's supposed to go.

MS. WARREN: But that's the issue.

CHAIRMAN: The what?

MS. WARREN: There is -- it opens up the opportunity for theft --

MS. EULER: Yes.

MS. WARREN: -- allowing a third party to have access to the money.

MS. EULER: Yes, there is.

MR. McCULLOCH: But you're also a seller -- (inaudible.)

MS. WARREN: All right.

CHAIRMAN: I see a hand.

MS. WARREN: That would not be a problem if it just went directly to the insurance company, then there wouldn't be that.

MS. EULER: Yes. We -- that would not be a problem with trust-funded things, too, if the payments were sent directly to the trust.

But the consensus -- there was discussion about it at the legislature, and it was determined that the seller should have the responsibility to make sure the money goes where it should go.

CHAIRMAN: Don?

MR. OTTO: Well, I mean, this may not be a problem for your insurance company or whatever, but there are still some out there where Aunt Millie comes by and brings her $5.32 a week in cash, in coins, and drops them off at whoever sold the insurance policy, which, in this case, might be the funeral director who also is an insurance agent. So, there are situations where, you know, that still goes on. So, that was the argument that you, at least, with some people -- I know my father-in-law has debit -- good old debit, you know -- remember those -- where he -- you know, they paid cash every week, and he put it in his account and sent it in. Well, that's why.

MR. KRAUS: And as a business practice, if that's how you wanted to set how you do business or how your clients do

business, they could, where that must be in the contract.

CHAIRMAN: So, with that comment, any other comments?

MS. EULER: Do you want to change the notice to 30 days instead of five and three business days?

MS. DUNN: I would suggest that for consistency and less confusion. Don?

MR. OTTO: Now, you -- every time you make those the same, you shorten my class by another paragraph.

MS. DUNN: I know. That's what I'm trying to do.

MS. EULER: Another $5 down the drain.

(Several people talking simultaneously.)

MR. KRAUS: Well, one of these is beforehand and one is after, though.

MS. EULER: Why don't we just say the seller should make the Board -- shall notify the Board of the change within 30 days prior to the change becoming effective.

MS. RUSSELL: Taking out the word "business?"

MR. KRAUS: But they don't always know

ahead of time, which is why there is an after time built in, too.

MS. EULER: Yeah. What about 30 days --

MR. KRAUS: But they want to know ahead of time, but if you don't know ahead of time --

MS. EULER: No later than 30 days after the change -- or within change, because that's what we've done for change of address. You don't have to notify the Board in advance, but you have to notify the Board within 30 days after it's happened.

MR. KRAUS: So, five days before if you know it before or 30 days after?

MS. EULER: No. Within 30 days of the change is what Becky is suggesting; is that correct?

MS. DUNN: That's correct.

MR. KRAUS: That's all right.

MS. DUNN: I'm just really trying to see what the funeral director in charge -- (inaudible.)

MS. RUSSELL: Would you say that again, Sharon?

MS. EULER: So, we want to change the -- what Becky is suggesting is if the designee changes, the seller shall notify the Board within 30 days of the change.

MR. KRAUS: So, you change three to 30 and you take out the whole five-business-day-prior deal.

MS. EULER: Just take out the --

MR. KRAUS: Change in writing.

MS. EULER: -- from seller, delete everything after seller, and, instead, write notify the Board within 30 days of the change. By written notice -- by written notification. Oh, that's already there. Never mind.

CHAIRMAN: Okay.

MS. CLARKSTON: Okay. Are you ready for fiscal stuff?

CHAIRMAN: No, not yet. We had a motion and a second on this, and then we went into discussion; right? MR. REINHARD: I don't think we had a motion at all.

CHAIRMAN: We didn't have a motion?

MR. MAHN: On #6?

MR. REINHARD: No.

CHAIRMAN: On #6?

MR. MAHN: Not yet.

MR. REINHARD: Okay. I make a motion.

CHAIRMAN: Okay. And there's the --

MR. REINHARD: Since #5 went so well, we'll try #6.

MS. EULER: And you also find that there is competent and substantial evidence --

MR. REINHARD: I find there's competent, substantial evidence --

MS. DUNN: To support the need for the rule.

MR. REINHARD: -- to support the need for the rule.

CHAIRMAN: Okay. There's the motion. Second? MR. FRAKER: Second.

CHAIRMAN: Gary.

MR. OTTO: I didn't see Sharon's lips move on that one.

CHAIRMAN: Gary seconds. Todd?

MR. MAHN: Yes.

CHAIRMAN: John?

MR. McCULLOCH: (Mr. McCulloch nodded head affirmatively.)

CHAIRMAN: Number 6 is approved.

MR. REINHARD: Now, Connie.

CHAIRMAN: Now, Connie.

MS. CLARKSTON: Okay. For the Board and for the licensee notification cost, what kind of impact is there going to be for the seller and the business? I mean, the responsibility to properly deposit and disburse, what kind of impact does that cause for the business? I know it's part of the business action, but --

MR. REINHARD: Well, we need time to make the deposit and keep track of the funds and --

MS. CLARKSTON: So, there's record-keeping?

MR. REINHARD: Yes.

MR. McCULLOCH: If you're asking me, yeah. A big impact.

MS. CLARKSTON: Okay.

CHAIRMAN: It could impact the consumer. They might have to buy stamps of their own if they choose to send it in directly.

MR. REINHARD: That wouldn't be much, but I think it's administrative.

MS. CLARKSTON: Okay. With

record-keeping, John, I'll pick your brain just a minute. Obviously, record-keeping. That's usually through an electronic database or, I mean, have most people moved to that versus keeping a log or a book; would that be reasonable to say? Or do you think there's some sellers out there that keep paper-pen documents?

MR. McCULLOCH: Oh, I would think so.

MS. CLARKSTON: Okay.

MR. McCULLOCH: I'm sure there's somebody that does.

MS. CLARKSTON: Okay. Costs then --

MR. McCULLOCH: Some of these little individual funeral homes might. Is that what you mean?

MS. CLARKSTON: Uh-huh.

MR. McCULLOCH: Yeah.

MS. CLARKSTON: Okay. So, for the record-keeping, is there a program out there that somebody can buy, or do they have to develop their own program to keep track of money deposited, incoming and outgoing and disbursements and so forth?

MR. McCULLOCH: I'm not aware of them.

MS. CLARKSTON: Okay.

MR. McCULLOCH: Are you aware of any programs out there?

MR. STALTER: I didn't hear --

MR. McCULLOCH: Like, programs out there where someone could just buy off the shelf to run their preneed program?

MR. STALTER: No, I'm not aware of any.

MR. McCULLOCH: Yeah.

MR. STALTER: No. No.

MR. OTTO: And we have been informed by the -- some folks that they'd be very, very expensive to get one built.

MR. McCULLOCH: Oh, yeah. I can imagine.

MR. OTTO: Like 15 grand.

MR. STALTER: (Inaudible.)

MR. OTTO: Well, that --

MR. McCULLOCH: It's hard to say.

MR. OTTO: I think they were revising -- I think they were rebuilding a previous -- (inaudible.)

(Several people talking simultaneously.)

MR. OTTO: But, yeah. If you want a full-blown computer program to run your

preneed, then they're going to be real steep.

MS. CLARKSTON: Okay. Are there -- this is where we kind of get into some of those trustee fees because making payments directly to the trustee. Obviously, I think the business is going to have to set that up, and what kind of fees are there for the trustee fees? I mean, is it by -- and I don't know enough about it to talk intelligently from it, so --

MR. McCULLOCH: Typically, it's based on, I think, the amount of money that they're overseeing.

MS. CLARKSTON: The amount of money in the trust? Okay.

MR. McCULLOCH: That kind of -- (inaudible.)

MR. STALTER: Yeah. Connie, we do ours on -- we have a document fee, we have a setup fee, there might be a review fee. But part of this, we always look how big the trust is. I mean, that's one indicator. So, in some sense, for the small business, it might cost more because of fewer contracts.

MR. OTTO: But this is if anything --

(inaudible.)

MS. EULER: Which one?

MS. CLARKSTON: I know, because -- (inaudible.)

MR. OTTO: I know, but I'm just saying.

MS. CLARKSTON: Okay.

MR. OTTO: I mean, this isn't --

MS. EULER: Uh-uh.

MR. McCULLOCH: It's always cost money to do, but --

(Several people talking simultaneously.)

MR. STALTER: It's new in the sense that you had to -- they have to allocate that income.

MR. OTTO: Yeah. But that -- not under this rule. This rule -- this is not the allocate-income rule that would increase fees.

MR. STALTER: I know, but I made that argument earlier and lost.

MR. OTTO: Yeah.

MS. CLARKSTON: Okay. Besides that, are there other fees that the business would incur? Is there other impact?

(Several people talking simultaneously.)

MS. EULER: What's the cemetery rule?

MR. STALTER: (Inaudible.)

MS. CLARKSTON: Yeah.

MR. KRAUS: Number 5, was that the exemption thing?

MR. STALTER: Not only a setup fee, but this is an additional expense with the administration.

CHAIRMAN: That's #5.

MR. McCULLOCH: The trustees are probably going to charge a little more because of the additional --

MR. STALTER: The oversight, too.

MR. McCULLOCH: Yeah. The oversight, probably having had a second account, you're going to have to open it up to pool the funds that you're going to draw back out, I assume.

MR. ZELL: Plus to process the payments directly to that.

MR. McCULLOCH: You mean, if you have your client just send it direct?

MS. CLARKSTON: Are there fees for that?

MR. McCULLOCH: In our case, I don't think we're going to do that because we want

to do our own accounting so that we can get all our stuff to balance before we actually send it on.

MR. STALTER: See, I thought we had kind of agreed to that, but I don't see it in here.

CHAIRMAN: So, the question you're asking is what? I mean, I know the big one, but, specifically?

MS. CLARKSTON: I was just listening to the dialogue when they were talking about, like, setup fees, and then John was saying that, for them, they like to collect that money and run it through there and make sure they balance on their end before they do submission, so there's some accounting activities that occur on your behalf before it goes to the seller.

MR. McCULLOCH: Yes. Before it goes to the trustees.

MS. CLARKSTON: Trustees. I'm sorry.

MR. STALTER: Before it goes to the trust. Yes. Trust.

MS. CLARKSTON: I think I've got enough to get started. This is one where we

may have to do further conversation as we go, and I'm probably going to pick your brain.

MR. McCULLOCH: Okay.

MR. REINHARD: It'll cost extra.

CHAIRMAN: And the trustee will probably mimic the exact same costs that he's experiencing, too. So -- all right. Okay. So, that finishes #6, all approved. So, now, we back up to #5. And we have Mr. Tom Reichard from Endowed Cemetery Care.

UNIDENTIFIED: Mr. Chairman -- (inaudible.)

CHAIRMAN: Okay. And Becky is making something.

MS. EULER: Probably just step up to a mike.

MR. MAHN: Go ahead and swear an oath.

MR. STALTER: State your name and your occupation.

UNIDENTIFIED: Social Security number.

MR. McCULLOCH: We also need to get a fingerprint.

MR. REICHARD: Do you want my kids' names?

MS. EULER: Blood sample, hair sample.

MR. REINHARD: Wife's maiden name.

MR. REICHARD: My name is Tom Reichard; I'm the executive director for the Office of Endowed Care Cemeteries.

MR. McCULLOCH: Yeah, but how do we really know that's who you are?

MS. RUSSELL: Fingerprint.

MR. STALTER: Someday you'll have a cemetery and you'll regret that you said that.

MR. McCULLOCH: That's right. I'm sorry.

MS. EULER: Tom, we are looking at rule #5 on page 5. Becky has a copy to hand to you and then you can give her back your copy because that's what I am writing my notes on. The Board's intention is to make it clear that 436 -- well, to help eliminate the current overlap between 214 and 436, and to draw a line so that people know what falls under 436 and what falls under 214 without overlap. And we attempted to do that in this rule, but our concern that what the statute says and what this rule say do not accurately reflect the truth of the endowed-care law in Missouri these days. So, we are hoping you

can help us craft a rule that will clarify for the cemetery operators and funeral directors what falls under 214 and what falls under 436.

MR. REICHARD: So, you need my office then to come up with a rule defining that a little bit better?

MS. EULER: That would be an option, or if you can give us some input on that now, we can craft something and the Board can submit this as their -- as an emergency rule.

MR. REICHARD: Well, I think the Division has rule-making authority under 214 if you needed -- if it would be better served to come from my office.

MS. EULER: Huh.

MR. REICHARD: That is an option.

MS. EULER: Okay.

MR. REICHARD: We have -- do you have a copy of Senate Bill 296 as it was signed?

MS. EULER: Not handy.

MR. REICHARD: Because it drastically changes all of this.

MS. EULER: Right.

MR. REICHARD: I don't know if I even have a separate account anymore in my statute.

MS. EULER: Okay.

MR. MAHN: Tom, are -- part of our -- I'm sorry.

MS. EULER: Well, I am wondering if perhaps what the Board would want to do is to take out subparagraph 1 of rule #5, leave sub 2 and sub 3, and then ask if the Endowed Care Board could work with this Board and perhaps come up with a rule that both boards can enact that are consistent. Does that sound like a workable --

MR. REICHARD: That's fine. I am the Board.

MS. EULER: Well, that will make the votes easier.

MR. REICHARD: The Division and I are the Board, so it makes it a little easier to deal with us --

MS. EULER: Right.

MR. REICHARD: -- and just dealing with Earl and me and Jane.

MR. MAHN: Tom, when we were talking earlier, vaults, headstones, and all those kinds of things like that, when funeral homes -- when cemeteries get a provider

nonestablishment license, if you're a funeral home, you are required to put certain amounts in trust for those items. And our understanding is, in the cemetery, that kind of fluctuates from headstones, it's a certain amount you put in, if the vault is in the ground, you put a certain amount in, the vault being presold that's not in the ground --

MR. REICHARD: The new statute states that burial merchandise or services are subject to a 80 percent of the fees going into trust. The first 20, the operator keeps, and then beyond that, the balance go into an escrow or trust account.

MR. MAHN: But was it your original intent to try to mirror 436 and what we were doing, or was there any communication there?

MR. REICHARD: The original language was really drafted by the ACM, and I think there was discussion of that, trying to keep them the same so one group wouldn't have an advantage over another.

MR. MAHN: Right. That's what we're kind of seeing now, you know. If you own a funeral home and you have a cemetery, as a

proprietary, you have to sit around saying, well, I better put these items over underneath cemetery.

MR. REICHARD: Well, the 80 percent, though, is statutory now.

MR. MAHN: Uh-huh.

MR. REICHARD: So --

MR. MAHN: Is that headstones and everything?

MR. REICHARD: As defined in here, it says burial merchandise, monument marker, memorial tombstone, headstone, urn, outer burial container, or similar article which may contain specific lettering, shape, color, or design as specified by the purchaser. And then the burial service was added, services to inurnment, entombment, interment, or other related services within the cemetery.

MR. MAHN: I see. What's your cancellation policies? Is there an amount they get back on the cancel option or -- sorry to be -- having you jump around.

MR. REICHARD: Off the top of my head, I don't know because we had specific language in our proposed legislation that was canceled

out, and the final product does not reflect that, so perhaps they don't have one now.

MR. MAHN: Yeah.

MR. STALTER: They've got it for 436. The only difference is, there is income accrual under 214.

MR. MAHN: Right. It mirrors 436, you say?

MR. STALTER: Old 436.

MR. MAHN: Old 436.

MR. STALTER: The cancellation and return of 80 percent.

MR. MAHN: Got you. Since it's 80-20, that would make sense. I just thought that's right where it was.

UNIDENTIFIED: (Inaudible.)

MR. MAHN: That's certainly better than what it was, though.

MR. McCULLOCH: So, if they cancel, they get back 80 percent?

MR. STALTER: Yeah.

CHAIRMAN: When you spoke of burial services, was that -- does that fall under -- what's the words I want here? Does that include if the cemetery chose to sell a

preneed, that would include funeral services of any kind, or are we just talking the burial part only?

MR. REICHARD: It just states interment, entombment, inurnment, or other related cemetery or services within the cemetery.

CHAIRMAN: So, that's --

MR. STALTER: Opening and closings.

CHAIRMAN: Closings. Okay. So, are you still thinking from legal that #1 needs to be different?

MS. EULER: I am thinking that this is not something we need an emergency rule on right now, and that it would be better to proceed with working with the Endowed Care Board on us both doing rules that are consistent with each other.

CHAIRMAN: Okay.

MS. EULER: I don't know if that's what the Board's feeling is. Perhaps Mr. Stalter would like to make a comment.

MR. STALTER: You know, I'm even trying to advise the fiduciaries. Do I have to put this -- these sales under 214 or 436?

And, basically, you're punting the issue to some point way off in the future. I can't --

MS. EULER: No. We're not -- we can put a deadline on it. Tom?

MR. REICHARD: Yes.

MS. EULER: How quickly can you come up with a rule?

MR. REICHARD: I don't see Earl.

MS. EULER: Rule.

CHAIRMAN: He's gone.

MS. EULER: With a rule.

MR. REINHARD: A rule. I know.

MS. DUNN: Well, the problem is --

MS. CLARKSTON: The problem is, they don't have a Board.

MS. EULER: Right. I know.

MS. CLARKSTON: Okay.

MS. EULER: I know.

MR. REICHARD: Well, but, I've got --

MS. EULER: I'm just thinking we can put some time frames on this so it's not five years from now.

MR. ZELL: Well, this -- the legislation is going to be introduced again next year that would define it again.

MS. EULER: Yes.

MR. ZELL: So, it's not going to be five years.

MS. EULER: Well, but what are people going to do for the next year?

MS. BATTAGLER: We're in confusion about what we're supposed to do for the next year as far as a cemetery is concerned. Yes, we're -- (inaudible) -- in most parts. That's why we feel that an emergency rule is necessary so that we can sell and have a burial container under a cemetery contract entrusted.

MS. EULER: Well, what I'm wondering, is it possible to get a draft rule by September 3rd?

UNIDENTIFIED: You've got one right here.

MR. STALTER: Yeah, I've got one for you.

MS. BATTAGLER: Honestly, what Bill wrote is actually a very good suggestion if you talk -- I don't know if you've seen that.

MR. STALTER: No, she didn't.

MS. EULER: It was confusing to me.

MR. McCULLOCH: Is this what you're suggesting, this paragraph?

MR. STALTER: No. It starts at the bottom of page 1 of my comments and it goes on --

MS. RUSSELL: And the first two lines of this one.

MS. BATTAGLER: I think it's on page 2 of your note.

MS. RUSSELL: Bill, this is what she's talking about, that your suggestion for --

MR. REICHARD: Yeah. That's what I was asking about.

MS. RUSSELL: Your little section there.

MR. STALTER: Oh. But it's three sections.

MS. RUSSELL: Oh. This one, she was talking about.

MR. STALTER: Licensing, that was for 436.

MS. BATTAGLER: No, I don't find it.

MR. MAHN: Unless they have a funeral home on their cemetery, why do we -- that's --

MS. RUSSELL: This is the one she was

--

MR. McCULLOCH: So, one and two, you're suggesting?

MS. BATTAGLER: Yeah. There's two -- (inaudible.)

MR. STALTER: (Inaudible) -- on 333 on August 10th. And then on August 11th, said, you know, maybe you're right, we need to -- if we saw it tied to a grave sale, then we see it being under 214.

MR. REICHARD: What about all of the cemeteries I don't license or have any regulatory authority over? I mean, bear in mind, I license a whopping, roughly, 98 or 96 endowed-care cemeteries and another 46 or 48 others, and that probably leaves somewhere in the neighborhood of 10,000 other cemeteries that I have no regulation over. What rules do they come under?

MS. RUSSELL: Good point.

MS. EULER: They don't.

MR. MAHN: They don't come under any.

MR. ZELL: Is there any evidence of preneed sales going on in those cemeteries?

MS. EULER: Oh, yeah.

MR. MAHN: There is?
MS. EULER: Oh, yeah.
MR. ZELL: Really? By the cemetery --
MS. EULER: Yeah.
MR. ZELL: -- or were they outside services?
MS. EULER: By the cemeteries. We have cemeteries that are not endowed-care cemeteries who sell preneed.
MR. ZELL: A city-owned cemetery could sell opening and closing?
MS. EULER: No, not a city-owned cemetery.
MR. ZELL: A privately owned --
MS. EULER: Private held, private cemeteries.
MR. MAHN: That are not endowed care --
MS. EULER: That are not endowed-care cemeteries.
MR. MAHN: -- that are selling --
CHAIRMAN: I couldn't tell you whether they were endowed care or not, but we've chased more than one rabbit of cemeteries that were acting out as services.
MR. MAHN: Really?

MR. REICHARD: For example, in Jefferson City, I have one licensed cemetery. There's a number of cemeteries here, large ones, but there's only one that's licensed.

MR. McCULLOCH: I don't think we can worry about the ones that you don't have any jurisdiction over, but, you know, that's something you guys will have to do something about.

MR. REICHARD: We don't have -- they're all exempt. I mean, it's --

MR. McCULLOCH: That's what I mean. I don't think we're going to do anything about that now.

MR. REICHARD: So, like, Resurrection or Riverview Gardens here in town, you know, if they're doing -- apparently, they can sell whatever they want to and whatever preneed they'd like.

MR. McCULLOCH: Do the other endowed-care cemeteries feel like those folks should have to have a license, because you're competing against that, I assume. Maybe you're not directly, but, I mean, do your other folks in your organization -- in your,

you know, cemeterians feel that way, that they have unfair advantage or they're causing trouble?

MR. ZELL: Well, sure, when the news hits bad things, we all get a black eye, but the nonendowed-care cemeteries, there's not a whole lot they can do. And the unregistered other cemeteries, what can you do about it?

MR. McCULLOCH: You can't now, but, I mean, is there a movement to try to do something with them?

UNIDENTIFIED: No. No.

MR. STALTER: No.

MR. McCULLOCH: No one cares.

MR. MAHN: Not anyone in 214 -- (inaudible.)

MR. McCULLOCH: They don't want to do anything about it at all?

UNIDENTIFIED: No.

MR. McCULLOCH: Really?

MR. ZELL: They view it as going against the church.

MR. MAHN: Look at that lightbulb go off in his head.

(Several people talking simultaneously.)

MS. EULER: Board, if somebody can tell me what they want to do as a rule, I will type it up right now and we can get it done.

MR. MAHN: I told you to buy a cemetery.

CHAIRMAN: The central issue here is that cemeteries and funeral homes at least be held to the same standard. They may not be in the same trust or under the same statute or whatever, but at least that they're held to the same standard; correct? Is that what we're trying to get to? It is, isn't it?

MR. MAHN: Cemeteries are held to the same standard for selling?

CHAIRMAN: At least the same standard.

MR. MAHN: If they're preselling --

CHAIRMAN: Yes.

MR. MAHN: -- vaults, headstones, stuff like that, regardless if they're endowed care or not?

CHAIRMAN: Well, there's nothing we can do about the ones that aren't unless they start holding theirselves out to be selling preneed, and then do we have the teeth to go

get them, and that's not an emergency rule, but --

MR. MAHN: We've probably got some cemeteries that have a provider license that aren't endowed care.

MS. EULER: Right. Tom, tell me what the correct terminology is. Are cemeteries registered with you as endowed care? Are they issued licenses? What's the correct terminology?

MR. REICHARD: We issue licenses for endowed-care cemeteries, and we issue licenses for nonendowed-care cemeteries. We ask that exempt cemeteries under 214.270, that they register with us, but they're -- they don't have to, and that's simply a -- just to have a registration for name purposes and address and contact information.

MR. REINHARD: Now, let's say I have, like, a small cemetery that's --

MR. REICHARD: Small or large or whatever, but any of the others -- 214.4 is what exempts cemetery associations, religious, fraternal, and exempts, basically, most of the cemeteries in the state.

MR. REINHARD: Like city cemeteries?

MR. REICHARD: Correct. Public ones, as well. National.

MS. EULER: Okay. I'm taking -- I'm making something up.

MR. MAHN: Tom, a question. If the cemetery -- make it an endowed-care cemetery -- and, all of a sudden, they decide they don't want to be endowed, can they then do whatever they want with their monies in the endowed care?

MR. REICHARD: No. The portion of the cemetery that was sold as an endowed-care cemetery, those sections still come under regulation under 214.270. They can sell other sections and they're supposed to identify what parts of the cemetery are nonendowed and what parts are endowed.

MR. MAHN: I mean, if it's out of the same owner, but he or she, all of a sudden, just decides, well, I don't want to be endowed care.

MR. REICHARD: They're still going to be subject to our audits and everything else as far as the trust fund goes.

MS. EULER: Tom, did somebody hand you Bill's proposed rule?

MR. REICHARD: Yes.

MS. EULER: How does that sound to you?

MR. STALTER: They'll put you under any spots.

MR. REICHARD: Well, without legal counsel to advise me --

MS. EULER: Without legal counsel to advise you.

MR. REICHARD: If you're fine with it, I am.

MR. STALTER: Well, they aren't, Tom; that's why you're here.

MS. EULER: From your perspective, does it make sense to you? Is that something you can understand as to what it means?

MS. WARREN: Are you asking me a question?

MS. EULER: No.

MS. WARREN: Everybody was looking at me, so --

MS. EULER: That's because you're so naturally beautiful, our eyes are drawn to you.

MR. STALTER: Do you want to walk

through it and I can explain what the intent was?

MR. REICHARD: Why don't we do that. You know, at first glance, I'm -- I don't see anything that gives me heartburn, but --

MS. EULER: Board, have you looked at those rules? Is that a yes?

(Numerous people agree.)

MS. EULER: What do you all think about it?

MR. McCULLOCH: So, you're saying when you start off there that you don't want them -- they're exempt if they, and then you go through these points; right?

MR. STALTER: Right. In other words, you've got the 333 exemption.

MR. McCULLOCH: Uh-huh.

MR. STALTER: From licensee.

MR. McCULLOCH: Okay.

MR. STALTER: And you've got the 436 about each transaction; okay? The first one is the licensing exemption, so we're going to exempt a cemetery. First of all, Tom's office licensed them, and that could be either endowed or not endowed. But that means

they're licensed by Tom's office. That's the --

MR. McCULLOCH: So, does that get them out of this non --

MR. STALTER: Yeah. They're -- this is taking them out of the fees completely.

MR. McCULLOCH: Because they're being licensed -- they're being -- feed over on that side?

MR. STALTER: They're being exempted. They're being exempted out of 333.

MR. McCULLOCH: Okay.

MR. STALTER: So, first of all, then they've got a license from the Office of Endowed Care Cemeteries. Then with regard to their merchandise sales, now, all of these things have to be satisfied, you know. The reason I'm picking up that part about the interment space, because the comments made on August 11th. We were saying, you know, if they are selling a vault in connection to a space, that that was what the Board was saying, that we can see that that should legitimately be under 214. Now, if you're saying it's a wider thing, that's fine with me.

MR. McCULLOCH: And when you're saying in connection, so I walk into their place of business and they sell me a vault and a grave space that day?

MR. STALTER: Yes. Yes.

MR. McCULLOCH: Then you want that to be an exception?

MR. STALTER: That would -- well, Steve is making a promise to you. He's saying that's the only way I'm going to sell a vault is if it's either sold at the same time as the grave space, or he sold the grave space a year ago, now they've come back and they can afford to buy a vault. And in his contract, he's going to say I'm even going to tell you where that space is so that you know that it's in the endowed-care part.

MR. McCULLOCH: But that doesn't come under 436 if it's sold separately a year later?

MR. STALTER: Well, no.

MR. ZELL: Because it's designated for a certain space.

MR. STALTER: Space. Now, if Steve is not selling the space anywhere, but he's just selling a vault, then, you know, you all say --

MR. ZELLER: That goes under 436?

MR. STALTER: 436.

MR. McCULLOCH: Okay. You guys okay with that?

MR. REINHARD: Good.

MR. ZELL: And the opening and closing to that space.

MR. STALTER: Or a marker or anything that's --

MR. ZELL: Or a marker or anything. But if it's an opening and closing at some other cemetery, I would be crazy to do it.

MR. STALTER: And what I've said on the next page on paragraph 3, so long as Tom's office doesn't come along and say, hey -- I mean, Steve is not complying with 214, basically, if he comes along and says that Steve's got a problem under 214's trusting, Steve gets an opportunity to correct it. Otherwise, if Tom isn't happy with it, he can say, you know, we have an issue report of material noncompliance. That exposes then Steve back up at 436, and your license -- (inaudible.)

MR. McCULLOCH: And that also maybe

catches the guys out there, if we can do anything about it, that don't come under 214.

MR. STALTER: Yeah. Well, if they're not under 214, they're not covered by this anyway.

MR. McCULLOCH: That's what I mean.

MR. STALTER: Yeah.

MR. McCULLOCH: But, obviously, those are the preneeds goes under 436.

MR. STALTER: Yeah.

MR. McCULLOCH: And then #4?

MR. STALTER: Four is just that thing, you know, this is that catchall. As long as -- you know, here's the thing. If they're offering caskets or funeral services, then that's going to be under 436 anyway.

CHAIRMAN: That's automatic?

MR. STALTER: Yeah.

CHAIRMAN: As a part on the burial space, even with the vault or all of the other stuff, in the new 214 or whatever -- however you want to call that -- they have to -- you guys have to trust 80 percent of that; right?

MR. STALTER: Of the burial spaces openings and closings, yeah.

CHAIRMAN: But if you put a vault in it, what do you -- you don't --

MR. ZELL: You have a grave. A grave is a grave is a grave.

CHAIRMAN: Okay.

MR. ZELL: And a grave will always be a grave if you sell it with a whole bunch of stuff. Just the proceeds of the grave goes into endowed care. Ten percent goes into endowed care. Everything else is separate. So, the marker, opening and closing of the vault, that's 80 percent trusted, and 20, you keep.

CHAIRMAN: Okay. So, it's just what's attached to the grave has to be -- is 80-20.

MR. MAHN: Right.

MR. STALTER: Yes.

CHAIRMAN: Not the grave itself?

MR. MAHN: No.

MR. McCULLOCH: And, now, that's all encompassed in that 80 percent?

MR. MAHN: Grave and mausoleum --

MR. STALTER: Yeah. Everything -- (inaudible.)

MR. McCULLOCH: You don't have all

these, like, op #2, you did a little here with this one, and this one was different?

MR. STALTER: Right.

MR. McCULLOCH: Now, it's all 80 percent.

CHAIRMAN: So, whether it's under 436 or 214, other than the grave space, it still is somewhat equal?

MR. ZELL: Yeah. And cancellations and all, they get their money back from all that anyway.

CHAIRMAN: Can you transfer it? Is it portable?

MR. OTTO: If you've got a flatbed.

CHAIRMAN: What if they don't want to be buried in your cemetery, they want to be buried over in their cemetery?

MR. STALTER: Dig that space up and move it.

CHAIRMAN: Yes, sir?

MR. REINHARD: I make a motion that we adopt Bill's proposal for substitute #5 -- for the substitution in #5.

CHAIRMAN: All right.

MR. MAHN: I second that.

MR. McCULLOCH: Okay by me.

CHAIRMAN: Mr. Fraker?

MR. FRAKER: Yeah.

CHAIRMAN: All right. So, I guess that takes care of that.

MR. REINHARD: Thanks, Bill.

MR. MAHN: Thanks, Bill.

MS. EULER: Yes, thank you. You were very helpful.

CHAIRMAN: Okay. Connie, do you know of any costs associated with rule #5?

MS. CLARKSTON: I think we've kind of done that and I think that we're going to try to put something together and then we may have to come back and --

MS. EULER: Thanks, Tom.

MR. McCULLOCH: Couldn't have done it without you.

MS. EULER: All right. We're on #7.

CHAIRMAN: All right. And I have been requested to take a quick break.

(Off the record)

MS. EULER: These are things we orally amended and I'm just --

MR. REINHARD: These are corrections

of those we've done that have been rewritten.

MS. EULER: Do you want to take that up?

MR. REINHARD: These were done, but they're rewrites to clarify.

MS. EULER: And Becky asks that we do another emergency rule for providers that's equivalent to the one for sellers. Or we could just amend this one to say preneed sellers and providers.

MS. DUNN: Okay.

MS. EULER: Shall --

MS. DUNN: Yeah.

MS. EULER: Not -- (inaudible.)

MS. DUNN: The provider doesn't -- (inaudible.)

MS. EULER: Okay. Why don't we go ahead and finish --

CHAIRMAN: Ready for #7, aren't we?

MS. EULER: Yeah. And then we'll come back and do these.

CHAIRMAN: And these are the -- what -- just the rewrites?

MR. REINHARD: The rewrites.

MS. EULER: The handouts. Jim just

handed out things.

CHAIRMAN: Yes, sir?

MR. OTTO: Are you taking comments on #7?

CHAIRMAN: We're getting ready to.

MS. EULER: Not yet.

MR. OTTO: Let me know.

CHAIRMAN: We don't have to --

MS. EULER: No. We're going to keep it a secret.

MR. OTTO: I may have dozed off, yeah.

UNIDENTIFIED: We'll wake you up.

CHAIRMAN: Well, we already did final approval on both of these; right?

MS. EULER: I want the Board to look at the final language. We can do that first, if you want.

MS. DUNN: To make sure we have it right.

MS. EULER: On #6, I changed the language a little bit on #3 just to make it a little more concise. And I changed #2 a little bit, too, so --

UNIDENTIFIED: (Inaudible.)

MS. EULER: Did I make a typo, Becky?

MS. DUNN: No. I was just -- you almost did these exactly as funeral director in charge except for two words.

MS. EULER: Gosh, I wonder why that is.

MS. DUNN: I know. Or do you want it to be like this?

MS. EULER: I thought I -- as I recall, some brilliant writer wrote the funeral-director-in-charge rule.

MS. DUNN: Within 30 days of the date, the change in service. It doesn't matter then.

MS. EULER: Yeah.

CHAIRMAN: Okay. So, would you like --

MS. EULER: The Board needs to finally approve #6.

CHAIRMAN: Okay. So, final approval for #6.

MR. FRAKER: So moved.

CHAIRMAN: Gary made the motion.

MR. MAHN: Second.

CHAIRMAN: Todd makes the second. Jim?

MR. REINHARD: Yeah.

CHAIRMAN: John?

MR. McCULLOCH: Yes.

CHAIRMAN: Yes. Okay. Finally

approved for #6.

MS. EULER: And page 3, the emergency rule regarding filing annual reports. The question I have is: Becky brings up a good point that we need a comparable rule for providers. Do you want to just say sellers and providers on this rule, or shall we do a separate rule for providers? Or do you want to do --

MS. DUNN: Well, the only thing I would say is providers are not paying a fee.

MS. EULER: Right.

MS. DUNN: So, if they file a report as set forth in --

MS. EULER: Well, we would have to change the statutory section to say the annual -- the provider report section.

MS. DUNN: Okay. So, what you're saying we could do is just add another line item to address providers?

MS. EULER: Yeah. Number 4. Make a #4 for providers.

MS. DUNN: And this is -- I think everybody needs to read this because this is what we talked about this morning.

MS. EULER: Right.

MS. CLARKSTON: Can I ask a question?

MS. EULER: Uh-huh.

MS. CLARKSTON: From the -- the annual reports run from August 28th through August 27th of the next year. What kind of burden does that put on small business if they're receiving financial reports from the trust? Does it put any burden on them to have that split month in there?

MS. EULER: Well, I had suggested September 1 because I thought that's the end of the -- the start of a new quarter. The new law goes into effect August 28th. I don't know. What do the people here who run small businesses say?

MS. DUNN: So, then we would have two days there would be no reporting period?

MS. CLARKSTON: No. They would just have to go on the next report. I mean, you'd catch them the next year.

MS. EULER: Uh-huh.

MS. CLARKSTON: But what I was wondering is, and probably should have said something this morning, but my thought was,

when you get your bank statements at the end of the month, are we putting an undue burden on small business to have those two days at the end of August?

MS. EULER: It would seem to me to make more sense to have it as of the last day of August.

MS. CLARKSTON: I would agree.

MS. EULER: But I don't run a small business anymore, so --

CHAIRMAN: Don?

MR. OTTO: For this report that we're doing October 31, 2009, we will --

MS. EULER: Not this year, next year.

MR. OTTO: I know. But I'm -- but that's one of the things that we need to make clear, whether we're talking -- yeah. See?

MS. DUNN: Yeah. Because I want to make sure I know what your question is because we're doing two things.

MR. OTTO: Yeah. Yeah. Here's what we intend to do, which I think we can do under the law. The report that I file for Missouri Funeral Trust on October 31 will come -- we're going to end our year on August 27th.

MS. EULER: Uh-huh.

MS. DUNN: Correct.

MR. OTTO: Which, I think, under the current regs, we have the right to do, and we can pick our year.

MS. EULER: Yes.

MR. OTTO: That way, this year's report only covers stuff under the old law. Then starting next year, we would -- it would all be under -- everything that we report would be under the new law.

MS. DUNN: That's what we want.

MR. OTTO: But I don't think this, as worded, covers --

MS. DUNN: Says it. Okay.

MR. OTTO: This covers going forward, it doesn't cover the filing on October 31, 2009, I don't think.

MS. EULER: What it says is that -- you're right. Because what this says is file it this year like you did last year, which means you could file a calendar year.

UNIDENTIFIED: Yeah.

MS. EULER: So, perhaps we shall say -- we should say that the Board -- that the

preneed sellers registered with the Board prior to August 2009 shall -- not may -- shall file an annual report as set forth in this section to meet the annual report requirement --

MS. RUSSELL: Maybe for the time period?

MS. EULER: And shall report --

MR. OTTO: If you force everybody to file the report this year that ends on August 27th --

MS. DUNN: Yes.

MR. OTTO: -- then you can go back to letting them pick their own year again, if you wanted to, as long as --

MS. EULER: No.

MS. DUNN: No.

MR. OTTO: Okay. That's fine. I mean, you don't have to. That's fine.

MS. DUNN: No. It's so -- no one understands it now.

MS. EULER: Why don't we do this? Why don't we say shall report all contracts sold as of August 31st, and then make the reporting year September 1 to August 31st.

MR. OTTO: Well, I want to cut off -- this year's report, I want to cut off so I don't have any contracts under the new law, which is August 27th.

MR. McCULLOCH: Which brings up another question. I don't know how you guys do it -- different ones, but, say, someone sends you a contract in that was written on the 24th. Do you all get everything signed by the person on the 24th, or do they submit it and then you issue back the -- (inaudible.)

MR. OTTO: They sign everything on the -- if they walk into the funeral home, they sign everything the 24th. It comes to me, I sign it.

MR. McCULLOCH: So, really, it's not a contract till you sign it?

MR. OTTO: It's not a contract till I sign it.

MR. McCULLOCH: Okay. So, if you sign that after that date, what's that going to do to us?

MS. EULER: That's what I'm just contemplating here in my little head.

MR. McCULLOCH: Because we don't do it

that way.

MS. EULER: Do we want reports executed by the seller by August 27th?

MR. OTTO: Yeah. I would say to be executed by the seller by August 27th. That's a good distinction, because that -- even though under the current law, it's not a contract until the seller signs it.

MR. McCULLOCH: Because the way we do it -- okay. So, the counselor fills out the application, then they submit it to us at the office. We either accept or deny.

MS. EULER: Uh-huh.

MR. McCULLOCH: That application becomes part of the trust certificate. We issue that. That goes back and is delivered by the counselor, say, two weeks later.

MS. EULER: Uh-huh.

MR. McCULLOCH: Then they sign it and then, at that point, the date that's on three, that's when it becomes an official contract.

MS. EULER: So, when do you want it?

MR. McCULLOCH: Well, I just thought of that while we're sitting here. I'm thinking, you know, if I get some stuff that's

submitted in right here at the end, we're not going to get it delivered.

MS. EULER: Right.

MR. McCULLOCH: It's going to be after this date, and that's going to be a problem, obviously.

MR. OTTO: It should be awful close -- (inaudible.)

MS. EULER: John, would you report that contract that you received the application in on August 25th?

MR. McCULLOCH: It would be the next year's --

MS. EULER: Would you report that under next year or this year?

MR. McCULLOCH: Next year.

MS. EULER: Under next year? So, why don't we --

MR. McCULLOCH: The problem is it's being written under these guidelines, I guess, but --

MS. EULER: Yeah. Well, that's okay. I mean, we're going to have those issues.

MR. McCULLOCH: But what if I don't establish a new trust and do the premium

anymore -- (inaudible.)

MS. EULER: The contract --

MS. BATTAGLER: But his application isn't a contract and you don't have money in your hand.

MS. EULER: Right. Right.

MR. McCULLOCH: Yeah. But it's going to get signed after the fact, and then it becomes a contract.

MS. BATTAGLER: So, it doesn't become a contract until after the first of the new year.

MR. McCULLOCH: But it's going to fall under all this new stuff then.

MS. BATTAGLER: When it becomes a new contract.

MS. EULER: Uh-huh.

MR. McCULLOCH: And what if I decide not to continue on doing a trust, then I've got two or three of these contracts -- (inaudible.)

MS. DUNN: Yeah. I understand what you're saying.

MR. McCULLOCH: Yeah.

MS. EULER: Well, sign off on all of them.

MS. DUNN: Because the contract doesn't become --

MR. McCULLOCH: Huh?

MS. EULER: Sign off on all of them before Friday.

MR. McCULLOCH: But I can't, see? The people have to sign them.

MS. EULER: Oh.

MR. McCULLOCH: See, they have to -- it has to be delivered. We have a delivery process, so the person has to deliver it. And at that point, you know --

MS. EULER: Yeah.

MR. McCULLOCH: And until they sign it, they have 30 days to cancel and all that anyway, so --

MS. EULER: Uh-huh. Well, I think we should not try to legislate that problem because everybody is going to have some of those kinds of issues, and there are going to be some transition issues. Why don't we say that the --

MR. McCULLOCH: Can we backdate them?

(Numerous people laughing.)

MR. McCULLOCH: I shouldn't have asked.

MS. EULER: Just a minute. I need to -- can I get you to say that into my lapel? So, why don't we say for reporting year ending October 31, 2009, preneed sellers who are registered with the Board prior to August 28, 2009, shall file an annual report as set forth in 436.021.2(3) under the 2000 laws to meet the annual report requirement of Section 436.460. This report --

MR. OTTO: Yeah. With a pending date of --

MS. EULER: I'm getting there.

MR. OTTO: Okay. Yeah.

MS. DUNN: (Inaudible.)

MS. EULER: This report shall report all contracts sold -- I'm tempted to say executed -- through 8/27/09.

MR. OTTO: Executed.

MR. McCULLOCH: (Inaudible.)

MS. EULER: Okay. And then for sub 2, for seller's renewal fee, they're going to pay $2 per contract; right?

MS. DUNN: It's not a renewal. It's just their annual reporting fee.

MS. EULER: Okay. So, why don't we

just say shall pay $2 per contract as provided in this section, because by saying required fee, people are going to be confused and they're going to look in the new law to see what the required fee is. And then for -- let's strike paragraph 3, and, instead, say for reporting year for reports due 10/31 of 2010, contracts executed -- shall include contracts executed from 8/28/09 through 8/31/10. Thereafter, annual reports cover contracts executed between 9/1 and 8/31. Does that make sense to people?

MR. OTTO: Yeah, that's good.

MS. RUSSELL: That makes real good sense.

MS. EULER: Okay. And then for providers, we'll do that they -- something similar. Providers file a report as per old law. No fee. And then for next year, and do something similar. Does that work for everybody? Board, does that work for you?

MR. REINHARD: Yeah. I'll make a motion we do that.

MS. DUNN: So, what we're doing is trying to encompass all those dates that

everybody has talked about and then we'll set a reporting period for the future --

MS. EULER: Yes.

MS. DUNN: -- after we get through this next year.

MS. EULER: Yes.

CHAIRMAN: We've got a motion.

MR. FRAKER: Second.

CHAIRMAN: Gary seconds. Todd?

MR. MAHN: Yes.

CHAIRMAN: John?

MR. McCULLOCH: Do we get to see all this and then vote on it?

MS. EULER: We're going to, but you're going to have to give me a minute to type it up.

MR. McCULLOCH: I was going to say -- so, we shouldn't be voting on it now, should we?

MS. EULER: Direct me to do this in concept.

CHAIRMAN: At least accept it.

MR. REINHARD: Okay. We're directing and we're doing or whatever.

MS. EULER: And then I will type it up

and we'll do a final.

CHAIRMAN: Okay.

MR. ZELL: (Inaudible.)

MS. DUNN: Hey, Connie, can you draft this?

MS. CLARKSTON: No. Sharon, is that something that Gina can draft? I mean, have you got it written down enough that she can sit down and --

MS. EULER: No.

MS. DUNN: Okay.

MS. EULER: But it will take me just a few minutes to type it up and then if she could print it.

MS. CLARKSTON: Okay.

MS. EULER: If somebody can let me sit at a computer.

MS. CLARKSTON: Do you want mine or Becky's?

MS. DUNN: She can use mine.

MS. EULER: Can you all carry on?

CHAIRMAN: We're ready to start with #7 is where we're at.

MR. REINHARD: I make a motion we accept #7. Grandpa.

CHAIRMAN: So, there was a motion that we accept #7. Second?

MS. WARREN: Which one is #7 because everything has been renumbered.

CHAIRMAN: It's grandfather -- the grandfather clause.

MS. WARREN: Okay. All right. Thank you.

MR. MAHN: Second.

CHAIRMAN: Okay. There was the second. Don Otto?

MR. OTTO: My comment on #7 is the purpose of the rule is to clarify and it doesn't. It doesn't clarify. I mean, particularly paragraph 2. Violations of the law that occurred after August 28, 2009, related to a contract in existence prior to August 28, 2009, shall be governed by the laws that existed on August 28th, 2009. When the law -- what the law on August 28, 2009, has in it provisions that say some of the stuff is retroactive, some of it isn't. So, it's, at best, circular, and I don't think -- I don't think this clarifies anything.

MS. EULER: Well, what I read it to

say is that if your conduct violated the law on December 1 of 2008, your conduct will be -- well, you know what, I see what you're saying.

MR. OTTO: It's circular.

MS. EULER: Well, it's not that it's circular, but that it doesn't work under the new law.

MR. OTTO: Trapezoidal. Yeah.

MR. REINHARD: Then do we really need it?

MS. DUNN: Oh, no, we need it because it --

MR. STALTER: Go ahead. You started talking there. Don't -- finish now. Why do we need it?

MS. DUNN: Well, let's let Sharon finish drafting this real quick.

MS. EULER: Let me do this rule, and why don't you all go on to #8.

MR. REINHARD: Okay. I withdraw the motion. Gary?

MR. FRAKER: Withdraw.

MS. RUSSELL: I think #8 -- we're just doing #8, not #9, right now, and #8 seems to have everything that the Board discussed at

the last meeting in it. It looks pretty good to me.

MS. BATTAGLER: I have a quick question on it, though.

CHAIRMAN: Go ahead.

MS. BATTAGLER: On #3 in there, it says the contract must be signed by the purchaser, provider, and seller or seller's agent. But under #4, it says if it's an agent of a seller -- if an agent of the seller signs the contract, the seller must also sign it, but doesn't need to be present. What about if a seller signs it for a provider -- signs it, and has a provider, the provider isn't necessarily going to be present at that time, either. But they will eventually have to sign it, so do we just leave the provider on there? I don't know.

MS. EULER: What section are you looking at?

MS. RUSSELL: We're on number -- page 8.

MS. EULER: Right. What portion of it?

MS. RUSSELL: Four, basically.

MS. EULER: Yes. It's not saying that

the provider must sign it at the time of purchase, it just says the provider must sign it.

MR. McCULLOCH: Why does the provider have to sign off then?

MS. EULER: Because the law says so.

MS. DUNN: The law says it.

MR. McCULLOCH: Okay. That makes it difficult, that's for sure.

MS. EULER: That's to insure that we don't have sellers selling contracts for providers who don't agree with it.

MS. DUNN: Or they didn't know about it.

MS. EULER: Right.

MR. McCULLOCH: And then up here where it says on F, signature of the seller, provider, purchaser?

MS. EULER: Yeah.

MR. McCULLOCH: But this is talking about notifying the Board; right? The provider shall notify the Board of setting up an agreement with someone. There won't be a purchaser. Am I understanding that correctly?

MS. RUSSELL: Oh, I see what he's

saying. Yeah.

MR. McCULLOCH: That shouldn't be in there.

MS. DUNN: What?

MS. RUSSELL: He's just saying that notifying that thing -- the purchaser under F isn't relevant because this is just notifying the Board. The purchaser is not going to have a signature where it's just notice -- notifying the Board who they're agreeing to sell for.

MS. EULER: You're right. You're right.

MS. RUSSELL: Good catch, John.

MS. EULER: It's like there are two rules there.

MR. McCULLOCH: And then the 15-day thing, is that going to be 30 now to go along with everything else?

MR. MAHN: It's about time you started earning your keep.

MS. EULER: It looks to me like maybe there needs to be a new rule starting with sub 2 about --

MS. RUSSELL: Sub 2 makes more sense,

yeah.

MS. EULER: And this makes that a new rule.

MR. McCULLOCH: So, when you enter into an agreement with a provider, so you're going to have to have the seller's agent, all of those folks have to sign it, also? They don't have anything to do with that agreement.

MS. EULER: The agent who sells the contract, the counselor who sells the contract signs it.

MR. McCULLOCH: Yeah. But you're just notifying the Board, and that changes all the time.

MS. EULER: But --

MR. McCULLOCH: They don't need to be part of that agreement, I don't think. Poor little agent doesn't have anything to do with any of this anyway.

MS. EULER: Yeah. Let me finish typing this. You all talk amongst yourselves. I'm almost done.

MS. DUNN: Okay. And, John --

MS. RUSSELL: I say you're right. You're right, John. She said it's a separate

rule. That's going to come off of there.

MS. DUNN: And, John, we can't change the 15 to 30 because it's set by statute on that one.

MR. McCULLOCH: That one is?

MS. DUNN: Yeah.

MR. OTTO: I think the statute also says the preneed agent has to sign it, too.

MR. McCULLOCH: Has to sign the agreement?

MR. OTTO: Yeah. I think that's in there.

MS. RUSSELL: Between the provider and the seller?

MR. OTTO: No. No. Between --

MS. RUSSELL: That's what he's talking about.

MR. STALTER: Yeah. We're talking about the provider -- or seller's provider agreement here.

MS. RUSSELL: Yeah. Yeah. Yeah. We're talking about the provider-seller agreement, not the agent doesn't have anything to do with that.

MR. McCULLOCH: Yeah.

MS. RUSSELL: That's got to come out of there.

MR. STALTER: Yeah. That's what you're saying -- (inaudible.)

MS. RUSSELL: Yeah. What Sharon was saying, making that a new rule, too, so it's a different area.

MR. OTTO: Well, I mean, that's just something that we -- the problem is in the statute, and we don't need to make it worse in the regulation. It's by just -- whenever we say the word "contract," we should make it clear if we're talking about the contract with the purchaser or the provider-seller contract because that's a problem that exists in the statute and we could make it worse with a regulation.

MS. DUNN: Well, we don't want to make it worse.

MS. EULER: Okay. I have -- never mind.

(Several people talking simultaneously.)

CHAIRMAN: Let's move over to the group-three rules for a minute. After looking at what's left in the group two, while she's

finishing that, I think we're going to have discussion in all of those areas, so --

MS. EULER: Find something that everybody agrees on.

CHAIRMAN: I am. That's --

MR. McCULLOCH: Are we going to talk about #8 now or passing #8?

CHAIRMAN: No. Actually go to the new ones where it's group three. We haven't even looked at these.

MS. EULER: And I haven't looked at those.

CHAIRMAN: We're trying to get to something that's not controversial so we can solve something.

MR. STALTER: Something I haven't reviewed.

MR. OTTO: And you took too long. I read through them already.

MR. STALTER: I don't even know where they're at, so I can't comment.

CHAIRMAN: Read the first one on page 1 and then we'll look at it. Yes, sir.

MR. OTTO: It's overbroad. I mean, all notices required by Chapter 333. So, if I'm

-- I mean, that's what it says. So, all notices required by Chapter 333 shall include the following: The name of the purchaser. What if I'm notifying the Board that -- I mean, the statement is overbroad. If I'm notifying --

MS. RUSSELL: If you're doing a change of address, you don't -- (inaudible.)

MR. OTTO: Yeah. I'm notifying the Board of a change of address, but this rule would say I have to include the name of the purchaser. There is no purchaser.

MR. McCULLOCH: It looks like -- (inaudible.)

MS. EULER: I believe the intent of this was to define what written notice means --

CHAIRMAN: Right.

MS. EULER: -- so we didn't have to define it in each and every rule.

MS. RUSSELL: Can you say if applicable? Maybe just under 436, not put 333 in this one.

MS. BATTAGLER: It's the same thing as 436, though.

MR. OTTO: The same as 436. I'm just

saying your written notice saying that I've changed addresses.

MS. RUSSELL: Oh, yeah.

MR. OTTO: I shouldn't have to be putting the purchaser. There is no purchaser to put on that written notice.

MS. RUSSELL: Right. Yeah. True.

MR. OTTO: It's -- I understand the idea behind it, but this is too broad.

MS. BATTAGLER: Or if there was even a change in the seller or provider or whatever, you know, there's -- or making a contract from a seller to a provider, there's not really a purchaser there yet, so that --

MR. OTTO: I'm notifying the State Board of a new preneed agent.

MS. BATTAGLER: Yeah.

MR. OTTO: I mean, that's what -- you've got -- have to do written notice of that, that wouldn't include a purchaser of a contract.

MS. RUSSELL: So, this one didn't work. Go to another one.

MR. OTTO: Okay.

CHAIRMAN: So, what would you suggest

be changed there?

MR. McCULLOCH: Do we even need a rule?

MR. OTTO: I don't think we need a rule.

MR. McCULLOCH: There's the point right there.

MR. REINHARD: There's the answer.

MR. McCULLOCH: It's pretty clear. No rule.

CHAIRMAN: Everybody in agreement with that?

MR. OTTO: You might change your mind in six months, but I don't think you need the rule.

MR. McCULLOCH: Because what is this applying to even?

MR. OTTO: The way it's worded, everything, so that's the problem.

MR. McCULLOCH: Yeah.

MS. BATTAGLER: Any kind of written notification whatsoever that you should turn in. It's referring to any kind of notification that you should have to turn in; change of address, a contract.

MR. McCULLOCH: But all that's --

(inaudible) -- right? We're just --

MS. BATTAGLER: Well, it doesn't state exactly what kind of written notification, that's why you say it's pursuant to a rule, but do you need that right now, an emergency rule?

MR. McCULLOCH: It's certainly not an emergency. I mean, I'm not sure you need it at all.

CHAIRMAN: Other comments?

MR. McCULLOCH: I don't think we need this rule.

MR. REINHARD: Make a motion.

MR. McCULLOCH: I make that motion. No rule.

CHAIRMAN: John makes a motion, no rule.

MR. STALTER: Is that with regard to all 436?

MR. McCULLOCH: Yeah.

UNIDENTIFIED: (Inaudible) -- hasn't changed. It's the same this year as it was last, so we don't need the rule.

MR. REINHARD: Second.

CHAIRMAN: Jim seconds. Gary?

MR. FRAKER: Yes.

CHAIRMAN: Todd?

MR. MAHN: Yes.

MS. DUNN: We need a rule -- (inaudible.)

CHAIRMAN: So, nonemergency rule on written requirement of notification.

MR. McCULLOCH: I'm not sure we need a rule, period.

CHAIRMAN: That will just be took up as we go.

MR. McCULLOCH: As we go. Okay.

MS. EULER: Okay. So, we're not going to do a rule on group 3?

CHAIRMAN: No. Just the first one.

MS. EULER: On the first one. Yes.

CHAIRMAN: Number 2.

MS. RUSSELL: Real controversial. Skip it.

CHAIRMAN: Is it, really? Irrevocable contract. Can we solve cancellation?

MR. OTTO: Well, I think that pretty well matches what would be required by the Medicaid folks. I mean, obviously, if you want to cancel part of a contract, like I want

-- (inaudible) -- I should be able to mess with that, but you can't cancel the money.

MS. RUSSELL: We're on the cancellation, page 3.

MR. STALTER: There's an irrevocable contract.

MS. RUSSELL: Page 3.

MR. OTTO: Oh, we're on -- did we skip #2 already?

MS. BATTAGLER: Two was already too controversial.

MR. OTTO: Okay.

MS. RUSSELL: Too controversial.

MS. DUNN: What was #2?

CHAIRMAN: Too controversial.

MR. STALTER: Oh. So, did they reject it already? I just --

CHAIRMAN: No, we just skipped it.

MS. BATTAGLER: No, we just passed it.

MR. OTTO: Well, then if we're on #3, I have another.

MS. DUNN: Okay. Now, what are we doing on #2?

MS. RUSSELL: We passed it up.

CHAIRMAN: We're going to go back.

We're going to go back.

MS. RUSSELL: We'll go back to it.

MS. DUNN: Oh, okay.

MR. OTTO: There was problems with #3, also.

MS. RUSSELL: There was problems with #3?

MR. OTTO: Well, first off, it says the trustee shall distribute. Who shall the trustee distribute to? Also, if you take a look at #1A, the principal of the trust including all payments received, that was the thing we talked about last time about the risk of market decline.

MR. STALTER: Yeah. I don't know whether it was the principal or payments -- (inaudible.)

MR. OTTO: Yeah. So, if a consumer is paying $1,000, because the stock market took a hit, it's now worth $900, this says you have to pay $1,000 the consumer paid in, not the $900 the trust is worth. Then the next problem is the trustee shall distribute any funds extracted from the principal pursuant to -- the trustee won't have that money. The

trustee does not have that money to distribute. The seller has got that money, theoretically, if they withdraw it, but not the trustee, so --

MS. RUSSELL: How about skipping and go to these. These look so uncontroversial. We were waiting for Sharon, so -- (inaudible.)

(Several people talking simultaneously.)

MS. RUSSELL: (Inaudible.) Find something noncontroversial.

CHAIRMAN: Look on page 8 at these.

MS. RUSSELL: Get something passed while Sharon is busy.

CHAIRMAN: Actually, we probably can solve that one because most of it's up here behind us.

MS. RUSSELL: Yeah. That's what I was thinking on that one, Martin.

CHAIRMAN: And the rest of it is just --

MR. McCULLOCH: Hey, we need to slow down.

CHAIRMAN: We need to slow down?

MR. McCULLOCH: Yeah.

CHAIRMAN: Really?

MR. McCULLOCH: I can't read here and read there and jump there. We're going to be here till midnight. Get that pizza.

CHAIRMAN: I've already got that thought figured out, so --

MS. EULER: All right.

MS. RUSSELL: Oh, she's done. Yea.

MS. EULER: I'm done.

CHAIRMAN: That's a good idea. I am, too. MS. EULER: (Inaudible.)

MR. STALTER: Are we back to group two?

MS. RUSSELL: Are we back to group two then?

CHAIRMAN: Can we go back to what you're done with?

MS. EULER: Only if I can find it.

CHAIRMAN: Okay.

MS. EULER: This is Becky's copy.

MS. DUNN: Okay.

MR. MAHN: This is your idea.

MS. EULER: Okay. Group two.

MS. DUNN: Okay. What number are we on?

MS. EULER: Number 8.

CHAIRMAN: That was number --

MS. DUNN: No.

MR. MAHN: We're going back to group two now?

CHAIRMAN: No. Did we do the grandfather clause.

MS. DUNN: We didn't do #7 because it was very --

CHAIRMAN: We didn't finish it.

MS. DUNN: No.

MS. EULER: Give me my pen, please.

MR. REINHARD: No. You need a magic wand, you don't need a pen.

CHAIRMAN: So, are you on #7 or #8, Sharon?

MS. EULER: I'm on #7.

CHAIRMAN: Okay.

MR. REINHARD: In group two.

CHAIRMAN: In group two, where we left off, the grandfather clause.

MR. MAHN: Well, we're changing gears here a little bit now.

MS. EULER: Okay. Well, let's start with #4 we can all agree on; right? Subparagraph 4?

MS. RUSSELL: This.

MR. STALTER: This. Yeah.

MS. RUSSELL: Yeah.

MS. EULER: See, this is how you build consensus.

CHAIRMAN: Right. I'm getting ready to do an embalming lesson here in a minute.

MS. EULER: Number 3.

MS. RUSSELL: Oh, yeah.

MS. BATTAGLER: Which #3? There's two #3's.

MS. EULER: Subparagraph -- the second sub 3.

MR. STALTER: Okay. Yeah.

MS. EULER: We all agree with that; correct -- Board?

MS. RUSSELL: Yes.

MS. BATTAGLER: Yes.

MS. RUSSELL: Is that okay?

MS. BATTAGLER: It looks good.

MS. EULER: Todd?

MS. DUNN: John?

MR. McCULLOCH: Yes.

MR. OTTO: To the extent that you need a rule, it says you will follow the law.

MS. EULER: Well, we had questions

about that. We've had questions about both of those things.

MR. OTTO: Okay.

MS. EULER: So, contracts -- I'm looking at the first sub 3.

MR. OTTO: Yeah.

MR. McCULLOCH: The first #3 or the second?

MS. EULER: The first sub 3.

UNIDENTIFIED: The middle 3?

MS. EULER: The middle one.

UNIDENTIFIED: The middle one.

MS. EULER: Violations occurring after August 28th, 2009 -- well --

UNIDENTIFIED: That's the same as #4, isn't it?

MS. EULER: No. You see, herein lies the problem. Because when I first read this, I thought, oh, yeah, that works, but then as I think about, it doesn't.

MR. McCULLOCH: That one makes sense to me.

MS. EULER: Well, contracts -- whether a contract is valid or not depends upon when it's executed. If it was executed on August

1, 2009, its validity is determined by the law -- by the old law. If it was executed on September 3rd, its validity is determined by the new law, and that's what 3 and 4 talk about. So, I think we take out 1, 2, and 3, the first three, not the second three. Because you can be -- if there is a contract executed, it's not the contract that determines what law applies, it's the conduct. If you have a contract that's executed in 2004, but you don't steal the money until 2010, we can discipline you under the new law for stealing the money in 2010 even though the contract is an old law.

MR. OTTO: But the definition of what is stealing or what is illegal activity -- let's not make it stealing --

MS. EULER: Well, I'm talking out-and-out stealing.

MR. OTTO: Yeah.

MS. EULER: We're not talking the 80-20 split, we're not talking any of that. I'm talking about the clear case.

MR. OTTO: I agree with you getting rid of 1, 2, and 3. You don't have to

convince me of that.

MS. EULER: I say get rid of 1, 2, and 3, and we deal with those things on a case-by-case basis in the Administrative Hearing Commission and the courts of law.

MS. RUSSELL: Sounds good.

MR. OTTO: Absolutely.

MS. RUSSELL: Three and four?

MR. McCULLOCH: I agree with that. Make that motion.

MS. EULER: Okay.

MR. McCULLOCH: We'll accept this without 1, 2, and 3.

MS. EULER: The first three.

MR. McCULLOCH: The first three.

MS. EULER: So, you keep the second three.

(Several people talking simultaneously.)

MR. OTTO: I know it says all this, but it says --

MR. REINHARD: Second. Call a question.

CHAIRMAN: Okay. We had a call for the question, so you made the call. Who seconded?

MR. FRAKER: Here.

CHAIRMAN: Gary seconded. Todd?

MR. MAHN: Yes.

MR. REINHARD: Yes.

MS. EULER: Okay.

CHAIRMAN: Is that a yes, John?

MR. McCULLOCH: I made the motion.

CHAIRMAN: Oh. I'm sorry.

MS. EULER: And let me just confirm that the motion included a finding that there is competent and substantial evidence to support the need for this rule?

MR. McCULLOCH: Always. Yes.

MS. EULER: All right.

MS. DUNN: So, Sharon, we accepted it without the first three?

MS. EULER: Correct. Connie, do we need to do more stuff on this?

MS. CLARKSTON: Well, yeah. This is where it gets a little complicated for the Board because discipline starts to come into that.

MS. EULER: No.

MS. CLARKSTON: Do you see it that way or not?

MS. EULER: No. Because we took out

all of that stuff.

MS. CLARKSTON: Okay.

MS. EULER: All that's left is that contracts in existence at the time of the new law went into effect remain valid.

MS. CLARKSTON: Right.

MS. EULER: And that new contracts must meet the new law.

MS. CLARKSTON: So, I see no impact.

MS. EULER: I see no impact. Anybody else see any impact?

CHAIRMAN: Okay. Hold that thought one fast second. We're ordering pizza. Everybody interested in eating pizza?

MS. EULER: Sure.

CHAIRMAN: Anybody just saying I just don't want that? Not like you're going to get a choice for something else; I just want to know if you all want it. Okay. Just want to --

MR. STALTER: What kind of beer, though?

CHAIRMAN: Root beer. Okay. So, no more impact. That was the last statement I heard.

MS. CLARKSTON: I don't see any fiscal impact and I don't see impact on small business unless I'm convinced otherwise.

UNIDENTIFIED: No.

MS. CLARKSTON: Speak now or forever hold your peace.

MR. STALTER: Your standards are getting lower and lower as we go through.

MS. CLARKSTON: They are. I've got to pass a freshman algebra class tonight, so, yes, let's go.

CHAIRMAN: Okay. No impact on #7. Done. Eight.

MS. EULER: Handed out the emergency rule regarding reporting.

CHAIRMAN: Got it. Everybody got a copy of the emergency rule?

MS. BATTAGLER: Yes. Quick question: Is it the reporting year ending or is it for the year that the report is due October 31st?

MS. EULER: It's the reporting year ending, because this reporting year ends October 31, 2009, by the statute.

MS. DUNN: Okay. Now, I think people will be confused --

MR. OTTO: That is not quite correct.
MS. DUNN: -- because then I think they're going to report --
MS. EULER: Well, we say for --
MS. DUNN: -- until October 31st.
MS. BATTAGLER: Right.
MS. EULER: Okay. We can say for report -- annual reports due.
MS. RUSSELL: Right. There you go.
MS. BATTAGLER: Yes.
UNIDENTIFIED: Yes.
MS. EULER: Okay. For annual reports due on October 31, 2009.
MS. RUSSELL: There you go.
MS. EULER: Preneed sellers registered with the Board prior to August 28, 2009, in lieu of filing the annual report required by Section 436.460, RSMo., may file an annual report on the form provided by the Board containing the information required by Section 436.021.2, RSMo. 2000. This report shall report all preneed contracts executed since the reporting period the seller reported for reporting -- let's change that to reported in its report due on October 31, 2008, through

August 27th, 2009. This annual report shall be accompanied by a fee of $2 per preneed contract sold for the reporting period.

MS. DUNN: Okay. I just wanted to -- Don, what do you think?

MR. OTTO: (Mr. Otto nodded head affirmatively.)

MS. DUNN: Okay.

MS. EULER: For the report due on October 31, 2010, sellers shall report all contracts executed between August 28, 2009, and August 31, 2010. Thereafter, the annual report shall report all contracts sold between September 1 of the year preceding -- that should be preceding, not proceeding -- preceding the annual report through August 31 of the reporting year. For reporting year ending October 31, 2009, providers shall file an annual report as provided by Section 333.315.3(4) of the new law. No annual fee shall be required for this reporting period. And the annual-report requirements for last year and this year for providers stays the same.

MS. DUNN: Okay. So, will that 333

confuse anyone, Don?

MS. EULER: It is what it is.

MS. DUNN: Well, I know, but they're providing a report for last year that was under 436, but it's the same requirements under 333.

MS. EULER: Right. Right.

MS. DUNN: Okay. I'm just asking.

MR. OTTO: Yeah. It'll be confusing, but there's nothing you can do about that. No matter the way you word that one, it's going to be confusing.

MS. EULER: Maybe someone will pick up the law book and read through or go on-line and see what that section is. Okay? Does anybody have any changes? Okay. Can we have Gina type this up?

MS. RUSSELL: Do you have somebody still in the office at 6:00?

(Several people talking simultaneously.)

MS. EULER: Is the Board okay with that language before Connie goes and types it up, or do you want to see it one more time?

MS. DUNN: I think we should see it one more time.

MS. EULER: Okay. Okay.

MS. CLARKSTON: All right. Then somebody can do the fiscal stuff real quick for me -- see if there is any.

MS. EULER: We'll do that when we get back.

CHAIRMAN: This is #8. Is this #8? Was this #8, what you just did? What did you read? Is that #8?

MS. EULER: That is -- it was in the group-one rules. I don't know what number it was.

MR. ZELL: So, that was group one?

MS. DUNN: (Inaudible.)

MR. STALTER: We did.

MS. DUNN: Because we just decided upon that today.

(Several people talking simultaneously.)

MS. DUNN: I think we just decided on this today, the one that --

MS. EULER: No. We -- because we had that -- I had the rule to work from.

MS. DUNN: Oh, yeah, but -- (inaudible.)

MS. EULER: No. I'm working from a

rule that was handed out.

MS. RUSSELL: Which group?

MS. EULER: Yeah. It was a handout.

UNIDENTIFIED: Seven.

MS. EULER: I've got page 3 written at the bottom.

(Several people talking simultaneously.)

MS. RUSSELL: Oh, that's right.

MS. EULER: I don't know.

MS. DUNN: Connie, didn't we just decide today about reporting the funds for last year?

MS. RUSSELL: I know we had to because it's not in here.

MS. EULER: I don't know.

MR. McCULLOCH: Yeah, I don't see it.

MS. EULER: I don't know.

MS. WARREN: (Inaudible.)

MS. EULER: Yeah.

MS. WARREN: (Inaudible) -- and then replaces page 6 in group three, really.

MS. EULER: Oh, it's group three?

MS. WARREN: Group three.

MS. DUNN: On page 6?

MS. WARREN: Yeah. (Inaudible) --

after I went through it.

UNIDENTIFIED: Oh, yeah. But this is the requirement for sellers.

MS. WARREN: But that's what we were looking at when we decided to start talking about it.

MS. BATTAGLER: Just look on -- (inaudible.)

MS. WARREN: (Inaudible) -- that's what we were talking about at the time.

MS. EULER: Oh, here. It's seller annual report, page 3.

MS. WARREN: Yeah. Page 3.

CHAIRMAN: Of what?

MS. RUSSELL: Of which group? Three?

MS. EULER: Well, but that's not the --

MS. RUSSELL: That's not the same.

MS. EULER: No. We must have just done it today.

CHAIRMAN: Okay. So, #8 then is just a completely new deal?

MS. EULER: I think so.

UNIDENTIFIED: There's something in here.

MS. RUSSELL: It's -- yeah.

MS. BATTAGLER: It was when we were talking about fees that we decided to change the fiscal year.

MS. EULER: Yeah. We had talked about it before, but we had never drafted a rule on it, so I think we did work on it today. Okay.

(Several people talking simultaneously.)

CHAIRMAN: Okay. So, we go to #8 then of group two.

MS. EULER: Okay. On #8, I think that we should make sub 1 its own rule.

CHAIRMAN: John, this is the one you mentioned something a while ago that wasn't --

MS. DUNN: Yeah.

CHAIRMAN: -- like, the purchaser can't be in there, the purchaser's signature, because this was a requirement for the Board?

MR. McCULLOCH: Yeah. Is that F?

MS. EULER: Right. And that's --

MR. OTTO: F.

MR. STALTER: Yeah.

MR. McCULLOCH: Uh-huh.

CHAIRMAN: So, strike purchaser?

MS. EULER: Connie -- (inaudible.)

MR. McCULLOCH: I'm even wondering why

you need to have a rule. Isn't it pretty clear in the law?

MS. EULER: Let's look and see if this is --

MS. RUSSELL: John, I think that at the last meeting, that Becky and them were saying that -- and Lori was saying that they get all kinds of different notices coming in on that, you know, so they want -- I think you wanted a clarification of what a notice ought to include on the -- between the seller and the provider; right? Is that right? Am I remembering correctly?

MS. DUNN: I can't remember.

MS. EULER: Well, let's look at some of the rules that the statute -- (inaudible.)

MR. McCULLOCH: So, just in general, if you have to notify the Board, the idea is that there needs to be spelled out.

MS. RUSSELL: That it would have this stuff. It had this stuff in it, yeah.

MR. OTTO: Is there going to be a form provided by the Board for such notifications? Doesn't that make life easier for you if there's just --

MS. EULER: Well --

MR. OTTO: -- a standard form?

MS. EULER: -- here's the thing. The provider annual report contains this information. And so, I think to -- rather than all of this, we should do just a simple, evident change of address. If a provider -- and it would be almost like an amended annual report. If -- I mean, the provider has to notify the Board annually of who their sellers are. So, the question is, is does the Board need to know that more frequently than annually. The statute says annually.

MS. DUNN: What page of the law are you on?

MS. EULER: I'm not.

MS. DUNN: Oh.

MR. McCULLOCH: It's on page, like, 16, isn't it?

MS. EULER: The annual report is on page 6 of the statute, what I'm looking at. That providers shall file an annual report to the State Board containing the name and address and custodian records, the names used by the provider, the name and address of each

seller with whom it has entered into a written agreement since the last report, and any other information. So, does the Board need to know that more than annually?

MR. McCULLOCH: Where are you reading that from?

MR. REINHARD: From the Bible.

MS. EULER: Page 6 of Senate Bill 1, kind of in the middle, starting with subparagraph 4, line 38. CHAIRMAN: So, where could there be a foul-up in it other than annually reporting it? Where is the downside?

MS. DUNN: There's another section that relates to this somewhere because I just read it to John a while ago. Because, John, remember when we were talking about the 15 days?

MS. EULER: 436.420 is the other section.

MR. McCULLOCH: Isn't this pretty clear for this thing?

MS. EULER: Yeah.

MR. McCULLOCH: So, why did you guys do all this? I wasn't here and you let this

get out of hand.

MS. EULER: I wasn't here, either.

MS. DUNN: I don't remember the circumstances. Sorry.

MS. CLARKSTON: Becky, are you looking for the other provisions on the annual reports?

MS. EULER: Here. On page 16 --

MS. CLARKSTON: On page 27. Oh.

MS. EULER: -- of Senate Bill 1, line 17, it says a provider shall notify the Board within 15 days of authorizing or otherwise allowing a seller to designate himself as a provider. So, that's why this is in there. But don't you think that this written notice is enough?

UNIDENTIFIED: I would think.

MS. DUNN: I can't remember the circumstances.

MS. RUSSELL: I can't, either, anymore. At this point, who really cares?

MS. DUNN: I know.

CHAIRMAN: Except on #9; right?

MS. DUNN: Thank you for thinking that I said that.

(Several people talking simultaneously.)

MS. EULER: I mean, we could do name and address of the seller we would want, name and address of the provider we would want, the effective date. I think not F. I think it's just A through G, and then take out F because there is the statutory provision requiring notice within 15 days. I had forgotten that.

CHAIRMAN: Does that work? Does anybody see any issues?

MR. OTTO: Well, the license number -- I mean, the idea is to get them so you know who they're selling for.

MS. EULER: Right.

MR. OTTO: I mean, the license number of the seller, the license number of the provider. I mean --

MS. EULER: It would just make it easier for the Board to have that.

MR. OTTO: I know it makes it easier, but I just don't want -- I'm trying to keep the burdens down on the funeral homes filling these out and getting them into you in a timely manner.

MR. McCULLOCH: Do they mail it in or -- the report, do we still have to do it that

way?

MS. EULER: Huh? The statute says we do.

MR. McCULLOCH: Currently, the annual report requires all that anyway.

MS. EULER: And the new law, the annual report does, too, but there's also a provision that requires this notice.

MR. OTTO: I'm just picturing people calling up and trying to figure out who -- you know, what the seller's license number is.

MS. EULER: Well --

MR. OTTO: Just trying to make it easier.

MS. EULER: -- as a third-party seller, when you enter into a contract with a provider, do you tell them what your license number is?

MR. OTTO: It's in there somewhere, but, yeah. It's on there.

MR. McCULLOCH: I don't think so.

MR. OTTO: But I'm just trying to keep things simple for both of us, simple as possible.

MS. EULER: Well, the Board can look

up the license number. What do you think, Becky?

MR. OTTO: I mean, if there's no --

MR. McCULLOCH: But when they report it to the Board, you do.

MS. DUNN: I think we need to know the actual date. It says 15 days of authorizing, but --

MS. EULER: That's what the statute says, so we can't -- (inaudible.)

CHAIRMAN: So, is this going to become a form?

MS. DUNN: Well, can't we put the effective date -- (inaudible.)

MS. EULER: This statute says exactly what the -- the rules have what the statute says.

MS. DUNN: Okay. (Inaudible.)

MS. CLARKSTON: But, Sharon, can I ask a question? If the rule says what the statute says, is it necessary to promulgate a rule?

MS. EULER: It's necessary to promulgate the rule only so that people know what notice they're talking about.

MS. DUNN: I don't think the statute

clearly tells us what -- it says 15 days of authorizing.

MR. McCULLOCH: I think they know what notice it's about.

MS. EULER: Or otherwise agreeing to allow a seller to designate himself or herself as a provider under any preneed contract. So, if the only reason that's in there is to put people on notice as to what notice they're talking about.

MR. OTTO: The intent form that's going out --

MS. EULER: Yes.

MR. OTTO: -- it has on there if you're a provider, you put down who your seller is.

MS. EULER: Uh-huh.

MR. OTTO: Will that meet this requirement?

MS. EULER: Yeah.

MR. McCULLOCH: I think it does.

MR. OTTO: I mean, I don't --

MS. EULER: Yeah.

MR. OTTO: That would be nice to make it clear, somehow, some way, so that you don't

have people saying, oh, I need to send in two pieces of paper.

MS. EULER: Well, I --

MR. OTTO: Or here's another permutation. You know, we've got -- you know, MFT, what have we got? I forget how many providers we have right now, 100 and something, people that are signed up to be providers. Do they all have to send in new notices on September 1?

MS. EULER: No, because they aren't providers yet. Only after they are a licensed provider do they need to notify the Board. So, in their initial application, they will provide notice of who they're selling -- who their sellers are, but this goes into effect only if there's a change from that initial application. So, you only need to send this in if there's a change.

MR. STALTER: (Inaudible.)

MR. OTTO: Yeah. But as we sign up, then we'll -- (inaudible.)

MS. DUNN: So, do you think #3 clearly tells the providers what they need to do?

MR. McCULLOCH: Well, they're going to

notify you that they are -- that they have somebody representing them.

MS. EULER: I've got a new seller, signed John.

MR. McCULLOCH: I've got a new seller, and they'll put down who their name is, and that would probably be it.

MS. EULER: But --

MS. DUNN: So, is that verbally?

MS. EULER: It could be under the statute.

MR. McCULLOCH: I guess that could, huh?

MS. EULER: That's why I think we need a rule that says --

MS. DUNN: Yeah.

MS. EULER: -- written notice, give us your name and address, give us the seller's name and address, the date it's effective, and then we allow them to file it electronically.

MS. DUNN: That's why I think there needs to be a rule.

MS. EULER: Right.

MS. DUNN: Because somebody could call and --

MR. OTTO: And could we state in there, though, to make it clear, that's all -- that's --

MS. EULER: After initial licensure.

MR. OTTO: That's all good. But can we stick it in there clear that by filling -- you know, if you filled out this information on the intent form, you're good?

MS. EULER: Well, why don't we put in after -- application after issuance of a license -- after you have received -- after a provider has received a license from the Board, any change --

MS. RUSSELL: There you go.

MR. OTTO: From their intent.

MS. EULER: -- from the original application needs to be reported.

MR. OTTO: Okay.

MR. McCULLOCH: That's good.

MR. OTTO: All right. That's good. Yeah. That's good.

MS. CLARKSTON: And then could you also tie that back to Section 436.420 in sub 1, pursuant to?

MS. EULER: It's down here in the

other -- (inaudible.)

MS. CLARKSTON: I know, but --

MS. EULER: Okay. All right.

MS. CLARKSTON: -- we have a lot of trouble. I get concerned about public reading this, that they know where this is being tied into.

MS. EULER: Okay.

MS. CLARKSTON: I have that general concern through all the rules, but I'll not get into that whole thing.

UNIDENTIFIED: (Inaudible) -- skywriting.

CHAIRMAN: So, everybody seems to be happy with that language. Would anybody like to make a motion on that?

MR. McCULLOCH: I make that motion.

CHAIRMAN: John makes the motion.

MR. FRAKER: Second.

CHAIRMAN: Gary seconds. Todd?

MR. MAHN: Yes.

CHAIRMAN: Jim?

MR. REINHARD: Yes.

CHAIRMAN: Okay. It is approved with the language corrections, and you need the

verbiage of whatever that verbiage is?

MS. DUNN: I've got it.

MS. EULER: And there is competent and substantial evidence?

CHAIRMAN: Yes.

MS. EULER: And that's just for sub 1.

CHAIRMAN: Okay.

MS. EULER: And then for the provisions in sub 2 through 7, that needs to be its own rule, and it's under a different authority. It's under the authority of 436.425, so let's look at that. Sub 2 says effective the last signature on the agreement. Do you want that -- to do that, or do you want it to be date that the seller signs it?

CHAIRMAN: And is your --

MS. DUNN: I don't think the last signature is good.

MS. EULER: Well, that's a fairly standard --

MS. DUNN: Is it?

MS. EULER: -- effective date of the contract.

MS. DUNN: Okay. Okay.

MS. EULER: And I think that MFT is

saying that they make sure the other person signs it first.

MR. OTTO: Yeah. But John does it kind of different. So, the last signature on it would make -- cover everybody.

MS. EULER: Are you all okay with that?

MS. DUNN: Well, I think we have a comment.

MS. WARREN: The effective date is the date the parties agree that they put in a contract together when they sign the contract, so it could be any date. It could be retroactive.

MS. EULER: It could be.

MS. WARREN: So, there's really no rule on first, last, or general.

MS. EULER: But it's not -- right.

MS. WARREN: It's whatever date is inscribed. So, we could set -- tell them what date to inscribe.

MS. EULER: Yes.

MR. McCULLOCH: The old law, if I understand it, it was only valid once the purchaser, when they signed it, that's when it became valid; right?

MR. OTTO: The purchaser and seller.

MS. EULER: I think both signed it.

MR. OTTO: The purchaser and seller had to both sign it before it was a valid contract.

MR. McCULLOCH: So, both just had to sign it?

MR. OTTO: Both had to sign it before it was a valid contract.

MR. McCULLOCH: Yeah. I guess that's probably true.

CHAIRMAN: So, what's the downside if we leave it as the last? You're saying that doesn't work; right?

MS. EULER: No.

MS. WARREN: No, I didn't say that.

MS. DUNN: No. She just --

MS. EULER: She's just saying that it could be designated in the contract, which is true.

MS. WARREN: (Inaudible.)

MS. EULER: But, frequently, the date they designate is the date it's signed by the last person, but not always. There's nothing -- I mean, there's nothing statutory, there's

no law that says that that's the way it is.

MR. OTTO: Well, except that we couldn't be putting down there the effective date of this as --

UNIDENTIFIED: August 21st.

MR. OTTO: -- August 21st, 2009.

MS. EULER: Well, and that's why --

MR. OTTO: Two months from now.

MS. EULER: And that's why we need this rule. So, is everybody okay with #2?

MR. McCULLOCH: I think I am.

CHAIRMAN: So, we're saying last signature being --

MS. EULER: Whoever signs it last.

CHAIRMAN: -- what's okay. But we're saying that's what's okay; correct -- that language?

MR. McCULLOCH: I think so.

MS. WARREN: (Inaudible.)

MS. EULER: Then it's not valid.

MS. WARREN: They don't have a contract.

MS. EULER: Right.

CHAIRMAN: Correct.

MS. EULER: Does anybody have a

problem with anything else in this rule which we will break out as a separate rule?

CHAIRMAN: Well, you want a motion on #2 at the moment; right?

MS. EULER: No. I think #2 through #7 can be one rule.

CHAIRMAN: Oh, okay.

MS. EULER: I was just going through it line by line --

CHAIRMAN: Okay.

MS. EULER: -- but in the interest of time, I don't see that we need to if nobody has a problem.

CHAIRMAN: Anybody else got a problem #2 through #7 -- or #3 through #7?

MS. EULER: Two through seven.

CHAIRMAN: Two through seven? Don?

MR. OTTO: I don't know. The question about -- where -- I lost -- my eyes are going -- five. The purchaser of the preneed contract shall receive either a copy or original of the contract. Now, we're talking about the contract that the purchaser has signed.

MS. EULER: Well, we should clarify

that, that that's preneed contract.

MR. OTTO: That would be good to clear that. And upon a request, a copy of any agreements or contracts between the seller and provider. So, that means the consumer gets the contract between John and his funeral home.

MS. EULER: They have the right to ask for it.

MR. OTTO: Well, I think --

MR. McCULLOCH: You're saying the law says that?

MR. OTTO: I don't think the law requires -- I don't think the law says that.

MR. REINHARD: Yeah.

MS. EULER: I'm saying that's what this rule says.

MR. OTTO: The rule says that, the law does not provide for that, I don't think.

MS. EULER: Well, I think the reason for that would be for the purchaser to make sure that there is a contract so that their contract is valid.

MS. BATTAGLER: But do you want the purchaser really knowing what their payments are going between each other, or what -- who's

getting knowledge from that?

MS. EULER: Well, I think that the purchaser needs to be able to confirm that there is, indeed, a contract between the seller and provider. Now, there may be other ways --

MR. McCULLOCH: They're going to do that by looking at that license on the wall.

MS. EULER: There may be other ways to confirm that.

MR. McCULLOCH: That'll take care of that one -- license on the wall. They can go and look at the wall.

CHAIRMAN: How would the license -- well --

MR. McCULLOCH: Well, remember, that was the big deal a while ago. You've got to have that license on the wall so that they'll know.

CHAIRMAN: No. But I'm trying to think, that's the counselor. That's the counselor.

MS. EULER: The seller's agent.

MR. McCULLOCH: And the seller, too.

MR. OTTO: But they don't get an

agent's license unless they have a seller.

MR. McCULLOCH: That's right.

MS. DUNN: No.

MS. EULER: Yes.

MR. OTTO: Yeah. An agent has to have a seller.

MS. EULER: You have to have -- they can't be a free lance seller, each agent.

MS. DUNN: No. I'm saying you can be an agent without designating a seller.

MS. EULER: No.

MS. DUNN: Well, how do you become an agent if you don't have a job yet for a seller?

MS. EULER: You have to -- you can only be -- you can get a license as an agent, but you can't sell unless you're working for a designated --

MS. DUNN: Okay. That's what I wanted to make sure I was clear on, because -- like, a funeral director is supposed to tell you what funeral home he's working at, but until he gets a license, he can't get a job. So, you can get a license as an agent, but you can't sell.

MR. OTTO: The consumer can -- I mean,

the consumer should be able to contact the State Board if they have doubts and find out whether or not this is a valid -- because the -- this is a valid purchaser/seller situation, but I don't want to give my contract to the consumer.

MS. EULER: Well, I'm saying that if you don't want to -- I understand that. But let's come up with another way the consumer can confirm that there is, indeed, a relationship between the seller and -- (inaudible.)

MR. McCULLOCH: They do it all the time. They pick up the phone while you're sitting there and they call the funeral home and say I've got a guy in here, he's this, this, this, and this. Does he work for you?

MS. EULER: Okay.

MS. CLARKSTON: Of course, that's something, Becky, with relationships that would be verified if we connect relationships to the licensing system. If somebody called in to verify an agent license and who they were selling for, is that something that we

should be able to verify?

MS. EULER: It's not public information.

MS. CLARKSTON: Why would that not be public?

MS. DUNN: Oh, yeah.

MS. EULER: It's not being -- (inaudible.) It's closed records.

MS. DUNN: We can't -- if somebody calls us and asks us what funeral home Martin Vernon works at, we can't tell them.

MS. EULER: Why don't we --

CHAIRMAN: But we're talking about seller and provider here, not agent; right?

MS. EULER: We're talking about consumers being able to confirm.

CHAIRMAN: That my provider has an arrangement with, so my contract is good?

MS. EULER: Uh-huh. What about this? What about providing that the consumer name -- that the purchaser shall receive contact information, phone number, some way to contact the seller to confirm?

MR. OTTO: That's supposed to be on the contract already.

MS. BATTAGLER: That's supposed to be on the contract directly. It's supposed to be on the contract.

MR. STALTER: Yeah.

MR. OTTO: The contract has to have the name and address of the purchaser and the seller and the provider and the trustee.

MS. EULER: Okay. I wasn't in the room when this was discussed, so I don't know what the discussion was related to this, but you all were here. MR. McCULLOCH: The part that says and a form request needs to come out of there.

MS. EULER: Okay. I'll do that.

MS. CLARKSTON: All the way to the end?

MR. McCULLOCH: Regarding the purchase -- yeah, that should just come out of there.

MS. EULER: So, it should just say the purchaser of the preneed contract shall receive either a copy or an original of the preneed contract, period?

MR. McCULLOCH: Yeah.

MS. EULER: Everybody okay with that?

UNIDENTIFIED: Yeah.

MS. EULER: Gary?

MR. FRAKER: Yes.

MS. EULER: Jim?

MR. REINHARD: Yes. Do you want a motion?

MS. EULER: No. We're going to do this as the whole rule. Okay. Sub 6 and sub 7 okay?

MR. OTTO: What if the provider and the seller are the same illegal person?

UNIDENTIFIED: We don't need other --

MS. EULER: Then they've got other problems. Call INS.

CHAIRMAN: Okay. So, all of that -- the rest of that is fine; correct?

MS. EULER: So, we need --

CHAIRMAN: A motion.

MS. EULER: -- a motion to approve, and what we're changing is in lines 3 and 4 and 5 where it says contract, we're going to add preneed contract -- preneed to make sure we know what contract it is, and in sub 5, we're going to put a period after contract in the second line and take out of the rest of that line.

CHAIRMAN: Motion?

MR. FRAKER: I'll make it.

CHAIRMAN: Gary made the motion.

MR. REINHARD: Second.

MS. EULER: And that includes a finding of competent, substantial evidence that there's a reason for this?

MR. FRAKER: Certainly. Certainly.

CHAIRMAN: Jim seconds the motion. John?

MR. McCULLOCH: One second.

CHAIRMAN: Not there yet?

MR. McCULLOCH: Okay.

CHAIRMAN: All right.

MS. CLARKSTON: Do you want to do costs on that one?

CHAIRMAN: Oh, yes.

MS. CLARKSTON: Okay.

MS. EULER: No.

CHAIRMAN: On both of them.

MS. EULER: We don't want to.

MS. CLARKSTON: On both. I know you don't want to. Okay. On sub 1, it seems to me for the Board, there's going to be costs for tracking those relationships between the seller and the provider, and minimal costs for

notice. Small-business regulatory fairness impact would be notice, so other costs to businesses to notify the Board of the requirements in sub 1 -- or in section 1? Okay. On sections #2 through #7, again, I think the fiscal impact for the Board is going to be tracking, and where did I get that from? Maybe #9.

MS. EULER: Actually, this is just notice.

MS. CLARKSTON: Okay.

MS. EULER: This is notice to people as to what you need to do.

MS. CLARKSTON: Okay. So, for the licensee, it's going to be notice and some record-keeping?

MS. EULER: No. It's not -- it's --

MS. CLARKSTON: You're going to have --

MS. EULER: Sub 6 requires notice to the Board.

MS. CLARKSTON: Okay.

MS. EULER: But the other is just informing people what they need to do.

MS. CLARKSTON: Okay. So, for small business, though -- okay. And for the fiscal

note for licensees, we'll just estimate the cost of notice to the Board.

MS. EULER: Okay.

MS. CLARKSTON: For fiscal impact, there's going to be record-keeping.

MS. EULER: Uh-huh. And this is a benefit of small business because under prior law, if the seller and the provider were the same legal entity, they still needed to have a contract, and under this law, they do not, so it reduces the burden on a small business in that way.

CHAIRMAN: Are you good?

MS. CLARKSTON: Uh-huh.

CHAIRMAN: Okay. Number 9?

MS. EULER: On sub 9 of this, we have not heard anything back from legal services or Missouri mental HealthNet, so we don't have anything to add, so we should just take that out. And if we hear back from them, we will do another rule.

CHAIRMAN: Take that out.

MS. EULER: Public not -- sub 9.

CHAIRMAN: Oh, okay.

MS. EULER: We had a placeholder there

for information from the mental HealthNet, and we have not received that, so if we do, when we need to do a rule, we will do a separate rule, so take out the placeholder in sub 9.

CHAIRMAN: Okay.

MS. WARREN: I have a comment.

CHAIRMAN: Okay.

MS. DUNN: Ann, you'll have to --

MS. WARREN: I'm Ann Warren with Inglish & Monaco. Rule 9, sub 7, which states all preneed contracts executed in the state of Missouri shall be disclosures on a form prescribed by the Board. Our comment is, as previously circulated, why can't the disclosures be placed in the preneed contract rather than have them be a separate form? Can't we make the rule be that it can be either in the preneed contract or on a separate form? And then the big question: What are the disclosures?

MS. EULER: We are working on the disclosures and we'll get those out. Connie, did it make it into the law the definition of what constitutes a Missouri preneed contract?

MS. CLARKSTON: It was in, it was out,

it was in, it was out.

MS. EULER: Because there is a question about when is a contract a Missouri preneed contract and when is it not. I thought --

MS. CLARKSTON: I think that the -- go ahead.

MS. EULER: I thought that in the -- does anybody know?

MS. CLARKSTON: If you look on page 14, there's a definition of preneed contract.

MS. EULER: Yes.

MS. CLARKSTON: Is that what you're looking for?

MS. EULER: Yes. And on sub 7, I think that this rule conflicts with the statute because it's executed in Missouri when the statute says for final disposition in Missouri. And the consumer disclosures, I don't think they need to be on a separate sheet. I think they could be incorporated in the contract.

MR. OTTO: Yeah. But then --

MS. EULER: So, I don't think --

MR. STALTER: Either/or.

MS. EULER: I don't think we need -- I mean, I don't think we need sub 7. Do you, Bill?

MR. STALTER: No. And I think that's problematic. I mean, part of it is that we're talking about reusable contract forms past August 28th, and we know there are going to be disclosures or addendums or something. We just know we're going to have to produce them at some point in the future.

MS. EULER: Yeah. Board, what do you think? Strike sub 7?

MR. McCULLOCH: Yes.

MS. EULER: Gary?

MR. FRAKER: Yes.

MR. REINHARD: Yes.

MS. EULER: Okay. You know, Jim answers to every name but his own.

MR. REINHARD: Oh. Somebody needs to shoot you.

MS. EULER: (Inaudible.)

CHAIRMAN: Don?

MR. OTTO: I have a problem with #6.

MS. EULER: Okay. Just a minute, Don. Connie?

MS. CLARKSTON: Can you look at #5 -- section #5, and then go back to page 8 and look at --

MS. EULER: Let's take up sub #5, too.

MS. CLARKSTON: Okay.

MS. EULER: Because we just dealt with that. Okay. Don, sub #6?

MR. OTTO: My problem is with five business days of the effective date of the contract. We mail them to the consumer.

MS. EULER: Yeah.

MR. OTTO: It takes me more than five days to get mail across the street here in town.

MS. EULER: And do you want to say 30 days so we're consistent? John, what do you think?

MR. McCULLOCH: This is saying that the seller and his agent must provide --

MS. EULER: That the purchaser must have their fully executed contract within so many days of the effective date of the contract.

MR. McCULLOCH: Thirty would be better.

MS. CLARKSTON: Why do I think that was

something that was said in statute?

MR. REINHARD: Yeah. Because I think joint accounts are less than that.

MS. DUNN: Well, we need to check that.

MS. EULER: Let's look.

UNIDENTIFIED: Per Meadows, they should have them in five.

MR. OTTO: Well, if they could speed up the mail, that would be good.

MS. DUNN: I can't imagine we put that -- (inaudible.)

MS. EULER: No, I don't see it.

MR. McCULLOCH: It says that the money has to be deposited in a joint account within ten days.

MS. EULER: Yeah. But I'm looking at 425 on page 16 of Senate Bill 1. It says that we need to have name and address, sets out the details, identify funding, notice, notice, notice, notice, cancellation, trust, phone numbers, signatures, guarantee, including disclosures, disclosures, and comply with the rules. So, no, I don't see anything in the statute.

MR. McCULLOCH: So, we get 30?

MS. EULER: Yeah.

MR. REINHARD: No. I think it ought to be ten. (Inaudible) -- one way and one another way.

MR. McCULLOCH: Yeah. This is just getting the contract back to the people. You've got to -- especially, you've got to have time to get that all processed.

MR. REINHARD: Give us 30 days from --

MS. EULER: And what I think I'm going to do, if it's okay with the Board, is I'm going to take what's in rule -- part #2 through #7 of the previous rule, and we're going to do a new rule and combine it in this rule so all the contract stuff is in one rule.

UNIDENTIFIED: That would be good.

MS. EULER: And we'll type that up and --

MR. McCULLOCH: (Inaudible) -- get the interest money.

MS. EULER: Okay. What about the other sections?

MR. STALTER: What about #8? You know, at a prior meeting, we talked about what it means to rescind, and we were going to

clarify that it meant the same thing as a cancellation. You've got it in there twice about --

UNIDENTIFIED: I've got a problem with #4 because you have -- and they've probably gone to court -- (inaudible.)

MR. STALTER: Are you talking about --

MR. McCULLOCH: But do you have to give them back interest and everything, and how much?

UNIDENTIFIED: Yeah. That's better than the current law.

MR. McCULLOCH: (Inaudible) -- on how much, though?

MS. EULER: Okay. We're talking about sub #8. Board, do you have comments on sub #8?

MR. REINHARD: Take it as --

CHAIRMAN: Works for me.

MR. MAHN: You're the chairman.

MR. STALTER: I see how you're doing it.

MS. EULER: Are you done?

MR. STALTER: Yeah, I do. And what we're saying is that even if they say they're rescinding the contract, really, it's the same

thing as cancellation.

MS. EULER: Uh-huh.

MR. STALTER: They catch it at the very last sentence.

MS. EULER: Yes. And are you okay with that?

MR. STALTER: Yes.

MS. EULER: Okay. I heard you all talking about #3.

MR. OTTO: Well, #3 and #4. The two issues are -- I mean, this really does spell out pretty good what people talked about last time.

MS. EULER: Okay.

MR. OTTO: But a new issue that I thought about is, okay, the consumer has gone to court and the judge has ruled that this is a voidable contract.

MS. EULER: Yes.

MR. OTTO: Okay. Does he have any kind of time period to void the contract, or can he just sit on it and wait for ten years and say, now, I'm voiding the contract?

MS. EULER: We can put a time frame in it.

MR. OTTO: I think a time period would be good --

MS. EULER: Okay.

MR. OTTO: -- within so many days after the court order.

MS. EULER: Well, after the judgment becomes final?

MR. OTTO: The judgment becomes final. Good point. That's better.

MS. EULER: How long?

MR. OTTO: Oh, I mean, we want to give him plenty of time.

MR. REINHARD: Thirty days.

MR. McCULLOCH: Thirty days.

MR. OTTO: Thirty days, and you want to make it right away. I like keeping everything at 30 days.

MS. EULER: Well, the judgment doesn't become final until 30 days after.

MR. OTTO: Yeah.

MR. REINHARD: Whatever, 30 days.

MR. McCULLOCH: Hey, why don't you have in there about the interest payments and fees?

MR. REINHARD: Thirty days.

MR. McCULLOCH: It doesn't talk about that in the law. The court is going to decide what's paid back; right? And he's probably going to do --

MR. OTTO: The court -- yeah. The court is just going to decide you screwed this contract up somehow, so it's voidable.

MR. McCULLOCH: Uh-huh.

MR. OTTO: Which, if a contract is voidable, normally, you get all your payments back.

MR. McCULLOCH: So, why would we want in the rule put interest and fees?

MR. OTTO: I don't know.

MR. REINHARD: Why don't we put a 10-percent penalty on it?

MS. EULER: Well, I remember -- I was present for this -- that we talked about that and decided we wanted to give the court guidance as to what the court could order.

MS. RUSSELL: It came off of page 18 out of the book, lines 52, 53, 54 is where you came -- where it came from.

MR. OTTO: But the problem is, I really think the court, under Senate Bill 1,

is just really almost a finder of fact that you screwed up the contract in a way that it is now voidable, and now that triggers the consumer's right to void the contract. And if you void the contract, it never existed, so the consumer gets all their payments back.

MS. EULER: Right. I understand, and I recall you saying the same thing last time.

MR. OTTO: Yeah. Yeah.

MS. EULER: So, my recollection is that the Board directed us to put that into the rule to give the court guidance as to what may be what they may order.

MR. ZELL: Did the court need that?

MR. McCULLOCH: Yeah. They don't need our guidance, do they?

MS. EULER: Yes.

MR. McCULLOCH: How come? Because that's our, you know, jobs as lawyers to give the courts guidance.

(Several people talking simultaneously.)

MR. OTTO: But I don't think the court has the authority to order anything.

MS. EULER: Yes. Well --

MR. OTTO: Just the order is, is this

contract voidable or not voidable, yes or no.

MS. EULER: Well, I think if I was the lawyer representing the consumer, I would say to the court under the statute, it says all payments shall be recoverable by the purchaser, and I would ask the court to make some orders about that. Ann?

MS. WARREN: (Inaudible.)

MR. McCULLOCH: Well, do they get all their payments back?

MR. OTTO: Yeah, that's fine. But this --

MR. McCULLOCH: Do they just get the payments back?

MR. OTTO: This rule goes beyond that by talking about interest.

MS. WARREN: (Inaudible.)

MS. EULER: Well, it defines payments to include interest payments.

MR. McCULLOCH: Well, but in the rule --

MR. OTTO: The statute is all payments the consumer has made.

(Several people talking simultaneously.)

MR. McCULLOCH: You're saying because

it's in the rule, you can.

MS. EULER: It doesn't say that.

MS. WARREN: No. (Inaudible.)

MS. EULER: It says all payments made under such contract.

MR. McCULLOCH: No, it's not in the statute at all.

MS. WARREN: Oh. Were you reading out of the statute?

MR. McCULLOCH: The statute doesn't call for interest and fees.

MS. EULER: It says all payments made under such contract. I could make an argument that interest payments are payments made under the contract.

MR. McCULLOCH: But we're not making interest payments, not to the consumer.

UNIDENTIFIED: She's talking about financing.

MS. EULER: The trust is. The trust is --

MR. McCULLOCH: The trust is not making -- well, that's only by contract.

MS. EULER: Right. All payments made under such contract.

MR. McCULLOCH: All payments means the money they paid in. If they paid in $1,000, they get their $1,000 back.

MS. EULER: I think a court would have to determine what that means, but I'm saying if I was representing a consumer, I would argue to the court that all payments means all payments.

MR. OTTO: But we don't make any interest payments.

MR. McCULLOCH: I agree with you, all payments, and all payments is the $1,000 they paid in.

MS. EULER: I would argue that that means including interest payments.

MR. OTTO: Because the --

MR. McCULLOCH: They didn't make any interest payments.

MS. EULER: Because it doesn't say that the consumer made. It says all payments.

MR. McCULLOCH: Nobody makes it.

MR. OTTO: Nobody makes interest payments. There aren't any.

MR. McCULLOCH: Yeah.

MR. OTTO: There are no interest

payments.

MS. WARREN: What does the statute say?

MS. EULER: Well, I mean --

MR. OTTO: There's earnings on the account.

MR. REINHARD: Well, take it to court and argue it there. Let's not argue it here.

MS. EULER: If it goes to court, it's going to go to -- I mean, it'll go to court. I know that we were directed to put this in the rule last time and so that is what we did. So, Board, what do you want us to do? What do you want to do with subparagraph 4?

MR. McCULLOCH: Take out interest payments and fees.

MS. EULER: Do you want to take out the entire subparagraph 4?

MR. OTTO: I think it would be good to make it clear the consumers gets 100 percent of what they paid back.

MS. DUNN: That was the point.

MS. EULER: That was the point, that --

MR. OTTO: But this goes beyond 100 percent.

MR. McCULLOCH: But doesn't the -- the

law says that.

MR. OTTO: I think so, but Sharon doesn't necessarily -- she disagrees, and that's fine.

MR. McCULLOCH: We don't need a rule.

MS. EULER: Well, if it comes up, people can litigate it.

MR. McCULLOCH: Okay.

CHAIRMAN: So, drop interest payments and fees.

MR. McCULLOCH: The whole thing, #4. You don't even need a rule. It says it in the law very clearly. They get back all their money.

CHAIRMAN: Okay. Need a motion.

MR. McCULLOCH: So, we give them back their money.

MS. EULER: Okay.

MR. REINHARD: (Inaudible.)

MR. McCULLOCH: It's what the law says. I mean, we didn't make that law; right?

MS. EULER: Well, people can litigate it.

MR. McCULLOCH: That was Todd and his boys. Sorry.

MR. REINHARD: His posse.

MR. MAHN: Got to realize who runs this state.

MS. EULER: Okay. Okay. So, what we have -- let me -- before someone moves, let me tell you what we've got so far. Oh, there's still #10 and #11. And I've still got a comment on #2 real quick.

MS. EULER: Okay.

MR. REINHARD: Uh-uh.

MS. BATAGLER: It real quickly just says that you have to identify in writing that the contract contains both guaranteed and nonguaranteed items. Shouldn't it state which items are guaranteed?

MS. EULER: What is guaranteed, yes. I think so. Board, do you agree?

MR. McCULLOCH: Say that again.

MS. EULER: That the contract is not only saying --

(Several people talking simultaneously.)

MR. McCULLOCH: Definitely. Definitely. It's set out right here -- (inaudible.)

MS. EULER: Okay. All right. Does

anybody have any other comments? What about --

MR. McCULLOCH: So, does #3 come out if #4 comes out?

MS. EULER: No.

MR. McCULLOCH: Three needs to stay?

MS. EULER: Yes.

MS. RUSSELL: Four and five are coming out -- (inaudible.)

MS. EULER: Four, five, and seven are coming out -- and nine.

MR. OTTO: Three needs to stay in.

MR. McCULLOCH: Three does?

MS. EULER: Yes.

MR. OTTO: With the 30-day thing added one.

MS. RUSSELL: And then they -- yeah. The 30-day judgment.

MR. STALTER: Yeah.

MS. RUSSELL: Okay.

MS. EULER: Let's look at sub #10. I don't know why that's in there. That's the old law.

MR. REINHARD: Take it out.

MS. EULER: I'd say we take out sub #10, unless somebody disagrees.

MS. RUSSELL: Yeah.

MR. REINHARD: (Inaudible.)

MS. EULER: Unless that means -- it's meant to mean executed on or before, because this is the old law.

MR. REINHARD: John wants it left in there.

MS. RUSSELL: On or after --

MR. McCULLOCH: So, the whole thing on #10?

MR. REINHARD: Anything that benefits the consumer has got to come out.

MS. EULER: Unless you want to change it to say executed on or before?

MR. REINHARD: Anything that benefits the consumer, out.

MS. DUNN: So, how are you promulgating the rule for something before --

MS. EULER: I don't know. I don't know. I don't know.

MS. RUSSELL: I think you -- this is -- you said on or after August 28th for the new law.

MR. OTTO: I think I know. I think the purpose of this was that in this interim until

December 31, when -- if you take a look at #11 and #12, you know, you've got until the end of the year to meet compliance.

MS. EULER: Uh-huh.

MR. OTTO: I think the purpose was until then, at the very minimum, you've got this stuff in there.

MS. EULER: But the new law applies to what goes into new contracts. This is what's in the old law. I don't see any reason to have it there unless somebody else does.

MR. OTTO: No, I don't. That stands to reason.

MR. McCULLOCH: Let's take that out.

MS. EULER: So, we're taking out #10.

MR. MAHN: I think it ought to stay.

MS. EULER: Okay. Why?

MR. MAHN: Because you think it ought to come out.

MS. EULER: Okay. Okay. Eleven.

MS. RUSSELL: Eleven and twelve come out, too, then.

MR. McCULLOCH: Eleven.

MS. EULER: Eleven is giving people until the end of December to get their

contracts in shape. I think that's okay.

MS. RUSSELL: What was that? Are you saying that the contracts aren't -- (inaudible.)

MS. EULER: So, if you write a contract next week before we know that the consumer disclosure is approved by rule, you're okay.

MS. BATTAGLER: We have to have that in context.

MS. RUSSELL: We have to have the stuff in the statute, but not in the disclosures as much.

MS. EULER: Right.

MS. RUSSELL: Okay.

MR. REINHARD: That's good.

MR. STALTER: Well, okay. Now, we're talking about printed forms and so forth. What we talked about before was people could continue using their old printed forms.

MS. EULER: Yeah.

MS. RUSSELL: And make the changes.

MR. STALTER: Yeah.

MS. EULER: Yeah.

MR. STALTER: And we may have to say

here's what's different under the new law.

MS. RUSSELL: Yeah.

MS. EULER: Yeah. I think it's okay to give people a little leeway to have some transition time. Does the Board agree?

MR. McCULLOCH: Yes.

MS. EULER: Okay.

MR. REINHARD: Are you going to leave #12?

MS. EULER: Yeah. Okay. So, what we've got is #1 stays the same, #2 changes to say that the preneed contract containing both guaranteed and nonguaranteed items shall clearly identify in writing what is guaranteed and what is not.

MR. McCULLOCH: What are you asking?

MS. EULER: I'm just reading over what we changed so you know what we've got. So, paragraph 3, we add the purchaser who has exercised their rights to void the contract within 30 days after final judgment. We take out #4 and #5. In subparagraph 6, it becomes 30 days instead of five business days. Seven comes out, eight stays the same, nine and ten come out, eleven and twelve stay the same.

MR. McCULLOCH: So, #12?

MS. RUSSELL: Martin, before you guys vote on this, this is the letter that I sent regarding this. My concern was in regards to the last meeting, maybe it wasn't this meeting, but a previous meeting where it was August --

MR. STALTER: August 11th.

MS. RUSSELL: -- August the 11th, where Sharon, you, and Earl were talking about the preneed contracts having to require all this information.

MS. EULER: Uh-huh.

MS. RUSSELL: And I wanted a clear understanding that if you were just doing insurance accounts, just insurance kind of contracts, you didn't have to have all this information about trusts or joint accounts, and vice versa if you're just doing joint accounts, why would you want all that insurance information on there. And that's where I -- I mean, we have a huge confusion out there because of that one issue.

MS. EULER: On the consumer disclosure forms that we are putting together, it's going

to say for trust, for insurance. And I know it's confusing, but I think it would be better to give people more information.

MS. RUSSELL: Okay. Well, that is --

MS. EULER: Because the statute says so.

MS. RUSSELL: Okay. So, what I'm saying, like, for instance, right now we have it that says preplanned funeral agreement insurance funded. It's clear; it's insurance funded.

MS. EULER: Uh-huh.

MS. RUSSELL: So, why do I have to go in and put all the --

MS. EULER: Because the statute says so.

MS. RUSSELL: That is an interpretation. That's an interpretation. And I talked to this -- the one -- (inaudible) -- that helped sponsor it --

MS. EULER: Uh-huh.

MS. RUSSELL: -- and he said that was never their interpretation, to make the consumer -- what good is it for the consumer? What does it help the consumer? All. You

all are hanging on the word "all."

MS. EULER: Well, when you are interpreting the statute, the first thing you do is you apply the common, ordinary meanings to the words. And when it says all, what does all mean?

MS. RUSSELL: Okay. Well, I'm fine with it as long as I know that this isn't going to be -- I mean, if I have to do it, I have to do. Like Bill said, it's a statute, it's a statute. If I have to do it, fine. I just need a clear understanding that I have to do it.

MS. EULER: Okay.

MS. RUSSELL: So, I'll abide by the statute if that's what you're telling me that every contract --

MS. DUNN: What page, Sharon?

MS. RUSSELL: Page 16.

MR. McCULLOCH: What are you saying, Darlene? You're saying every contract --

MS. RUSSELL: Page 16 -- oh, wait.

MR. REINHARD: We got it.

MR. McCULLOCH: Wait. Wait. It starts with -- we've got to go back --

MR. REINHARD: I know.

MS. RUSSELL: Line all preneed contracts shall be sequentially numbered and in writing and in a font type and size that are easily read and show clearly and conspicuously, and it goes on, include the name, blah, blah, blah, blah, all the way down. So, that's where you're saying all contracts, regardless, have to have this in.

MS. EULER: Uh-huh. Uh-huh.

MS. RUSSELL: And as long as I have a clear understanding that that's the statute and it's not going to be -- across the board, everybody. So, everybody, trust companies, you have to include your insurance language in that.

MR. STALTER: Don't pull me into this.

UNIDENTIFIED: Oh, no. No. No.

MR. STALTER: I'd rather do -- I mean, if you're saying something like that has to happen, let's do that by the disclosure or the separate document.

MS. EULER: And we're going to.

MR. STALTER: Okay. But -- well, that's not what I --

MS. RUSSELL: But, now, the Board is going to be providing that.

MS. EULER: We are working on that. Let's wait until you see what we come up with before we debate whether it's good or bad.

MR. STALTER: Well --

MS. RUSSELL: Well, I've got until Friday to have a new contract for somebody to write upon, you know, on Friday.

MS. EULER: I know.

MS. RUSSELL: So, that's what I'm worried about.

MS. EULER: That's why --

MR. OTTO: But you can use your old forms.

(Several people talking simultaneously.)

MS. RUSSELL: I don't think you can use the old forms. The law is what the law is. It doesn't give you till December 31st to get into compliance and use your old contracts. So, if you say the law is the law, you have to do it like that, too. Am I right? I mean, you all are saying, okay, we've got till December 31st to get your contracts in order, but that doesn't say that

anywhere.

MR. McCULLOCH: (Inaudible) -- we can interpret this. He said --

MS. RUSSELL: Yeah. Well, that's exactly -- we will.

MR. McCULLOCH: -- many, many times to make that clear.

MS. BATTAGLER: So, the Board -- you're saying that the Board doesn't have any intention of going back and saying that your contract is voidable because before December 31st, even though the law went into effect, it didn't have all of the things that the law stated?

MS. EULER: The Board is not saying that, but the law says purchaser.

MS. BATTAGLER: We've also talked about other things that the law says that you all aren't going to --

MS. EULER: We're trying to give people the option to have some lead time here. It doesn't mean you have to take it. If you're not comfortable with that legally, then you need to do legally.

MS. CLARKSTON: Sharon, could you

explain the disclosures a little more because I have not seen those and I just want to have some perspective on what the Board is thinking.

(Several people talking simultaneously.)

MS. EULER: What we're working on is putting together something that could be stapled to a preneed contract, like the proof of lending.

MS. CLARKSTON: Okay.

MS. EULER: Consumers, here are things you need to know.

MR. STALTER: It could be, like, plain English issues to --

MS. EULER: Yes. Okay.

CHAIRMAN: Well, the thought that she's reflecting, is that -- you're actually stating that a preneed contract, regardless of whether it's joint, whether it's insurance, whether it's trust, whatever, will have all those stipulations, so there's one --

MS. EULER: So there's one disclousre. Yes. Because that's what the statute says.

(Several people talking simultaneously.)

MR. REINHARD: Well, I don't agree with it.

MS. EULER: So, on #9, does the Board want -- is the Board ready to approve this?

MR. REINHARD: No. I want to know what -- like #11, why don't you strike #12 out of there?

MS. EULER: I didn't.

MR. REINHARD: Well, we took #11 out.

MS. EULER: No, I did not. I took #10 out. Number 11 and #12, the Board told me to leave -- let go. So, if you don't want to put #11 and #12 in there, we don't need to.

MR. McCULLOCH: Eleven and twelve can go, you say?

MS. BATTAGLER: You're taking those out?

MS. EULER: The Board said they wanted to keep #11 and #12 in. But I'm saying that the Board -- we haven't voted on this. And, Board, if you want #11 and #12 to come out, we could take them out.

MR. McCULLOCH: Let's do.

MS. EULER: There may be some heart attacks in the back row, but go ahead.

MR. OTTO: No. We need #11 and #12.

MR. STALTER: Yeah. We need #11 and

#12; otherwise, you guys need new contract forms next Monday.

MS. BATTAGLER: Well, Friday.

MR. OTTO: Yeah.

MR. STALTER: Well, we're not going to sell over the weekend.

MR. ZELL: And we've got to get them printed, so they need to be done -- (inaudible.)

(Several people talking simultaneously.)

MS. DUNN: And there is a system to that similar to the 436 process, so --

MS. EULER: Or you can change the date.

MR. McCULLOCH: But this is working against us, isn't it?

MR. STALTER: No. Really, why this -- we need to know that we could still use our old contract forms up through about December 1st or whatever the date is.

MS. DUNN: Change the date to -- (inaudible.)

MR. McCULLOCH: Just saying that they have to be compliant.

MR. STALTER: Well, if they are compliant under the old law, they're still

compliant under the new law.

MR. REINHARD: Not on preneed contracts.

MR. STALTER: I wouldn't have quite worded it that way, but if that's the --

MS. EULER: Well, I'm just saying thinking we could word that if they were --

MR. STALTER: That's the intent.

MS. EULER: That they have to be compliant with either the old law or the new law.

MR. REINHARD: Well, if you say it is, okay.

MS. RUSSELL: (Inaudible.)

MR. OTTO: That's fine.

MR. STALTER: You know, I got lucky once today with one of my proposals. I'm going to -- (inaudible.) I'm not going to write any more provisions.

MR. McCULLOCH: Well, as a layperson, I'm having a hard time.

MR. STALTER: I know. Yeah. And that's why I raised the question. I didn't mean -- are we all on the same page that we can use our old forms for a period of time?

MR. REINHARD: Well, that's what I'm worried about.

MR. STALTER: Yeah. Well, you're the one voting, not me.

MR. REINHARD: No. But that -- you know --

MR. McCULLOCH: Why don't we just say that, we can use old forms. That's real clear.

MS. EULER: That's what I was going to say, that your preneed contracts need to be in compliance with the old law or the new law.

MR. OTTO: And that was the intent back in that paragraph 10 in there, although it was not --

MR. REINHARD: Yeah, let's do that. Well, it make simplified so they -- so some stupid -- (inaudible.)

(Several people talking simultaneously.)

MS. EULER: If it's in compliance with the old law --

MR. STALTER: I had a provision under here in the grandfather section about that. On page 2 of those infamous Stalter comments --

MR. MAHN: Has anybody got a copy of what an old contract will look like compared

to what a new contract would look like?

MS. EULER: No, since we don't have all the provisions yet.

MR. MAHN: I mean, everybody has got different contracts, so --

CHAIRMAN: Tell you what. While we're debating that big issue, let's do it over pizza because it's sitting out there getting cold.

(Off the record)

MS. EULER: I think that you should wait until we have the disclosures put together and then you can say this disclosure for these contracts and this disclosure for that contract.

MR. REINHARD: We'll explain how that would work -- (inaudible.)

MS. EULER: Once we have the consumer disclosures put together, you can say this --

MR. REINHARD: The disclosure --

MS. EULER: -- needs to go with this and this needs to go with that.

MS. DUNN: (Inaudible.)

MS. EULER: If that's what you're trying to do.

MR. ZELL: So, you're making the

interpretation of why --

CHAIRMAN: So, why -- so, would it not be --

MS. EULER: If the Board wants to interpret the law that way. I don't -- I think you may have some issues there, but I don't think we should deal with it until we have something in front of us.

CHAIRMAN: If we chose to interpret it that way, would it be easier for you all writing those points, whatever they are, to know in advance, though, that --

MS. EULER: Well, we do know. You just told me.

(Several people talking simultaneously.)

MS. CLARKSTON: I mean, she did for #7 and #9. Was there more that you had?

MS. EULER: (Inaudible.)

MS. CLARKSTON: Check, Tab, snap, snap.

(Several people talking simultaneously.)

MS. EULER: It's sent.

MR. OTTO: That is -- yeah. You did a good job.

MS. EULER: Despite evidence to the contrary, sometimes I can practice law

competently, Mr. Otto.

MR. OTTO: Yeah, but you're not supposed to. The statute says things that you're not supposed to be practicing law.

MS. DUNN: Okay. Now, we're going to be looking at #7 and #9.

MS. EULER: Okay. What this does is this incorporates the part of #8 we took out of what we left in #8 and #7 and #9. So, there may be typos, but if we kind of -- if there are typos, let me know.

(Several people talking simultaneously.)

MS. EULER: Okay.

CHAIRMAN: So, to finish rule #9 --

MS. EULER: This is #7, parts of #8, and #9.

CHAIRMAN: Okay.

MS. EULER: So, I would ask that you rescind your approval of #7, the second half of #8, and #9, and substitute this instead.

MR. REINHARD: So moved.

CHAIRMAN: So moved.

MS. DUNN: Did everybody read it?

MR. REINHARD: (Inaudible.)

CHAIRMAN: That there is a finding of

substantial evidence --

MS. EULER: Competent and substantial evidence.

CHAIRMAN: -- to support the rule?

MS. EULER: Right.

MR. REINHARD: Did you get that?

MS. RUSSELL: Yeah. I was just going to ask you that question. So, after -- or before the 31st, we have to provide them with whatever those addendums are?

MS. EULER: Uh-huh.

MS. RUSSELL: So, you can still write the contract, the old contract, and then --

MS. EULER: Right. And then supplement it with any new information legally required.

MS. RUSSELL: New information. But, like, for instance, if the contract -- just a real quick question. Like, for instance, my contracts that I don't -- I mean, this is a funeral-home contract.

MS. EULER: Yeah. Yeah.

MS. RUSSELL: We don't have contracts. We help them with them, but, for instance, this one does not have a signature by the

agent.

MR. OTTO: (Inaudible) -- seller, would you?

MS. RUSSELL: What was that?

MR. OTTO: Well, you wouldn't want to be a seller or anything?

MS. RUSSELL: I don't mind being a seller, I just don't do it to my funeral homes so they'll have control. But anyway --

(Several people talking simultaneously.)

MS. EULER: That's something that would need to be supplemented.

MS. RUSSELL: Okay. That's what -- so I just have to make sure any of those guys that wrote the new ones would have to make sure that they included that information?

MS. EULER: Right.

MS. RUSSELL: Okay. That's --

MS. EULER: So, basically, what we're saying is you can do the contract in two documents.

MS. RUSSELL: Got you. An addendum that -- okay.

MS. EULER: Uh-huh.

MS. RUSSELL: So, they'd actually have

to go back to the purchaser if they didn't have an addendum to make sure that contract was valid?

MS. EULER: Right.

MS. RUSSELL: Are you all hearing that?

MR. MAHN: No.

MS. RUSSELL: You understand that -- I want to make sure that everybody gets that --

MR. REINHARD: That you're going to have to go back --

MS. EULER: On September 1 --

(Several people talking simultaneously.)

MS. EULER: -- you can use your old contract, but by the end of the year, you need to provide the purchaser with whatever you need to do to supplement your old contract and make it in compliance with the new statute.

MS. RUSSELL: Got you.

CHAIRMAN: Okay.

MR. McCULLOCH: So, after the fact, you can just send them this information?

MS. EULER: Yeah.

CHAIRMAN: And that's what Jim's motion was?

MR. REINHARD: Yes.

CHAIRMAN: All right. Somebody second it.

MR. REINHARD: It's dying for a lack of second.

MR. FRAKER: Second.

CHAIRMAN: Okay. Gary seconded. Todd?

MR. MAHN: Yes.

CHAIRMAN: John?

MR. McCULLOCH: Okay.

CHAIRMAN: It's approved.

MS. DUNN: Okay. Now, Connie has to do her part.

MR. REINHARD: (Inaudible.)

MS. CLARKSTON: Okay. I know that when we did the working group, that at least eight point was a topic of conversation, and I'm talking small business on the side. But since it's at least eight, then I'm assuming there is no impact. They can go bigger than eight?

MS. EULER: Uh-huh.

MS. CLARKSTON: Okay. But not smaller. So, if they don't -- but they can't go smaller than eight, and we kind of went through that through one of the meetings and

went in and found out what Word could do.

MS. EULER: Yeah.

MS. CLARKSTON: And it couldn't go to seven, so --

MS. EULER: Right.

MS. CLARKSTON: -- so, there should be no impact for that portion; correct?

MS. EULER: Right.

MS. CLARKSTON: Okay.

MR. REINHARD: Well, it could be, I guess.

MS. BATTAGLER: Are you asking if this is requiring any impact on small business? Yes, it is, because we --

MS. CLARKSTON: Well, the mailings or the supplemental --

MR. REINHARD: (Inaudible) -- contract is all screwed up anyway -- (inaudible.)

MS. BATTAGLER: It is all screwed up -- (inaudible.)

MR. REINHARD: But she says that it would be an impact if they had to redo them.

MS. BATTAGLER: I mean, does everybody have at least eight point on their contracts right now?

UNIDENTIFIED: We don't, but --

MR. REINHARD: I want to write mine in Chinese -- (inaudible.)

MS. BATTAGLER: It would only fit seven and a half, so --

MR. REINHARD: You didn't say what language it had to be in, did you?

MS. CLARKSTON: You're going to go down that path?

MR. REINHARD: Yeah.

MS. CLARKSTON: You're a brave man.

MS. EULER: That's what #8 is.

(Several people talking simultaneously.)

MS. CLARKSTON: Okay.

MS. BATTAGLER: On the addendums, too --

MS. CLARKSTON: Right.

MS. BATTAGLER: -- that we have to put together to --

MS. CLARKSTON: And I'm assuming the addendums would be mailed, or would the agent --

MS. EULER: However they wanted to do them. They could mail them, they could hand deliver them. Just so long as they get them.

MR. REINHARD: So, that would be a -- well, a bicycle.

CHAIRMAN: You mean people that have computers -- or people that buy preneed contracts have computers?

MS. CLARKSTON: Okay. The Board's cost, I don't see any. For licensee costs, the cost may be similar to that of the small business, to redo the contracts and to deliver the addendums and print those.

UNIDENTIFIED: Right.

MS. CLARKSTON: So, we'll have to get costs on that.

MR. REINHARD: I say it would be $500 a contract, easy.

(Several people talking simultaneously.)

MR. MAHN: Don, are you going to give a class to funeral homes on how to figure all this out?

MR. OTTO: I have to figure it out first, but, yeah.

MR. MAHN: After you figure it out?

MR. OTTO: Yeah.

MR. REINHARD: There's a money-maker right there.

MR. MAHN: I want you to come down and give us personally.

MS. EULER: Okay.

MS. CLARKSTON: Okay.

CHAIRMAN: Okay. Are you good with that?

MS. CLARKSTON: I think so. I mean, we're going to have to search that out, but we can do it.

MS. EULER: Yeah. Number 8, I've got a replacement for #8.

MR. REINHARD: (Inaudible.)

MS. EULER: Yes. That's why they pay me the big bucks.

MR. REINHARD: You're worth it. She is worth it.

MS. EULER: Okay. Number 8.

MR. MAHN: We're looking at this little piece right here?

MS. EULER: Yes.

MR. MAHN: When it says license number of the provider.

MS. EULER: Yes. This is the provider providing notice for the Board, so the provider has to give us their name and

address, their license number, so the Board staff can look it up easily.

MR. MAHN: I got you.

MS. EULER: Who their new seller is, and the effective date.

MR. MAHN: Got you.

MS. EULER: Can be provided electronically, e-mailed, faxed, whatever, but follow up with the original signed document.

MR. MAHN: I'm just getting tired. I was looking at the thing that was a contract -- a funeral -- a preneed contract.

MS. EULER: No.

CHAIRMAN: Okay. So, now, we approved this already, so do you need another approval?

MR. MAHN: Right.

MS. EULER: I will do final approval of this language.

CHAIRMAN: Okay. Motion for --

MR. McCULLOCH: Motion.

CHAIRMAN: John makes the motion for final approval.

MR. FRAKER: Second.

CHAIRMAN: Gary seconds.

MR. MAHN: Yes.

CHAIRMAN: Todd, yes. Jim?

MR. REINHARD: Yes.

CHAIRMAN: Yes. So, final approval. And you had already done your part, didn't you?

MS. CLARKSTON: Uh-huh.

CHAIRMAN: That's what I thought. So, that takes care of #8.

MS. DUNN: And we had the terminology added to the original bill, Sharon?

MS. EULER: Yes.

CHAIRMAN: Okay. So, we're done with #8 and #9; right?

MS. EULER: Uh-huh.

CHAIRMAN: So, #10.

MS. EULER: It doesn't say anything that the statute does not.

CHAIRMAN: Go ahead, Don.

MR. OTTO: On paragraph 2 where it says the written statement shall include -- let's see. The written statement shall also include the principal and interest paid to date for the trust. This is when the consumer is asking for an accounting, in effect.

MS. EULER: Uh-huh.

MR. OTTO: The fault with that is the

interest is not the consumer's.

MS. EULER: Well, I understand. Whether it belongs to the consumer or not and whether the consumer is entitled to know is a different case.

MR. OTTO: Which -- yeah. I understand.

MS. EULER: I'm looking at the statute to see what the statute says.

MR. OTTO: But my concern, when the consumer makes this request, they find out, oh, there's $3,000 worth of interest in there; I'm going to cancel it. Well, but they don't get that interest if they cancel.

MS. EULER: Right. But if the provider -- this purchaser is thinking about moving that to another account, to another -- transferring it, and then the funeral home wants to know how much is in the account.

MR. OTTO: I think under that rule, I mean, I think, you know, the provider, obviously, would have to -- the new provider would have to know that --

MS. EULER: Right.

MR. OTTO: -- before they accepted it.

But that's different than this.

MS. EULER: No.

MR. McCULLOCH: But those two numbers may not be the same, anyway.

MS. EULER: Because the new provider doesn't have any right to the -- they don't have any interest in this to get that information, but the purchaser does.

MR. McCULLOCH: And those two amounts may not be the same.

MS. EULER: Right.

MR. McCULLOCH: Because by contract, you can say you're going to pay zero.

MS. EULER: Right. Right. I know. But --

MR. McCULLOCH: Poorly written law. Who did this?

MS. EULER: I didn't write this one.

MR. McCULLOCH: Who lobbied for this?

MS. EULER: I don't know. This, again, happened when I was out of the room. Apparently, the Board did.

MR. McCULLOCH: Not this Board.

MS. EULER: Well, nobody else could have done it.

MS. DUNN: Not me.

MR. OTTO: But even if that is what the Board wants, I would say that sentence could be written better.

MS. EULER: Well, Board, I'm looking to see if there is anything. If I recall that there is something in here that says the consumer has the right to request --

MR. McCULLOCH: Page 21.

MR. STALTER: Yeah. Paragraph 13, the last sentence.

MR. McCULLOCH: Yeah. Ninety-four -- ninety-three, ninety-four, ninety-five.

MS. EULER: Including principal and interest. So, I think that under that statutory section, the consumer has a right to know, but I don't see that this rule adds anything that's not already in the statute.

MS. CLARKSTON: The only thing is, it says that the seller -- or the written statement shall be signed by the seller. Is that necessary?

MS. EULER: No. Because it's -- you don't want it signed by the seller, you want it signed by the trust.

MS. BATTAGLER: The trustee is the one -- (inaudible.)

MS. EULER: The trustee is the one who is going to -- now, the seller requests it and provides it.

MR. STALTER: They're talking about the trustee.

MS. EULER: I mean, if I were the consumer, I don't care if it's signed by the seller; I want to see something from the bank. But my question is --

MR. McCULLOCH: It says here the seller shall fund this one.

MS. EULER: Right.

MR. McCULLOCH: So, it doesn't have anything to do with the trustee.

MS. EULER: My question is, is based on the conversation today, does the Board want this as a rule? It doesn't add anything other than the signature by the seller to what's already in the statute.

MR. McCULLOCH: I think the statute stands on its own, unless you want to change -- in some way change this interest thing.

MS. EULER: Board?

MR. McCULLOCH: Does anybody have any ideas on how to get around it?

MR. STALTER: (Inaudible.)

MR. McCULLOCH: No?

MR. STALTER: I don't.

MR. McCULLOCH: Not really?

MR. STALTER: No. I mean, I think the statute states already what's required, so I don't know that the rule adds anything to that.

MS. EULER: That's what I'm thinking, too, but it's not my call. Board?

CHAIRMAN: So, everybody is in agreement legally that it's unnecessary?

MS. EULER: I don't know. I'm not hearing from the Board.

CHAIRMAN: No. I'm talking to legally, not the Board.

MS. EULER: Legally, I don't think this adds anything substantive that is not already in the statute.

MR. REINHARD: Then take it out.

CHAIRMAN: Okay. Somebody make a motion?

MR. REINHARD: Then take it out. Make a motion.

CHAIRMAN: Jim makes the motion to take it out.

MR. McCULLOCH: To get rid of rule #10?

MS. EULER: Yes.

MR. McCULLOCH: I make that motion.

CHAIRMAN: No, you second it.

MS. EULER: Jim beat you to it.

MS. DUNN: So, no emergency rule.

CHAIRMAN: So, Gary?

MR. FRAKER: Yes.

CHAIRMAN: Todd?

MR. MAHN: Yes.

MR. STALTER: Now, can we talk about another issue that is raised in this section that didn't make it here?

MS. EULER: Uh-huh.

MR. STALTER: And that is, you know, why sellers have administrative fees, finance charges, and so forth. We talked about some way of allowing them to, I guess, pull those out before they got to the trust. I mean, you've really got -- what kind of mechanism can they use to -- and if they use that term -- extract their finance charges before the deposits are made to the trust?

MR. McCULLOCH: You don't really have to put in the finance charges, do you?

MR. STALTER: Well, it says -- right now, it just says put all the payments are deposited to the trust. So, I was going to say, let's create some kind of a rule about --

MR. McCULLOCH: So, identify the list of payments that go along with the net cost of the preneed.

MS. EULER: Let's not do that as an emergency rule.

MR. STALTER: Okay.

MS. EULER: But I remember we did talk about it, and that that's something that's -- we are going to need a permanent rule on, and I think it will require more discussion and public input than we have time for tonight. And I don't see it as a real need for an emergency rule.

MR. REINHARD: Well, people are writing contracts, though.

MR. STALTER: Yeah. Like I said, right now, there's a lot of folks supposed to be writing trust-funded, but they don't have trusts in place, so as long as there's some

tolerance about what we do.

UNIDENTIFIED: (Inaudible.)

MS. BATTAGLER: The truth in lending part and those finance charges and everything or administrative fees or whatever are a part of our contract.

MS. EULER: Right.

MS. BATTAGLER: And we're going to be having to deposit all of our finance charges and everything into the trust in the meantime, and not be able to pull any of those out. And it's also going to throw off any examinations, audits, you know, anything like that.

MS. EULER: Well, let's keep that as a -- (inaudible) -- but let's not do it tonight. Board, are you okay with that?

CHAIRMAN: Well, #10 is passed that it is a don't need, so #10 is gone.

MS. EULER: Let's move on to #11.

CHAIRMAN: Go for #11.

MS. EULER: Okay. Eleven. What this intends to do, and you all tell me if it's acceptable or not, is to clarify that a trustee cannot invest in -- well, let me just

give you an example. Bob is a preneed seller. Bob has Bob's Funeral Home. There is another preneed seller in town, we'll call him Joe, but the trustee did not invest in Bob's Funeral Home with Bob a trust because that's too close to the trust, but that there's no prohibition on the trustee making a decision to invest in Joe's Funeral Home even though Joe is a preneed seller. That may not be the best example, but to make clear that the conflict for the trustee is in investing in the same entity in a way that might cloud the judgment. That's my understanding of what this rule is supposed to do. Again, I wasn't in the room when this was being discussed, so I don't know what the Board's intention was. Will somebody clarify that, Board?

MR. McCULLOCH: Again, you don't think the law is clear?

MS. EULER: Well, the -- as I was told what the issue is -- let me find it.

MR. McCULLOCH: So, in 20 -- you're looking in here, 2392?

MS. EULER: Is that this law as written would prohibit the trustee from

investing in any investment that involved any preneed seller or provider, or descendants, siblings, parents, spouses of any preneed seller, not just the seller who was part of that trust. And I don't -- my understanding is the intention of the law is just to prevent self-dealings, and not to prevent the trustee from having to figure out for anything they were going to invest in. Let's say Bob owns --

MR. OTTO: Ford Motor Credit.

MS. EULER: -- Ford Motor Credit. Bob owns Ford Motor Credit, and Bob's dad is a preneed seller.

MR. OTTO: Yeah.

MS. EULER: Does that mean that the trustee can't invest in Ford Motor Credit because Bob is a descendant of --

MR. McCULLOCH: The answer would be no. That's not what they're trying to stop at all.

MS. EULER: Right. And that's what this rule is trying to make clear, that it's not any preneed seller, it's the preneed seller whose trust it is.

MR. OTTO: I have a question. What's the difference between paragraph 1 and 2 in

rule #11?

MR. McCULLOCH: Just added those extra -- (inaudible.)

MS. EULER: That it applies to those who are related to the preneed trust, and does not apply to those who are not related to the preneed trust. So, it's kind of saying red and not red.

MR. OTTO: Okay.

CHAIRMAN: So, does this actually achieve what you were -- this language achieves what you were getting at with Ford Motor Credit and all that?

MS. EULER: I think it does, but I'm not the Board. And I read it with a lawyer's eye, not with a funeral-director's eye. So, that's why I said that was the intention, and I need the Board to tell me if this rule meets that intention.

MR. ZELL: How could the trust invest in Bob's or Jim's or whatever if it's not a prudent investment?

MS. EULER: Ford Motor Credit might be.

MR. ZELL: Ford Motor Credit, but your first example, they couldn't do that.

MS. EULER: Or what if the trust -- the trustee has Jim's account -- Jim's Funeral Home's preneed account, and the trustee says, hey, this STI, that seems like a good risk. I'm going to buy stock with STI as an investment of the trustee. Under the broad reading of this, they couldn't do that because STI is the seller. So, we want to make sure that it's restricted to the self-dealing and -- because that's what the statute wanted to prohibit, is self-dealing. Does that make sense? Jim, does that make sense to you?

MR. REINHARD: Yeah.

MS. EULER: John?

MR. McCULLOCH: Well, I'd keep it on.

MS. EULER: Okay.

CHAIRMAN: Okay. Then make a motion.

MS. EULER: Then make a motion.

MR. REINHARD: I make a motion we keep this one.

MR. McCULLOCH: I don't see any reason for this.

MR. FRAKER: I'll second.

CHAIRMAN: Well, there's a motion and a second.

MR. McCULLOCH: No.

CHAIRMAN: There's a no.

MS. EULER: Jim and Gary vote yes?

CHAIRMAN: Yes.

MR. FRAKER: Second, yes.

MS. EULER: Okay. So, it passes.

MR. REINHARD: And we can always take it out down the road.

MS. EULER: Yes. Okay. The little box here clarifies that the law allows a trustee assistance to keep their independent financial advisor if they had one at the time. And this simply clarifies that that independent financial advisor is an agent of the trustee and is subject to all of the agency provisions contained in the new 436.

CHAIRMAN: Okay. So, do you need a motion on that or just good as it is?

MS. EULER: We need a motion for approval.

CHAIRMAN: Need a motion to approve #11 and a half?

MR. FRAKER: So moved.

MR. REINHARD: Second.

CHAIRMAN: All right. John?

MR. McCULLOCH: I haven't read it yet. What is it saying?

MS. EULER: It says that if a trust has an independent financial advisor, then that independent financial advisor is an agent of the trustee and is subject to the agent oversight by the trustee that's in 436.440.

CHAIRMAN: Go ahead.

MR. McCULLOCH: What are you trying to clarify in the law?

MS. EULER: That the independent financial advisor is an agent of the trustee.

MR. McCULLOCH: Is not or is?

MS. EULER: Is. And is subject to the supervision by the trustee.

CHAIRMAN: And they're your current financial advisor.

MS. EULER: Right.

MR. REINHARD: Right.

MR. McCULLOCH: It's confusing. I don't know.

MR. OTTO: Well, my point is, I don't think that's necessarily the case under Senate Bill 1. I wish that were probably clearer under Senate Bill 1, but I can make the

argument that the way Senate Bill 1 is worded, you're allowed to keep your investment advisor that you had under the old law, and under the old law, that investment advisor reported to the seller, not the trustee.

MS. EULER: And that is not really -- would not be my interpretation of the law. So, that's why we think the Board needs this rule to clarify that.

MR. OTTO: Well, like I said, I think, arguably, this proposed rule goes beyond what the statute provides.

CHAIRMAN: Meaning #11 and a half.

MS. EULER: And I disagree.

MR. OTTO: Eleven and a half.

CHAIRMAN: Because you've got a one and a two, so it's up to you.

MR. McCULLOCH: If you're going to leave it up me, I'd have to read this really close. I don't know. I don't know if I understand. I thought the old -- I thought the trustee was responsible for everything, really.

MS. EULER: Yes.

MR. STALTER: Under the old one, if

you had -- after $250,000, the seller could appoint --

MR. McCULLOCH: He could.

MS. EULER: Right.

MR. OTTO: The seller appointed it, not a trustee.

MR. McCULLOCH: Yeah.

MR. OTTO: So, the seller was responsible for the investment advisor, not the trustee.

MR. McCULLOCH: Because, ultimately, that person has still got to go through the trustee. They can stop it all.

MS. EULER: That's right.

MR. STALTER: But the trustee under the old one was -- it's held harmless. He wasn't -- he didn't have to go look at that.

MS. EULER: No. The trustee was held harmless for the investment decisions, but the trustee still had to maintain control over the trust assets.

MR. STALTER: Well, okay. But we're talking about --

MS. EULER: And under the new Senate Bill 1, the trustee may delegate to an agent

duties and powers. And what we're saying is that if there is an independent financial advisor, that that person may continue to make investment decisions for the trust, but that they are under the direction of the trustee, so that the independent financial advisor can't make decisions that would put the trust in violation of the law, that the trustee can say, no, you have to comply with the law. I'm not going to let you make an investment decision that's not in compliance with provisions of current Chapter 436.

MR. OTTO: That's different than making the -- in my opinion, that's different than making -- what you just said is different than making the independent investment advisor the agent under the trustee.

MS. EULER: Under 436. A preneed trustee may delegate to an agent duties and powers, blah, blah, blah. The trustee shall exercise reasonable care in selecting an agent and establishing the scope and terms of the agency, periodically reviewing the agent's actions in order to monitor the agent's performance and complies with the terms of

agency. An agent owes a duty to the trust to exercise reasonable care, to comply with the terms of the agency, and the agent submits to the jurisdiction of the courts. Delegation of duties and powers to an agent shall not relieve the trustee of any linear responsibility imposed upon the trustee by sections of 436.400, 520, or the trust agreement.

MR. OTTO: But that is separate from the provision that says trusts that have an independent investment advisor prior to August 28th may continue to keep that one.

MS. EULER: That is true.

MR. OTTO: And that section of the prior law allowed the seller to be the one that chooses --

MS. EULER: Could choose the investment advisor, but the investment advisor was still -- could not make decisions that placed the trust out of compliance with law.

MR. OTTO: Then I don't think you need a rule. If your interpretation of the rule was correct -- or the law is correct, you don't need a rule.

MS. EULER: I think we need a rule to clarify that so that everybody understands that, including the trustees.

MR. McCULLOCH: I think this part is clear now, what you just read.

MR. REINHARD: Well, if she thinks we need a rule, and she's an attorney, we've got a motion on the floor. I'm calling the question. If you all want to debate it in the hallway, go out there and debate it.

MS. EULER: Well, Gary and Jim have already voted yes.

MR. FRAKER: We voted yes.

CHAIRMAN: Yes. So, it's you and you.

MR. MAHN: Well, I stepped out for a moment, so I think I'd look silly to vote right now, really. I don't know what we're voting on.

MR. REINHARD: Well, then abstain.

MR. McCULLOCH: Just vote no.

MS. EULER: You can abstain.

MR. MAHN: I abstain.

CHAIRMAN: Okay. It's still two to one.

MS. EULER: Okay. We're done with

group two. Now, just --

CHAIRMAN: I'm glad you abstained. I'm glad you abstained. It was going to tie and I would have had to vote.

MS. EULER: I -- (inaudible) -- #12.

MR. MAHN: Well, it wouldn't have tied. I'd never vote John's way.

(Several people talking simultaneously.)

CHAIRMAN: Oh, sorry. I was about to forget the most important part. I thought we were going to get one more in.

MS. CLARKSTON: Sorry. Number 11. What I was seeing for that was no impact for the Board or licensees, but benefit to clarify?

MS. EULER: Yes.

MS. CLARKSTON: And we can work on the wording of that with a little assistance from legal; that would be good.

CHAIRMAN: Amen.

MS. CLARKSTON: Okay. Eleven and a half, don't see a cost to the Board, don't see a cost to licensees, but I'm a little concerned about small business and --

MS. EULER: What are your concerns?

MS. CLARKSTON: Just hearing comments

back here, if it goes beyond the statute.

MS. EULER: It does not.

MS. CLARKSTON: Okay.

MR. OTTO: Well, one impact to small business would be the lawsuits that are going to ensue, but --

MS. EULER: Who are they going to sue?

MR. OTTO: What?

MS. DUNN: Well, I mean, people could. Do you take into consideration lawsuits?

MR. OTTO: I'm assuming -- I want to hire and fire my investment advisor, and I think I'm allowed to do that under the law. You make them the trustees agents and I lose that.

MS. EULER: I don't think so.

MR. OTTO: And so, the agent of the trustee, I, as a seller, have lost control. I want him to be my agent. I want to be responsible for what I'm doing, investing my money.

MS. EULER: They -- (inaudible.)

MR. ZELL: But they have a contract with a trust.

MS. EULER: Right.

MR. ZELL: You don't have that contract. It's a contract agreement between the trust and the advisor.

MS. EULER: Thank you.

MR. OTTO: But I'm losing that right now.

MR. ZELL: No. If you can --

MR. OTTO: No. No.

MR. ZELL: The trust company can bring three names to you and you get to pick one out, and that might be your best friend.

MR. OTTO: Right now, I have a contract with our investment advisors -- a written contract that says he would spell --

MR. ZELL: (Inaudible.)

MR. OTTO: Yeah. Well, it's gotten better. I've got a guy that does -- charges me for their investment advice.

MR. ZELL: Through the trust?

MR. OTTO: No. We hired him because that's what the current law says.

MR. MAHN: Is this a Board meeting or MFDEA meeting.

MS. EULER: Let's move on.

CHAIRMAN: All right.

MS. EULER: All we need to do is focus -- (inaudible.)

MS. CLARKSTON: I do, and I'm concerned.

MS. EULER: I forgot about that part.

MS. CLARKSTON: Okay. So --

MS. EULER: What are your concerns?

MS. CLARKSTON: I'm listening to this conversation, so I'm hearing that there's a concern or potential for an impact to a small business, whether it be the association other small businesses that they are in contract with an investment advisor, and what happens if they break that contract, is there an impact to them based on this rule, and you're saying no, there's no impact.

MS. EULER: They can hire a new investment advisor, but the new investment advisor is an agent of the trustee. And there is a lawsuit pending that will decide that question. That would be the case of Garrett vs. Cassity, et al.

MR. REINHARD: Well, move on.

CHAIRMAN: So, did you get what you need, or do you need more?

(Several people talking simultaneously.)

MR. REINHARD: Did you get enough, Connie?

MS. RUSSELL: No impact is what I'm hearing.

MS. CLARKSTON: No, I don't, but I understand the urgency to go, so we'll work this out later.

MS. DUNN: Well, the problem is if she doesn't get her answer, we can't do the emergency rule.

(Several people talking simultaneously.)

MR. MAHN: Well, the questions that she asked -- I mean, to be honest with you here, sitting as a Board, I mean -- and I'm trying to be -- think thoughtful of Connie here. I don't have -- you know, I don't have a clue if there's an expense to that or not.

MS. EULER: Well, you're a small-business owner.

MS. CLARKSTON: But with all due -- correct. But with all due respect, if you've got people here that have that answer, I think the intent of the small-business regulatory --

MR. MAHN: But Don don't have the

answers, he's just got the questions that we could sit here all day and listen to.

MS. CLARKSTON: I don't know if I could get you somebody that could tell you.

MR. MAHN: I mean, I'm getting real tired of this, you know.

(Several people talking simultaneously.)

MR. REINHARD: Well, can you get that later from her? That would be --

MR. MAHN: Yeah. I mean, 7:30 in the morning until 8:00 at night.

MR. OTTO: That's fine, but that was my point.

MR. REINHARD: She said she was going to help Connie figure it out.

MR. MAHN: We love you, Connie. I mean, I feel for you, Connie, but --

MR. REINHARD: Do you want to say it again?

MR. MAHN: I feel like we should be giving you an answer, but I don't know --

MS. BATTAGLER: I will get a phone number of somebody that Connie can speak to that could give her information if that could have a major effect, at least on our end. I

don't know about anybody else's.

MR. REINHARD: And what's your name and address?

(Several people talking simultaneously.)

MR. MAHN: There probably is not one thing in here that don't -- couldn't have some sort of an expense. A stamp, an envelope, water, gas, something.

MR. McCULLOCH: Hey, can we go back to this or is that too far out?

CHAIRMAN: That's where we're at, with the impact -- does this impact or something different.

MR. McCULLOCH: Okay. Well, yeah. I think what Don was saying. So, here it goes on to six, it says for trusts in existence, you can continue to do what you're doing. Don is saying this rule contradicts that, which I agree that it does.

MS. EULER: It does not. How? How?

MR. McCULLOCH: Well, you're saying that you can't do this anymore.

MS. EULER: No. You aren't saying you can do that. The financial advisor can help make -- give advice and make investment

decisions, but they are an agent of the trustee. They have always been an agent of the trustee. The independent financial advisor does not absolve the trustee from violations of the law.

MR. McCULLOCH: Now, that's what I always thought, but you didn't agree with that.

MR. STALTER: Yeah. Well, that's as the old 436 was, when you satisfy those requirements, the trustee was no longer responsible for the investment decisions and whatever happened with that.

MS. EULER: For the decision, but not if assets of the trust were invested in a way that violates the law. If they made a bad investment decision --

MR. ZELL: No. (Inaudible) -- over another, then they're not responsible.

MS. EULER: Right.

MR. ZELL: But if they invested in Bob's Pizza Joint, that would violate all the rules, and the trust would be responsible for that.

MS. EULER: That's it, exactly.

MR. ZELL: So, then if the investment

advisor said mutual fund A or B, and one was better than the other, the trust company wasn't responsible for that. But if they did something illegal --

MS. EULER: If they bought in -- (inaudible.)

MR. McCULLOCH: It's not that they did something illegal, it's just as if they did something that they felt wasn't prudent.

MR. ZELL: That they thought -- yeah. It's not prudent, so it's against the rules of the trust.

MR. McCULLOCH: So, the trustee would say wait, wait, I'm not going to accept that.

MR. ZELL: Right.

MR. McCULLOCH: That's how I always thought that worked, but you don't necessarily agree?

MR. STALTER: I don't agree with it. I think that it -- once you put that investment advisor in, you know, the trustee didn't have any oversight with regards to the investment.

MR. McCULLOCH: I see.

CHAIRMAN: Well, it is approved.

MR. McCULLOCH: So, in other words, if they came out and said I want to buy that -- (inaudible.)

MR. STALTER: I want to buy term insurance.

MR. McCULLOCH: -- desert out there and I think it's a great deal because there's going to be a new Las Vegas, do you think the trustee would have had to have done it?

MR. STALTER: I think the trustee, again, depending how their relationship was structured, sometimes they just gave up all control over to the --

MS. EULER: Right. But the trustee is still responsible.

MR. STALTER: That's going to be a key issue in this -- (inaudible.)

MS. EULER: Yeah.

MR. OTTO: And I've lost already, but -- so -- but if -- my point is, if Sharon's interpretation of the law is correct, #11 and a half is not needed. If my interpretation of the law is correct, #11 and a half contradicts 436.

CHAIRMAN: And I guess we'll find out

as we go down the road. So, Connie, are you not totally happy, but you're going to get help.

MS. CLARKSTON: Not totally happy, but we will -- I will make a phone call.

CHAIRMAN: So, #11 and a half is over. Turn the page to #12.

MS. EULER: Okay. Ann has comments.

MS. DUNN: Ann, comments?

MS. WARREN: I have comments on #1, #2, and #3. The most important one really is #3, but I'll just run through them. I think you all have them in front, but #1 talks about collection of administrative fees. I think we were just looking for clarification on what the other fees are. I think that's probably pretty easy to explain. On #2, this talks about submitting the payments.

MS. EULER: Can I interrupt you for a moment?

MS. WARREN: Yeah, you sure may.

MS. EULER: On the other rule about this, we took out the -- well, you know what? This is already covered.

MS. WARREN: It's already covered?

MS. EULER: In the other rule we did.

MS. WARREN: Are you talking about #1?

MS. EULER: I'm talking about #2.

MS. WARREN: Number 2? Yeah.

MS. EULER: Is #1 included?

MS. WARREN: Okay. Are you reading what I have, that this is not the entire agreement that a seller and a provider -- (inaudible.)

MS. EULER: We've already addressed that in another rule, so -- (inaudible.)

MS. WARREN: Okay. So, you're going to delete #2?

(Several people talking simultaneously.)

MR. McCULLOCH: Yeah, I think so.

MS. WARREN: Okay. All right. And then does everybody understand what our issue is? Does everybody have it in front, or do I need to read it?

(Several people talking simultaneously.)

MS. EULER: On #1.

MR. MAHN: Too little, I know that.

CHAIRMAN: Read it.

MS. WARREN: It should not always be upon agreement by the seller and provider, the

insurance company will always, and it's underlined, send the bill for the preneed payment to the consumer who will then send the premium payment to the insurance company. This needs to be rewritten to reflect this. And, again, allowing a third party to have access to that money opens up an opportunity for theft. And then #3, on the overages, paying excess to the named beneficiary is a change from a funeral home in Missouri besides which the statutes do not state that this is required. Why change this? Also, in #3, we're okay with the first part of paying any excess to the State of Missouri if they are named as a beneficiary, however, the second part is a problem since the insurance companies are obligated under a life-insurance policy, the contract, to pay the named beneficiary. We cannot violate that contract, and I think Mark Stahlhuth agreed with this at our last meeting.

MS. EULER: Right.

MS. WARREN: Having the insurance company pay the estate instead of the main beneficiary would require us to violate that

contract, that's placing the company in jeopardy with the named beneficiary potentially having to pay out twice, which won't happen, besides which we do not know when an individual is receiving public assistance, so this cannot be monitored. But I think Sharon has got the answer.

MS. EULER: Well, I have -- yes, I think so.

MS. WARREN: Okay. Shoot.

MS. EULER: On sub 2, that's already covered by what we did in what I've got marked as a #6 rule. The purchaser may make the payments directly to the trustee insurance company or the financial institution. So, I would suggest we remove subparagraph 2.

MS. WARREN: Okay.

MS. EULER: On subparagraph 1, I know there are instances where, like Don mentioned earlier, where Mabel brings her $5.32 down to the funeral home and the funeral home sends it into the insurance company. So, I understand your concern on that, but I don't think all insurance companies do it that way.

MS. WARREN: And you're still on #2?

MS. EULER: I'm on #1.

MS. WARREN: Oh, #1. Okay.

MS. EULER: And if the seller does receive the payments, we need to make sure they send them on to the insurance company.

MS. WARREN: Well, at the end of the day, the insurance companies can only, under the insurance laws, pay who is named in the contract.

MS. EULER: Right.

MS. WARREN: So, we can write all we want in this, and it's -- (inaudible) -- and Mark Stahlhuth agreed with that, and he -- (inaudible.)

MS. EULER: Right. But if the seller gets the money from Mabel, the seller needs to send it on to the insurance company.

MS. WARREN: Oh, you mean on the premium?

MS. EULER: On the premium.

MS. WARREN: Okay. So, you're back to the premium.

MS. EULER: I'm on #1.

MS. WARREN: Okay. (Inaudible.) Okay.

MS. EULER: I'm on #1.

MS. WARREN: Okay.

MS. EULER: So, if Mabel brings her money into the funeral home, the funeral home needs to send that money on to the insurance company.

MS. WARREN: Right. So, that would be the insurer's designee, the agent.

MS. EULER: We're not saying that that's what we want them to do or recommend they do, but if that happens.

MS. WARREN: Right. If they end up with the money, they have to give it to the insurance company.

MS. EULER: Right. They don't get to keep it.

MS. WARREN: But, typically, there is a premium payment that's billed directly to --

MS. EULER: Right.

MS. WARREN: -- the consumer?

MS. EULER: Right. But we have Mabel will get her bill from the insurance company and bring her check and take it down to Jim because that's where she bought her premium.

MS. WARREN: And what you want to do is make sure that Jim turns around and gets

that to the insurance company right away.

MS. EULER: Right. Right.

MS. WARREN: And there's nothing wrong with that.

MS. EULER: Right. So, Jim is going to stick it in the envelop, put a stamp on it, put it in the mail.

MS. WARREN: Okay.

MS. EULER: Okay. On #3.

(Several people talking simultaneously.)

MR. McCULLOCH: Now, wait a minute. Can I ask a question here?

MS. EULER: Yeah.

MR. McCULLOCH: Okay. Explain what this means here where it says insurer's designee do not include administrative or other fees. Why is that in there?

MS. RUSSELL: (Inaudible.)

MS. EULER: So that if you collect -- if the seller collects the $2 reporting fee, that you don't have to send that to the insurance company.

MS. RUSSELL: Exactly.

MS. BATTAGLER: (Inaudible.)

MR. McCULLOCH: Okay. So, that kind

of goes back to the deal we were talking about --

MS. BATTAGLER: Thank you.

MR. McCULLOCH: Thank you. -- because why can't we just keep -- sorry. Why can't we keep all our finance charges then? Why does the insurance people get to distract -- take all those things out when we can't?

MS. EULER: I don't think anybody has said you can't. I think what you said is -- (inaudible.)

MR. McCULLOCH: We were arguing awful hard and you made us table it.

MS. EULER: And I'm saying, let's talk about that some other time other than right now.

MR. McCULLOCH: Okay.

MS. EULER: Okay.

MR. McCULLOCH: And we won't forget.

MS. WARREN: Now, on #2, you're taking #2 out --

MS. EULER: Yes.

MS. WARREN: -- because of the issue that there may or may not be a contract --

MS. EULER: No. Because we've already

got it in the other rule.

MS. WARREN: Okay. And what does it say in the other rule? What number is it?

MS. EULER: Number 6.

MS. WARREN: Number 6. Number 2.

MS. EULER: Just giving people the option to do that for all the trustee. If the insurance company says you have to send your payments to us, they can do that.

MS. WARREN: Okay. So, they pay some -- so, what you -- what the Board is wanting when there is an insurance premium, it does go directly to the insurance company?

MS. EULER: Yes. Yes.

MS. WARREN: (Inaudible.)

CHAIRMAN: I want to mention something now. Just -- it follows Don's comment to some extent. But I have a little lady that brings her -- she gets her premium notice. She does not have a checking account. I mean, she is living in 100 years ago. She would not have a bank checking account. She comes to the funeral home and gives me the thing in cash so I can mail it in for her because, otherwise, she has to go buy a money order.

MR. REINHARD: And a stamp.

CHAIRMAN: And a stamp and the envelope and everything else.

MS. RUSSELL: Exactly. That happens all the time.

CHAIRMAN: So, I mean --

MR. MAHN: You're going to mail it in for her just like you always did.

CHAIRMAN: That's right.

MR. MAHN: You're the chairman.

CHAIRMAN: I am. I buy the pizza, too.

MR. MAHN: That's right. Amen.

MS. WARREN: So, it takes out people being able to make agreements. That's why you're taking out #2?

MS. EULER: Right.

MS. WARREN: Everybody knows what they're supposed to do.

MR. MAHN: Doesn't she realize this all really doesn't matter?

MS. EULER: Right.

CHAIRMAN: Just do what you're supposed to do.

MS. WARREN: Do the right thing.

CHAIRMAN: Do the right thing. There

you go.

MS. EULER: And on #3, this is not drafted as clearly as it could be because nobody is asking that the insurance company pay the overage to the State or to a stated beneficiary, but that the seller pays the overage. So, if the seller is the named beneficiary, then the seller's obligation is to pay to the estate or to the State of Missouri if there's a public-assistance case. So, we can clarify that.

MS. WARREN: Wonderful.

MR. STALTER: Are you making a distinction between guaranteed and nonguaranteed on that, though?

MS. RUSSELL: Yes. I was just going to raise that question.

MS. EULER: It's under the contract.

MR. STALTER: How so in the contract?

(Several people talking simultaneously.)

MS. RUSSELL: He's saying if there was -- it says under #3, for any overages under a nonguaranteed has to be inserted because the statute says nonguaranteed overages have to go back. Only on a nonguaranteed contract.

MR. STALTER: Yeah.

MS. RUSSELL: Yes. And may I suggest #3 be stricken because you'll need to do that for the trust if you do it for insurance?

MR. STALTER: Oh, come on.

MS. RUSSELL: No.

MS. EULER: It is the law.

MS. RUSSELL: It is -- #3 is the same should be done for the trust, and then you've got to tell the trust what they have to do with the overages because --

MS. EULER: That's right, because that's just not insurance.

MS. RUSSELL: Yeah. It's not just insurance, so I suggest #3 be knocked out.

CHAIRMAN: Actually, I think it's a great idea to put -- make sure they're all in the trust and in the joint accounts and in everything else because we don't know how many times we've dealt with this where people are -- goof.

MS. EULER: Well, we need this just to be a general rule.

MS. RUSSELL: A general rule, yes.

MS. EULER: And not --

MR. STALTER: And not a guaranteed one.

MS. RUSSELL: A nonguaranteed; correct.

MR. STALTER: Okay. I don't have a problem with that.

MS. EULER: Nonguaranteed, yes.

MS. RUSSELL: Nonguaranteed, because that's what the law is now.

MS. EULER: I will work on putting something together that will make this whole -- fix this whole thing and may make John happy.

MR. McCULLOCH: Hey, I've got one other thing here.

MS. RUSSELL: Uh-oh.

MR. McCULLOCH: Back on #1, about the fees and things. Well, if you look on page 23, line 9, middle of the line there, a seller shall not receive or collect any administrative or other fees from a purchaser connected with an insurance-funded preneed contract. What does that mean?

MS. EULER: Except for any amount required or authorized by this chapter or by rule. That means that the -- if you have an insurance-funded preneed contract, you can

only collect from the consumer what's required to pay the premiums on the insurance policy and any fees imposed by the Board or by other statute. You can't come up with your own fees.

MS. RUSSELL: That's the annual reporting fees to allow the people that sell insurance contracts to also be able to pass that on to their consumers for the $36.

MR. OTTO: There was a couple people that were charging, like, $100 processing fee to do insurance.

MS. EULER: Uh-huh.

MS. RUSSELL: Not ours.

MS. EULER: And there were -- or maybe still are other people who, if you're over the age of 60, charge you a processing fee, and if you're under the age of 60, do not.

MS. RUSSELL: Really?

MS. CLARKSTON: So, Sharon, what's the distinction in between?

(Several people talking simultaneously.)

MS. RUSSELL: That's where that came from then.

MS. CLARKSTON: Sharon, what is then on line 9 through 12, that next sentence?

MS. EULER: Uh-huh. Well, I think that -- I don't know. We'll have to figure that out.

MR. ZELL: What was the question?

MR. McCULLOCH: Need to read 9 through 12.

MS. EULER: Yeah.

MR. REINHARD: That's it. Stir the peanut gallery up. Get them all fired up.

MS. DUNN: What page, Sharon?

MS. EULER: Twenty-three.

(Several people talking simultaneously.)

MR. MAHN: I thought we were already through that. Are we going back? It's all together different when you live here, isn't it? You wait till we have a meeting in Festus.

MS. RUSSELL: What page did you say, John?

MR. McCULLOCH: Twenty-three.

MS. EULER: You live here tonight.

MR. MAHN: I'm here.

(Several people talking simultaneously.)

MS. EULER: I would request from the Board that you give me and Earl a chance to look at this more closely and come back to the

Board with another proposed rule, not tonight.

MR. McCULLOCH: Okay.

MR. MAHN: Amen.

MR. McCULLOCH: That's fine.

MS. EULER: And, John, I'll see if we can make you happy.

MR. REINHARD: I make a motion our meeting is over.

MR. MAHN: Second.

MS. DUNN: And, Sharon, how do we bring that back?

MS. EULER: We will figure that out.

MS. DUNN: Okay.

MS. EULER: We won't do it this week. We may not do it next week, but maybe -- I don't know.

MR. REINHARD: Can't we schedule two days next week when we get --

MS. DUNN: Well, I mean, I can -- I've got a meeting scheduled for next week.

MR. REINHARD: Well, let's just do it. I mean, these guys are all -- everybody is wore out.

MS. EULER: We are done with group two.

CHAIRMAN: So, that's just a redo.

MR. ZELL: Well, thanks, everybody, it's been fun.

MS. DUNN: Thanks, Steve.

MS. EULER: So, if you want to --

UNIDENTIFIED: Was there a motion on that?

MS. EULER: So, if you want to do a public meeting by next week --

UNIDENTIFIED: Was there a motion?

MR. REINHARD: (Inaudible.)

MS. EULER: No.

CHAIRMAN: She was just going to redo it.

UNIDENTIFIED: No motion.

MS. EULER: I'm going to look at it. I'm going to work on it.

UNIDENTIFIED: Just redo.

MS. EULER: If you want to do a public meeting next week, Earl can be here or I can be here by phone.
I'm not available to come to the meeting.

MS. DUNN: So, like, what does this do to our process?

MS. EULER: Well, it is what it is. Based on what Connie said earlier, we're not

going to be able to get all of these emergency rules filed on Friday anyway. So, Connie, does it matter if it's next Wednesday when the Board finally approves? We've got three rules we can go forward with, the ones the Board has approved thus far.

MS. CLARKSTON: Okay. Let me ask this question: Do we have everything approved that is going to be urgent, like, first on the list?

MS. EULER: Yes.

MS. CLARKSTON: Okay. With that said, then, yes, I think we have everything we need tonight to be able to move those through first. If we're not doing them all in a complete packet.

MS. DUNN: Well, I guess I would ask before we depart today if you would look through group three just rather quickly to see if you see anything.

CHAIRMAN: We already took one of them out.

MS. DUNN: I mean --

UNIDENTIFIED: Which one did you take out, the very first one?

CHAIRMAN: The first one. The first

one is not emergency.

UNIDENTIFIED: (Inaudible.)

MS. DUNN: Right. I mean, we're making a decision that we're going to wait on all of group three.

MS. EULER: For a week.

MS. DUNN: A week.

MS. EULER: So, fees are in group three, we need to do that.

MS. DUNN: Oh, yes.

UNIDENTIFIED: (Inaudible.)

MR. REINHARD: I think you need to add some more to them.

MS. CLARKSTON: You know, on these fiscal notes -- (inaudible) -- it does not add anything.

MS. EULER: Did the Board -- the Board approved these.

MS. CLARKSTON: Creating me more work.

CHAIRMAN: We approved those.

MS. EULER: They approved those.

CHAIRMAN: But this other group of everything, we have not.

MS. DUNN: No. Some of that is all ready.

MS. EULER: But there is no reason to change any of these others, is there?

MR. STALTER: You mean, for pure urgency?

CHAIRMAN: I would think not. Honestly, I would think not.

MS. EULER: So, I think that we just need to fill in the blanks with what we can, and the Board has already approved that.

(Several people talking simultaneously.)

MS. DUNN: Okay. So, the Board said no --

CHAIRMAN: No, not emergency on that first one.

MS. DUNN: Right. Okay.

CHAIRMAN: And that's it. That's all we did. And, now, she's looking at the fees.

MS. DUNN: Okay.

CHAIRMAN: Page 8.

MS. DUNN: So, we need to do the fees.

CHAIRMAN: But we -- the parts that's not done, we've already done from up there.

MS. DUNN: Okay.

CHAIRMAN: So, it just would be --

MS. EULER: Seller, $200.

CHAIRMAN: She asked the question, there would be no reason that we would need to change any of the others, is there?

MS. DUNN: Right.

MS. EULER: This could be --

MR. OTTO: You do need to add another category under there, though.

MS. EULER: Right.

MR. OTTO: Because you've got provider nonestablishment and provider establishment.

MS. EULER: Right. Right. But the Board has already approved those. So, we have one, two, three, four, five, six -- seven rules.

(Several people talking simultaneously.)

MS. DUNN: Do we need a count to vote on the amended fee for seller and amended fee for provider? I don't see it.

MS. EULER: Do you want an amended fee for seller and an amended fee for provider?

MS. DUNN: Well, it's in the current -- it's currently a fee we have, and I feel that the Board needs to vote on that.

MS. EULER: Well, there's an amended establishment fee.

MS. DUNN: That's not it.

MS. EULER: Okay.

MS. DUNN: I need an amended provider --

MS. EULER: I thought we were just going to do our change-of-address form.

MS. DUNN: What about a corporation?

MS. EULER: What about them?

MS. DUNN: No limits.

MS. EULER: No limits?

MS. DUNN: No limits.

MS. EULER: No. We were just going to do a change-of-address form.

MS. CLARKSTON: We have to know how to set this -- (inaudible.) Sorry.

MR. OTTO: Shall we break out the karaoke machine?

MR. REINHARD: Yes.

MS. EULER: Love me tender --

MR. REINHARD: You had to bring it up, didn't you?

(Several people talking simultaneously.)

MS. DUNN: At least you laugh.

MR. REINHARD: You've been laughing at it all day. Hell, he thinks we're nuts anyway.

MS. EULER: Well, the -- plus, if the Board finalizes these rules on Tuesday, how long will it -- will you have the other rules ready to go on Tuesday?

MS. CLARKSTON: Sure.

MS. EULER: Sure.

MS. DUNN: Well, Connie, the thing about what you said is -- and I think we need to make sure to clarify this -- it goes to the Division, the Department --

MS. CLARKSTON: She asked if I would have them ready.

MS. DUNN: Oh.

MS. CLARKSTON: She didn't get to the other -- I can only control what I'm over. The rest of it is up to somebody else.

CHAIRMAN: Yes, sir?

MR. OTTO: If I might say, if there's one rule that you can possibly try to submit on Friday -- just one -- just the one -- just one single one -- it's the one that you just rewrote that says you can use your contracts.

MS. RUSSELL: Yeah.

MR. STALTER: Yeah.

MR. OTTO: I mean, if that's the only

one you submit on Friday, that would be the one I'd suggest.

MS. RUSSELL: I think notice of intent to apply. Their notice of intent to apply, they have to have that.

MR. OTTO: Yeah. Good point. And the notice of intent to apply.

MS. EULER: Well, I'm sure that Connie will use her best efforts to get the rules through the process as expediently as possible.

MS. CLARKSTON: Yes, she will.

MS. EULER: I'll sing in your ear, too, if you would like.

MS. CLARKSTON: Please do not.

MS. EULER: I take requests.

MS. CLARKSTON: The request is don't sing in my ear.

MS. EULER: Okay. Is there anything else in the group-three rules that we absolutely have to do tonight, or can they wait?

CHAIRMAN: So, should -- can we -- this fee thing, is it really difficult?

MS. EULER: No. We've already approved it.

CHAIRMAN: I mean, is it really something --

MS. EULER: I've got it on my approved list.

CHAIRMAN: Okay. But we didn't go through the deal.

UNIDENTIFIED: To vote on it.

CHAIRMAN: Well, we did that, but we didn't all these others.

MS. EULER: Oh, okay. Well, does somebody want to make a motion to approve?

CHAIRMAN: Somebody make a motion to approve.

MR. FRAKER: I make a motion to approve.

CHAIRMAN: Gary makes the motion. Second?

MR. MAHN: Second.

CHAIRMAN: Second, Todd. Jim?

MR. REINHARD: No.

CHAIRMAN: John?

MR. REINHARD: I'm walking out of here with my life.

CHAIRMAN: That got everybody's attention. What's going on? What's the

matter? What's --

MR. REINHARD: I'm not going to be shot at the next time a funeral director sees me and is going to shoot me.

MS. EULER: And this includes a finding of competent and substantial evidence to support the need for the rule?

CHAIRMAN: Absolutely, it does.

MR. McCULLOCH: (Inaudible) -- approval of emergency rules.

MR. REINHARD: Yeah. No, I vote yes.

(Several people talking simultaneously.)

MR. REINHARD: I can change the vote. Yes.

MR. McCULLOCH: I was going to vote with you.

MS. EULER: Okay.

CHAIRMAN: Okay. So, fees are approved. Does that have any -- is there any impact to business, on fees?

MS. RUSSELL: Oh, my gosh, yes.

MS. BATTAGLER: Yes.

MS. DUNN: So, does that mean that every fee in this rule, we have to go through and say funeral establishments, funeral

directors?

MS. RUSSELL: Oh, my word.

MS. CLARKSTON: Which means the fiscal notes, small-business statement --

MS. BATTAGLER: But don't you have that on your sheet that you gave?

MS. CLARKSTON: I do, but there's other forms that are bigger than that sheet.

MS. RUSSELL: She's starting to do gestures -- (inaudible.) You better watch those -- (inaudible.)

MS. CLARKSTON: I'm trying to maintain myself, although it's not an easy process.

CHAIRMAN: So, do you need any help with that one, or is that pretty --

MS. CLARKSTON: I think I've got that one pretty much nailed.

CHAIRMAN: You think you can cover that one?

MS. CLARKSTON: Yeah. I think I can take that one.

CHAIRMAN: Okay. So, you have two rules of group three done, so --

MS. EULER: We have -- yeah.

CHAIRMAN: The first one is nothing

and --

MS. EULER: Do you want to do another 35 minutes and see what you can get done in 35 minutes?

MR. MAHN: Let's go home.

MS. EULER: Connie wants to do algebra.

MS. CLARKSTON: No. I've got budget to submit tonight.

MS. EULER: Okay. All right.

MR. MAHN: I want to back up 35 minutes and go home and leave then.

MS. EULER: So, which day next week -- (inaudible.)

MS. DUNN: For the public?

MS. EULER: Uh-huh.

MS. DUNN: Let's see. I want to make sure I check this this time. Okay. September 2nd.

MS. EULER: Wednesday.

MS. DUNN: Okay. So, September 2nd, Wednesday, for the public at 9:00 a.m. For the Board in closed at 7:30 a.m., so that means you will have hotel reservations on the evening of September 1st.

MS. EULER: And if you need me, I can

be here by phone.

MS. DUNN: By phone.

MR. MAHN: Are we going to meet on Wednesday, too.

MS. RUSSELL: You'll be here on the 2nd, though; right, Sharon?

MS. EULER: No.

MS. RUSSELL: Then we better figure out how we get this finished.

MR. MAHN: Why not on Monday night?

MS. EULER: I can call in.

(Several people talking simultaneously.)

MR. OTTO: Everyone is going to be in St. Louis on the 1st; right?

MR. MAHN: What's on the 1st in St. Louis?

MR. OTTO: Randy Sutton's pretrial.

MR. REINHARD: Oh, yeah. Are you going to it, Don?

MR. OTTO: Oh, yeah.

MS. EULER: Okay. All right.

MR. MAHN: What time is that?

CHAIRMAN: Is there anything else we need to do?

MS. DUNN: Is there any other business

for open session?

CHAIRMAN: Anything else?

MR. OTTO: Do you want me to say my thing?

MS. DUNN: What?

MR. OTTO: About Hawthorn Bank?

MS. DUNN: Oh, go ahead, for the record.

MR. OTTO: For the record, we're getting a couple of -- and I will send -- these people, I don't think, maybe want their names in open record because it might wind up in a complaint. I don't know. But I think Becky mentioned last time that Hawthorne Bank that was the trustee for Capital Reserve and then its successor, SNL, has said they're not going to be a trustee anymore. We've gotten reports from funeral homes that are being told by, apparently, the attorney for SNL that they cannot roll that money out to another trustee, that they can't do that even though the funeral home was the seller on those. And with permission from the funeral homes involved, I will send that material to Becky.

MS. DUNN: Okay.

MS. EULER: You may also want to send that that information to the Division of Finance.

MR. OTTO: Yeah.

CHAIRMAN: Thank you all for coming and being a part of this. I know it's hard and grueling. And, Connie, thank you very, very, very, very much. And, Ms. Court Reporter, thank you for all that you have done, sticking with us.

(Off the record)

I, Kristy B. Bradshaw, a Certified Court Reporter in the State of Missouri, do hereby certify that the foregoing transcript constitutes a full, true and correct record of said proceedings that were held on August 25, 2009; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 1st day of October, 2009.

Kristy B. Bradshaw

KRISTY B. BRADSHAW, CCR

August 25

Board Meeting Addendum Working Documents

Date
Rules for Group 1
Group 3 Rules draft A
Group 2 rules draft C
Emergency Rules for Group 1
Public Comments
Date
Bill Stalter Group 2 Comments
Greg and Darlene Russell comments
Homesteaders Life Comments

August 25

Board Meeting Addendum Working Documents

Rules for Group 1

Rules for Group 1 following 8-5-09 meeting

- These 2 rules are extracted from Group 1 for Regular Rules not Emergency.
- If the Board has approved the rule to go forward, the word **APPROVED** appears before the rule. The approved rule is found on **page 2**. The rule still needing approval is found on **page 3**.
- The emergency rules from Group 1 appear in a separate document.

APPROVED

Rule: Payment is not determining factor of "practice of funeral directing"

Title: Practice of funeral directing; payment not determining factor

Purpose: This rule explains that the receiving of payment for providing funeral services is not the determining factor in identifying the practice of funeral directing.

(1) In determining whether a person, pursuant to 333.011(6), is engaging in the practice of funeral directing pursuant to 333.011(8), the Board shall consider all activities listed in 333.011(8).
(2) Receipt of payment by any person for any or all services provided pursuant to this Chapter or Chapter 436, RSMo shall not be the determining factor in determining whether the person is engaging in the practice of funeral directing.

Authorized by: 333.340 and 333.011(8)

Rule: Corporation must be represented by an attorney

Title: Practice by a licensed attorney

Purpose: This rule states when and how a party must be represented by a licensed attorney in a matter involving a licensee or applicant of the Missouri State Board of Embalmers and Funeral Directors.

(1) All licensees may be represented before the board by an attorney. If the licensee desires to be represented by an attorney, the attorney shall be licensed to practice law in Missouri or meet the requirements of the Supreme Court with respect to nonresident attorneys.
(2) Any individual may present that individual's own case without a licensed attorney in a before the Missouri State Board of Embalmers and Funeral Directors in which the individual is contesting a decision of the Missouri State Board of Embalmers and Funeral Directors.
(3) Any individual may file an initial complaint on behalf of another person, including a corporation or other legal entity in a matter involving a licensee or applicant of the Missouri State Board of Embalmers and Funeral Directors but any and all proceedings and filings following the filing of the initial complaint shall be conducted by a licensed attorney.
(4) Except as set forth in section (3) of this rule, only a licensed attorney may represent any other person, including a corporation or other legal entity in matters before the Board. The filing of any document in a matter involving a licensee or applicant of the Missouri State Board of Embalmers and Funeral Directors by a licensed attorney, unless stated otherwise therein, shall be deemed an entry of appearance. An attorney not authorized to practice in Missouri shall enter an appearance in accordance with Missouri Supreme Court Rules.
(5) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.
(6) All documents filed with the board shall become a part of its permanent files.

Authorized by: 333.340 and 333.011(6)

RESCIND current rule 20 CSR 2120-2.050

August 25

Board Meeting Addendum Working Documents

Group 3 Rules draft A

Group 3 Rules

Rule re: Requirements for Written Notice

Title: Requirements for Written Notification to the Board

Purpose: This rule details the requirements for written notification to the Board.

All written notice as required by Chapter 333, Sections 436.400 to 436.520 or any rule properly promulgated pursuant to Chapter 333 and Sections 436.400 to 436.520 shall include:

(1) The name of the seller and, if applicable the seller's agent;
(2) The current business address and telephone number of the seller and, if applicable the seller's agent;
(3) The license number of the seller and, if applicable, the registration number of the seller's agent;
(4) The name of the provider;
(5) The current business address and telephone number of the provider;
(6) The license number of the provider;
(7) The name of the purchaser;
(8) The current address and if available, the telephone number of the purchaser;
(9) The date the written notice was executed;
(10) The signatures of all parties necessary to the particular requirement for written notice.

Authority: 333.340, 436.456

Rule re: What is irrevocable in an irrevocable contract

Title: Irrevocable contracts

Purpose: This rule states what portion of an irrevocable contract is irrevocable and what is revocable.

(1) In any irrevocable preneed contract, the following portions of the contract shall be irrevocable and not cancellable under any circumstances:
    a. The funds provided by the purchaser to support the preneed contract; and
    b. The disposition of the funds.
(2) Any other portion of an irrevocable contract can be cancelled upon agreement of the parties and written notice provided to the Board.

Authority: 333.340 and 436.456

Rule re: Disposition of funds upon cancellation

Title: Disposition of funds in a trust-funded contract upon cancellation

Purpose: This rule explains the disposition of funds in a trust-funded contract upon cancellation by the parties.

(1) When a purchaser elects to cancel a trust-funded preneed contract upon proper notice, the trustee shall distribute:
    a. The principal of the trust, including all payments received; and
    b. Any funds extracted from the principal pursuant to § 436.430.4, RSMo.
(2) The trustee shall not distribute the origination fee extracted from the trust principal pursuant to § 436.430.3, RSMo.

Authority: 333.340 and 436.456

Rule re: Seller cancellation of contracts

Title: Seller cancellation of contracts

Purpose: This rule explains the requirements of a seller upon cancellation of a preneed contract.

(1) The provisions of Section 436.457, RSMo allowing a seller to cancel a contract shall apply only to joint account and trust-funded contracts.
(2) Cancellation of insurance funded contracts shall be governed by the contract and insurance policy.
(3) The provisions of Section 436.457, RSMo do not limit a seller's right to discontinue providing services pursuant to Sections 436.458 and 436.500, RSMo.

Authority: 333.340 and 436.457

ALTERNATIVE A: Rule re: Seller requirements upon change of provider

Title: Seller requirements for disposition of funds if elect to terminate duties under contract upon change of provider.

Purpose: This rule describes a seller's requirements for disposition of funds if the seller elects to terminate his or her duties upon a change of provider.

(1) In the case of a trust-funded contract, upon written notification to the seller by the purchaser of the purchaser's intent to select an alternative provider, the seller shall elect to either continue under the new provider or terminate his or her duties under the agreement.
(2) If the seller elects to terminate his or her duties under the new provider, the seller shall pay to the new trust under the new provider all of the trust property including principal and income and all funds extracted pursuant to §§ 436.430.3 and 436.430.4, RSMo.

Authority: 333.340 and 436.458

ALTERNATIVE B: Rule re: Seller requirements upon change of provider

Title: Seller requirements for disposition of funds if elect to terminate duties under contract upon change of provider.

Purpose: This rule describes a seller's requirements for disposition of funds if the seller elects to terminate his or her duties upon a change of provider.
Authority 333.340 and 436.458

(1) In the case of a trust-funded contract, upon written notification to the seller by the purchaser of the purchaser's intent to select an alternative provider, the seller shall elect to either continue under the new provider or terminate his or her duties under the agreement.
(2) If the seller elects to terminate his or her duties under the new provider, the seller shall pay to the new trust under the new provider all of the trust property including principal and income but excluding all funds extracted pursuant to §§ 436.430.3 and 436.430.4, RSMo.

Authority: 333.340 and 436.458

Rule re: Requirements of seller annual reports

Title: Requirements for seller's annual reports.

Purpose: This rule clarifies the requirements for a seller's annual report.

(1) Every seller of preneed contracts shall file an annual report on a form prescribed by the Board;
(2) The report shall identify, by a number assigned to the contract, each and every contract sold since the last annual report. Only one number shall be assigned to each contract and no number shall be used more than once.
(3) Each annual report shall contain written consent authorizing the Board to conduct an investigation into the trust account. The investigation shall include, but not be limited to: a review of all financial statements, documents, books and records related to the trust; a review of all correspondence by or with the seller, provider, purchaser, seller's agent, trustee, and any other individuals authorized by law or statute;
(4) The report shall contain a notarized certification as to its accuracy;
(5) The report shall contain a list, including the name, address, contract number and funding mechanism of all Missouri preneed contracts fulfilled, cancelled or transferred during the prior calendar year;
(6) The report shall contain the name, business address and telephone number of the financial institution maintaining the trust account as well as the name, business address and telephone number of the trust manager or corporate contact;
(7) The report shall contain the trust fund balance reported on the previous year's report, or if the seller has never filed a report, the value of the trust according to the financial institution's report on October 31 of the previous year;
(8) The report shall contain the current trust fund balance. The current trust fund balance shall be the balance on a date no more than 10 business days prior to the date the seller files the report with the Board;
(9) The report shall contain all contributions made to the principal since the previous report. Each contribution shall be listed separately by date;
(10) For contracts funded by a joint account, the report shall include the amount on deposit in each joint account;
(11) For contracts funded by insurance, the report shall include the total face value of each policy and the status of each policy. The status should be identified as full-paid, receiving payments, lapsed, or other reference to accurately describe the state of the insurance-funded contract.
(12) If a seller fails to file an annual report on or before the October 31, 2009, the seller's license shall be automatically suspended on November 1, 2009 until such time as the seller submits the report and pays all applicable fees.

During a suspension of the seller's license, all the seller's contracts shall still be valid contracts.

(13) Section 436.460, RSMo shall apply to all contracts entered into before August 28, 2009 and all contracts entered into on or after August 28, 2009.

Authority: 333.340 and 436.460

Rule re: Fees

Title: Fees pursuant to Chapter 333 and Sections 436.400 to 436.520

Purpose: This rule sets out all fees contained in Chapter 333 and Sections 436.400 to 436.520.

(1) The following fees hereby are established by the State Board of Embalmers and Funeral Directors:

(A) Embalmer Practicum Student Registration Fee	$25
(B) Embalmer Application Fee	$200
(C) Embalmer Oral Examination Fee	$125
(D) Embalmer Reciprocity Application Fee	$300
(E) Embalmer Biennial Renewal Fee	$200
(F) Funeral Director Application Fee	$200
(G) Funeral Director Limited License Application Fee	$200
(H) Funeral Director Reciprocity Application Fee	$300
(I) Funeral Director Biennial Renewal Fee	$200
(J) Reactivation Fee (up to one year lapse)	$100
(K) Reactivation Fee (up to two year lapse)	$200
(L) Establishment Application Fee	$300
(M) Amended Establishment Application Fee	$25
(N) Establishment Biennial Renewal Fee	$250
(O) Reciprocity Certification Fee	$10
(P) Duplicate Wallhanging Fee	$10
(Q) Collection Fee for Bad Checks	$25
(R) Law Book Requests (after initial request)	$5
(S) Examination Review Fee	$25
(T) Background Check Fee (determined by MSHP)	$
(U) Provider License Application Fee	$
(V) Provider Biennial Renewal Fee	$
(W) Seller License Application Fee	$
(X) Seller Biennial Renewal Fee	$
(Y) Seller Agent Registration Fee	$
(Z) Seller Agent Biennial Registration Renewal Fee	$
(AA) Seller Annual Report Fee	$
(BB) Seller Annual Report Late Fee	$
(CC) Seller Agent Law Examination Fee	$

(2) All fees are nonrefundable.

(3) The provisions of this rule hereby are declared severable. If any fee fixed by this rule is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions of this rule shall

remain in full force, unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission

Authority: 333.340

RESCIND 20 CSR 2120-2.100

Rule re: Record retention

Title: Seller record retention requirements

Purpose: This rule defines the requirements for maintaining records for preneed sellers.

(1) All preneed sellers shall maintain adequate records of all preneed contracts and related agreements with providers, trustees, financial institutions and seller's agents.
(2) The records shall be maintained within the State of Missouri in a format that is readily and easily accessible to the Board and its investigators.
(3) The records shall be maintained in a manner that will prevent decay or degradation such that the records can be preserved over time.
(4) Records can be maintained in hard copy or electronically but all must be readily accessible.
(5) All records must be readily capable of being copied.
(6) Sellers who maintain electronic records shall make hard copies of the records available to providers, trustees, purchasers, agents or the Board upon request.
(7) Records may be removed by the seller from the State of Missouri but only after a written request is made and written approval is provided by the Board.

Authority: 333.340 and 436.465

Rule re: Provider ceasing business

Title: Requirements of provider ceasing business

Purpose: This rule sets out requirements for a provider who ceases providing under preneed contracts.

(1) If a provider of a preneed contract ceases doing business, the provider shall make all reasonable good faith efforts to find a new provider to serve under all existing contracts.
(2) If a provider is unable to find any new providers to serve under the provider's existing contracts, the provider shall, no later than 30 business days before the provider winds up his business:
    a. Provide written notice to the seller, seller's agent, purchaser, and Board that despite good faith efforts replacement providers could not be found;
    b. In the case of trust-funded contracts, provide written notice to the trustee and/or corporate contact that the provider is winding up his business and no replacement provider was found;
    c. In the case of insurance contracts, provide written notice to the insurance company and/or corporate contact that the provider is winding up his business and no replacement provider was found;
    d. In the case of joint account funded contracts, provide written notice to the financial institution and/or corporate contract that the provider is winding up his business and no replacement provider was found.
    e. Provide written notice to the purchaser of their right to obtain a new provider.
(3) The provider shall provide written notice consistent with the rules promulgated pursuant to Sections 436.400 to 436.520, RSMo.

Authority: 333.340 and 436.490

Rule re: Seller ceasing business

Title: Requirements of a seller ceasing business

Purpose: This rule sets out requirements for a seller ceasing business under preneed contracts.

(1) If a seller of a preneed contract ceases doing business, the seller shall make all reasonable good faith efforts to find a new seller to serve under all existing contracts.
(2) If a seller is unable to find any new sellers to serve under the seller's existing contracts, the seller shall, no later than 30 business days before the seller winds up his business:
    a. Provide written notice to the provider, seller's agent, purchaser, and Board that despite good faith efforts replacement sellers could not be found;
    b. In the case of trust-funded contracts, provide written notice to the trustee and/or corporate contact that the seller is winding up his business and no replacement seller was found;
    c.In the case of insurance contracts, provide written notice to the insurance company and/or corporate contact that the seller is winding up his business and no replacement seller was found;
    d. In the case of joint account funded contracts, provide written notice to the financial institution and/or corporate contact that the seller is winding up his business and no replacement seller was found.
(3) The seller shall provide written notice consistent with the rules promulgated pursuant to Sections 436.400 to 436.520, RSMo.
(4) In the seller's ceasing business report to the Board, the seller shall include all information contained in § 436.500, all information pertaining to written notice in the regulations promulgated pursuant to Sections 436.400 to 436.520, and all information required in the seller's annual report pursuant to § 436.460, RSMo.
(5) The seller must also address the seller's contractual, fiduciary and other obligations as set forth in § 436.500.

Authority: 333.340 and 436.500

August 25

Board Meeting Addendum Working Documents

Group 2 rules draft C

Group 2 rules

#1 Rule re: single premium annuity contracts

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Title: Replacement single premium annuity contracts

Purpose: This rule states that while only single premium annuity contracts can fund an insurance-funded preneed contract, purchasers may purchase replacement single premium annuity contracts during the contract period.

(1) An insurance-funded preneed contract may be funded by an insurance policy or a single premium annuity contract.
(2) An insurance-funded preneed contract may not be funded by an annuity other than a single premium annuity contract.
(3) If a purchaser funds an insurance-funded preneed contract with a single premium annuity contract, the purchaser may replace the single premium annuity contract with another single premium annuity contract at any time in the duration of the preneed contract.
(4) Any replacement single premium annuity contract must meet all the requirements of the initial annuity contract, Chapter 333, Sections 436.400 to 436.520, RSMo and any other requirements under state or federal law.

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Authority: 333.340 and 436.405

#2 Rule re: activities that do not constitute preneed under Sections 436.400 to 436.520, RSMo

Title: Activities that do not constitute preneed under Sections 436.400 to 436.520, RSMo

Purpose: This rule identifies activities that do not constitute preneed under Chapter 436 and do not require regulation for preneed under Sections 436.400 to 436.520, RSMo.

The following activities do not constitute a preneed contract under the terms and conditions of Sections 436.400 to 436.520, RSMo:

(1) Sale of funeral merchandise where the purchaser takes immediate possession of the funeral merchandise;
(2) The preplanning of funeral arrangements with where there is no exchange of payment or anything of value for the future services; and
(3) Naming a funeral establishment as the beneficiary to a life insurance policy outside a preneed contract as defined by Section 436.405.1(7).

Authority: 333.340 and 436.405

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#3 Rule re: types of financing available; other financing still preneed

Title: Preneed contracts with non-compliant financing mechanisms are still subject to the provisions in Sections 436.400 to 436.520, RSMo.

Purpose: This rule identifies the acceptable funding mechanisms for preneed contracts.

(1) Preneed contracts shall only be funded by:

(a) A preneed trust as defined by 436.405.1(8);
(b) An insurance policy or single premium annuity contract as defined by § 436.405.1(3); or
(c) A joint account as defined by § 436.405.1(4).

(2) Preneed contracts funded by any other mechanism shall be non-compliant with the requirements of Sections 436.400 to 436.520, RSMo. All non-compliant preneed contracts shall still be subject to regulation by the Board under Sections 436.400 to 436.520, RSMo.

Authority: 333.340 and 436.405

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#4 Rule re: meaning of final disposition

Title: Final disposition shall be used consistently with definition in § 193.015(3)

Purpose: This rule explains the use of the term final disposition as it relates to preneed contracts under Sections 436.400 to 436.520, RSMo.

For purposes of Chapter 333 and Sections 436.400 to 436.520, RSMo, the definition and use of the term final disposition shall be consistent with the definition of the term final disposition contained in Section 193.015(3);

Authority: 193.015, 333.340 and 436.405

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#5 Rule re: Cemetery exception

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Title: Endowed care cemetery exception.

Purpose: This rule describes the exception to preneed contract requirements under Sections 436.400 to 436.520, RSMo for endowed care cemeteries.

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(1) The provisions of sections 436.400 to 436.520 shall not apply to contracts or other arrangements sold by a cemetery operator for which payments received by or on behalf of the purchaser are required to be placed in an endowed care fund, as defined by Chapter 214, or for which a deposit into a segregated account is required under Chapter 214.

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(2) The provisions of Sections 436.400 to 436.520, RSMo shall apply to the contract sold by the operator as described in (1) above if the contract or arrangement includes services that may only be provided by a licensed funeral director;

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(3) This exception to the requirements of Sections 436.400 to 436.520, RSMo shall be contract specific.

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Authority: 333.340 and 436.410

#6 Rule re: seller obligations

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Title: Provider and seller obligations under Sections 436.400 to 436.520, RSMo

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Purpose: This rule clarifies the duties of the seller of a preneed contract.

Except as otherwise provided in Sections 436.400 to 436.520 and any rules validly promulgated pursuant to those sections:

(1) The seller shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract;
(2) Alternatively, the preneed contract may permit the purchaser to make payment directly to the trustee or insurance company named in the contract in lieu of making payment to the trustee;
(3) All sellers of preneed contracts in the State of Missouri shall designate an individual manager in charge within the seller's business at a Missouri address who will accept notice regarding any actions of the Board on behalf of the seller. The designation shall be made in writing and provided to the Board. If the designee changes, the seller shall make the Board aware of the change in writing five (5) business days prior to the change in designee becoming effective, or if the seller does not have notice five (5) days prior, then within three (3) business days of the change in designee.

Authority: 333.340 and 436.415

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#6

(1) The seller shall be obligated to collect and properly deposit an disburse all payments made by, or on behalf of, a purchaser of a preneed contract;

(2) A purchaser may make payments on any preneed contract by making the payment directly to the trustee, the insurance company, or the financial institution where the joint account is held, as applicable, in lieu of paying the seller.

(3) All sellers shall designate an individual to serve as manager in charge of the seller's business. This individual shall either reside or work within the state of Missouri. The seller shall designate the manager in charge in its initial application for licensure. If the manager in charge changes, the seller shall provide written notice to the Board within 30 days of the change.

#7 Rule re: clarification on pre-August 28, 2009 and post-August 28, 2009

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Title: Grandfather clause

Purpose: This rule clarifies the treatment of contracts made prior to August 28, 2009.

(1) Violations of Chapters 333 and 436 occurring prior to August 28, 2009 shall be governed by the law as it existed at the time of the violation;

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(2) Violations of Chapter, 333 and Sections 436.400 to 436.520 occurring after August 28, 2009 related to a contract that existed prior to August 28, 2009 shall be governed by the law as it existed on August 28, 2009;

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(3) Violations of Chapter, 333 and, Sections 436.400 to 436.520 occurring after August 28, 2009 related to a contract executed on or after August 28, 2009 shall be governed by the law as it existed on August 28, 2009;

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(3) All preneed contracts executed on or after August 28, 2009 must meet all requirements contained in Chapter, 333 and Sections 436.400 to 436.520 as the law existed on August 28, 2009.

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(4) Preneed contracts entered into prior to August 28, 2009 remain valid after August 28, 2009 to the extent they were valid under Sections 436.005 to 436.071 prior to August 28, 2009.

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Authority 333.340, 436.412 and 436.415

#8 Rule re: Provider and Seller requirements under the preneed contract

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Title: Requirements for notice by provider under preneed contract

Purpose: This rule sets out the requirements for notice by a provider under a preneed contract.

(1) A provider shall notify the Board within 15 days of authorizing or agreeing to allow a seller to designate himself or herself as the provider under a preneed contract. Such notice shall be in writing and shall include:
(a) Name and address of the seller;
(b) Name and address of the provider;
(c) License number of the seller;
(d) License number of the provider;
(e) Effective date of the authorization or agreement;
(f) Signature of the seller, provider, purchaser, and, if applicable, the seller's agent;
(g) Notice with the Board may be filed electronically but the original document shall be provided to the Board by mail following the electronic filing.

(2) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the last signature on the agreement;

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(3) The contract must be signed by the purchaser, provider and seller or seller's agent of the preneed contract;

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(4) If an agent of the seller signs the contract, the seller must also sign the contract but need not be present at the time it is signed with the purchaser;

(5) The purchaser of the preneed contract shall receive either a copy or original of the contract and upon request a copy of any agreements or contracts between the seller and provider regarding the purchaser's contract.

(6) If the provider and seller are the same legal person, the provider must still provide notice as required by this Rule to the Board that he or she is the provider for the seller. However, a contract between the seller and provider, if the seller and provider is the same legal person, is not required.

(7) If the provider and seller are the same legal person, the preneed contract and any other contracts or agreements necessary to the preneed contract must contain:
a. One signature line indicating that signature belongs both to the seller and provider; or
b. Separate signature lines for the seller and provider.

Authority: 333.3.40 and 436.420

#8

(1) After initial application, if there is a change in seller affiliation, the provider shall provide written notice to the Board, pursuant to Section 436.420.3, RSMo, that the provider has authorized a new seller to designate the provider on the seller's preneed contracts. This notice shall be provided to the Board within 15 days after the provider authorizes the seller to act and the notice shall contain at least:

(a) Name and address of the provider;
(b) License number of the provider;
(c) Name and address of the seller;
(d) Effective date of the authorization or agreement.

(2) This notice may be provided to the Board electronically, but the original signed document shall be provided to the Board by mail or hand delivery.

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#9 Rule re: Contract requirements

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Title: Consumer contract requirements

Purpose: This rule identifies requirements of all preneed contracts.

(1) All preneed contracts and any agreements necessary to the preneed contract shall be in writing in Times New Roman or similar font in at least 8-point font size;

(2) A preneed contract can contain both guaranteed and non-guaranteed items. Any preneed contract containing both guaranteed and non-guaranteed items shall clearly identify in writing in the contract that the contract contains both guaranteed and non-guaranteed items;

(3) A preneed contract is voidable by order of a court of competent jurisdiction. Upon order of the court, the contract is voidable. Notice of the voidable contract must be provided to the seller and provider. The purchaser, upon notice, may then exercise the right to void the contract. Upon a valid court order and notice, a preneed contract is void.

(4) All money under the preneed contract, including but not limited to payments, interest payments, and fees, is recoverable by the purchaser only if the purchaser elects to void the contract following receipt of a valid court order and notice to the seller and provider;

(5) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the final signature of the provider, purchaser, seller's agent or seller on the agreement;

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(6) The seller, or his agent, must provider the purchaser with a fully executed original or copy of the preneed contract within five business days of the effective date of the contract;

(7) All preneed contracts executed in the State of Missouri shall be accompanied by a disclosure sheet containing all necessary consumer disclosures on a form prescribed by the Board;

(8) Preneed contracts can be cancelled or rescinded pursuant to Sections 436.400 to 436.520. The process for concluding the affairs of the preneed contract that is rescinded or cancelled shall be the same and the purchaser, seller and provider shall have the same rights and obligations under cancellation and rescission.

Deleted: Chapter 436

(9) PUBLIC ASSISTANCE STAFF WILL CHECK

(10) In addition to all other requirements set out in Chapter 333 or Sections 436.400 to 436.520, RSMo, including but not limited to § 436.425 and any validly promulgated rule, all preneed contracts executed on or after August 28, 2009 shall:

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(a) Be in writing;

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(b) Be executed by a seller who is in compliance with Chapter 333 and Sections 436.400 to 436.520, RSMo;

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(c) Identify the contract beneficiary and set out in detail the final disposition of the dead body and funeral services, facilities and merchandise to be provided;

(d) If the contract is trust funded, identify the preneed trust into which contract payments shall be deposited, including the name and address of the trustee thereof;

(e) If the contract is trust funded, identify the terms of the trust and related agreements among two or more of the contract seller, provider and trustee of the trust and that those individuals are in compliance with Chapter 333 and Sections 436.400 to 436.520;

(f) Contain the name and address of the seller, his or her agent, the provider and the purchaser.

(11) All preneed contracts shall be compliant with Chapter 333 and Sections 436.400 to 436.520 on or before December 31, 2009.

(12) Any contract that does not comply with the requirements of Chapter 333 and Sections 436.400 to 436.520 after December 31, 2009 shall be voidable.

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DISCLOSURE SHEET AND REQUIREMENTS

Authority: 333.340 and 436.425

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(1) All preneed contracts shall be in Times New Roman or a comparable easily read font and at least 8 point type.
(2) A preneed contract may contain both guaranteed and non-guaranteed items, but the preneed contract shall clearly identify those items which are guaranteed and which are not.
(3) A preneed contract is voidable by order of court of competent jurisdiction. Upon final judgment finding a preneed contract is voidable, the purchaser may then exercise his or her right to void the contract by providing written notice to the seller and the provider. The purchaser must exercise his or her right to void the contract within 30 days of final judgment.
(4) The purchaser must be provided a fully executed original or copy of the preneed contract within 30 days of the effective date of the contract.
(5) Preneed contracts ~~my~~ may be either cancelled or rescinded pursuant to the provisions of Sections 436.400 through 436.520, RSMo. The process for cancellation or rescission shall be the same and the purchaser, seller and provider rights and obligations shall be the same whether the contract is cancelled or rescinded.
(6) Preneed contracts effective and valid prior to August 28, 2009 shall remain valid and effective after August 28, 2009.
(7) Preneed contracts executed after August 28, 2009 shall comply with all requirements of Chapter 333 and Sections 436.400 through 436.520, RSMo. However, preneed contracts that were valid under the relevant provisions of Chapter 436 on August 27, 2009 may be used to enter into valid preneed contracts after August 28, 2009 so long as any additional requirements in Sections 436.400 through 436.520, RSMo, are provided to purchasers no later than December 31, 2009 by supplement addendum to the preneed contract.

Sharons rewrite

#10 Rule re: trust funded contract requirements

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Title: Requirements for deposit of and verification of payments

Purpose: This rule identifies what payments must be deposited into the preneed trust under a trust funded preneed contract and the seller's reporting requirements for deposits.

(1) The seller of a preneed contract funded by a trust shall deposit all payments received pursuant to the terms of the preneed contract into the trust within sixty days of receipt of the funds by the seller, his agent or designee.

(2) Within 30 days of request by the purchaser, the seller shall provide to the purchaser under a preneed contract, a written statement of all deposits made to the trust. The written statement shall include a detailed description of all deposits made by type of deposit and date of deposit. The written statement shall also include the principal and interest paid to date for the trust. The written statement shall be signed by the seller.

Deleted: <#>The seller need not deposit other payments such as fees or costs that are not terms of the contract in the trust.¶

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Authority: 333.340 and 436.430

#11 Rule re: Trustee investment restrictions

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Title: Trustee investment restrictions under a trust funded preneed contract

Purpose: This rule identifies the investment restrictions of a trustee under a trust funded preneed contract.

(1) A trustee shall not make decisions to invest any trust fund under a preneed contract with those individuals or entities contained in §§ 436.445(1) through (4), who are, or may be, related to the parties to that preneed contract or trust;
(2) The trustee investment restrictions contained in §§ 436.445(1) through (4) shall not apply to those individuals or entities related to the parties to other preneed contracts or trusts.

Authority: 333.340 and 436.445

#11 ½ An additional potential emergency rule re: independent financial advisor is an agent of trustee

Title: Independent financial advisor is an agent of the trustee

Purpose: This rule clarifies that an independent financial advisor is an agent of the trustee in a trust funded preneed contract.

An independent financial advisor, as provided in section 436.440.6, is an agent, as provided in section 436.440, of the trustee.

Authority: 333.340 and 436.440.6

#12 Rule re: Insurance funded contracts

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Title: Insurance funded contracts

Purpose: This rule identifies payment issues in insurance funded preneed contracts.

(1) Payments collected by or on behalf of the seller which must be promptly remitted to the insurer or the insurer's designee do not include administrative or other fees built into the preneed contract;
(2) The purchaser of an insurance funded preneed contract, may, upon agreement with the seller and provider, submit payments directly to the insurer or insurer's designee;
(3) For any overages under the preneed contract that exceed the costs under the contract, the overages shall be distributed:
    a. To the estate of the beneficiary named in the insurance policy; or
    b. If the policy holder received public assistance to the State of Missouri if the State of Missouri was named as beneficiary or to the estate of the beneficiary if the State of Missouri was not named.

Authority: 333.340 and 436.450

August 25

Board Meeting Addendum Working Documents

Emergency Rules for Group 1

Emergency Rules for Group 1 following 8-5-09 meeting

- If the Board has approved the rule to go forward, the word **APPROVED** appears before the rule.
- The approved emergency rules appear first in this document, **pages 2-7,** followed by the emergency rules still needing approval, **pages 8-11.**
- Rules from this group the Board determined were not emergency rules are now contained in a separate document.

APPROVED

Emergency rule: Preneed sellers and providers must be licensed and preneed seller agents must be registered in the State of Missouri to do business.

Title: Pre-need agent; requirements of the agent's seller

Purpose: This rule explains that any licensed pre-need agent in the State of Missouri must be selling pre-need contracts on behalf of a seller who is licensed in the state of Missouri.

(1) Any pre-need agent registered by the Missouri State Board of Embalmers and Funeral Directors to sell a pre-need contract for or on behalf of a seller must be the agent of a seller who is licensed to sell pre-need contracts by the Missouri State Board of Embalmers and Funeral Directors.

Authorized by: 333.340, 333.011(9), 333.320 and 333.325

APPROVED

Emergency rule: "Final Disposition" as defined in Chapter 193

Title: Use of term "final disposition" consistent with Chapter 193, RSMo

Purpose: This rule explains that use of the term "final disposition" in Chapters 333 and 436, RSMo shall be consistent with the definition of the term in Chapter 193, RSMo.

(1) For purposes of Chapters 333 and 436, RSMo, final disposition shall be defined in accordance with the definition contained in Section 193.015(3), RSMo.
(2) Use of the term final disposition in Chapters 333 and 436 shall be consistent with its use in Chapter 193, RSMo.

Authorized by: 333.340 and 333.011(10)

APPROVED

Emergency rule: "Provider" includes funeral establishment that has agreed to undertake obligations of pre-need contracts pursuant to Chapter 436

Title: Provider to include funeral establishments engaged in pre-need

Purpose: This rule explains that a provider in a pre-need contract includes, but is not limited to, a funeral establishment that has agreed to undertake the obligations of a pre-need contract under Sections 436.400 through 436.520, RSMo.

(1) As defined by Section 333.011(10), the provider of services under any pre-need contract pursuant to Sections 436.400 to 436.520, RSMo shall include any licensed funeral establishment that has agreed to undertake the obligations of a pre-need contract pursuant to Sections 436.400 to 436.520, RSMo.
(2) Any provider who is a licensed funeral establishment who has agreed to undertake the obligations of a pre-need contract pursuant to Sections 436.400 to 436.520, RSMo, must meet all requirements of both a licensed funeral establishment and a pre-need provider pursuant to Chapter 333 and Sections 436.400 to 436.520, RSMo.

Authorized by 333.340 and 333.011(10), RSMo

APPROVED

Emergency rule: Licensed funeral director must report each seller for whom he or she is an agent.

Title: Funeral Director agent registration

Purpose: This rule establishes the reporting requirement for any funeral directors serving as sellers' agents.

(1) Any funeral director acting as a pre-need agent shall report the name and address of each pre-need seller for whom the funeral director is authorized to sell, negotiate, or solicit pre-need contracts to the Board on a form prescribed by the Board.
(2) Any funeral director shall also identify him or herself as acting as a pre-need agent on his or her biennial report form to the board by checking the appropriate box on the form prescribed by the board.

Authority: Section 333.340 and 333.325.4

APPROVED

Emergency rule: Pre-need agents must take Missouri law exam.

Title: Certifying pre-need seller agents to take the Missouri law exam.

Purpose: This rule prescribes the process for certifying pre-need seller agents to take the Missouri law exam and a requirement for registration.

All pre-need seller agents registering with the board shall achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam. Successful completion of the Law exam shall be a prerequisite to registration. This exam may be taken any time after filing the Notice of Intent to Apply. Pre-need agent applicants must successfully complete the Missouri Law exam on or before December 31, 2009, prior to the expiration of the Notice of Intent to Apply. The Missouri Law exam covers knowledge of Chapter 333, RSMo and the rules governing the practice of embalming, funeral directing and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition and transportation of dead human bodies. The Missouri Law section also contains questions regarding Sections 436.400 to 436.520, RSMo relating to pre-need statutes and Chapters 193 and 194, RSMo relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations and Occupational Safety and Health Administration (OSHA) requirements as they apply to Missouri licensees. Notification of intent to take this examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination.

Authority: 333.340 and 333.325.5

APPROVED

Emergency rule: Financial welfare cause for injunction

Title: Danger to financial welfare is cause for injunction.

Purpose: This rule states that serious danger to an individual's financial welfare is cause for the State Board of Embalmers and Funeral Directors to seek an injunction pursuant to Section 333.335.1(2), RSMo.

(1) For purposes of Section 333.335, RSMo, the Missouri State Board of Embalmers and Funeral Directors shall be entitled to seek injunctive relief against any person from engaging in any business or practice authorized by a registration or authority, permit, or license issued under this chapter that presents a substantial probability of serious danger to the health, safety or welfare of any resident of this state or client or customer of the licensee or registrant.
(2) For purposes of Section 333.335, RSMo, serious danger to the welfare of any resident or client or customer shall include, but is not limited to, the financial welfare of the resident, client or customer.

Authority: Section 333.340 and 333.335.

Emergency rule: Corporate ownership of a corporate licensee

Title: Corporate ownership of a corporation holding a pre-need provider license.

Purpose: This rule prescribes the requirements regarding corporate ownership of a corporation that holds a pre-need provider or seller's license.

(1) If the applicant for a pre-need provider or seller's license pursuant to Section 333.315, RSMo is a corporation or other legal entity, referred to as "applicant corporation" and it is owned by a corporation, referred to as "owner corporation":

    (a) each officer, director, manager or controlling shareholder of the applicant corporation shall be eligible for licensure as if they were applying for licensure as an individual; and

Authority: 333.340 and 333.315

REVISED Emergency rule: Corporate ownership of a corporate licensee

Title: Corporate ownership of a corporation holding a pre-need provider license.

Purpose: This rule prescribes the requirements regarding corporation application for a pre-need provider or seller's license.

(1) A corporate applicant for either a seller or provider license shall certify to the Board that each of its officers, directors, managers and controlling shareholders would be eligible for licensure under § 333.330, RSMo if he or she applied for licensure as an individual.
(2) The applicant shall have the burden to demonstrate to the Board that its officers, directors, managers and controlling shareholders would be eligible for licensure under § 333.330, RSMo.

Authority: 333.340, 333.320, 333.315 and 436.456

Emergency rule: Licensees must file application for new license if change in ownership.

Title: New license required for change of ownership

Purpose: This rule states that a new license is required for a change in ownership of a pre-need provider or seller.

(1) The pre-need seller or provider's license issued by the board is effective for a specific name of a person or entity authorized to conduct business in Missouri. Whenever the ownership, location or name of the Missouri licensed pre-need seller or provider is changed, a new license shall be obtained.

(A) If a change of ownership is caused by the elimination of one (1) or more owners, for whatever reason (death, sale of interest, divorce, etc.) without the addition of any new owner(s), it is not necessary to obtain a new pre-need seller license. However, a new application for a pre-need seller license form shall be filed as an amended application within thirty (30) days after the change of ownership. This form shall be filled out completely with correct, current information.

(B) A corporation is considered by law to be a separate person. If a corporation holds a Missouri pre-need seller's license, it is not necessary to obtain a new pre-need seller license or to file an amended application for a pre-need seller license if the owners of a minority interest in the stock change. However, as a separate person, if the corporation begins ownership of an entity which holds a Missouri pre-need seller license or ceases ownership of an entity which holds a Missouri pre-need seller license, a new pre-need seller license shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

Comment [L1]: Do we need to say if a majority interest changes, then a new license is required?

Authority: 333.340 and 333.320

REVISED Emergency Rule: Change in contact information

Title: Licensees shall be required to provide up to date contact information.

Purpose: This rule details the requirements for providers, sellers, and seller's agents for providing the Board with current contact information.

(1) Providers, sellers and seller's agents shall keep the Board notified of their current address, telephone number, facsimile number and e-mail address, as applicable, at all times.
(2) Providers, sellers, and seller's agents shall notify the Board within 10 business days of any such change by submitting written notice with the new information. The written notice shall comply with the Board's rules regarding written notice.

Authority: 333.340 and 333.320

Emergency rule: Display of License

Title: Licenses issued by the Missouri State Board of Embalmers and Funeral Directors must be displayed.

Purpose: This rule states that pre-need sellers, providers and seller's agents must prominently display their license or registration to practice issued by the Missouri State Board of Embalmers and Funeral Directors.

(1) All licenses or registrtions, and any and all duplicate copies thereof, issued by the Missouri State Board of Embalmers and Funeral Directors shall be prominently displayed at all times in a conspicuous location or manner easily accessible to the public for each office or place of business of the licensee or registrant.
(2) All licenses or registrations shall be available at all times for inspection by any duly authorized agent of the Missouri State Board of Embalmers and Funeral Directors.
(3) The Missouri State Board of Embalmers and Funeral Directors may cause a complaint to be filed with the Administrative Hearing Commission pursuant to Section 333.330, RSMo, for the failure of a licensee or registrant to display his or her license or registration as required by Section 333.091 and this regulation.

Comment [L2]: Do we need to include registrations in this too?

Authorized by 333.340, 333.091 and 333.330

Emergency rule: Normal market fluctuation resulting in a shortage in a pre-need trust is not a basis for injunctive relief.

Title: Normal market fluctuation is not a basis for injunctive relief.

Purpose: This rule provides that normal market fluctuation that result in a shortage to a pre-need trust or joint account do not constitute cause to seek an injunction against a seller of a pre-need contract.

(1) Pursuant to Section 333.330.4, RSMo, the Missouri State Board of Embalmers and Funeral Directors shall not be entitled to seek injunctive relief against a seller if there is a shortage in the preneed trust greater than twenty percent of the total amount required to be held or deposited into the trust pursuant to Sections 436.400 through 436.520, RSMo in the pre-need trust that is exclusively the result of normal fluctuations in the market.

Authority: Section 333.340 and 333.330

August 25

Public Comments

Bill Stalter Group 2 Comments

August 24, 2009

Group 2 Rules

Bill Stalter Comments

Single Premium Annuity Contracts

This issue does not merit an emergency rule. There have been conflicting reports as to why SB1 was revised to reference single pay annuities. The Board should seek input from legislators before adopting a rule that prohibits multiple pay annuities.

Preneed contracts with non-compliant financing

This proposal attempts to restate the statute, and does not merit an emergency rule.

Definition of Final Disposition

Reference to Section 193.015(3) [set out below] does not adequately address the jurisdiction questions that will arise from preneed programs that are based in bordering states. For example, what if an Iowa cremation society solicits Missouri residents. It would be better to address this issue through a permanent regulation.

> "Final disposition", the burial, interment, cremation, removal from the state, or other authorized disposition of a dead body or fetus;

Cemetery Exception

This proposed emergency rule does not reflect the Board's discussions on August 5th. There was a consensus that cemeteries should be exempted from Chapter 436 if the vault sale was made in conjunction with the sale of a burial space. If the Board is to provide an emergency rule for the Chapter 436 cemetery exemption, it should also do so for the Chapter 333 cemetery exemption. The following is offered as the emergency rule for RSMo. Section 333.310:

> Pursuant to RSMo. Section 333.310, a cemetery shall be exempt from the licensure requirements of RSMo. Sections 333.315 and 333.320 when all of the following conditions are satisfied:
>
> > 1) The cemetery has a current and valid license issued pursuant to RSMo. Section 214.275;
> >
> > 2) All sales of merchandise made by the cemetery that would otherwise be defined as a preneed contract for funeral merchandise are made pursuant to a contract whereby such merchandise is either i) purchased in conjunction with an interment right or grave space subject to RSMo.

> Section 214.320, or ii) is to be delivered to an interment right or grave space subject to RSMo. Section 214.320 that is owned by the purchaser and identified within the contract;
>
> 3) The cemetery has not been found to be in non-compliance with RSMo. Section 214.385 or RSMo. Section 214.387 by the Office of Endowed Care Cemeteries pursuant to a completed examination or audit; and
>
> 4) The cemetery does not offer for sale caskets or services that may only be provided by a Missouri licensed funeral director or embalmer.

The following is offered as an emergency rule for RSMo. Section 436.410:

> Pursuant to RSMo. Section 436.410, a preneed contract for the sale of funeral merchandise by a cemetery shall be exempt from the requirements of Chapter 436 when the sale is made pursuant to a contract whereby such merchandise is either i) purchased in conjunction with an interment right that is subject to RSMo. Section 214.320, or ii) is to be delivered to a grave space subject to RSMo. Section 214.320 that is owned by the purchaser and identified within the contract. However, if the contract includes caskets or services that may only be provided by a Missouri licensed funeral director or embalmer, the contract shall clearly set forth the application of payments and provide for administration pursuant to Chapter 436 for those payments applied to the casket or funeral services.

Grandfather clause

The proposed emergency rule is confusing. If a pre-8/28/09 contract breached the 'old' Chapter 436, would this regulation 'bless' the contract for compliance with the new Chapter 436?

Instead, the Board discussed an emergency rule to allow sellers to use existing preneed contract forms so long as an addendum was provided to the consumer that explained provisions/rights that were changed by SB1. The following is offered for that purpose:

> Entities that possessed a valid preneed seller's registration with the State Board as of August 27, 2009, may continue to use their existing contract forms until October 1, 2009, provided such entity i) files a Notice of Intent to Apply for Certification/Licensure as a preneed seller, and ii) provides to each purchaser an addendum that explains the purchaser's rights regarding cancellation and portability under Chapter 436, as revised on August 28, 2009.

Provider and Seller requirements under the preneed contract

Much of the subject matter of this emergency regulation will be addressed through the application process for sellers and providers. Accordingly, would it not be better to defer this to the permanent regulation process?

Consumer contract requirements

If the Board is to allow sellers to continue use of existing contracts until permanent regulations are passed, is this emergency regulation necessary? If so, paragraph 7 is a problem. Paragraph 8 also contradicts the Board's discussion that a purchaser's rescission should be treated the same as a cancellation.

Requirements for deposit and verification of payments

The emergency rule does not provide a mechanism for sellers to follow when segregating fees and costs from a purchaser's payment. In lieu of the proposed, consider the following:

> For compliance with RSMo. Section 436.430.2, a seller may establish with a banking institution located within Missouri an account that shall be maintained exclusively for seller's receipt of purchaser payments for preneed contracts sold subsequent to August 28, 2009. The seller shall be responsible for accounting for all fees and costs that are in addition to the purchaser payments made towards a preneed contract. The seller may accumulate purchaser payments in the clearing account until they are required to be deposited to trust pursuant to RSMo. 436.430.2. The seller may not withdraw any fees or costs from the clearing account until the purchaser payments associated with such fees or costs are deposited to trust.

Trustee investment restrictions

The proposed rule is not consistent with comments made on August 5th regarding investment advisors being governed by RSMo. Section 436.440. Perhaps this issue would be better addressed by permanent regulations.

Insurance funded contracts

Paragraph 3 is confusing. Is the reference to the preneed contract or the at need contract? This may be a controversial issue for some sellers and providers, and may be a better issue for permanent regulations.

August 25

Public Comments

Greg and Darlene Russell comments

August 21, 2009

Becky Dunn, Executive Director
Missouri State Board of Embalmers and
Funeral Directors
3605 MO Blvd.
Jefferson City, MO 65109

Dear Becky:

I would like for you to include in next week's agenda a discussion regarding the new preneed contract requirements from Senate Bill 1.

I realize that we discussed this issue at the August 11th meeting but I believe that Section 436.425.1 RSMo, needs to be discussed further. Both Earl Kraus, the Division attorney and Sharon Euler, the Assistant Attorney General expressed their opinion at the meeting that "All preneed contracts....." means that each and every contract must contain the prescribed provisions for all three types of funding. In other words, even if a contract was trust funded, it must contain the appropriate language for insurance and joint account as well as trust language. I and many others do not believe this was the intent of the legislation as this would serve no purpose and only be confusing to consumers.

The purpose of this section is understood and it is agreed that all preneed contracts must contain some universal provisions outlined in this section such as 436.425.1 (1)(2)(3)(4)(7)(8)(9)(12)(13)(14)(15) and (16). Why would a trust contract or joint account need to contain the provisions applicable to insurance such as (5) (6) or (11)? Why would an insurance contract need to contain provisions appropriate only for a trust funded contract or joint account such as (10)?

To require such language that does not relate to the funding on the contract the consumer is purchasing does not seem to be in the best interest of the consumer. It is important to know exactly how the Board interprets this section before any new preneed contract can be drafted.

From past experience I know that implementing a new law is very tedious and requires an enormous amount of work. Greg and I want you to know

that we appreciate all the hard work you, your staff and the Board are doing to implement Senate Bill 1. Thank you.

Sincerely

Darlene Russell, CPC
Greg Russell, CFSP, CPC

August 25

Public Comments

Homesteaders Life Comments

Page 1

Activities that do not constitute preneed

-#2 is very concerning since it borders on requiring a licensed funeral director to only sell preplanned funerals. This may not be what they intended but it leans heavily towards that. Is there any purpose to having this in there?

-Is #3 to allow final expense sales? Most insurance companies will not allow a funeral home to be named as beneficiary since it limits the freedom of choice. Also, how does this follow along with section 436.450.7(1)?

Page 3

Seller Obligations

-#1 needs to have added: except in the case of an insurance funded preneed contract, all payments shall be paid directly to the insurance company by the purchaser. There is no need to make it part of the preneed contract if it is stated in the rule. By not putting it in the rule you are allowing a 3rd party to have access to that money which opens up an opportunity for theft.

Page 5

Consumer Contract Requirements

-Why can't the disclosures be placed in the preneed contract rather than have them be a separate form. Can't we make the rule be that it can be either in the preneed contract or on a separate form?

-What are the disclosures?

Page 7

Insurance Funded Contracts

-In #1 they discuss "administrative or other fees" – what fees are they talking about? There are no other fees that should be collected other than the initial premium.

-Need to change #2. It should not be upon agreement by the seller and provider. The insurance company will **ALWAYS** send the bill for the premium payment to the consumer who will then send the premium payment to the insurance company. This needs to be rewritten to reflect this. Again, allowing a 3rd party to have access to that money opens up an opportunity for theft.

-In #3 paying excess to the named beneficiary is a change for many of the funeral homes in Missouri. Besides which, the statutes do not state that this is required. Why change

this?

-Also in #3 I am okay with the first part of paying any excess to the State of Missouri if they are named as beneficiary, however the second part is a problem since we are obligated under a life insurance policy (a contract) to pay the named beneficiary. We cannot violate that contract. Having us pay the estate instead of the named beneficiary would require us to violate that contract thus placing us in jeopardy with the named beneficiary and potentially having to pay out twice. Besides which, we do not know when an individual is receiving public assistance so this cannot be monitored.

Additional Handouts – August 25, 2009

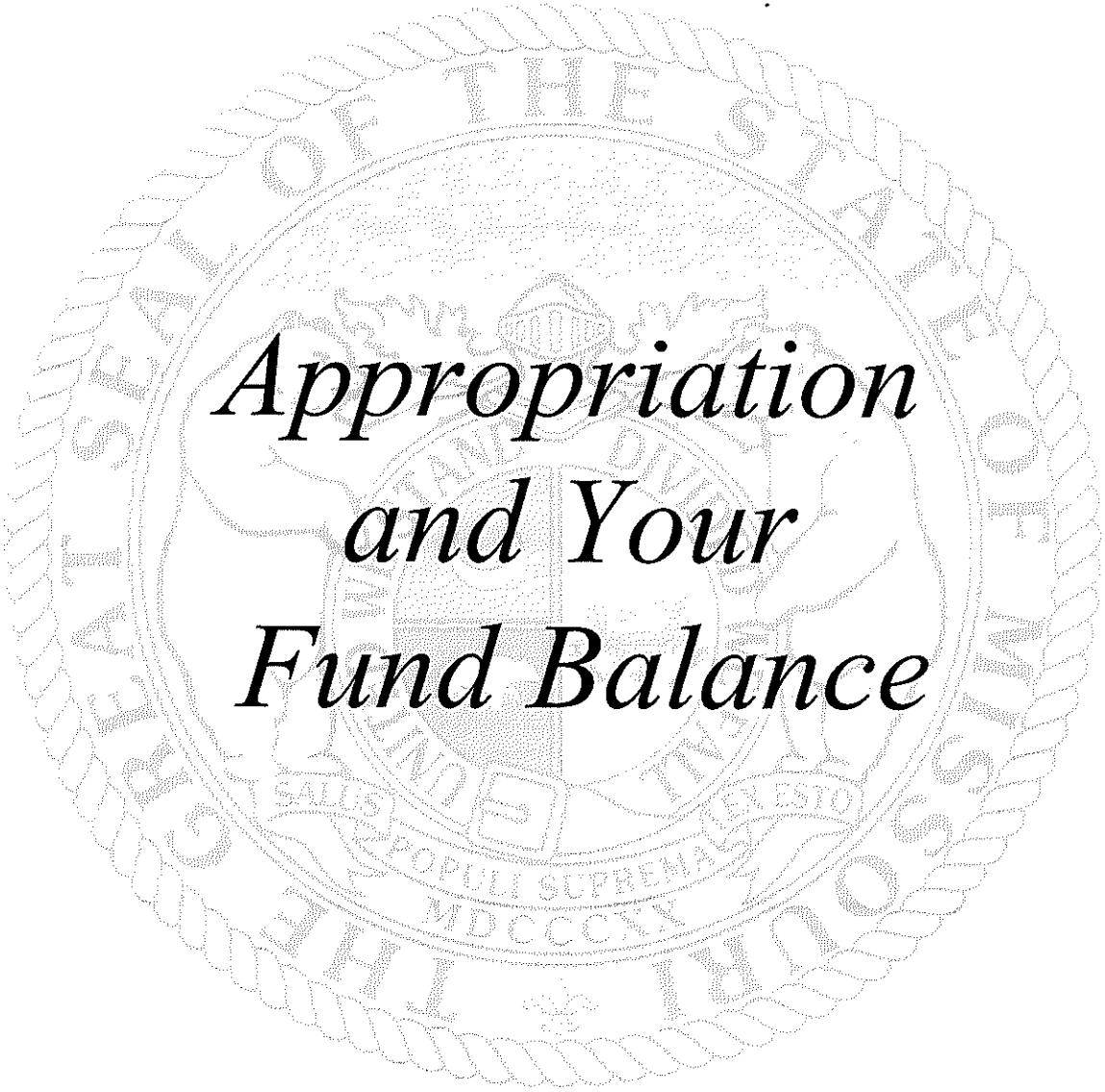
REVISED Emergency rule: Corporate ownership of a corporate licensee

Title: Corporate ownership of a corporation holding a pre-need provider license.

Purpose: This rule prescribes the requirements regarding corporation application for a pre-need provider or seller's license.

(1) A corporate applicant for either a seller or provider license shall certify to the Board that each of its officers, directors, managers and controlling shareholders would be eligible for licensure under § 333.330, RSMo if he or she applied for licensure as an individual.
(2) In any proceeding, the applicant shall have the burden to demonstrate to the Board that its officers, directors, managers and controlling shareholders would be eligible for licensure under § 333.330, RSMo.

Authority: 333.340, 333.320, 333.315 and 436.456



Appropriation and Your Fund Balance

Definitions

Appropriation

Amount Authorized by the General Assembly for the board's budget (Expenses/Equipment and Transfers amounts) which gives you the authority to spend money from your fund.

Fund Balance

Balance of all monies received by the board through fees collected minus expenses.

There are three (3) ways money can be deducted from your fund:

1. Check
2. Transfer
3. Sweep

Expense & Equipment Appropriation

E/E - $145,393 HB 7.490

In-State Travel
Out-of-State Travel
Electronic Equipment
Court Reporting
Expert Witnesses
Examination of Books and Records /Audits
Office Equipment
Professional Services
Miscellaneous Expenses

3 Types of Transfer Appropriations

1. **PR Transfer ($363,579E - HB 7.535)**

   - Division Expenses and Services:
   - Director's Office Expenses
   - Division Equipment and Expenses
   - Information Technology Staff
   - Legal Staff
   - Deposits/Renewal Processing
   - Central Investigative Unit
   - Human Resources/Payroll
   - Board Appointments
   - Accounting/Purchasing
   - Travel Services
   - Legislation/Budget/Rules
   - Mailroom Services
   - Vehicle Pool

   - Board Expenses and Services:
   - Salaries for Board Staff
   - Per Diems for Board Members
   - Fringe Benefits

   - Rent

   - Department Cost Allocation

   - Licensee Refunds

   - Office of Administration Cost Allocation – PR Admin. Portion

2. **Office of Administration Cost Allocation Transfer ($7,017 - HB 5.265)**
   - Administrative Offices
   - Governor's office
   - Lieutenant Governor's office
   - Secretary of State's office
   - General Assembly
   - Capitol Police
   - Department of Revenue - Deposits

3. **General Revenue Transfer ($85,000E - HB 7.530)**
   - State Auditor's Office
   - Attorney General
   - Administrative Hearing Commission

Sweep Calculation

Currently, by statute, monies in the fund shall be transferred and placed to the credit of general revenue when the amount in the fund at the end of the biennium (odd years) exceeds three times the amount of the appropriation (expenses and transfers) for the preceding fiscal year.

597,818.00	**Total FY 2009 Appropriation**
x 3	**3 Times Your Appropriation**
1,793,454.00	**Fund Limit Allowed before Sweeping to General Revenue**
1,111,382.33	**FY 2009 Ending Fund Balance**

Under current statute, the fund will not be swept for the FY 2009 sweep year.