OPEN MEETING MINUTES
Missouri State Board of Embalmers and Funeral Directors

September 2-3, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Wednesday, September 2, 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 7:30 a.m. on Wednesday, September 2, 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
Joy Gerstein, Public Member

Board Member Absent
James Reinhard, Member

Staff Present
Becky Dunn, Executive Director
Lori Hayes, Inspector

Closed Meeting
Motion was made by Gary Fraker and seconded by Todd Mahn 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 Joy Gerstein voting in favor with no votes in opposition. James Reinhard was absent for this portion of the meeting.

Wednesday, September 2, 2009 9:30 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 9:30 a.m. on Wednesday, September 2, 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 – via conference call
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General – via conference call

Public Present

Amy Battagler, Stewart Enterprises
John Moore, Moore Funeral Homes
Brad Speaks, Self/Speaks Family Legacy Chapels
Mark Warren – Missouri Preneed Coalition
Darlene Russell, CFL Preneed
Bill Stalter, Stalter Legal Services
Don Otto, MFDEA/MFT
DJ Gross – Duncan Funeral Home
Representative Tim Meadows – State Representative 101st

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 Joy Gerstein voting in favor with no votes in opposition. James Reinhard was absent for this portion of the meeting.

Approval of Minutes

Open Meeting Minutes were not completed for approval at this meeting.

Future Meeting Dates

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.

The Board reviewed the previously approved rule – For Annual Filing Reports. This approved rule was brought back to the board with suggested edits. After discussion, a motion was made by Todd Mahn and seconded by Gary Fraker to make clearer the initial reporting period dates and bring it back to the board for review later today. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, James Reinhard and Joy Gerstein voting in favor with no votes in opposition.

The Board reviewed **Group 3 Rules.**

#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

Chairman Vernon noted this rule is nonemergency and will be reviewed further by the board at a later date.

#2 - Rule re: What is irrevocable in an irrevocable contract

Title: Irrevocable contracts

(1) A purchaser may change providers pursuant to Section 436.458 even if the contract has been made irrevocable. However, if the contract has been made irrevocable, the purchaser shall not received any refund of any funds paid on the contract, rather if the new provider requires a new trust to hold the preneed funds, that transfer of funds shall be by wire transfer or other secure bank to bank transfer and at no time shall the funds be in the control of the purchaser.
(2) If a contract has been made irrevocable and a purchaser desires to change to a provider that has no contract with the seller, then the original preneed contract shall be cancelled upon the execution of a new preneed contract with the new seller and the old seller shall direct that the transfer of funds be made by wire transfer or other secure bank to bank transfer to the new seller's trust. At no time shall those funds be in the control of the purchaser.

Authority: 333.340 and 436.456, 436.458

The board reviewed and discussion was held. A motion was made by James Reinhard and seconded by Todd Mahn to modify paragraphs 1 and 2, and add a new paragraph 3 to address insurance, trusts and joint accounts. Legal counsel will rewrite and bring back to the board for further review. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, James Reinhard and Joy Gerstein voting in favor with no votes in opposition.

#3 - Rule re: Disposition of funds upon cancellation

Title: Disposition of funds in a trust-funded contract upon cancellation by the purchaser

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; plus
   b. The amount of funds distributed from the trust to the seller pursuant to § 436.430.4, RSMo.
   c. If the income of the trust is not sufficient to cover the amount of funds distributed to the seller pursuant to Section 436.430.4, RSMo, the trustee may make demand upon the seller to recover these fees.

(2) The trustee shall not distribute the origination fee distributed to the seller pursuant to § 436.430.3, RSMo.

Authority: 333.340 and 436.456

The board reviewed and discussion was held. A motion was made by Todd Mahn and seconded by John McCulloch to clarify the money goes from the trustee to the seller to the purchaser and seller has 15 days to distribute money to the purchaser. Legal counsel will rewrite, verify distribute days for trustee/seller in statute and bring back to the board for further review. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, James Reinhard and Joy Gerstein voting in favor with no votes in opposition.

#4 - 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) An insurance funded preneed contract may be cancelled by the seller if the seller receives notification that the insurance policy funding the contract has been cancelled.

Authority: 333.340 and 436.457

The board reviewed and discussion was held. A motion was made by Todd Mahn and seconded by Joy Gerstein to accept 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, James Reinhard and Joy Gerstein voting in favor with no votes in opposition.

#4A - 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) When a purchaser notifies the seller that a new provider has been selected, the seller shall pay to the new provider pursuant to the terms of the contract with the original provider. If the seller does not have a contract with the new provider, then then the original preneed contract shall be cancelled upon the execution of a new preneed contract with the new seller and the old seller shall direct that the transfer of funds be made by wire transfer or other secure bank to bank transfer to the new seller's trust. At no time shall those funds be in the control of the purchaser.

(2) In the event a new preneed contract is executed, the new seller shall not be entitled to an origination fee or any additional payments that the original seller may have been entitled to under Section 436.430.3 or .4.

(3) All property held in the trust, principal and income, shall be transferred to the new trust.

Authority: 333.340 and 436.458

The board reviewed and discussion was held. A motion was made by James Reinhard and seconded by John McCulloch to have legal counsel rewrite and bring back to the board for further review. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, James Reinhard and Joy Gerstein voting in favor with no votes in opposition.

#5 - 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 provided 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 be signed by an officer, director or manger in charge and the signer shall certify, under oath, that the annual report is complete and accurate and the annual report shall be notarized.

(4) If a seller fails to file its annual report on or before October 31 of each year, then the seller's license shall be suspended as of November 1 and shall remain suspended until the seller has filed its annual report, its annual renewal form and paid all fees due.

(5) Any seller who continues to engage in any activities of a preneed seller during the time that its license is suspended may be subject to all authorities and powers of the State Baord, the Office of the Attorney General and the seller's local prosecutors.

Authority: 333.340 and 436.460

The board reviewed and discussion was held. A motion was made by Todd Mahn and seconded by John McCulloch to accept 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, James Reinhard and Joy Gerstein voting in favor with no votes in opposition.

Wednesday, September 2, 2009 – 11:54 am – 1:00 pm Closed Session

#6 - 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

The board reviewed and discussion was held. A motion was made by Todd Mahn and seconded by James Reinhard to amend the draft to reflect

NonProvider - $200.00

Funeral Establishment that is a provider - $100.00

Seller - $75.00

Agent - $50.00

There is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Todd Mahn, James Reinhard and Joy Gerstein voting in favor, John McCulloch voting no in opposition. Gary Fraker was absent for this portion of the meeting.

#7 - 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 and provided to the State Board upon request either immediately or within 3 business days or as otherwise requested by the Board.
(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 for such removal that includes a means to ensure that the records remain available for inspection within the State of Missouri and written approval is provided by the Board.

Authority: 333.340 and 436.465

The board reviewed and discussion was held. A motion was made by Gary Fraker and seconded by John McCulloch to amend language to retain the records for five (5) years, and that there is a finding of confident and substantial evidence to support the need for this rule. After discussion was held, Gary Fraker withdrew his motion and John McCulloch withdrew his second.

A motion was made by Todd Mahn and seconded by Joy Gerstein to delete the words in subsection (5) "or within three business days" so that it would read "either immediately or as otherwise requested by the Board". 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, James Reinhard and Joy Gerstein voting in favor with no votes in opposition.

#8 - 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

A motion was made by Todd Mahn and seconded by Gary Fraker 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, James Reinhard and Joy Gerstein voting in favor and John McCulloch voting "no" in opposition.

Wednesday, September 2, 2009 2:30 p.m. – 3:30 p.m.

Closed Meeting

Motion was made by Todd Mahn 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; and 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. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, James Reinhard, and Joy Gerstein voting in favor with no votes in opposition.

#9 - 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 ensure services of all existing contracts.

(2) If a seller is unable to find any new sellers to service 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 to the Board that despite good faith efforts replacement sellers could not be found;

b. In the case of trust-funded contracts, provide written notice to each trustee 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 each insurance company 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 each financial institution that the seller is winding up his business and no replacement seller was found.

(3) As part of its cease doing business report, the seller shall file with the Board a final annual report for a reporting period from September 1 of the previous year to the date of the seller's cease of business. This report shall be made as an attachment to the cease doing business report and shall be made on the form provided by the Board for annual reports and shall comply with all requirements of the seller's annual report.

(4) The seller shall provide the Board with a written statement showing how it will comply with the seller's contractual, fiduciary and other obligations as set forth in § 436.500.

(5) Any person with unfulfilled preneed contracts who was registered with the Board as a seller on August 27, 2009 and had not filed cease doing business forms with the Board before August 28, 2009, shall be required to file a cease doing business report in compliance with Section 436.500 and this and any other rules if they do not seek application for a Seller's license by October 31, 2009. This cease doing business report shall be due by close of business on October 31, 2009.

Authority: 333.340 and 436.500

The board reviewed and discussion was held. A motion was made by Todd Mahn and seconded by Gary Fraker 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, James Reinhard and Joy Gerstein voting in favor with no votes in opposition.

#12
Title: Seller obligations regarding payments
Purpose: This rule clarifies seller obligations regarding payments received

(1) All payments received by a seller or its agents, must be promptly remitted to the appropriate payee – the preneed trust, the appropriate joint account, or forwarded to the insurance company.
(2) If the seller charges any finance or interest charges or any other fees as part of the preneed contract, those payments must be deposited into the trust and may not be retained by the seller.
(3) Any per contract fee assessed by the Board is an obligation to be paid by the preneed seller and not by the purchaser. However, if a seller passes this fee along to the purchaser, this fee shall be clearly noted on an invoice or statement provided to the consumer the amount charged and the purpose of this charge.
(4) If the seller collects the per contract fee assessed by the Board, the seller should maintain records of this collection and be able to provide to the State Board an accounting of these funds. If the seller deposits these fees into the trust, the Trustee shall distribute those fees to the seller in September or October of each year so that the seller will have the funds available to pay those fees to the State Board.
(5) In a preneed seller receives payment from insurance, a joint account, or a trust, and the payment exceeds the cost of the goods and services provided under the contract, the seller shall distribute the overage to the estate of the preneed beneficiary or, if the beneficiary received public assistance, the overage shall be paid to the State of Missouri.

Authority: 333.340, 436.415 36.430, 436.450, 436.455, 436.460, 436.465

The board reviewed and discussion was held. A motion was made by John McCulloch to define "payment under the contract" in the rule as the principal. Sharon Euler, Assistant Attorney General, would like the record to reflect that this motion is against legal advice. Motion died for lack of a second.

A motion was made by Todd Mahn and seconded by Gary Fraker for legal counsel to review the draft of this rule for further clarification and bring back to the board at a later date. John McCulloch, James Reinhard and Joy Gerstein voted "no" in opposition. Motion died.

A motion was made by John McCulloch and seconded by James Reinhard to approve Subsections #3 and #4 of the rule as drafted as a separate 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, James Reinhard and Joy Gerstein voting in favor with no votes in opposition.

A motion was made by John McCulloch and seconded by Todd Mahn to approve Subsection #5 of the drafted rule as a separate rule, and have Sharon Euler, Assistant Attorney General, make sure the wording is okay with Chapter 208, and bring back to the board for review at tomorrows meeting. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, James Reinhard and Joy Gerstein voting in favor with no votes in opposition.

A motion was made by John McCulloch and seconded by Gary Fraker to table Subsections #1 and #2 until tomorrow's meeting. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, James Reinhard and Joy Gerstein voting in favor with no votes in opposition.

RECESS

A motion was made by Todd Mahn and seconded by Joy Gerstein to recess for the evening at approximately 5:40 p.m. and scheduled to reconvene Thursday, September 3, 2009 at 7:30 a.m. in closed session. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, James Reinhard and Joy Gerstein voting in favor with no votes in opposition.

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

The meeting of the Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 9:22 a.m. on Thursday, September 3, 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
Joy Gerstein, Public Member

Board Member Absent

James Reinhard, Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General
Don Eggen, Chief Investigator

Public Present

John Moore, Moore Funeral Homes
DJ Gross – Duncan Funeral Home
Darlene Russell, CFL Preneed
Amy Battagler, Stewart Enterprises
Mark Warren – Inglish, Monaco
Don Otto, MFDEA/MFT
Brad Speaks, Self/Speaks Family Legacy Chapels
Bill Stalter, Stalter Legal Services

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 Joy Gerstein voting in favor with no votes in opposition. James Reinhard was absent for this portion of the meeting.

Senate Bill 1 Implementation Process - continued

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.

[redraft after comments on 09/02/09]

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 Chapter 333 and sections 436.400 to 436.520, RSMo.

(1) For annual reports due on October 31, 2009, preened 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 all 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 in its report due on October 31, 2008 through August 27, 2009. This annual report shall be accompanied by a fee of $2 per preneed contract sold for the reporting period.

(2) For the report due on October 31, 2010, sellers shall report all contacts 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 the annual report through August 31 of the reporting year.

(3) For the reporting year ending October 31, 2009, providers shall file an annual report as provided by Section 333.315.3(4), RSMo (Cum. Supp. 2009). No annual fee shall be required for this reporting period.

Authority: 333.340 and 436.460

The board reviewed and discussion was held. A motion was made by Gary Fraker and seconded by John McCulloch to change Subsection (2) ....executed ~~between~~ "from" August 28, 2009 ~~and~~ "through" August 31, 2010. Specify the reporting period for sellers and a separate subsection to specify the same reporting period for providers. Have legal counsel make changes and will be approved. There is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn and John McCulloch voting in favor with no votes in opposition. James Reinhard and Joy Gerstein were absent for this portion of the meeting.

[redraft after comments on 09/02/09]

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) When a purchaser notifies the seller that a new provider has been selected, the seller shall have the option of continuing in the contract with the new provider or terminating his or her obligations under the contract.

(2) The seller shall have the right to terminate his or her duties upon a change of provider on a contract by contract basis.

(3) When the seller elects to continue his or her duties, the seller shall pay the new provider pursuant to the terms of the contract with the original provider. If the seller does not have a contract with the new

provider, then the original preneed contract shall be cancelled upon the execution of a new preneed contract with the new provider.

(4) When the seller elects to terminate his or her duties, for trust and joint account funded contracts, the old seller shall direct that the transfer of funds be made by wire transfer or other secure bank to bank transfer to the new seller's trust. At no time shall those funds be in the control of the purchaser. For insurance funded contracts, the policy shall be reassigned to the new seller in accordance with the terms of the policy or relevant insurance law.

(5) In the event a new preneed contract is executed, the new seller shall not be entitled to an origination fee or any additional payments that the original seller may have been entitled to under Section 436.430.3 or .4.

(6) For trust funded contracts, all property held in the trust, principal and income, shall be transferred to the new trust.

Authority: 333.340 and 436.458

The board reviewed and discussion was held. A motion was made by Todd Mahn and seconded by Gary Fraker 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 Joy Gerstein voting in favor with no votes in opposition. James Reinhard was absent for the entirety of today's meeting.

[redraft after comments on 09/02/09]

#2 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) A purchaser may change providers pursuant to Section 436.458 even if the contract has been made irrevocable. However, if the contract has been made irrevocable, the purchaser shall not receive any refund of any funds paid on the contract; rather if the contract is trust or joint account funded and the new provider requires a new trust or joint account to hold the preneed funds, that transfer of funds shall be by wire transfer or other secure bank to bank transfer and at no time shall the funds be in the control of the purchaser. If the contract is insurance funded, the insurance policy shall be reassigned in the manner described in the policy or pursuant to relevant insurance law.

(2) If a contract has been made irrevocable and a purchaser desires to change to a provider that has no contract with the seller, then the original preneed contract shall be cancelled upon the execution of a new preneed contract with the new seller. For trust and joint account funded contracts, the old seller shall direct that the transfer of funds be made by wire transfer or other secure bank to bank transfer to the new seller's trust. At no time shall those funds be in the control of the purchaser. For insurance funded contracts, the insurance policy shall be reassigned in the manner described in the policy or pursuant to relevant insurance law.

Authority: 333.340 and 436.456, 436.458

The board reviewed and discussion was held. A motion was made by Todd Mahn and seconded by Gary Fraker 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 Joy Gerstein voting in favor with no votes in opposition. James Reinhard was absent for the entirety of today's meeting.

[redraft after comments on 09/02/09]

#3 Rule re: Disposition of funds upon cancellation by the purchaser

Title: Disposition of funds in a trust-funded contract upon cancellation by the purchaser

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 to the seller within 15 days of notice:
    a) The principal of the trust, including all payments received; plus
    b) The amount of funds distributed from the trust to the seller pursuant to § 436.430.4, RSMo.
(2) The trustee shall not distribute the origination fee distributed to the seller pursuant to § 436.430.3, RSMo.
(3) The seller shall within 30 days distribute the funds described in (1) above to the purchaser of the contract.

Authority: 333.340 and 436.456

NOTE: § 436.456 requires trustee to pay the purchaser

The board reviewed and discussion was held. Earl Kraus will redraft and bring back to the board for further review.

[revised following comments of 09/02/09 and research by Sharon E.]

Title: Preneed Contract overages and refunds for persons on public assistance

Purpose: This rule clarifies how overages and refunds are handled when a preneed contract beneficiary has received public assistance

(1) If a preneed seller receives payment from insurance, a joint account, or a trust, and the payment exceeds the cost of the goods and services provided under a non-guaranteed contract, the seller shall distribute the overage to the estate of the preneed beneficiary or, if the beneficiary received public assistance, the overage shall be paid to the State of Missouri.
(2) If a beneficiary of a preneed contract has received public assistance pursuant to the provisions of Chapter 208, RSMo, and the purchaser or his or her successor cancel or becomes entitled to refund, such refund shall be paid to the State of Missouri up to the amount of public assistance benefits provided as provided in Chapter 208, RSMo.

The board reviewed and discussion was held. A motion was made by John McCulloch and seconded by Todd Mahn that there is no need for this rule. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition. James Reinhard was absent for the entirety of today's meeting.

Preneed Contract Disclosures to Consumer

(to be provided at the initiation of every preneed contract)

This Contract is a Legally Bind Document

Before you sign this contract, you should read it and make sure you understand all terms and conditions. You may wish to consult with your legal counsel before you sign this contract.

Right to Receive a Copy of this Contract

You have a right to receive a copy of this contract and any accompanying documents related to this contract such as any life insurance policies or evidence of a joint account.

Right to Change Providers

The law gives you the right to change the provider named in this contract. The provider is the funeral home or other service provider who will provide the goods and services at the time of your death. If you want to change providers, you must provide both the seller and provider named in this contract with written notice that you wish to change providers and you must include the name and address of who you want to be your new provider. You may NOT be billed for any additional fees or charges to change providers. A change in providers may require a

new preneed contract. Your seller and provider can help you determine whether a new contract is required or not.

Qualifying for Public Assistance

If you decide to seek qualification to receive Medicaid or other public assistance, you may sign an agreement to make this contract irrevocable at any time. Even if you have agreed to make this irrevocable as part of your qualification for public assistance, you still may change providers at any time. However, you cannot cancel this contract and receive any refund.

Your Right to Cancel this Contract

You have a right to cancel this contract at any time before your death. If you cancel this contract, you may not be entitled to receive all funds paid on this contract. If you want to cancel this contract, you must give the seller named in this contract written notice that you wish to cancel this contract.

If your contract is funded with a joint account, you must also provide written notice to the financial institution where your account is held. The financial institution must give you the funds in the account, minus any interest, within fifteen (15) days of your request. Interest will be distributed as provided in this contract.

If your contract is funded with an insurance policy, canceling the contract will NOT cancel the insurance policy. You must follow the policies of the insurance companies to cancel the insurance policy. If you cancel the insurance policy, you will receive only the cash surrender value of the policy which may be less than what you have paid into the policy.

If your contract is funded with a trust, you must provide written notice to the seller and to the trustee. The trustee shall then distribute all funds held on your behalf in the trust within fifteen (15) days.

Seller's Right to Cancel This Contract

The seller may cancel this contract if you fail to make any installment payment within sixty (60) days of when it is due. Before the seller can cancel the contract, the seller must provide you with written notice of the intent to cancel the contract and you may bring your account current within thirty (30) days. If you don't pay the balance within thirty (30) days, then the seller can provide the funds to the provider at the time of death to be credited towards your funeral services or the seller can cancel the contract and will refund you 85 percent of your contract payments made.

What Happens if I Die Before My Contract is Paid in Full?

If you die before the contract is paid in full, your survivors have the option to pay the balance due on the contract and receive all goods and services that have been price guaranteed. If the balance is not paid, the amount paid on your contract will be applied to the price of your funeral based on the provider's current prices.

The board reviewed and discussion was held. A motion was made by John McCulloch and seconded by Gary Fraker to have legal counsel rewrite and bring back to the board for further review 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 Joy Gerstein voting in favor with no votes in opposition. James Reinhard was absent for the entirety of today's meeting.

A motion was made by Gary Fraker and seconded by Todd Mahn to draft a rule for when there is the assignment of an insurance policy, there's no money changing hands, there's no contract, and that you don't have to pay the $36 fee. There is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and Joy Gerstein voting in favor. John McCulloch voted "no" in opposition. James Reinhard was absent for the entirety of today's meeting.

Thursday, September 3, 2009 – 12:40 pm – 1:30 pm Closed Session

Closed Meeting

Motion was made by Todd Mahn 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; and 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. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition. James Reinhard was absent for the entirety of today's meeting.

APPROVED

(edits below following 09/03/09 comments)

Emergency Rule re: Requirements of Preneed Contracts

Title: Preneed Contract Requirements

Purpose: This rule details the requirements of preneed contracts

(1) All preneed contracts shall be in Times New Roman or a comparable easily read font and at least 8-point type;

(2) A preened 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, a purchaser may then exercise his or hr 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 to 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 effective and valid on and after August 28, 2009; and

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

Authority: 333.340, 436.412, 436.415, 436.420, and 436.425

The board reviewed and discussion was held. The board approved adding the words "and all regulations enacted thereunder" to the end of the first sentence of subsection (7)

[second redraft after comments on 09/03/09]

#3

Rule re: Disposition of funds upon cancellation by the purchaser

Title: Disposition of funds in a trust-funded contract upon cancellation by the purchaser

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:

a) the trustee shall distribute to the purchaser within 15 days of notice the principal of the trust including any funds not yet distributed from the trust pursuant to § 436.430.4, RSMo, but not including any origination fee not yet distributed to the seller pursuant to § 436.430.3, RSMo; and
b) The seller shall within 30 days of the notice distribute to the purchaser any funds distributed to the seller by the trustee pursuant to § 436.430.4, RSMo.

Authority: 333.340 and 436.456

The board reviewed and discussion was held. A motion was made by John McCulloch and seconded by Gary Fraker 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 Joy Gerstein voting in favor with no votes in opposition. James Reinhard was absent for the entirety of today's meeting.

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

The board revisited this rule and discussion was held. A motion was made by Gary Fraker and seconded by Joy Gerstein to amend subsection (1) to add the words "but not limited to" .....pursuant to Sections 436.400 to 436.520, RSMo shall include, **but is not limited to** any licensed funeral establishment..... 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 Joy Gerstein voting in favor with no votes in opposition. James Reinhard was absent for the entirety of today's meeting.

[second redraft after comments on 09/03/09]

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 Chapter 333 and Sections 436.400 to 436.520, RSMo.

(1) For sellers:
a) For the annual report due on October 31, 2009, 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 all 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 in its report due on October 31, 2008 through August 27, 2009. This annual report shall be accompanied by a fee of $2 per preneed contract sold for the reporting period;

b) For the annual report due on October 31, 2010, sellers shall report all contracts executed from August 28, 2009 through August 31, 2010. Thereafter, the annual report shall report all contracts sold between September 1 of the year preceding the annual report through August 31 of the reporting year. Each annual report filed for reporting years ending October 31, 2010 and thereafter shall also be accompanied by the annual fee as required by the Board.

(2) For providers:

a) For the annual report due as set out below, providers shall file an annual report as provided by Section 333.315.3(4), RSMo (Cum. Supp. 2009) covering the reporting period as set out below.

i. For report due October 31, 2009, reporting period shall be from the date of the seller's last annual report though August 27, 2009. No annual fee shall be required for this reporting period.

ii. For report due October 31, 2010, reporting period shall be August 28, 2009 through August 31, 2010 and accompanied by the renewal fee established by the Board.

iii. For reports due successive years, reporting period shall be September 1 through August 31 and shall be accompanies by the renewal fee established by the Board.

Authority: 333.340 and 436.460

The board reviewed and discussion was held. A motion was made by Gary Fraker and seconded by Todd Mahn to amend subsection (2)(a)(i) .....reporting period shall be from the date of the ~~seller~~**provider**'s last annual report though..... And then subsection (2)(a)(iii) .....and shall be ~~accompanies~~ **accompanied** by the renewal fee..... and add the fee rule number to this rule to clarify. 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 Joy Gerstein voting in favor with no votes in opposition. James Reinhard was absent for the entirety of today's meeting.

Title of Rule: Mandatory consumer disclosures

Purpose: This rule sets forth the mandatory consumer disclosures that must be provided to each purchaser of a preneed contract.

1. Each purchaser of a preneed contract shall be provided the following mandatory consumer disclosures at or before the time the consumer signs the contract unless otherwise provided by rule.

Mandatory Preneed Contract Disclosures to Consumer

This Contract is a Legally Bind Document

Before you sign this contract, you should read it and make sure you understand all terms and conditions. You may wish to consult with your legal counsel before you sign this contract.

Right to Receive a Copy of this Contract

You have a right to receive a copy of this contract and any accompanying documents related to this contract such as any life insurance policies or evidence of a joint account.

Right to Change Providers

The law gives you the right to change the provider named in this contract. The provider is the funeral home or other service provider who will provide the goods and services at the time of your death. If you want to change providers, you must provide both the seller and provider named in this contract with written notice that you wish to change providers and you must include the name and address of who you want to be your new provider. You may NOT be billed for any additional fees or charges to change providers. A change in providers requires the

agreement of the new provider and may require a new preneed contract. Your seller and provider can help you determine whether a new contract is required or not.

Qualifying for Public Assistance

If you decide to seek qualification to receive Medicaid or other public assistance, you may sign an agreement to make this contract irrevocable at any time. Even if you have agreed to make this irrevocable as part of your qualification for public assistance, you still may change providers at any time and make changes to the goods and services as any time. However, you cannot cancel this contract and cannot receive any refund.

Your Right to Cancel this Contract

You have a right to cancel this contract at any time before your death. If you cancel this contract, you may not be entitled to receive all funds paid on this contract. If you want to cancel this contract, you must give the seller named in this contract written notice that you wish to cancel this contract.

If your contract is funded with a joint account, you must also provide written notice to the financial institution where your account is held. The financial institution must give you the principal in the account within 15 days of your request. Interest will be distributed as provided in this contract.

If your contract is funded with an insurance policy, canceling the contract will NOT cancel the insurance policy. You must follow the policies of the insurance companies to cancel the insurance policy. If you cancel the insurance policy, you will receive only the cash surrender value of the policy which may be less than what you have paid into the policy.

If your contract is funded with a trust, you must also provide written notice to the trustee. The trustee shall then distribute all funds held on your behalf in the trust within fifteen (15) days.

Seller's Right to Cancel This Contract

The seller may cancel this contract if you fail to make any installment payment within 60 days of when it is due. Before the seller can cancel the contract, the seller must provide you with written notice of the intent to cancel the contract and you may bring your account current within 30 days of notice. If you don't pay the balance within 30 days, then the seller can provide the funds to the provider at the time of death to be credited towards your funeral services or the seller can cancel the contract and will refund you 85 percent of your contract payments made.

What Happens if I Die Before My Contract is Paid in Full?

If you die before the contract is paid in full, your survivors have the option in trust funded or joint account funded contracts to pay the balance due on the contract and receive all goods and services that have been price guaranteed. If the balance is not paid, the amount paid on your contract will be applied to the price of your funeral based on the provider's current prices.

If your preneed contract is funded through an insurance policy, consult your insurance policy.

The board revisited the rewrite of the disclosures to consumers and discussion was held. A motion was made by John McCulloch and seconded by Gary Fraker to approve the rewrite of the Mandatory Preneed Contract Disclosures to Consumer 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 Joy Gerstein voting in favor with no votes in opposition. James Reinhard was absent for the entirety of today's meeting.

A motion was made by Gary Fraker and seconded by John McCulloch to accept the changes to the rewrite draft the Mandatory Preneed Contract Disclosures to Consumer as follows:

1. Each purchaser of a preneed contract shall be provided the following **written** mandatory consumer disclosures **at or before the time the consumer signs the contract unless otherwise provided by rule**.

And Amend the last sentence of the disclosure as follows:

If your preneed contract is funded through an insurance policy, **you should** consult your insurance policy.

Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition. James Reinhard was absent for the entirety of today's meeting.

August 25, 2009 meeting, the Board reviewed the comments received from Joshua Slocum, Funeral Consumers Alliance, relative to his concerns about non-business activities. The board voted 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.
The board received a response from Joshua Slocum, dated August 28, 2009, thanking the board for such a timely answer, and wondered if the board would consider adding a clarification that the rule does not interfere with the rights of families and religious groups to care for their own dead without charge, and without the board's oversight?
A motion was made by Todd Mahn and seconded by John McCulloch to not make this an emergency rule, and the board will do this as part of their regular rule-making time. Motion carried with Gary Fraker, Todd Mahn, and John McCulloch voting in favor with no votes in opposition. Joy Gerstein was absent for this portion of the meeting and James Reinhard was absent for the entirety of today's meeting.

#12
Title: Seller obligations regarding payments
Purpose: This rule clarifies seller obligations regarding payments received

(1) All payments received by a seller or its agents, must be promptly remitted to the appropriate payee – the preneed trust, the appropriate joint account, or forwarded to the insurance company.
(2) If the seller charges any finance or interest charges or any other fees as part of the preneed contract, those payments must be deposited into the trust and may not be retained by the seller.
(3) Any per contract fee assessed by the Board is an obligation to be paid by the preneed seller and not by the purchaser. However, if a seller passes this fee along to the purchaser, this fee shall be clearly noted on an invoice or statement provided to the consumer the amount charged and the purpose of this charge.
(4) If the seller collects the per contract fee assessed by the Board, the seller should maintain records of this collection and be able to provide to the State Board an accounting of these funds. If the seller deposits these fees into the trust, the Trustee shall distribute those fees to the seller in September or October of each year so that the seller will have the funds available to pay those fees to the State Board.
(5) In a preneed seller receives payment from insurance, a joint account, or a trust, and the payment exceeds the cost of the goods and services provided under the contract, the seller shall distribute the overage to the estate of the preneed beneficiary or, if the beneficiary received public assistance, the overage shall be paid to the State of Missouri.

Authority: 333.340, 436.415 36.430, 436.450, 436.455, 436.460, 436.465
The board revisited #12-Seller obligations regarding payment, subsection (1) and (2) and discussion was held. A motion was made by John McCulloch and seconded by Gary Fraker to drop subsections (1) and (2) from the draft of this rule. Motion carried with Martin Vernon, Gary Fraker and John McCulloch voting in favor with no votes in opposition. Joy Gerstein abstained from the vote. Todd Mahn and James Reinhard were absent for this portion of the meeting.
Subsections (3) and (4) were approved earlier in the meeting as a separate rule and Subsection (5) be dropped from this rule.

Becky Dunn, Executive Director, gave out the notice-of-intent form to the public that were present at today's meeting, and asked for any feedback they may have because, apparently, the form that was distributed thus far has caused some confusion. Before the board does the mail-out to the profession, any suggestions would be appreciated in the next couple of days so that modifications can be made and maybe cause less confusion.

Closed Meeting

Motion was made by Todd Mahn 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 Joy Gerstein voting in favor with no votes in opposition. James Reinhard was absent for the entirety of today's meeting.

Adjournment

A motion was made by Todd Mahn and seconded by Gary Fraker to adjourn. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition. James Reinhard was absent for the entirety of today's meeting. The meeting adjourned at 7:20 p.m. on Thursday, September 3, 2009.

Executive Director: Sandy Sebastian

Approved by the Board on: 6/14-16/10

ORIGINAL

MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

RECEIVED
OCT 21 2009
STATE BOARD OFFICE

TRANSCRIPTION OF MEETING

DIVISION OF PROFESSIONAL REGISTRATION
3605 MISSOURI BOULEVARD
JEFFERSON CITY, MISSOURI

SEPTEMBER 2, 2009
9:30 A.M. - 11:50 A.M.
1:15 P.M. - 2:30 P.M.
3:45 P.M. - 5:40 P.M.

CHAIRMAN: Okay, guys. Welcome, again, to the fun. Let's get started. So, we'll call the meeting to order. Do a roll call. Gary Fraker?

MR. FRAKER: Yes.

CHAIRMAN: Todd Mahn?

MR. MAHN: Here.

CHAIRMAN: Joy Gerstein?

MS. GERSTEIN: Here.

CHAIRMAN: Hi, Joy.

MS. GERSTEIN: Hi.

CHAIRMAN: John McCulloch?

MR. McCULLOCH: Here.

CHAIRMAN: Jim Reinhard? Absent?

MR. McCULLOCH: He's here.

CHAIRMAN: But not in the boardroom. So, all right. I need a motion to approve the agenda for the day.

MR. FRAKER: I'll do it.

CHAIRMAN: Gary Fraker makes the motion.

MR. McCULLOCH: Second.

CHAIRMAN: John seconds. Joy?

MS. GERSTEIN: Yes.

CHAIRMAN: Todd?

MR. MAHN: Yes.

CHAIRMAN: All right. Moving right along. I need a motion for approval of the minutes.

MR. McCULLOCH: I'll make that motion.

CHAIRMAN: John makes the motion.

MR. FRAKER: Second.

CHAIRMAN: Gary seconds. Todd?

MR. MAHN: Yes.

CHAIRMAN: Joy?

MS. GERSTEIN: Yes.

CHAIRMAN: That passes. Sharon, do you have any AG report that you would like to speak of this morning?

MS. EULER: I don't believe I have anything new. Sorry I can't be there today, but I don't know of any news unless somebody has any questions for me.

CHAIRMAN: All right. Actually, we should go around the room. I think everybody here knows everybody because we've all been so cozy lately, so -- but just on the sake of. Earl Kraus, to my right, senior legal counsel. Obviously, you heard the roll call of the Board, so you know who that is. Lori Hayes,

our inspector. Ms. Court Reporter, tell us your name again.

THE REPORTER: Kristy Bradshaw.

CHAIRMAN: Thank you, Kristy. Mr. Stalter?

MR. STALTER: Are you ready for us?

CHAIRMAN: Yeah.

MR. STALTER: Okay. Bill Stalter for Stalter Legal.

MR. SPEAKS: Brad Speaks, Speaks Funeral Home.

MR. OTTO: Don Otto, Missouri Funeral Directors and Embalmers Association.

MR. WARREN: Mark Warren, Missouri Preneed Coalition.

MS. BATTAGLER: Amy Battagler, Stuart Enterprises.

MS. RUSSELL: Darlene Russell, CFL Preneed.

MR. MOORE: John Moore.

CHAIRMAN: And the lady that's the thrust behind the throne.

MS. DUNN: Hey, Kristy, did you get that?

THE REPORTER: John Moore?

MS. DUNN: John Moore with Moore Funeral Homes. Did you get everybody else okay?

THE REPORTER: Uh-huh.

CHAIRMAN: And the lady hiding in the little black box right here, Sharon Euler, attorney general's office. And you didn't get to make the roll call. Do you want to introduce yourself?

MR. REINHARD: No. I want to remain anonymous.

CHAIRMAN: Okay. All right. Did I miss anything there? All right. Do you have anything you want to speak to before we just move on? Just a quick thought here. The group-three rules that you would have in your hand, there's been some minor adjustments made to that and you're getting ready to get a new one in your hand very shortly, so they're being speedily copied on the copy machine and will be in here momentarily, something like that. So, okay. I think we're ready to start the group -- well, this is which one?

MS. DUNN: Well, that was already approved and we have some minor changes to it

that we would like to discuss today.

CHAIRMAN: Which rule, though? Is there a number that designates --

MR. KRAUS: I think that was in the very initial set.

CHAIRMAN: Number one?

MS. DUNN: Maybe. It could have been in group one.

MR. KRAUS: Pre group one.

CHAIRMAN: Okay. Does everybody have what says previously approved at the top, the rule on the -- for annual filing reports? Has everybody got that? We'll start with that one. All right. Got a little language cleanup there that legal counsel is going to discuss, so take it away.

MR. KRAUS: Yeah. This is one that was previously approved. It was actually one of the very initial rules approved along with the notice-of-intent rule. And we were getting that prepared for filing, then we noticed a couple of things that we thought merited coming back to the Board with suggested edits. And you'll notice in the attached page, it says suggested changes not yet approved, and

you can see the additions there. We're adding "and providers" to make sure that this applies to both sellers and providers in the first two paragraphs there. That numbering should probably be one, two, and three instead of four, five, and six, but the edits to the text is what's important there. And then in the last paragraph, in addition to adding provider, it was suggested that it might be a whole lot better for the industry and for accounting purposes to have the report, instead of running through August 27th, to run through the end of a month so that you don't have to try to keep track of a couple days at the end of August through some other kind of random day in the middle of the month. So, that's all that change does is it takes it through the effective date of the law through August 31st of next year because that's the end of a month. Then September 1 through August 31 of successive years. And that's really the extent of that change.

MS. EULER: Earl?

MR. KRAUS: Yes?

MS. EULER: This is Sharon. When the

Board discussed that, we discussed that the issue was a few days, and the issue was that the Board wanted it that way because that's the cutoff for the old law to the new law, so it was clear which contracts were under the new law, which ones were under the old law, as kind of a transition.

MR. KRAUS: Right. And for the first period, I think they're doing that because it starts that the next reporting period starts on August 28th.

MS. EULER: Right.

MR. KRAUS: So, I'm not sure if you're --

MS. EULER: Well, I don't have in front of me what you're looking at.

MS. DUNN: I sent it to you on e-mail this morning. It's the one that I forwarded to you --

MS. EULER: Oh, I've got it here. Annual report rule?

MS. DUNN: Yes.

CHAIRMAN: Well, the report that comes up, it does catch -- it keeps us in the old versus the new. And then after the first year

of that, then it does just clean it up and make it --

MS. DUNN: Right.

MR. KRAUS: Right. Because in the first paragraph, it says for the reporting year ending October 31, '09.

MS. EULER: Right. So, for this year, that's reporting year through August 27th. For next year, it's August 27th through September 1, and then for years after that, it's September 1 through September 1 -- August 31st through September 1. That's what the Board's intent was.

MS. DUNN: Well, we talked about this to Connie yesterday and we were talking about the small-business impact, because I know this is confusing right now, but we were trying to come up with something -- now, we've got through August 31st. I mean, Don Otto and I have talked about this before, when you say to, through. We were trying to come up with something, after we get all of these reports caught up, that would be something that everybody in the funeral profession would remember instead of giving them all these off

dates. And Connie suggested as a small-impact statement that would be something would be kind of a bookkeeping hardship, so that's why we came up with these different dates. Now, Don -- I mean, it's up to the chairman to call on you, but that's what our intent was yesterday when we were talking about this.

MS. EULER: But wouldn't it be easier for a company to keep records as of the end of a month?

MR. KRAUS: I think that's what we're trying to do.

MS. EULER: Well, August 28th isn't the end of the month.

MS. DUNN: That's only for that reporting year.

MR. MAHN: For this year.

MR. KRAUS: That's only for that first --

MR. MAHN: That's when the new law starts.

MR. KRAUS: -- for this year.

MS. EULER: Well, you say beginning August 28th, 2009, the reporting period shall be August 28th through August 27th of

successive years.

MR. KRAUS: Well, that's the previously approved. We're looking at -

MS. DUNN: The second one.

MR. KRAUS: -- the second page.

MS. DUNN: If you page down on that e-mail.

MS. EULER: Oh, okay. All right.

MR. KRAUS: Yeah. That's what we're trying to change it from, so I agree with you.

MS. EULER: Okay. Let me look at the right one then.

MS. DUNN: Honestly, Sharon, I did the same thing yesterday.

MR. OTTO: Yeah. Sharon, I think the one you're looking at, the paragraph 3 of the previously approved, I don't think that completely reflects what the Board was really discussing to do 100 percent because you're right. But I'm not sure the suggested changes on the not-yet-approved rule, I'm not sure that those make it clear that on October 31st, 2009, your reporting year will end at midnight on August 27th, 2009. I'm not sure that that rule makes that clear.

MR. KRAUS: I see that, yeah.

MR. OTTO: I think it covers successive years pretty good, but I'm not clear -- I don't -- I think that the rule makes that 100-percent clear, and I think that was probably the intent.

MS. DUNN: Okay.

MS. EULER: It needs to be clear that the reporting period is from date of the seller's last report up to August 27th of this year. And then next year, it's August 28th through September 1, and then for years after, it's August 31 through September 1.

CHAIRMAN: So, does everybody -- do you agree? You're shaking your head. So --

MS. DUNN: You understand what we're trying to do?

(Several people respond yes.)

MS. DUNN: We're just trying to make it not a bookkeeping nightmare for those that are doing these reports. So, this is the time for the audience to tell us because we want to not make it any more confusing.

CHAIRMAN: Sure.

MR. MOORE: Just set a date when it's

due. You've got three or four different dates here that we're going to worry about over the next year or two.

MR. KRAUS: Well, you have a date when it's due, but then you also have what reporting period you're covering within that report.

MR. MOORE: We're going to cover September 1st through August 31st. Make a rule that says this year, your report is due August 31st. The heck with all these other dates. Just get a couple dates. You've got five different dates here we've got to worry about for the next year and a half. Just set a date. Simplicity, it kills you.

MS. DUNN: The problem with bringing it through the date it's due, then you can't get it in on that date, because if it's through October 31st, then everybody says, well, how am I supposed to report through October 31st and get a license issued to me. So, that's why it's never been through October 31st. So, that's why -- and, John, this is -- it's a little difficult because we're transitioning from three different periods of time. And

what we're trying to do is give the profession the opportunity to finish a report, get a license back by October 31st.

MR. MOORE: Okay. So, our sales tax is due on the 15th of the month, but it ends on the 31st of the month prior. They stopped it. You've got 15 days to get it sent in. It can't be simple?

MR. KRAUS: And I think that's what they're trying to do here is have the reports that are due in October for a reporting period from September 1 through the end of August of the following year. That's what we're trying to get to.

MR. MAHN: I think what John is seeing on there, and maybe he doesn't understand because he hasn't been here. He's seeing this August 28th, 2009, date. That's only for this year, John, because the new law started August 28th. So, you've got to encompass that little bit of business between August 28th and September 1st that you normally would be -- after this year, they'll all be from September 1st to August 31st. Just this one year because of the new law started on the 28th,

you're backing up and including the 28th; am I right?

MR. KRAUS: Exactly.

MS. DUNN: Right.

MR. MAHN: Right. Make a motion we move on.

MS. DUNN: And when it gets in the office, we have to issue a license as a result of this report now.

MR. MOORE: Yeah. Sure.

MS. DUNN: So, we can't have it up to, like, the 15th. We -- because it takes processing time for just the small office we have. So, we're going to have to issue licenses as a result of those reports, so that's why we're setting those dates out from when the license is due, if that makes sense to everyone.

CHAIRMAN: I think it makes total sense.

MR. MAHN: I make a motion that we accept that as is and move on.

CHAIRMAN: Motion. Second?

MR. FRAKER: Second.

CHAIRMAN: Gary seconds.

MR. KRAUS: I think we could make more clear, like Sharon and Don were saying, that the initial reporting period is up through August 27th of '09, and I could go get something added to that and bring it back later this morning.

MS. EULER: Yeah. Because I'm looking at what -- I have paragraph sub 6, and I don't understand what that means.

MR. KRAUS: Yeah. I think we can make an adjustment to that to clarify that and also address the up through August 27th period so that it's all laid out exactly what it is.

MS. EULER: For reports in year X, for reporting year X, for reporting year X.

MR. KRAUS: Right.

MR. MAHN: I included that in my motion.

CHAIRMAN: Okay. Joy?

MS. GERSTEIN: Yes.

CHAIRMAN: John?

MR. McCULLOCH: Okay.

CHAIRMAN: Jim?

MR. REINHARD: Yes.

CHAIRMAN: All right. So, you can

clean that up to fix those couple little things and that will be taken care of.

MS. DUNN: Lori, did Tess have those new handouts ready yet?

MS. HAYES: Yes.

MR. KRAUS: It makes total sense.

CHAIRMAN: Do we have a yes or no?

MS. DUNN: Lori is going to -- (inaudible.)

CHAIRMAN: Oh, okay. Lori is passing the offering plate at the moment, so --

MR. McCULLOCH: So, this old group three, we just get rid of it?

MR. KRAUS: Well, you may want to hold on to that because there may be references back and forth in the discussion, I think.

MR. McCULLOCH: Okay.

MR. KRAUS: Because some of you may have looked at the initial draft and thought, well, I like that or I don't like that, and then we can compare them as we go through.

CHAIRMAN: Sharon, Becky just sent you an e-mail with these new group-three things, so you'll have both.

MS. EULER: All right. Thank you.

CHAIRMAN: Are we ready?

MR. KRAUS: Should we start into group three, #1?

CHAIRMAN: Let's start in on group three, #1.

MR. KRAUS: All right. The #1, requirements for written notice, it's my understanding that near the end of the last meeting when the Board started into group three, that the Board actually decided that they didn't want to have this rule, but it was in group three, so it's here. If the Board wants to have further discussion on it, I guess you could, or if you don't want that rule, we can move on to rule #2. I think, at one point, there was discussion about the different places where there is a requirement for written notice, that maybe there should be a rule setting out what those different notices should include. And then later, there was subsequent discussion that said, no, don't approach it that way.

MR. McCULLOCH: So, in other words, you think this is clear enough, what's in here? Is that what you're saying?

MR. KRAUS: I'm not saying that.

MR. McCULLOCH: I mean, did we say that?

MR. KRAUS: That's my understanding.

CHAIRMAN: Yes, we did.

MS. DUNN: Well, I would say after the past week, that anything you can clarify through rules that would make it better for the profession would be really good for the staff.

MR. KRAUS: Now, Martin, is that a note that it shouldn't be a rule or it just should be nonemergency?

CHAIRMAN: Just should be nonemergency, is what I wrote.

MR. KRAUS: Oh.

CHAIRMAN: That possibly we would need rules, but I just wrote nonemergency rules.

MR. KRAUS: So, at most, we'll deal with this later?

MR. OTTO: For what it's worth, the problem with this rule, it was way overbroad because it says for any written notice, you have to do all this. For example, under Chapter 333, if the funeral director in charge

of your business changes for more than 30 days, you have to give written notice to the State Board. If you adopt this rule, that means if you change your funeral director in charge, you have to give the name of the provider, the name -- I mean, it covers stuff that it was not intended to cover because --

MS. BATTAGLER: It also requires a purchaser name and address, if possible, and that doesn't apply to very many notices.

MR. OTTO: There's a whole lot of written notices that this list does not apply to, was the part -- yeah.

MR. KRAUS: Okay.

MR. OTTO: Or can't apply to.

CHAIRMAN: I can see that from -- we had, basically, said that we thought this was nonemergency at the time, so anybody think we need to revisit that thought or just keep it that and move on?

MR. KRAUS: Moving on?

CHAIRMAN: Nobody has responded, so --

MR. REINHARD: Moving on.

CHAIRMAN: -- I suppose move on. So --

MR. KRAUS: All right. Number 2. All

right. This was drafted in an attempt to address what's irrevocable in a contract -- in an irrevocable contract. There was discussion, as I understand it, among the Board and those attending that the focus there is supposed to be on the money is what's irrevocable, and this tries to address that. And I think that's because within Senate Bill 1, there is provisions for changing providers and that sort of thing, so that is allowed under law, so that's, apparently, irrevocable, but there it is.

MS. RUSSELL: I like this a lot better. This makes a lot more sense for -- it gets the funeral home, the provider, information on what to do.

CHAIRMAN: Don?

MR. OTTO: Yeah. This is -- I think this is very well written. It would be nice if there was maybe a paragraph 3 that included an insurance funded. This only deals with trusts, so if somebody has made an insurance policy irrevocable and an irrevocable contract, you know, how do you handle that? The big question I got yesterday with that is

consumers come in and purchased an insurance-funded irrevocable contract, and now they're changing providers. It's no problem for the insurance company to change that, usually, but the first funeral home, since they were the seller, they don't want to be the seller anymore because they don't want to have to report that and don't want to have the fiduciary obligation; they want that to transfer to the new funeral home --

MR. MAHN: Provider?

MR. OTTO: -- that the purchaser wants to transfer it to. So, it would kind of be similar to paragraph 2 here, but it would be specific to an insurance, where a consumer wants to transfer an irrevocable policy that is funded by insurance and not just trusts because paragraph 2 here deals with just trusts.

MS. EULER: This is Sharon. Did we also want to say that it applies to joint accounts, as well?

MR. OTTO: Well, that would be a good paragraph 4.

MR. STALTER: Are there irrevocable

joint accounts?

MR. OTTO: Yeah.

MS. EULER: Yes.

MR. STALTER: How does it work then from that?

MR. KRAUS: Well, can --

MR. OTTO: Well, it depends on the law. I don't know --

MR. KRAUS: Can we accomplish that by leaving -- by instead of specifying that it applies to all those, leaving it general and thereby applying to all of those, and simply make an adjustment to the transfer of funds to being -- to encompassing in some way the transfer of how whatever the funding mechanism is.

MR. OTTO: You could say the transfer of funds and/or -- because sometimes you might have multiple. It might be insurance policy and money.

MR. KRAUS: Right.

MR. OTTO: And so, you could say the transfer of all funds in the trust and/or any insurance policies -- that the funds in the trust, joint account, and/or any insurance

policy that are funding that preneed contract, something like that.

MR. KRAUS: Right.

MR. REINHARD: I make a motion we add that to it. Can you get Sarah to do that?

MR. KRAUS: Yeah.

MS. EULER: I think we could add a paragraph. You could add a paragraph 3 to address insurance. For trusts and joint accounts, though, I think they would be dealt with the same. We could just add joint accounts to paragraph 1 and paragraph 2.

MR. REINHARD: Let's get it done. (Inaudible.)

MS. DUNN: So, modify paragraphs 1 and 2, and then add a new paragraph 3?

MR. REINHARD: Well, I make a motion that they go submit it back to Sarah and Sarah brings it back and we look at it.

CHAIRMAN: That works. Second?

MR. MAHN: Second.

CHAIRMAN: Todd seconds. Gary says yes. Joy? John? All right. So, redo. I think everybody is in total agreement with the idea, it's just what the language is.

MR. KRAUS: Yeah, I think so.

MR. REINHARD: Yeah. Put that one down. One side. One over here and one over here.

CHAIRMAN: All right.

MR. KRAUS: All right.

CHAIRMAN: Number 3.

MR. KRAUS: Number 3. Disposition of funds upon cancellation by purchaser. Let's see. Funds in a trust fund and contract upon cancellation.

CHAIRMAN: Any comments? Don?

MR. OTTO: Yeah. We talked about this a little bit last time. There's a couple problems with the way this is worded, in my opinion. First off, the trustee can't distribute something it doesn't have, and it would not have that 10 percent that is refundable. The seller has that.

MR. KRAUS: If they've asked for it.

MR. OTTO: If they have done it. If they've done it. So -- and, also, it doesn't -- it says the trustee shall distribute. Who shall they distribute to, because normally the contract between the trustee and the seller

would be the trustee distributes stuff to the seller. That's -- I mean, I think we have to clarify who the trustee is supposed to distribute the money to on that situation, but, also, the trustee can't distribute something it doesn't have. And so --

MS. EULER: But if there is income in the trust, I think the idea is that the trustee would distribute that money out of the income that has accumulated in the trust.

MR. OTTO: But there might not be.

MS. EULER: If there isn't, then the trustee may make demands upon the seller to recover those fees.

MR. OTTO: Well, I could see it. I'm just saying the trustee can't -- the banks will go nuts if you pass this because it's requiring them to do something that they might physically not be able to do.

MS. EULER: Right. But it tells them where to get the money.

MR. OTTO: Well, but they still can't just get the --

MR. SPEAKS: But, now, you're putting the burden on them to do it.

UNIDENTIFIED: Yeah.

MR. OTTO: Yeah. I mean, it's -- the rule should say -- in my opinion, the rule should say the trustee distributes the principal of the trust, and, again, you've got to be careful with that including all payments received because, now, what if the market value of the trust has gone down, you've got a problem there. But I believe the rule should say that the trustee distributes to the purchaser -- make that clear that it goes to the purchaser, the principal of the trust, and that the seller shall then, upon cancellation, send to the purchaser the 10 percent, if it's been withheld, pursuant to whatever that statute number is.

MS. EULER: Well, I think the trustee, if there is money in the -- attributed to that account in the form of interest or income or whatever, if the amount has accumulated from -- and the trustee can out of that.

MR. STALTER: Can do what? What's the last part?

MS. EULER: Then the trustee calls up the seller and says, hey, seller, you owe me

this money.

MR. KRAUS: Sharon, you broke up a little bit on that last part. What is --

MS. EULER: Which part?

MR. KRAUS: The last part of what you were saying there. What was that, again?

MS. EULER: The thing that the trustee, if there is not sufficient income for, you know, both in the trust to pay for that extra 10 percent, then the trustee calls up the seller and says, hey, pay up.

MR. OTTO: Well, I think we should put the duty on paying the purchaser the 10 percent to the person who took the 10 percent. And so, if -- now, if the 10 percent has been left in the trust, then, yes. I mean, that's part of the principal, so that's already covered. But if that 10 percent has been withdrawn by the seller, it should be the obligation of the person who has got the money --

MS. EULER: But what's the problem with having the trustee distribute that amount if that amount is in the trust?

MR. McCULLOCH: There's nothing wrong

with it if it's in the trust.

UNIDENTIFIED: That's right.

MR. OTTO: But, yeah, then you get real complicated.

MR. McCULLOCH: The problem is if it's not.

MR. OTTO: Now, you've got a real complicated rule because you're going to have to --

MR. STALTER: Well, the way I went at this, Sharon, it's the lesser of. Either it's the value of that account or the payments in the trust net of the origination fee. So, I mean, if we've got 95 percent in the trust, then we'll refund it. But if I don't have that much, you want me to go call all my sellers whenever that happens if it's $10 or $15 or whatever?

MR. MAHN: The problem is the law says 95 percent, so, basically, all we've got to do is figure out who's coughing up the 10 percent.

MR. STALTER: Yeah.

MR. MAHN: Who's going to cough it up, you know, the buyer, the seller, the agent?

MR. McCULLOCH: The seller.

MR. MAHN: The seller. Just like insurance does it, it's like a charge-back. Somebody has got to cough it up, let's just decide who's coughing it up and move on.

MR. McCULLOCH: Well, it shouldn't be the trustee. They're not --

MR. MAHN: Right.

MR. McCULLOCH: If they don't have it, they shouldn't be in that --

MR. MAHN: Right.

MR. McCULLOCH: They shouldn't be involved.

MR. KRAUS: Right. Now, this -- and maybe this can be addressed a couple of different ways. This does say the trustee may make demand. It's not requiring the trustee to do that. Maybe we leave that in there so the trustee may do that, but also add that there is a requirement --

MR. MAHN: The seller.

MR. KRAUS: -- that the seller is ultimately responsible for it.

CHAIRMAN: And you've got two separate -- I mean, you have situations that could be both ways. If it's not out of the -- if it's

the money is all 100-percent trusted, then, obviously, the trustee would be the one that distributes it.

MR. KRAUS: That's right.

CHAIRMAN: If it is, then you've got two people. So -- but shouldn't the language be covering both bases?

MR. KRAUS: And I think maybe --

MR. OTTO: Yeah, I agree. If the 10 percent has been deposited into the -- yeah. If the 10 percent has not been distributed per whatever that rule is that allows you to distribute the 10 percent, the trustee gives it back to the purchaser. If it has, the seller gives it back to the purchaser.

MR. STALTER: But the likelihood is you're going to be short that amount for the first year and a half of the contract's life because you won't have the -- you will not have earned enough to cover it.

MR. MAHN: So, what it's saying is that for at least a year and a half, the seller is responsible for the 10 percent?

MR. STALTER: Well, that somebody. You know, the trust won't have enough

prefunding.

MR. McCULLOCH: But you can't put a time on it because you --

MR. MAHN: No, you can't put a time on it.

MR. STALTER: It depends -- (inaudible.)

MR. MAHN: I'm just saying in that time frame, they absolutely would be coughing it up.

MR. KRAUS: And so, what about adding, like we were saying before, under paren 1 that the trustee shall distribute to the purchaser and then adding, say, a paragraph 3 saying that if that 10 percent has already been distributed to the seller, then the seller is responsible for returning that money to the purchaser?

MR. OTTO: I mean, yeah. You could use this right now, what you've got, and just say the trustee shall distribute, you should add "to the purchaser," I think, that first sentence, the principal of the trust, period. That gets confusing when you say principal of the trust including all payments received

because, again, that "all payments received" might include stuff that's not in the trust anymore.

MR. KRAUS: Well, but I think what some of that extra part there is trying to allow, which your change will take out, is allow the trustee to actually return part of that 10 percent by utilizing income.

MR. OTTO: But that might violate, now, the contract between the seller and the trustee because the other parts of the statute say the income off the trust belong to the seller. The statute says the income from the trust belongs to the seller. I mean, so, to me, the simplest way is you keep -- again, the trustee shall distribute to the purchaser the principal of the trust. B, this amount shall include the amount set out at 436.430.4 if it has not been withdrawn from the trust by the seller. And then C would go out completely and C would then say the seller shall distribute to the purchaser, or maybe that needs to be brought out in a different paragraph, if that 10 percent has withdrawn as the seller's job to return that to the

purchaser because they're the ones that pocketed the money.

MS. EULER: But what is the problem? If -- and maybe we can say this differently. If there is money in the trust to pay that 10 percent, what is the problem with just having the trustee pay that out of the 10 percent if that interest belongs to seller anyway? That just says it does, and that's the seller's money, the trustee pays it out. What is the problem with that?

MR. McCULLOCH: The seller may not want to handle it that way. They may prefer to leave it --

MR. STALTER: The other part, maybe the trustee is accounting for it. Yeah. I have to account for that. I figure out, you know, what I did then and make refunds come in.

MS. EULER: Sorry. I can't hear what you're saying.

MR. STALTER: It's an accounting issue for the trustee.

MS. EULER: Right.

MR. STALTER: Okay. It's just -- I'm not saying right or easy, it is a layer of

administration that we have to take care of.

MS. EULER: I understand that.

MR. STALTER: Okay.

MR. OTTO: And flip the question. What's the problem with making the person who pocketed the money the one responsible for paying it back?

MS. EULER: Because they won't.

MR. KRAUS: Well, I think there is an additional advantage to the purchaser because they don't have to go to several places to get money, and I think that's the advantage.

MS. EULER: (Inaudible) -- two checks that pays the seller to pay them back because the seller, most likely, in my experience -- and keep in mind, I only see the bad people -- isn't going to pay that money back or is going to delay, delay, delay, and say I'll pay it next week. Well, I'll pay it next week. I'll pay it next week. Whereas the trustee has the money, it's sitting there, why not have the trustee just pay that out if it's in the account? I just do not see a problem with that.

CHAIRMAN: Well, Don, what are you

seeing that is -- that -- I mean, that -- from my point of view, that makes sense, but what's the legal thought that's messing -- that you disagree with?

MR. OTTO: Well, my concern is trying to think on behalf of the banks with what Bill said. Number one, the banks are going to go nuts about that, I think. It is an accounting -- it is potentially an accounting nightmare. In some cases, okay, I'm going to have to give the consumer a check for $3.62, you know, and now they're owed because -- but they're still owed $76.52 by the funeral home. So, the elimination of the two-check problem is not necessarily gone, particularly if they cancel within the first couple years. So, the bank is now -- the trustee is now going to have to figure up, okay, how much of this, you know -- I've got to write a check to the consumer. The principal, I know, because I account for that, but now I'm going to have to write -- split up whatever income there is. I'm going to have to calculate what the 10 percent was, and is it -- particularly, in the first year and a certain period of time, it's -- you can

only get the -- you know, the 10 percent of the total, so there might not even be enough money in the trust, but you have to calculate that. And then what if the interest in the trust covers part of the 10 percent, but not all of the 10 percent? So, now, you've got the bank writing a check for, again, $125.52, but, now, the seller is on the hook for $75.68. To me, it's just simpler and cleaner to make the person who has pocketed the money responsible for giving it back. Now, it may certainly be a case where you have a bad actor out there, but, like we said with NPS, it's already illegal to steal money. I mean, you don't need to pass a law for that. Prosecute them, go after them if they're a bad actor.

CHAIRMAN: So, why not just -- okay. If that causes such a bureaucracy of problems, why not just make the seller the person that has to refund it and he has so many days to refund it, and he'll be getting his money quick out of the trust.

MR. OTTO: That's another -- that's another option.

MR. McCULLOCH: That was certainly the

intent of all this.

UNIDENTIFIED: I like that one -- (inaudible.)

MR. McCULLOCH: I mean, that was the idea.

UNIDENTIFIED: A good idea.

MR. MAHN: That's why you're chairman.

MR. McCULLOCH: Because you had guys like Todd --

UNIDENTIFIED: I thought it was -- (inaudible) -- Martin, there.

CHAIRMAN: If you just give him so many days to cough it up out of his own pocket, he'll be getting it out of the trust pretty quick. Go ahead, Mark.

MR. WARREN: This is Mark Warren. I mean, this can also be taken care of in an agreement, you know, between the parties that if this eventuality arises, then it's your duty to -- you know, that you are responsible for that money.

MR. OTTO: Sharon, you're better at this. Did we leave in the statute, Senate Bill 1, that if the seller doesn't provide the money that they're supposed to give to the

purchaser, the purchaser can do end-around and go to the trustee?

MS. EULER: Not the purchase, the provider.

MR. OTTO: Because in the current -- I mean, in the old 436, if the seller fails to pay money to anybody that's due money --

MS. EULER: It is the purchaser.

MR. OTTO: The purchaser.

MS. EULER: 36.510.

MR. OTTO: Okay. So, if you do what Vernon suggested, that the seller is obligated to do it, there is already in the law where if the seller doesn't do what they're supposed to do, you can do an end-around and go straight to the trustee to collect the money.

MS. EULER: Right. Now, why not just go to the trustee to begin with?

CHAIRMAN: Because it may not be there and it may be parts of it and it may be caught up in the interest and it's a layer of levels that the banks don't like.

MR. MAHN: I think it's best to put the seller on the hook indefinitely for the 10 percent. Just put that in there.

MS. BATTAGLER: Well, if you require the seller to pay back -- to issue the refund, and then the seller can go to the trustee and say this is how much I refunded, give me what's in the trust principal, plus income because their --

MR. STALTER: I'll give you whatever I've got in the trust. That's what it is.

MS. BATTAGLER: Right. Right. Then everything is covered. It comes from one person. You don't have the accounting nightmare for the banks, the trustees. The trustees don't have to give out more money than what's actually in the trust. I mean, you cover everything right that way.

MR. MOORE: Well, who do the people buy it from? They bought it from the seller.

MS. BATTAGLER: Yeah.

CHAIRMAN: Well, that's who --

MR. MOORE: Why confuse the public more? Go back to whoever you gave your money to to get your money back. However I get my money back is my problem, not John Doe, consumer. Who did you write the check to? Go get it from the guy you wrote the check to.

CHAIRMAN: Any other comments?

MR. MAHN: I make a motion we put seller in there is responsible for the 10 percent indefinitely. Is that what you're thinking, Don?

MR. OTTO: Yeah.

MR. McCULLOCH: I would second that.

CHAIRMAN: Okay. Gary says yes. Jim? Joy? Okay. So, that just needs rewritten.

MS. EULER: Mr. Chairman?

CHAIRMAN: Yes, ma'am.

MS. EULER: I have another meeting at 10:00, so I can either leave the phone on mute, or if you want me to hang up, I can, and I'll let you know when I'm back. You'll have to call me back. Your preference.

CHAIRMAN: Becky says just e-mail her and she'll call you back.

MS. EULER: Okay. All right. Well, I hope your meeting goes well while I'm gone.

CHAIRMAN: Thank you.

MS. EULER: And I'll see you in about 30 minutes.

CHAIRMAN: All right. Go ahead.

MR. KRAUS: So, on #3, you agreed that

we would add to this rule that the seller is responsible -- ultimately responsible for that other 10 percent?

MR. MAHN: Right.

MR. KRAUS: Okay.

CHAIRMAN: Does that bring this -- all this wording back to what we were just saying, that it's simplified. It's the seller's whole problem, go see him and get your money?

MR. OTTO: Well, I would say --

MR. KRAUS: Well, now, those are two different things.

MR. OTTO: Those are two different things.

MR. KRAUS: Two different things. Do you want, A, for there to be the current rule with clarifying and adding to it that the seller is responsible for that other 10 percent to the extent it's not paid out from the trustee? Or does all the money go from the trustee to the seller to the purchaser?

CHAIRMAN: I think that's the cleanest, personally, but --

MR. McCULLOCH: I like that one.

MR. MAHN: Yeah. That was my motion.

CHAIRMAN: Okay. So, there was his motion.

MR. McCULLOCH: I remember that.

MR. OTTO: You're a good motion maker.

CHAIRMAN: That's right.

(Several people talking simultaneously.)

MR. KRAUS: How many days?

MR. MAHN: One day.

MR. KRAUS: One day.

MR. MAHN: Thirty days.

MR. McCULLOCH: Are we doing our 30 days in most things now?

MR. MAHN: Yeah.

MR. KRAUS: Yeah.

MR. McCULLOCH: So, it's consistent.

MR. KRAUS: Yeah. Thirty days for the seller to get the money to the purchaser; right?

MR. McCULLOCH: Yeah.

MR. OTTO: I would only suggest -- I'm not sure if there's not something buried in the statute already that says how fast the refund has to come back?

MS. DUNN: I know. That's why I was making sure -- (inaudible.)

CHAIRMAN: Well, 30 days or the statute.

MR. OTTO: If it's not in the statute, 30 days is great, but it might already be in the statute.

MS. DUNN: Yeah.

MR. MOORE: Is that by written cancellation?

CHAIRMAN: Well, I would think so.

UNIDENTIFIED: Sure.

MR. OTTO: Yeah. The statute already says canceled in writing.

MR. KRAUS: Yeah. There's notice provisions in writing for the cancellation.

CHAIRMAN: Okay.

MR. KRAUS: All right. Number 4.

CHAIRMAN: Number 4. Fifteen.

MS. RUSSELL: Well, I'm just saying on page 26 on the cancellation, on joint accounts, it says 15 days, on insurance funded, it says 15 days. It doesn't -- and it says within 15 days on the trust.

CHAIRMAN: Okay. So, I guess --

MS. RUSSELL: So, it's in the statute, 15 days.

CHAIRMAN: Now, do you think we should follow suit?

MS. RUSSELL: Page 26, line 20, Earl.

MR. STALTER: Which line?

MS. RUSSELL: Line 20.

CHAIRMAN: So, we just need to follow the statute, and that appears to be 15.

MR. KRAUS: And it says the trustee shall distribute within 15 days.

MS. RUSSELL: If you go up and look at the joint account and the life insurance, you know, to be consistent, it's going to the purchaser in 15 days.

MR. KRAUS: Seller shall notify the purchaser. Well, we'll look at that and make sure of that, because I'm assuming that you want the number-of-day requirement on the seller. So, we'll have to make sure that that doesn't conflict with what the statute says. If the statute puts the time line on the trustee in 15 days, then maybe the sellers can still be 30 to allow them to get the money to the purchaser, but we'll check that.

MR. OTTO: That's a good thought.

MR. MAHN: That was also in my motion

-- ventriloquism.

MR. McCULLOCH: So, on page 21, it's talking about -- is it referring to this at the top there?

MR. KRAUS: Twenty-one of the Senate bill?

MR. McCULLOCH: Yeah.

MR. KRAUS: Talking about adequate books and records.

MR. McCULLOCH: Is that talking about that? And line 91 says the seller shall furnish to each contract purchaser.

MR. KRAUS: No. That's talking about reporting and --

MR. McCULLOCH: That's just reporting?

MR. KRAUS: Yeah.

MR. McCULLOCH: Okay.

CHAIRMAN: Had to think about it for a minute.

MR. KRAUS: All right. Ready for -- what are we on -- #4?

CHAIRMAN: Four.

MR. KRAUS: Seller cancellation.

CHAIRMAN: I think he should get his money from the purchaser. Just kidding.

MR. MAHN: Was that a motion?

CHAIRMAN: I can't make a motion.

MR. MAHN: I know.

MR. KRAUS: This was addressing, if you'll recall in 436.457, Section 1 specifies joint contracts and trust-funded contracts, but the other three -- Sections 2, 3, and 4, don't, but it sounds as if they are to apply to joint and trust-funded contracts. So, that's what Section 1 there is going towards, to try to clarify that. And then #2 is try to address, well, what about insurance-funded preneed contracts, so --

MR. MAHN: It looks clean to me.

CHAIRMAN: It is pretty straightforward, actually, but --

MR. MAHN: Make a motion to accept it.

CHAIRMAN: Okay. Motion. Second? Joy. John? Joy?

MR. McCULLOCH: Do we really need it? That's what I'm trying to figure out. Do we really need it? So, you think we need this clarification?

MR. KRAUS: Well, I mean, what was raised last time and it is a valid point, that

because they're numbered as one, two, three, and four, they're all separately standing. Two, three, and four aren't subparagraphs of the first one. So, two, three, and four, you could argue, since it says the contract, applies to any and all contracts, not just trusts and joint accounts. So, you know, to that extent, I think it's helpful.

MR. McCULLOCH: No.

CHAIRMAN: Okay.

MR. McCULLOCH: It would take me too long to figure it out.

CHAIRMAN: All right.

MR. McCULLOCH: I'll go with what you said.

MR. MAHN: You're holding up the process.

MR. McCULLOCH: I know. I'm slow.

MR. KRAUS: All right. Number 5. Well, where did the number go on that one? I'll check that one. We have an alterative A on the next --

CHAIRMAN: #4A -- or #4B, I guess.

MR. KRAUS: Let me make sure that's right. Yeah, that's right. I guess that's

just the one between #4 and #5. This is addressing the seller requirements when they're changing providers. Have alternative A on there because there had been a number of different drafts that we were working with on this.

CHAIRMAN: Go ahead, Don.

MR. OTTO: I think most of this looks pretty good. There's a typo, I think, in the first sentence under paragraph 1, or just a grammatical thing. When the purchaser notifies the seller that a new provider has been selected, the seller shall pay to the new provider what -- shall pay to the new provider pursuant to the terms -- it probably should be shall pay pursuant -- get out the word "to." The seller shall pay the new provider pursuant to the terms of the contract. That word "to," it sounds like, should be out of the first sentence. And the other thing is, under the statute, it is the seller's option whether or not to continue the contract or with the new provider substituting as the old provider, or to cancel the contract, which is what this deals with, and this sounds like it restricts

the seller to this option only if the seller does not have a contract with the new provider.

MR. KRAUS: Well, but doesn't the seller have the option of entering into a contract with the providers?

MR. OTTO: Oh, yeah. Yeah. That part -- it's the flip side.

MR. KRAUS: I mean, I see what you're saying where --

MR. OTTO: Let's say I have a contract -- I have a contract -- I'm the seller -- I mean, I'm a seller. I have a contract with funeral home A and funeral home B. But for some reason, I don't want to deal with this trust situation with funeral home B under this contract. The statute gives -- I can't think of a reason why I would, but let's -- if there is one. The statute gives the seller the option of saying, no, I'm washing my hands of this deal. Perhaps he thinks there was some nefarious things going on with this contract he doesn't like.

MR. KRAUS: Within that particular contract?

MR. OTTO: Yeah. This particular

contract. Well, we did have a situation in St. Louis, I think my first year here, when somebody was going door-to-door, if you transfer the contract to me, you get a free steak dinner at Bonanza. And maybe the seller has heard wind that that's going on and doesn't want to have anything to do with that kind of thing. I don't know. But I'm just saying that second sentence, that the seller does not have a contract with the new provider, I think it probably should be worded if the seller chooses not to use the option that we're not talking about here, if the seller chooses not to continue the trust with the new provider -- there's the wording. If the seller chooses not to continue the trust with the new provider and substitute in his old provider, then the contract shall be canceled. I'm having a hard time thinking of when that actually would apply -- happen, but I --

MR. STALTER: One part might be where -- if the new provider didn't have a trust. What do I do with the money? We can't work out a deal, so, you know, I need to go ahead

and cancel this and just figure out what I can do with the money.

MR. SPEAKS: You can't state it as a double negative, though.

MR. OTTO: Yeah. I can't -- no, you're sure not.

MR. KRAUS: Okay.

MR. MAHN: But other than that little typo fixed, just make a motion that we move on, leave it as is.

CHAIRMAN: Well, the typo fixed or do we need that language changed?

MR. STALTER: Well, if you look at #3, though, it says, you know, to a new trust. As long as there's a new trust. Now, if he doesn't have a trust, you know, what -- can we put that in a joint account or some other kind of funding that's --

MR. KRAUS: Well, that's something I was going to mention, too, that here we talk about transfer of the funds, and maybe we need to address that similarly as in the earlier rule when we were talking about, well, it may not be funds, it may be an insurance policy, there may be something else that we also need

to take into account.

CHAIRMAN: Any other comments?

MR. OTTO: Yeah. You could say to the new seller's -- well, shall be transferred as directed.

MR. STALTER: We'll leave that to Earl.

MR. OTTO: Yeah.

MR. STALTER: He's going to work on it.

MR. OTTO: But, yeah. The new provider may just be doing joint accounts, which doesn't run -- I mean, if you've actually got a cancellation and a new contract that doesn't want to follow the switching of a funding-mechanism provision that's in the statute, so that's okay.

CHAIRMAN: Anybody in disagreement with those thoughts that were said?

MR. REINHARD: No.

CHAIRMAN: Then somebody give me a motion for him to fix this.

MR. REINHARD: I make a motion that we give Earl some direction to fix this.

CHAIRMAN: All right. Second?

MR. McCULLOCH: Second.

CHAIRMAN: Okay. I'm not sure who was

first there, but John vocally did, so Gary?

MR. FRAKER: Yes.

CHAIRMAN: Todd?

MR. MAHN: Yeah.

CHAIRMAN: Joy?

MS. GERSTEIN: Yes.

CHAIRMAN: All right.

MR. KRAUS: Very good. Now, #5. There's the requirement for annual -- seller's annual reports. And we kind of went back and forth on this from a really long rule setting out everything and really repeating a lot of what's in the statute to circling back to a much shorter rule so that we're not just repeating what the statute says.

MR. OTTO: This is a good job, whoever did this. But the one thing that's left hanging there, if a seller misses the deadline -- okay? They miss the deadline, and they know -- they figure out their mistake, they file it on November 15th, what happens to the contracts that have been signed by the consumer and the consumer has paid the money in that suspended period? Obviously, you can discipline the seller, I mean, for messing up

here, but you don't want to hurt the consumer, either, necessarily. I mean, in the Secretary of State, if you miss your annual filing, and your corporation is suspended or is not active because you missed your filing, when you do your filing, it goes retroactive back to the date of when you blew it so that anything that you've done in that interim is still valid. You might want a paragraph 6 that explains, well, you know, what happens to those -- one option is to say after you've been reinstated, if the seller -- after the seller's suspension is over, that is retroactive to October 31st, but the seller is still subject to discipline for missing their deadline. Otherwise, you have contracts that I don't know what their legal status is. Now, the other option is to say any contracts that were signed during that period are void and the consumer gets all their money back. That's another option, but I'm not sure that's good for the consumer.

UNIDENTIFIED: No.

MR. KRAUS: Yeah. And I'm not sure there's an authority for the Board to say that they are void or that they're valid, for that

matter, because that's really a matter of contract law, I think.

MS. RUSSELL: It would be no different than an at-need situation where you had somebody who failed to renew their funeral-director's license or establishment license and they entered into contracts with consumers. I think addressing it is going to cause you problems down the road. It's going to be up to that consumer to say, hey, wait a minute. This wasn't valid. I think I don't owe you this money or whatever, but it's no different than those contracts. I don't think you can really put that in a rule that says those contracts are void or -- I mean, because it's going to be up to the purchaser, really.

MR. KRAUS: Well, and we did look at some language on that and tried to look at authority as to saying they're void or saying they're valid and that sort of thing, and just ran into a problem on every variation of that. So, that's why you don't see it in this draft.

MR. OTTO: And you might be right, it's better to leave it alone. But my concern is the flip side, though. Ten years down the

road, the funeral comes due. It was guaranteed. You say, wow, we're going to lose a lot of money on this funeral. Oops. Guess what? We signed the contract during -- when we weren't -- we were suspended. We don't have to honor this contract.

MS. RUSSELL: Well, I think if I was that purchaser, I would be going, wait a minute, you were suspended, then this contract isn't valid, you owe me money, I take you to court, you owe me everything.

MR. OTTO: Oh, yeah. We'll pay you all your money. We'll give you all your money back.

MS. RUSSELL: No. No. No. They'd go under the new law.

MS. BATTAGLER: Not to mention you shouldn't be selling a contract if you know that you're suspended --

MS. RUSSELL: Bingo.

MS. BATTAGLER: -- because you haven't turned your report in. You know when you haven't done it, but --

MS. RUSSELL: Bingo, Amy.

CHAIRMAN: The purchaser, though, is

never going to know --

MS. BATTAGLER: Right.

CHAIRMAN: -- that you were suspended in that time line they bought the contract, so, I guess, if there's a real concern of that, there should be language that says you have to notify every contract holder that you wrote in this time frame that this is an invalid contract or something.

MS. RUSSELL: Wow.

CHAIRMAN: Well, I mean, how would they know?

MS. RUSSELL: Yeah.

CHAIRMAN: So, that would eliminate your surprise ten years down the road.

MS. BATTAGLER: But why are they writing contracts in that time if they know that they're suspended because they didn't turn their report in.

CHAIRMAN: Well, they didn't, and that's the loophole for --

MR. OTTO: Well, you could have a situation where, particularly, you have a corporate -- somebody up here fails to file the report. It's just a clerical screw-up.

Now, you've got all these people down here --

MS. BATTAGLER: Don't know about it.

MR. OTTO: -- don't know that corporate has failed to file the report, and they're writing contracts right and left. I just don't want a consumer left out in a lurch because of that. I mean, if the seller screwed up, they ought to be disciplined as the Board sees fit, but I just don't want to see a consumer hurt by a screw-up that's the seller's fault. And maybe you're right, maybe the best thing to do is leave it alone and wait for somebody to sue.

MR. KRAUS: Yeah. I think that's a valid concern, but I think the Board's authority falls within discipline, referring for enforcement, and the Board saying these are deemed valid or these are deemed void really steps on the courts' toes when there could be a lot of other issues with those contracts and then, suddenly, the Board -- well, the Board has said they're valid or the Board has said they're void when -- you know, you hurt somebody doing that and you probably don't have the authority to do it anyway, so --

CHAIRMAN: So, I'm hearing this is pretty good just as it is with that one thought that probably better to leave that thought alone, so --

MR. OTTO: Yeah.

MR. MAHN: Yeah.

CHAIRMAN: -- if anybody has a comment, we would love to entertain that, but, other than that, I'll accept a motion to accept as is.

MR. MAHN: I make a motion to accept as is.

MR. McCULLOCH: Second.

CHAIRMAN: Second. Jim?

MR. REINHARD: Yes.

CHAIRMAN: Joy?

MS. GERSTEIN: Yes.

CHAIRMAN: Gary?

MR. FRAKER: Yeah.

MR. KRAUS: Number 6. Fees. It's fairly straightforward; it's simply a listing of the fees.

CHAIRMAN: Are the new ones are there?

MS. DUNN: Okay. Now, this doesn't have the fees on there, Earl.

MR. KRAUS: Doesn't it?
MS. DUNN: No.
CHAIRMAN: And that's a problem.
MR. KRAUS: I don't see 65 on here anyway.
MS. DUNN: And the only thing -- I think we'll go -- we'll get that key rule that has the fees on it, but last week when Shari and Connie were here, we were basing the $200 fee on the fact that we thought that most funeral homes were going to be sellers, and I'm not getting that idea.
MR. STALTER: You're not getting that kind of response?
MS. DUNN: Right.
MR. STALTER: Yeah.
MS. DUNN: Well, it appears as if they may just be one seller for multiple funeral homes. So, we based this fee on most funeral homes being a seller, and it appears as if, unless something changes in the next few months, that many funeral homes are going to have one seller like they did before. So, what I was saying is the $200 fee that we estimated is not going to be sufficient to

conduct business until we have the appropriation increased in -- that's the only --

MR. STALTER: So, what you're saying, Don was right -- $65?

MR. SPEAKS: You had a dream.

MR. OTTO: I had a dream.

MR. MAHN: I think we need to stop pushing it off on the consumers and I think we ought to consider that every provider have a seller's license.

MS. RUSSELL: I think you're just talking -- you're not talking about the $36, you're talking about the actual --

MS. BATTAGLER: The application fee?

MS. RUSSELL: Yeah. The application fee to the seller?

MS. DUNN: Yes.

MS. RUSSELL: It's not the consumer on that one.

MS. DUNN: We were just -- I was just talking about the fees we discussed last week, and from the calls that we have received, it doesn't appear that what we were thinking is going to maybe occur. So, we based a fee of

$200 on 600 and let's say 70 --

MR. MAHN: Funeral homes.

MS. DUNN: -- funeral homes. Well, it appears that most funeral homes may want to just have one seller. Some aren't, but many are.

MR. MOORE: Is that the only place they're going to sell preneed from is that one location?

MR. MAHN: Just one funeral home even if they've got 15 funeral homes?

MS. DUNN: Well, see, right now, you can have one seller registration for multiple funeral homes.

MR. MOORE: Then why not just one preneed or one provider or one establishment for each location?

MR. MAHN: Yeah.

CHAIRMAN: Let me respond. I have a multiple seller currently. Under the new law, I don't want to personally -- it's not worth $200 per location to me to have to deal with the fact that when this little audit trail starts floating around that I'm going to audit six funeral homes at one time.

MR. MOORE: Then you should only be able to sell preneeds out of one location, really.

CHAIRMAN: I am. That's what I'm going to do. I'm going to buy six separate sellers' licenses at the $200 so I don't have to deal with that. Now, that's my own personal choice to do that, and I realize that's going to cost me. But I just -- that's just the way I want it. So, it's cleaner, it's easier, and --

MR. MOORE: Well, I think that's the way it should be. Wherever you're selling this from, you should be licensed to sell that.

CHAIRMAN: But you don't have to do it that way.

MR. MOORE: Why?

CHAIRMAN: Because you can label them all under one.

MR. MOORE: So, why can't I just have one establishment license even if I've got more than one firm? What's the difference?

MS. RUSSELL: The law.

UNIDENTIFIED: The law.

MS. RUSSELL: The law doesn't allow

that.

MR. MAHN: (Inaudible.)

CHAIRMAN: Yeah.

MS. BATTAGLER: 333 doesn't allow that.

MR. MOORE: Okay. If I have a funeral home that's licensed for everything and I have just a chapel, but the chapel does nothing but visitations, why do I have to have anything other than the visitation for that chapel? Why do I have to have -- if they don't do anything, why do I have to have any business permits? Why do I have to have anything? Why do I have to have a provider license there? We're not providing nothing. Everything is sold out of place A. They're not selling nothing. Why do I have to have a provider's license for that?

CHAIRMAN: I'm not sure I have an answer for that one.

MR. MAHN: Can we -- this is beyond our -- (inaudible) -- of Board to make it that the buyer's --

MR. MOORE: I mean, if you've got ten locations and you're selling this product out of ten locations, every location ought to be

licensed.

CHAIRMAN: I could agree with that, but go ahead.

MR. OTTO: Well, I have to disagree. For example, that would mean everybody with Missouri Funeral Trust would have to drive to Clayton or whatever to sign the contract. The seller is the legal entity somewhere that is selling "the product." They may not have a physical location every place --

MR. MOORE: Okay. Is MFT selling that product or is your funeral home selling that product?

MR. OTTO: MFT sells the product.

MR. MOORE: Why in the heck are you never at my funeral home doing it? Why do I do it?

MR. OTTO: Because you are the agent for MFT for that sale.

MR. MOORE: So, I'm selling it for you?

MR. OTTO: Yes. But we're not --

MR. MOORE: Okay. I'm the seller.

MR. OTTO: But you don't have to have a seller's license there for MFT. MFT has the seller's license, well, here in Jeff City,

actually. But it's where -- you know, the seller has to have a license somewhere.

UNIDENTIFIED: Let's do it graduated.

MR. MAHN: Say Jim sells 12 prearrangements in ten years and he has to pay $200 a year with one location, and you've got somebody with 50 locations paying $200 a year selling 10,000 prearrangements. I mean, it's -- financially, why is that fair to Jim? His ought to just be $1 then or something, you know. Or is it beyond our jurisdiction to even bring up that individual providers have to have their own seller's license, too, or are we just barking up a tree? I mean, somewhere -- (inaudible.)

MR. KRAUS: Yeah. You can't do that.

MR. MAHN: Well, somebody say that and then we can go on.

MR. KRAUS: But you can change the fee. I mean, you have control over the fees, but --

MR. MAHN: Just the one single fee.

MR. KRAUS: But limiting who can and can't get a particular license by just blanketly saying --

MR. MAHN: Well, if it's one fee, can it be --

MR. KRAUS: -- this is the way you have to do it and this is the way you can't do it?

MR. MAHN: -- that we stagger by locations.

MR. REINHARD: Yeah. If you have 14 funeral homes, that's $2,800; if you have one funeral home, it's $200.

MR. MAHN: Yeah. And the fee would be staggered among locations.

MS. RUSSELL: I think that they said -- (inaudible.)

MR. KRAUS: That was discussed early on about doing that and kicked around, and you decided not to go that way.

MS. DUNN: And that is really very difficult internally for us to do.

MR. SPEAKS: Well, coming back to Sharon's original question --

MS. DUNN: Becky.

MR. SPEAKS: Or Becky. I'm sorry. Sorry about that. What you were getting at was with the $200 with the number of increases

it looks like there will be, that's not going to be enough money.

MS. DUNN: That's right.

MR. SPEAKS: So, the implication there was, need to change that fee structure in order to come up with the money to do what you need to do?

MS. DUNN: Right.

MR. SPEAKS: So, do you know what that number is?

MS. DUNN: Well, no. I just brought that to the table today and I can bring -- I can calculate that out.

MR. SPEAKS: So, instead of $200, is it $300, something like that?

MS. DUNN: Well, I believe we used last week approximately 690 funeral homes that we thought were going to be sellers. And so, now, I am estimating, and, of course, based on what Martin said, that's not the case, but I'm estimating that maybe we're only going to have 360 sellers.

MR. REINHARD: Hey, Don, you might be closer to $65 a contract than $36.

MR. OTTO: Well, I think --

MR. REINHARD: He may be right.

MR. OTTO: Yeah, but who knows. But I've told everybody $36.

MR. REINHARD: Well, some fee is going to go up.

MR. OTTO: Well, I think the seller's fee ought to go up.

MR. SPEAKS: Right. That's the answer.

MR. MAHN: Well, definitely not the preneed fee, though.

MR. OTTO: That's not the per-contract fee.

MS. RUSSELL: Not the per contract.

MR. MAHN: Per contract.

MR. OTTO: The seller's fee ought to go up in that case.

MR. MAHN: It should go down.

MR. REINHARD: But why should I -- like, okay. But the same point is, like, why do you do it on one and you don't --

MR. MAHN: Exactly. Why should you pay the same amount when you only do two preneeds a year as somebody that's doing 2,000?

MR. REINHARD: I mean, there's got to be some kind of a just system to this.

CHAIRMAN: Go ahead, DJ.

MR. SPEAKS: Yeah. You can't pro rate that seller's licensure fee. It would be like somebody saying, you know what, my driver's license, I only drive to church once a week. I don't want to have to pay what everybody else drives because they're salesmen on the road.

MR. MAHN: Well, no. Pro rating due to number of locations.

MR. SPEAKS: Oh. Oh. Yeah.

MR. MAHN: Not number of sales.

MR. SPEAKS: Yeah.

MR. MAHN: No one knows how many sales you're going to do next year. Number of locations.

MR. KRAUS: So, if you drive four cars, you have to pay a higher driver's-license fee than driving one car.

MR. MAHN: Yeah.

MR. SPEAKS: Well, that could be a possibility.

MR. MAHN: But if you drive four cars, you pay a higher --

MR. KRAUS: You pay more for titles

and stuff.

MR. MAHN: -- personal-property-tax fee.

MR. KRAUS: Yeah.

CHAIRMAN: Okay. DJ?

MS. GROSS: I know you were looking at those funeral homes that may be using an outside seller or conglomerates that have multiple funeral homes as far as looking at the numbers. But, currently, aren't there funeral homes that don't have a seller's license because they are using a third-party seller?

UNIDENTIFIED: Correct.

MS. GROSS: There's a lot that are that way. My question is: On the law that's going forward on the funeral homes that are taking assignment of insurance or they're being named as beneficiary on an insurance policy that people bring in, are they going to need a seller's license for that? Is there going to need to be a contract? That's still a really gray area, but if they're required to have a seller's license, there are many funeral homes in this state that don't realize

that and that will increase the number of sellers that's required -- (inaudible.) That needs to be something that's --

CHAIRMAN: Yeah. That's almost a whole other issue.

MS. GROSS: Well, it is, but that is going to affect the number of sellers.

CHAIRMAN: Well, I agree. I agree.

MS. GROSS: Which -- (inaudible.) And we would like to get an answer, too.

CHAIRMAN: We'll have to work through that.

(Several people talking simultaneously.)

MS. DUNN: I don't have the answer -- (inaudible) -- and DJ has asked me a number of times.

CHAIRMAN: Part of the reason that I have chosen the course that we're going to take is I'm basing that seller thought on we have books and records and we have a trust account for that location. We have books and records and a trust account for that location. Books and records and a trust account for that location. So, how -- just going to larger sized issues, does all of the locations go

into one account?

MS. BATTAGLER: It's one trust, but there's -- obviously, we keep separate records for each one, but it's one trust account for the D.W. Newcomer's locations.

CHAIRMAN: So, if D.W. Newcomer's number rolls up in the random-selection thing and the little group comes out for the audit, are you all prepared to audit all of it?

MS. BATTAGLER: Well, we keep separate records for each individual location.

MR. McCULLOCH: The question is, are the auditors -- (inaudible.)

MS. BATTAGLER: But it's all one trust, so we can keep track of all of that. That's what I've been told, and that's the way they've been doing it for however long.

CHAIRMAN: Okay.

MS. BATTAGLER: And we only have one seller license. Do what?

MS. GROSS: So, there would be -- (inaudible) -- for the seller, and not just for -- would there be -- (inaudible.)

MS. BATTAGLER: They're auditing the D.W. Newcomer's trust account for doing

business as this location. They go to each individual location, they don't go to just, you know, a random area.

MS. GROSS: That was just the question I asked.

MS. BATTAGLER: Oh.

MS. GROSS: If you have -- if, like, with them --

MS. BATTAGLER: But we can commingle funds, so --

MS. GROSS: -- they get audited, they would be auditing the seller --

MS. BATTAGLER: For all those firms.

MS. GROSS: -- for all of them. They wouldn't be -- right. So, it wouldn't be for one location?

MS. DUNN: Yeah. For all those firms.

MS. BATTAGLER: At one time? I thought it was individual locations.

MS. DUNN: Well --

MR. KRAUS: Isn't it geared by licensee?

MS. RUSSELL: Well, your providers, yes.

MR. KRAUS: Okay.

MS. DUNN: Yeah. So, I mean, if there's one license --

MR. MAHN: And it's all one -- (inaudible.)

MR. KRAUS: So, if it's all under one licensee --

MR. MAHN: One seller's license good for -- (inaudible.)

(Several people talking simultaneously.)

MS. BATTAGLER: That's -- well, they do that at each individual location.

MS. RUSSELL: That's for the provider, probably.

MR. MAHN: Yeah.

(Several people talking simultaneously.)

MS. DUNN: Yeah. Because this fee structure is very important as we proceed.

CHAIRMAN: Go ahead, Don.

MR. OTTO: Well, DJ, I asked that this -- that assignment thing be on the agenda separately because there's a whole bunch of other issues also with that.

MS. GROSS: Well, you just thought that number may raise it or --

MR. OTTO: Yeah. There's a whole lot

of other problems, and DFS is one of the problems with that. But getting back to what this rule is, would making it $400 instead of $200 solve your budgetary problems?

MS. DUNN: Actually, Connie just stepped in. And, Connie, I was letting them know -- we were talking about the fee rule.

MS. CLARKSTON: Uh-huh.

MS. DUNN: And the $200 that we estimated, Shari, you, and myself, based on our appropriation and what we had to do to conduct business this year, it appears as if there's going to be individuals in the profession that want to continue to have one seller for all of their locations, where we were estimating a seller for each location.

MS. CLARKSTON: Correct. Correct.

MS. DUNN: So, now, what we're doing is, I just sent Shari a note to say just calculate that out based on 360 instead of 690.

MS. CLARKSTON: Okay. Okay.

MS. DUNN: So we can throw that fee out to the group, because, basically, the seller is going to pay for it no matter if they get one seller or if they get a seller

at each location because we've got to make up the difference.

MS. CLARKSTON: So, are you thinking that you'll have two different fees, or you're just saying drop that seller fee for --

MS. DUNN: We're going to have to increase the seller application fee for this year.

MS. CLARKSTON: Okay.

MR. REINHARD: For this year?

MS. CLARKSTON: Let me go back and, if you don't mind, I'll go --

CHAIRMAN: Why don't we just put the money where it really belongs and forget whether you're a seller or you're a provider because it's all about your funeral home unless you've put it on the establishment.

(Several people respond negatively.)

CHAIRMAN: Well, you're trying to get the money somewhere else anyway, so what's the difference?

MR. MAHN: How about this? You've got the -- you know how we did the agent thing, if you're a funeral director, you're a funeral director/agent? How about all providers, just

automatically, I don't care whether you sell preneed or not. All providers become a preneed/seller, have a fee for that, and then third-party sellers that aren't a provider have a fee for that.

MR. MOORE: All right. Yeah. Give us a break for once.

MR. MAHN: Why not do that? I mean, what is the problem with that? Then you're covered. If you take an insurance policy, there's nobody -- the bogeyman ain't standing there going, oh, you weren't a seller, you know. You automatically are. You're a provider/seller, just like the funeral director/agent.

CHAIRMAN: Say all that again. My mind lost you on the first curve.

MS. DUNN: We have to --

MR. MAHN: Every provider and make every provider a provider/agent and have a fee for that. I'm not saying what the fee is yet; okay? But, automatically, all providers are provider/seller; okay -- and have a fee. And then for third-party companies that aren't providers, have just a seller's license just

like you've got just the agent license. Have a seller's license for them at a fee.

MR. MOORE: And charge them more.

MR. MAHN: I'm not saying what the fee is yet, I'm just saying why don't we do that? Then if he takes in an insurance policy -- say, he don't sell any preneed, trusts, everything, all he takes in is an insurance policy, he's not wondering whether or not he's covered as a seller or not. He's just covered.

MS. CLARKSTON: So, would you issue the license as such as a provider/seller?

MR. MAHN: Every funeral home would be getting a license saying provider/seller.

MS. CLARKSTON: Provider/seller.

MR. MAHN: Whether you do anything or not.

MS. DUNN: But the statute doesn't allow that.

MS. CLARKSTON: I know. That's what I was going to ask: Will the statute allow it, and I think our system --

MR. OTTO: It's not a bad idea.

MS. HAYES: Unless you did a classification -- (inaudible.)

MS. CLARKSTON: You did the classifications; correct.

MS. HAYES: Third-party seller -- (inaudible.)

MR. REINHARD: That's everybody because then they're all legal.

UNIDENTIFIED: Well, explain to me where you're going, why --

MS. DUNN: Well, we don't have the authority in the Senate bill to set out a seller/provider license.

MR. STALTER: No. But you're just -- you're finding a way to control the fees by tying them together, basically, as you're approaching it; right.

CHAIRMAN: Let me ask this question: We thought that possibly through your all's presentation last week that the $36 fee might actually go down after the first year --

MS. CLARKSTON: That's correct.

CHAIRMAN: -- after you saw the experience. Well, if the idea came up with just that that would maintain, would that make up the difference of what we're seeing possibly as the loss to equal out that money

in the seller -- (inaudible.)

MS. CLARKSTON: You're going to have to let us plug numbers in, so if you'll give me just a few minutes, we'll -- Shari and I will go work on that right now.

MR. REINHARD: Well, let's take a break.

CHAIRMAN: Is that a good idea? Everybody -- take a break. That'll work.

(Off the record)

CHAIRMAN: Okay. Let's get back in motion. Due to the ability of technology and all of Connie's wizardry here quickly, leaving things just the same as the fees that we had already talked about and set, so to speak, and with even the idea of the drop in the count on sellers, the fund balance will still fit in the range of where we want it to fit, so we're thinking moot point, leave it alone, keep right on moving.

MR. McCULLOCH: Sounds good.

MS. DUNN: So, then we just need to go through what these fees were; correct?

CHAIRMAN: I suppose. Actually, I have a question.

MR. KRAUS: Yeah. I'm not sure whether or not on --

CHAIRMAN: We approved this last week, according to me. We approved that, so what is it we need to do?

MS. DUNN: He wasn't here for that portion last week.

CHAIRMAN: Oh.

MR. KRAUS: I don't know. Yeah. And I'm not sure why those aren't filled in.

MR. OTTO: He wrote that on the board.

MR. KRAUS: Yeah. I mean, other than specifying the establishment and nonestablishment fees, which you already approved --

CHAIRMAN: Which we did.

MR. KRAUS: Yeah. Then maybe nothing.

MR. REINHARD: But still the argument is, is if you could reduce -- you know, the guy that sells, like, one funeral home with the three contracts, reduce his fees, why are we doing something to adjust something?

CHAIRMAN: I think the thinking will be, this is what it takes to get us over the hump today and it works without having to go

through all that. And we probably really do need to go back and relook at maybe some different instruction.

MR. REINHARD: Oh, okay. I see what you're saying, emergency rule, dah, dah, dah, dah, dah.

MR. McCULLOCH: Because that all has to be the mixture; right?

MR. REINHARD: Right.

MR. McCULLOCH: And then you'll have history to know --

CHAIRMAN: History.

MR. REINHARD: And then he'll be chairman and you can drop the ball in his lap.

(Several people talking simultaneously.)

CHAIRMAN: Actually, it's not on there.

MR. REINHARD: (Inaudible.)

CHAIRMAN: Last week, if you guys remember, we did the little drawing on the board up here and we came up with the provider application being $100 for nonestablishment, $10 for establishment. The provider renewal fee was zero. The seller application fee was $200, the seller renewal fee being $36 per contract, and the seller/agent/funeral

director registration fee is $50. Do you remember all that being written up there?

MR. McCULLOCH: Yeah.

CHAIRMAN: Okay. Now, I don't know. Do we really need -- we really didn't -- that's just stuff that we already have in the office or is that something that's got to be set?

MS. DUNN: Yes. Those -- we're not setting a renewal fee right now for anything. The per-contract fee was estimated at $36, and the law-examination fee is a set fee through the conference.

CHAIRMAN: So, that's nothing there?

MS. DUNN: Yeah.

CHAIRMAN: So, my notes show --

MR. KRAUS: Was there an amended provider, an amended seller at $25?

MS. DUNN: $25.

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

CHAIRMAN: Yeah. So, I actually show where we approved that --

MR. REINHARD: We did.

CHAIRMAN: -- as a rough, so --

MR. REINHARD: Do we want to approve

it again?

MS. DUNN: Sorry I brought that up.

CHAIRMAN: Oh, that's okay because it's --

MR. KRAUS: I don't think so. And I think the reason this is included in group three, even though you talked about it last time, is because it falls within group three, so it's there.

CHAIRMAN: Okay. So --

MR. KRAUS: But if everyone agrees, we can --

CHAIRMAN: -- unless there is some issue with it that you all want to revisit, now that we've done the math thought again, so --

MR. FRAKER: Do we have a window of time that we can revisit this, say, in a year or two years, and make adjustments if necessary -- I mean, outside the emergency --

MR. KRAUS: Well, at any time, you can go in through the normal rule-promulgation process and adjust fees with the exception of within the next four years, there's a moratorium to the extent they relate or they

impact small business, then you have to fall into a category of why you need to adjust those fees if you're raising them. If you're lowering them, you can lower them anytime and you're exempted from the moratorium. So, with that one caveat, yeah, you can go in at any time, but you have to go through the whole promulgation process and all that.

MR. MAHN: I know this will open up a can of worms, but how do you get anyone to have a seller's license for a provider? Would that not have helped us to lower the contract fee to our families that we served who are already getting sort of punished, to me, for something that -- you know, again -- (inaudible) -- $2 to $36 contract fee, you know.

MR. McCULLOCH: It doesn't sound like it, based on the numbers she just gave us.

MR. MAHN: Yeah.

MR. McCULLOCH: Because they thought it was going to drop and it didn't affect it, so probably not much.

MR. MAHN: No. What I'm asking is if the other funeral homes had to have a seller's

license, would that increase enough money to offset the difference of the $36?

MR. McCULLOCH: I don't think that's the big moneymaker, it's the 36 bucks that's the big money maker, because of the number of contracts every year.

MS. CLARKSTON: With the full anticipation then for FY '12, that the Board would be able to look at setting that per-contract fee lower. That was fully anticipated from -- through the discussions and any discussions --

MR. McCULLOCH: Yeah. They anticipate it going lower. You're right.

MS. CLARKSTON: Yeah.

MR. McCULLOCH: Through their projections early on from the very beginning.

MR. MAHN: I have one more question then about that, and I'm going to leave this subject alone. Have we got the rule-making on audits yet? And my question on that is, is that have we really established how that's going to take place and are we going to come up with a number that it's going to cost for audits, and based on this $36 to pay for that,

before we're even for sure how extensively that's going to be conducted?

MR. REINHARD: Yeah, we made rules on that.

MS. CLARKSTON: The way that we do projections on is that we look at actuals and estimate from previous history of the Board whether or not a full-blown audit has cost or what an examination of books and records has cost. So, at this point of the stage where we're at for implementation, that's the only data that we have.

MR. MAHN: So, are we putting the cart before the horse? The reason I'm asking is, we have the rule-making authority on audits. I mean, have we really decided how extensive or what we're going to consider what checking somebody's books or audit or whatever -- I'm just throwing this out -- an inspector is going to -- you know, how extensive are we looking at this? When there's a full-blown audit, I know how expensive you're talking about that is.

MS. CLARKSTON: Right.

MR. MAHN: And, in that case, that

cost needs to be $36. But if --

MS. CLARKSTON: I think that if I can take you back a little bit, what we tried to do is with different scenarios and saying what's going to work on implementation. And when you look at it from a fiscal standpoint, what we know -- and from an HR standpoint, what we know is that we're not going to be able to have staff in here ready to roll immediately upon the passage of one of the bill and then the promulgation of the rules. So, Becky and I sat several nights trying to go through this and looked at the different scenarios, believing that contract services would need to continue for the first year. Those contract services is what led us to set that $36 fee. So, based on that scenario, that's currently what this Board uses for audits and examination of books, so that's the history that we have. That's actual expenditures that are shown.

MR. MAHN: Could it be a minimum of examination of books? I'm just asking this question.

MS. CLARKSTON: That would have to be

a Board decision, but --

MR. MAHN: Would that not make a difference in the cost? I mean, if it's going to be a matter of our inspectors going in and saying let me see your preneed file, everything looks cool and clean, that would be considered audit -- you know, auditing their preneeds.

MS. CLARKSTON: I think it can be considered, but I think that there are also needs to be some consideration given to the state of your fund balance.

MR. MAHN: Right.

MS. CLARKSTON: So that if you have a large audit, a huge case comes through with extraordinary legal expenses, you're going to have to have a reserve in there to protect that, and that's what we're trying to build right now is your reserve. And it is unfortunate that it's jumped from $2 to $36 --

MR. MAHN: But, I mean, like, we're going to go over to Jim's, he does a couple of prearrangements a year, and spend $36,000 on auditing his funeral home, you know. So, I'm saying that, you know, the thing of it is,

like the insurance companies -- am I not right on this, John -- that if they're -- something is found out that they have to have an audit, aren't they responsible for paying for their own audit? If something is found, they need --

MR. McCULLOCH: You have to pay for it regardless.

MS. CLARKSTON: But their statutes dictate that.

MR. McCULLOCH: Unless it's found not -- yeah. Yeah.

MS. CLARKSTON: Their statutes dictate that. Yeah.

MR. McCULLOCH: Yeah, that's a whole different -- but you also get to write that off against your premium tax.

MR. MAHN: Right.

MR. McCULLOCH: If you pay -- (inaudible.)

CHAIRMAN: Isn't the law going to --

MR. REINHARD: But we don't pay premium tax.

MR. McCULLOCH: That's right.

MR. MAHN: Yeah.

CHAIRMAN: The law already told us

that all funeral homes will at least be looked at once every five years. It didn't exactly specify how they would be looked at --

(Several people talking simultaneously.)

MS. DUNN: Right.

CHAIRMAN: -- and wouldn't we have to --

MR. MAHN: That's what I'm wondering, would be looked at.

CHAIRMAN: Wouldn't we have to balance the money to that thought? In other words, if we had two huge audits in that year, maybe the rest of the -- I mean, that is a little unfair, I suppose, but wouldn't you still have to just to be responsible with the money that you have? So, if you have two huge audits this year, the rest of your specified group for that year may just get the quick look, but at least they were looked at.

MR. MAHN: Right.

MS. CLARKSTON: And that's the thought process that we used when we set up the scenario is that we had, I think, two or four audits per year, not full-blown, everybody getting an audit. The majority went with

investigations, with -- (inaudible) -- with the Central Investigating Unit, and then a portion of those with an examination of books and records. So, we did give some thought process to not -- (inaudible) -- with an audit. First of all, there's no way to build that fund balance at this point. That would be astronomical fees. So, we did look at minimizing the full-blown audits to looking at a number of examination of books and records and looking at a number of investigations. So, that did take into play when we did the scenarios.

MR. MAHN: What happens if there's a surplus of money, say, you go a few years without any major audits, then we got --

MS. CLARKSTON: We start -- that's why we watch those fees regularly.

MR. MAHN: What happens with the surplus?

MS. CLARKSTON: Surplus leads to general revenue, but --

MS. DUNN: We've never done that. We've never swept.

MS. CLARKSTON: We watch those fees.

Becky gets quarterly reports --

MR. REINHARD: (Inaudible.)

MR. MAHN: It looks like we're heading that direction.

MS. DUNN: Are we in sweep?

MR. MAHN: No. That we're going to have surplus.

MS. CLARKSTON: I'm sorry? What was your --

MR. MAHN: We could possibly have a surplus if we don't have any major audits. So, what I'm saying, does that money go back to the consumer or --

MS. CLARKSTON: No. It goes back to -- well, it does to general revenue, and if they receive services from general revenue, yes. And that's the -- (inaudible) -- and so forth. But by systems that we have within the Division, I would be shocked if we would ever get to a sweep because Becky receives quarterly reports from Shari, and we watch those fund balances closely. We also now have the ability that we have never had before by another statute that allowed us to drop fees -- to decrease fees by emergency rule. So, if

we have a renewal that's going out, let's say we're a year down the road, set at $36 because that's truly what we believed things were going to be, or even drop it to $23. We're three months out from your renewal, we look at the fund balance, $23 -- $36 is going to bring in too much revenue. We have the ability at that point to file an emergency rule by statute to get those fees decreased and not take any more money in than we're going to use. So, I think with the systems that we have in place within the Division, working with Becky and staff, we watch those so closely that we don't want to take any more revenue than we need to. I feel very comfortable, as much as we've talked about these fees through the legislative process, the scenarios that we have walked through, and I can tell you that those weren't a fly-by-night kind of a situation. There were several conversations. At one point, those fees were set at $72 per contract. We worked very hard with scenarios to get those knocked down. So, from what I'm seeing on your fund balance and where that is in relationship to

sweep, I fully recommend for the first year that it's $36 with anticipation that we drop it down after that, but I don't see how we're going to get your fund and your reserve built without having that income and that revenue coming to your fund.

MR. REINHARD: Well, I see your point. You're saying, like, the consumer would be better served if, like, seller would pay his share of it for each individual funeral home.

MR. MAHN: Yeah. That's part of what I'm saying.

MR. REINHARD: See, then you could drop the fees down to 30 bucks, and then put it on the other, and if you're going to --

MR. MAHN: That's half of what I'm saying, yeah. I mean, you've got --

MS. CLARKSTON: But at this point, statute is not dictating that you pass that -- that any seller pass that --

MR. MAHN: Right. The statute has been lobbied well enough that the first 30 funeral homes pay the same amount that one funeral home, and we understand that. The statute has that in there.

MS. CLARKSTON: Okay. But I was going to flip it a little bit differently. There is nothing in statute that I believe says that that $36 needs to be passed on to a consumer. I think that's a business choice.

MR. REINHARD: It's going to -- well, Brad Speaks and I were talking about that, Connie. But, I mean, they're going to get passed on no matter what because you're going to add it in someplace in your services or somewhere, they were going to pay for it.

MS. CLARKSTON: And I agree. That was recognized.

MR. REINHARD: Well, Don and I were talking about it. Yes, they're going to pay for it.

MR. McCULLOCH: But she's right. If you feel that way about your clients, just pay it for them.

MR. REINHARD: (Inaudible.)

MS. CLARKSTON: Or a portion of it.

MR. REINHARD: Give it to them for a Christmas present. Just write a check back to them.

MR. McCULLOCH: Of course, you are.

Exactly.

MS. CLARKSTON: I don't know that we can set a fee structure that says that the seller pays this amount and you'll attach this amount to the contract. I don't think we have enough authority in the rule-making to allow us to do that. I wish it was a perfect rule.

(Several people talking simultaneously.)

MR. MAHN: Right. Well, I might have put a question ahead of where we're at, and I was just making sure that, you know, where -- you know, how extensively are we going to look at these audits. Or just, you know, what's going to be considered checking the preneed files, you know. You can do as many audits as you want, but the guy who gets $5,000 cash and puts it in his pocket and never starts a file, that money is gone. You'll never find it. The best auditor in the world will never find it.

MS. DUNN: Connie, addressing the audit structure is a whole other topic which we --

MS. CLARKSTON: It is. It's out of my -- (inaudible.)

MR. MAHN: Yeah. Yeah. We haven't

got to yet?

MS. DUNN: No. We can ask right now the firm that's bid this is McBride & Locke, and that's the firm that the State of Missouri is utilizing, and we can bring them in in a session and discuss --

MR. MAHN: Well, what I'm asking is, we're not going to send McBride and Locke off to 700 funeral homes right out of the gate.

MS. DUNN: Can't. We can't afford it.

CHAIRMAN: You can't.

MR. MAHN: Right.

CHAIRMAN: We can't afford that now.

MR. MAHN: Right. So, what I'm saying is, over the years, what is going to be our protocol? Are we going to have an inspector --

MR. REINHARD: Yeah. And what rules are we going to write on that?

MR. MAHN: What's the rule going to be on it? If the inspector checks and he kind of says, hey, it looks like everything is fine, then they're good for another five years?

MS. DUNN: Well, that's up to the Board.

MR. MAHN: But when do we get to that?

MR. REINHARD: Yeah. When do we get to that?

MR. MAHN: Because it seems like we're putting the cart before the horse on this stuff.

MS. CLARKSTON: The other thing to keep in mind -- and I'm sorry to interrupt -- but you also have staff people that you are going to be getting here -- financial -- your analyst that will be looking at it and your manager, so it may not go through an investigation if you choose not to. I mean, you have three additional staff that's going to help reduce those costs, and that's one thing that we looked at was was it going to be more cost effective for this Board to have staff who had the expertise to perform those examinations and audits, or was it going to be more cost effective to continue your contract services.

(Several people talking simultaneously.)

MR. MAHN: So, are we sort of budgeted like we're going to have, let's say, five McBride & Son, or whatever you call them, major big audits in a year? Is there a

number? Is there a number that you think we're going to have to have, the big daddies, the big --

MS. DUNN: Tell him how the fiscal net was calculated based on --

MS. CLARKSTON: Yeah. When we looked at it for scenarios, in trying to really figure out how we would implement this from a Division and Board standpoint, and we were kind of joined at the hip at that point, was we were looking at -- it was going to be much more cost effective to have staff. But how do you get staff up and running on a dime quickly and get everybody acclimated to it?

MR. MAHN: Right.

MS. CLARKSTON: It doesn't work. So, what we looked at was using McBride & Locke the first year with, I think it was, full -- we estimated four full-blown audits. Was it two?

MS. DUNN: I think.

MS. CLARKSTON: Okay. Maybe it was two.

MS. DUNN: Yeah.

MS. CLARKSTON: It was two, so we were

minimum on that, and then putting a portion of examinations of books and records for that first year, as well, and I want to say that was around forty -- and I can go pull the numbers and talk more intelligently from it than from my memory. And then realizing that there may still be some investigations that would hit through CIU. So, not everyone is going to get hit that first year.

MR. MAHN: Right.

MS. CLARKSTON: When we did our scenarios. So, then we got through the first year of fiscal estimates. The next year, we will start having staff. The first year, you're going to be hiring and acclimating everybody into that. So, the next year, you're going to have three staff members that are going to be able to assist with those financial reviews. You'll have two analysts and you'll have a manager. So, then you're going to reduce your cost for contract, so contract won't be in that anymore. But you're going to start getting your funeral homes onto -- and your providers and sellers onto a schedule or, you know, you won't hit everyone

every year. That's why that five-year span is in there.

MR. MAHN: Well, I guess my question is: Is if our inspectors go out and look in files, are we required to have to pick somebody? Like John, for instance, next year, you know, do we just pick him out and he gets an audit without anybody finding a reason or cause? So, we know we're going to do at least four random audits no matter what -- full-blown?

MS. CLARKSTON: I think that's a decision that the Board needs to make.

MR. MAHN: Okay.

MS. CLARKSTON: I don't think I'm in a position to make that, but the statute does authorize the Board to conduct -- (inaudible.)

MR. MAHN: I mean, are you volunteering?

MR. McCULLOCH: I'd like to suggest we start with the Zs and work our way back. Just as a suggestion.

MS. CLARKSTON: Just as a suggestion.

MR. McCULLOCH: Didn't I get a second on that?

CHAIRMAN: And, obviously, this is going to really have to be worked out on the game plan for that, but it doesn't necessarily have to fall under emergency rules to get this implementation going. So, it's a good discussion and we all need to hear this, but I don't think there's an answer to this thought at the moment.

MR. MAHN: Right. I think whatever we do decide on audits, it's going to play a major role in what our budget and what our expenses will be.

CHAIRMAN: Oh, I agree.

MR. MAHN: And then, ultimately, what we pass off to charge.

CHAIRMAN: And I'm sure you're factoring it, but you're talking about just the random audits. What about the bad boys?

MR. MAHN: Right. Well, I know that.

MR. FRAKER: Well, I think that's what we're all asking, is what's going to trigger these audits. There's got to be something. If our inspector finds something or there's a complaint or something like that, we're going to have to weigh all that stuff.

MR. MAHN: Yeah. Right.

CHAIRMAN: So, let's weigh it a different day.

MR. MAHN: Got it. Got it. Sorry.

CHAIRMAN: No, that's okay, because we need to have the discussion.

MR. REINHARD: I just think we need to go back to fees here before -- because you'll never be able to change them again. Like Earl was saying, you can do it now. They're good for how many years? Four years or something? What was the rule?

MS. CLARKSTON: It's a four-year moratorium.

MR. REINHARD: Four-year moratorium, so --

MS. CLARKSTON: But there's --

MR. REINHARD: -- the guys that are having 25 funeral homes getting off for 200 bucks aren't paying nothing for four years.

MS. CLARKSTON: But, Jim, if I may, that moratorium also allows for different justifications to be filed so that if you can connect it with what you're doing right now because, in essence -- well, that law, House

Bill 191 is already in effect. It became effective August 28th, the same as Senate Bill 1. So, right now, we're already under the moratorium, but there's classifications, and I can print that bill off and show you that at some point this morning. But if it's connected to a piece of legislation or a federal mandate, you just need to justify that. If there is going to be, you know, some detriment to the health, welfare, and safety of the public, we'll justify that; we have the ability to file a fee decrease or we will also attempt to file an emergency on a fee increase if we need it. So, I think that just because there's a moratorium doesn't mean we're totally cut off at the knees. It does mean that there's more scrutiny and we have to justify more.

MR. MAHN: So, Earl, I mean, it's open right now at Jim's desk. You're legal. What's -- how can we make that work fair? You and I had a couple of discussions. Throw it out there.

MR. KRAUS: Make giving up the fees?

(Several people talking simultaneously.)

MR. MAHN: Well, the $200. He's a 50-call funeral home a year and doing two prearrangements paying the same fee a guy doing 10,000 calls.

MS. KRAUS: And some people would say that that's fair.

MR. MAHN: Well, sure. The ones doing the 10,000 calls, so it's very few.

MR. KRAUS: That's right. Yeah.

MR. MAHN: (Inaudible.) So, I'm asking what they can -- I'm asking what you think as the attorney, how can we fix the fees on there without breaking a law or some already rule that we can't touch?

(Several people talking simultaneously.)

MR. KRAUS: Well, I mean, there was discussion at one of the prior meetings, I think, about when you were setting the $36 fee. I'm going to wait since the court reporter is trying to get all this down.

MR. MAHN: Yeah. We've got everybody talking -- a major issue here.

MR. KRAUS: I think there was discussion at one of the prior meetings that when we were -- I think when we were setting

the $36 fee that what about doing a staggered amount; this amount if you do this level of contracts, this amount if you do this level of contracts.

MS. CLARKSTON: But that becomes a problem -- (inaudible.)

MR. KRAUS: It does become a problem logistically. There's a lot of problems logistically with implementing that. Is that legal? Yeah, I think it is. Are there logistical problems with implementing it? Yeah, I think there are, but that is a way of addressing volume.

MR. MAHN: What's wrong with just having --

MR. KRAUS: I think any way of addressing volume means you're setting different amounts for different levels of something which is going to hit those same issues. They're not illegal. I mean, they --

MS. BATTAGLER: Can I ask, are you -- Todd, are you asking about maybe one person that just has one location that they're selling out of charge one amount; if they have two to five, they pay a higher amount; five to

ten, they pay a higher amount?

MR. MAHN: Well, originally, I just thought it would be easier to have a seller's license per location. That would clean it all up -- or a provider/seller license.

MS. BATTAGLER: You think that that would reduce some of the expense to the consumer?

MR. MAHN: Well, it would clean things up. I mean, for instance, if you're going to be examined and you've got 15 funeral homes, but you've only got one that's having problems, and you've got that seller's license for that one funeral home, it's just going to examine that one funeral home. If you've got a seller's license for all 15 funeral homes, it's going to give the Board authority to examine all 15, so we might find something in 14 out of 15 of them, which, if that's the way you're going to give us the go-ahead latitude to do, let's go.

MR. FRAKER: Can we do that? Can we impose the $200 fee per -- per establishment license, per -- if you've got five funeral homes and you have five different

establishment licenses, you do, don't you? Why not impose that $200 fee per -- I tend to agree. I think this would clean it up a little bit.

MR. REINHARD: But here's an example. They were saying there's like -- they thought there were going to be 220 funeral homes that would buy a seller's license; right? And then, all of a sudden, they get to thinking, well, maybe we're going to be down to half of that, so 310. So, let's say that at $200 -- and this isn't going to come out right, but 620 funeral homes would make $50,000 a year appropriation to do your -- whatever you've got to have, not -- (inaudible) -- your funding. So, isn't there a way, like, okay, say, can't you drop it to $75 for 620 funeral homes and make it a fee of $75 instead of $200 and everybody is equal? I mean, spread it equally among everybody.

MR. FRAKER: You're saying every funeral home, Jim, gets --

MR. MAHN: $7,500 -- or $75.

MR. REINHARD: $75 instead of $200.

MR. FRAKER: All right.

MR. MAHN: Yeah.

MR. REINHARD: But where can you add that on or where can it make it fair? Well, here's a guy that owns, like, several funeral homes. I mean, he's not opposed to that. It saves him money, too. I mean --

MR. MAHN: Well, I've got two and Martin has got six, so we both are -- you know, just talking here today, considering having a seller's license for each location.

CHAIRMAN: That's what I'm going to do.

MR. MAHN: So, you're talking about --

MR. REINHARD: Well, you can do it, but he may not and she may not.

MR. KRAUS: But you're talking about changing -- aren't you, essentially, just talking about changing the fee for a funeral home whether they do preneed or not?

MR. REINHARD: Well, how many funeral homes are not going to do preneed? That's -- they're all going to do preneed some day, some form.

MR. MAHN: If they accept -- if somebody calls them from --

MR. KRAUS: I mean, you can do that,

but --

MR. McCULLOCH: But you can't make somebody be a seller, though, because they might choose not to do so, so we can't do that.

(Several people talking simultaneously.)

MR. REINHARD: Well, those are the guys that how do you audit them? Then those are the guys, I mean, you can go audit. Because if they're not selling, they're doing something wrong.

MR. McCULLOCH: So, if you don't pass 200 bucks -- (inaudible.)

MR. REINHARD: Because I'll guarantee you somebody has got a goddamned insurance contract that's assigned to that funeral home someplace.

MS. RUSSELL: Exactly.

MR. MOORE: If you're not a seller, that doesn't give you the right to come in; correct?

MR. McCULLOCH: Well, sure. Your -- (inaudible) -- can't you?

MR. REINHARD: Well, do they audit providers or sellers or both or --

MR. KRAUS: I don't think I'm

following your question.

MR. MOORE: If I don't have a seller's license, you don't have the right to come in and examine my books because I'm not selling.

MR. KRAUS: As a seller, no.

UNIDENTIFIED: Correct.

MR. KRAUS: Unless you're selling unlicensed and then --

MR. MAHN: So, why should anybody get --

MR. MOORE: Well, if you can't look at my books, you can't tell me that.

MS. RUSSELL: Oh.

MR. MAHN: Yeah.

MR. KRAUS: Well, if someone files a complaint with the Board that they went to you and obtained a contract --

MR. MOORE: If somebody would have filed one against NPS, we wouldn't be here today. Who says that's going to happen?

MR. KRAUS: Well, that wasn't your question.

MR. MAHN: But if they file a complaint on him and he don't have a seller's license, you still can't go in and inspect his

books.

MR. KRAUS: I mean, how does the Board do anything to anyone who is doing unlicensed activity? In some way, it comes to the attention of the Board and then they do something. If it never comes to the attention of the Board, then, of course, they're not going to do anything because they don't know about it. I mean, that's the way of the world.

MR. REINHARD: Well, see, there'll never be another Randy Singer, head of the Division, cover all the goddamn cat shit up.

CHAIRMAN: Go ahead, DJ.

MS. GROSS: It just goes back to the issue that Jim had brought up, in reading through Senate Bill 1, if you take an assignment or you are the beneficiary of an insurance policy that's funding a contract and it goes into Family Services, in our area, they require a contract. I know there are some areas of the state that don't, but I don't think the State can be disparate in how they treat consumers. So, if you accept an assignment or a beneficiary, you would need to have a seller's license; correct?

MR. McCULLOCH: I think you would if you make it -- if you tie it into goods and services and put it on a contract.

MR. MOORE: What if you just -- (inaudible) -- to other services, you're not guaranteeing any prices, you're not issuing a contract, you're just saying that they have this money to use towards their funeral, but I'm not guaranteeing you any of that, I'm not touching a contract.

MR. McCULLOCH: It doesn't matter if you guarantee it or not.

MR. MOORE: They're still wanting a contract on that.

MS. GROSS: The State, in my area, wants a contract.

MR. KRAUS: There is a difference between an assignment of an insurance contract by itself and as compared to an insurance policy being assigned in return for funeral services on a preneed basis in a contract. That is a preneed contract and there has to be a seller of that preneed contract. If there is just the assignment of the insurance policy alone, no preneed contract, no guarantee of

any kind of funeral services whatsoever, there is no preneed contract. Therefore, there is no sale of a preneed contract and there wouldn't have to be a seller because there is no preneed contract.

MR. MAHN: How about this, Earl? How about this? The one license that every individual funeral home has to have is an establishment license; am I correct? Can we all agree on that? Is that correct? Each funeral home, there's an establishment.

MR. FRAKER: Sure.

MR. REINHARD: Well, Josh Slocum may not agree with you.

MR. MAHN: So, why not just raise the establishment-license fee to, like, $800 and then have a provider fee at $50 and a seller fee at $50.

CHAIRMAN: And the problem you've got with that is -- that's what I said a while ago -- is that you need this money now, and we're not changing establishment licenses correctly. That's not under emergency rule.

MR. REINHARD: I want to address Earl's -- okay. But there is not a funeral

home in the state of Missouri that a family hasn't come into and said I've got to go to Family Services and I've got an insurance contract and it's got a cash value and I want to take it to the funeral home, and they're going to write a contract saying that they're going to give that family some kind of consideration for the money from the insurance, and you've got to give it irrevocability; right? And they've got to take that down to the State, so there's not a funeral home in the state of Missouri that hasn't done that. So, everybody is a provider/seller.

MR. FRAKER: Exactly.

MR. MAHN: Everybody.

MR. REINHARD: Everybody.

MR. KRAUS: If they're doing that, then I think --

MR. FRAKER: That's what you're going to do. That's what you're going to do.

MR. REINHARD: Well, I'll guarantee they've all done it because it's easy enough to check. Just go to Family Services and --

MR. KRAUS: They don't have to do

that, but if they do, they are a seller.

MR. McCULLOCH: But they don't have to. That's the point, though. They don't have to.

MR. REINHARD: They don't have to, but they've got to because Family Services have to have a contract --

MR. McCULLOCH: They could turn it away, though. They could say I'm not going to do it then because I'm not going to be a seller and I'm not going to go through the --

MR. KRAUS: They don't have to take the business.

MR. REINHARD: Oh, yeah. And I don't want your business.

MR. McCULLOCH: I understand that. I can't imagine anybody doing it, but it could happen.

(Several people talking simultaneously.)

CHAIRMAN: Actually, are you having to validate to Family Services your funeral-home contract or just the life-insurance-policy contract?

MS. BATTAGLER: Preneed contract.

MS. RUSSELL: Preneed contract.

MR. REINHARD: It's -- you've got to

give -- they've got to have something to tie that to the funeral home to get irrevocability. I, so-and-so, make such-and-such irrevocable. Where are they getting that from?

MR. FRAKER: Family Services has conditioned us now. I know, like, that's exactly the way it is in our area, DJ. You cannot -- they've got to have a number. I mean, it's --

MR. KRAUS: Is that because they don't want people just, essentially, giving their assets away, because that's not what spend-down is. It's not giving away your stuff.

MR. FRAKER: That's probably what it is. Isn't there, like, a two-year or five-year --

MS. RUSSELL: (Inaudible.)

MR. KRAUS: And if they're getting something in return, they're not giving it away.

MS. EULER: Earl, this is Sharon.

MR. KRAUS: Hey, I forgot you were on there.

MS. EULER: The funeral plan, to qualify for Medicaid, it's not part of spend-down, it's excluded from consideration. So, it's not -- the fact that the money has been spent, it's that it is excluded. So, when they're looking at assets, they don't look at that as an asset of the estate. So, that's a slightly different --

MR. KRAUS: But if they simply do an assignment and don't do a preneed contract --

MS. EULER: It doesn't count.

MR. KRAUS: -- it doesn't fall within the exclusion?

MS. EULER: No.

MR. KRAUS: Okay. There we go.

MS. EULER: The exclusion specifically says there has to be a preneed contract in the statute. It's in 208 somewhere.

MS. GROSS: And for the record, when McBride, Locke & Associates or whoever goes into the funeral home to do an audit or an examination or an investigation, whatever you want to call it, that is an area that they look at and that is a question that they have. If they find an insurance policy that's been

assigned, they look for a contract and, if it's not there, the question becomes why is there not a contract. And I think this is an issue that funeral homes around the state are going to find themselves -- I mean, I think the Board needs to take a position on it because as audits are going to be done at least every five years, they'll be looking at that, that's going to be an issue. And I think most areas, they need a contract, and why not have each establishment be a seller because they are going to be doing that at one point, unless they turn away, like John said, and tell them to go to their competitor.

MR. OTTO: Well, first, I mean, you can't require somebody to be a seller. You can't.

MR. KRAUS: We've established -- we have established that.

MR. OTTO: Yeah. But, on the other hand -- well, and the problem with this assignment thing is DFS people are not consistent across the state as to what they require. And if the Board remembers, a couple years ago, there was the -- a DFS person came

in and spoke to the Board and this very issue was raised about the inconsistency in different parts of the state about what the DFS people require, and this is my personal opinion: His response was, oh, I don't tell them what to do. They interpret the laws on their own and we don't force them to interpret the laws, if anybody remembers that.

MR. McCULLOCH: I do.

MR. OTTO: Yeah. And so, there's the problem is in one part of the state, they might require one thing, in another part of the state, they might not require. One thing I think this Board has the authority to do, which I think would be a wonderful idea, personally, is that in the event that a preneed contract is created, as part -- and only consideration -- and I use the term "consideration" with quotation marks there -- is an assignment of a preexisting paid-in-full insurance policy in order to qualify for Medicaid, and you shouldn't charge the 36 bucks because no money has really changed hands. And what are you going to in that situation, tell Grandma you've got to write me

a check for $36? You're not going to be --

MR. REINHARD: I'm doubling it to $72.

MR. OTTO: Yeah. So, I mean, I think that would be a nice gesture. It doesn't solve all the problems, but in the event that a funeral home must write a preneed contract and the only consideration is the assignment of a preexisting paid-in-full policy for purposes of Medicaid, not spend-down, but exclusion or whatever you want to call it under Chapter 208, that you don't charge the 36 bucks.

MR. MAHN: Well, I think we -- stay on course here. I think what Jim is saying is before we close the door on this, are we absolutely sure this is where we want all the fees and that they're fair? I think that's the question. And if there's -- and if the statutes say we can't change things, we can't combine provider/seller, we can't -- so, we know we can't do that, so to talk about it for two hours does us no good. We can't have every funeral home be a seller. We know that's in statute, so to talk about that for another two hours does us no good. So, I've

cut us back from 8:30 to 5:30 now.

MR. MOORE: It's not fair to charge the amount to a mom-and-pop the same as you charge a conglomerate. It's not fair. I mean, I've got one location, they've got ten locations, they're getting the same thing that I'm paying for one, they're getting for ten for the same price. That's not fair. It isn't. It's not fair. If they're only selling out of one location, then fine. But if they're selling out of all ten for the price of one --

MR. MAHN: They're getting nine free.

MR. MOORE: What's fair about that? It's not fair.

CHAIRMAN: It's just the way it was.

MR. MOORE: No, it's not fair.

MR. REINHARD: Well, let's make it fair. How do you make it fair?

CHAIRMAN: That's the question.

MR. MOORE: Anywhere they sell a contract for, they pay for the license.

MR. OTTO: The one comment I would make, everyone says that -- about the moratorium statute. I know that's -- if you

read that statute, in my opinion, it's not a moratorium on going back and changing the fees. It's just that from here on, if you want to raise a fee, you've got to explain why you're doing it. That's really what it boils down to. You can't just pass a fee increase and, Connie, tell me if I'm way out of bounds here. But there are so many different exceptions for the health and public welfare, for the safety of the public, because it's time to do a new rule or something else that some of the other states have done. It's not that you cannot come back and raise the fees or change the fees if you need to, it's just from this day forward, you can't just do it without explaining why you're doing it. So --

MR. KRAUS: And it has to fall within one of the exceptions in the statute.

MR. OTTO: Yeah. But those exceptions are so broad, you know. The health, safety, and welfare of the public of Missouri. You know, if you say that the fee needs to be increased or changed around because, you know --

MR. KRAUS: Because we didn't set it

high enough in the first place?

MR. OTTO: Because you didn't set it high enough in the first place, or you set these people too high and these other people not high enough. I think you have the authority to do that. Just you have to explain yourself.

MR. MAHN: Well, if we can't raise it in the seller area, maybe we should raise it in the duplicate wall-hanging fee. Well, they've all got to hang license on the wall. They've got to duplicate them.

MS. DUNN: And we -- those are those great big --

MR. MAHN: Oh, it's not the little square ones?

MS. DUNN: It's not the little ones.

MR. McCULLOCH: I asked that question.

CHAIRMAN: Does the -- like you said many times that the idea if you do ten, it's this, and 40, it's this, and 75, it's this, that that staggered system, that doesn't work through the system. How much flexibility does the system have, though? In other words, if we said -- if we drew a line in the sand that

said if you do less than 100 contracts, it's this fee; if you do more than 100 contracts, it's this fee. Or balance it out, if you do 250 is the magic number; if you're below it or you're above it?

MS. DUNN: Lori?

MS. GERSTEIN: Can I ask a question at this point?

CHAIRMAN: Go ahead.

MS. GERSTEIN: Because you're talking about a system that it won't work on the tiers.

CHAIRMAN: The State system. Right.

MS. GERSTEIN: Then why don't we do it by funeral home? That, the system can handle. I don't understand why one system can't work with the other, but, I mean, because I agree that it's not fair.

MS. DUNN: Is there any way --

MR. McCULLOCH: You can't make the funeral home be a seller.

MR. MOORE: What if, this first year, you charged the 200 bucks, and we send down our annual report next year and I only did 30, then I'm only charged 50 bucks the following year; if she did 300, she's charged $400. And

then the following annual report, you still have your schedule, you tell me before you submit my license, you send back and said, John, you did 60 this year, we're raising your fee. The first year, charge everybody this 200 bucks. Then have the schedule in place and you charge us for what we do.

MR. REINHARD: Yeah, but you're still not charging everybody 200 bucks because there's going to be certain entities are going to have 50 funeral homes and --

MR. MOORE: That are going to sneak off and get it for nothing.

MR. REINHARD: Yeah. Not that that's -- well, it just needs to be fair across the board, the 700-and-some-odd funeral homes.

MR. FRAKER: My comment is this: We've identified the problem, you know. I think we all really realize that it's not fair, and I agree, John. You're exactly right on this thing. But, you know, to simplify this thing, why not just have an across-the-board fee that's nothing but fair. I think when you stagger things, you're just asking for a problem.

CHAIRMAN: You do realize, though, we're talking about the application fee, the fee you pay the first time. That's all we're talking about, not the renewals, not the contracts.

MR. FRAKER: Yeah, I understand. The best way to get out of a hole is quit digging.

CHAIRMAN: I know. So, that's what we're talking about.

MS. DUNN: Only the original application, so in years forward, their renewal could be considerably different.

MR. FRAKER: It'd be less.

MR. MOORE: So, why is every place that sells these not required to make application to have a license to sell it?

CHAIRMAN: Well, they messed that up a long time ago because, see, I've been one of those people that have been taken advantage of the single guys all along, too, because I've had six funeral homes under one seller.

MR. MOORE: But you can fix that now and make it fair.

CHAIRMAN: I understand that.

MR. REINHARD: And he's going to.

CHAIRMAN: I'm going to. I'm going to make every one of my funeral homes a seller.

MR. REINHARD: Let's write a real nice note to anybody that has over one funeral home to please send in a little extra money.

MR. MAHN: By statute, we can't do that; right?

MR. FRAKER: Well, sure we can.

MR. REINHARD: It's a donation.

MR. KRAUS: To require them to?

MR. MAHN: Yeah.

MR. STALTER: I don't think so. I don't think you've got that authority to say you have to.

MR. MOORE: If they sell preneed, you don't have the authority to tell them they have to have a seller's license?

MR. STALTER: To say that you would have to have a license for each establishment. I don't think you have the --

MR. MOORE: Yeah. But if they've got an establishment license, they're another entity.

MR. KRAUS: No. I don't think so. They're not covered under John Doe

Corporation. They have an establishment license.

MR. KRAUS: Not a separate. You can't make them get a separate seller license.

MR. MAHN: You can't?

MR. KRAUS: No. I don't thinks so.

MR. MOORE: They're another class. Wal-Mart is covered by Bentonville, but in every town they're at, they have to get a business license. This is the same thing. They're sellers. So, if I've got three funeral homes in three different towns, why shouldn't each one have to have a seller's license?

MR. FRAKER: Well, I don't think there's an -- that's the issue. I think this -- let's fix this right now. Somebody make a motion to do something and then let Earl worry about it.

CHAIRMAN: Well, okay. But, now, he just said, if you heard him, that you do not have the authority to carte blanche say everybody has to; right?

UNIDENTIFIED: Right.

UNIDENTIFIED: Right.

MR. KRAUS: I think that's right.

CHAIRMAN: Legally.

MR. KRAUS: Sharon, do you agree with that?

MS. EULER: Absolutely.

MS. GERSTEIN: I have a question as a public member because I'm not sure how this works. If you don't have a license for each establishment, how can you sell for that establishment? I don't understand how you can do something without having a license.

MR. KRAUS: Well, the seller on the contract is not the establishment, it's the seller.

MS. GERSTEIN: But he's selling to that establishment; right?

MR. KRAUS: If they're designating that establishment as the provider, then they're the provider.

CHAIRMAN: It's kind of like I own them all and I can register them once and it's this one, this one, this one, this one, this one, and I get a license for it. Now, actually, to provide the services, that is -- it is interesting that we do say to provide

the funeral, you do have to have one of those individually.

MS. GERSTEIN: Oh.

CHAIRMAN: Because the funeral is under the rule.

MS. GERSTEIN: So, it works one way, but not on the top.

MR. REINHARD: Well, it should work the same for both.

CHAIRMAN: It should. I agree with that.

MR. REINHARD: But that's not what they wrote.

MS. EULER: No. It's no different than saying what APS says. Every seller license is a third-party license. Sorry to pick on you, John.

MR. McCULLOCH: That's okay.

MS. EULER: But the seller license that John has for APS will be exactly the same license as Martin has for his funeral homes, and many different funeral homes can act under that license as they want to.

MR. OTTO: One good way to think what is a seller. The seller is the entity that

is responsible for collecting the money, accounting for the money, and paying the money out to who is entitled to it. Okay. So, that may be, if Vernon decides that he wants each of his different locations to be the person responsible for that at that location, that's fine. But somebody may decide I want this entity to be the one that's responsible to the State of Missouri and to the consumers for collecting, accounting, and distributing the money, so that's where the legal distinction is. And I would also just remind folks that under the new law, you do not have to be a funeral establishment to be a provider. So, a casket store that's selling preneed can be a provider. A cemetery, under certain circumstances, doesn't have an establishment license and they can be a provider, as well. So, that's just something to keep in mind, as well.

MS. DUNN: And that's why we set that fee higher for those.

MR. OTTO: Yeah. That's why you set the fee higher.

MR. MAHN: But everybody has to be a

provider; right?

MR. OTTO: If you -- and that's another thing is do you have to be a provide -- I mean --

MR. KRAUS: Not if they don't do preneed.

MR. OTTO: And when you say don't do preneed, this is an interesting thing. I mean, to me, you do not need a provider's registration or license to handle a preneed contract that has now become at-need. It has been fulfilled. You would need a preneed, however, if you are putting yourself on a preneed contract as the provider, then you're a provider. After the person has died, it's not a preneed anymore, it's an at-need. But that gets into a thing about this notice of intent, how many -- what locations --

MR. KRAUS: Right. But at some point, you were the provider on a preneed contract.

MR. OTTO: Well, not necessarily.

MR. McCULLOCH: If you they transfer it into you.

MR. OTTO: You know, for example, some of the guys outside the service area and they

come to you with another preneed contract or one of these NPS contracts --

MR. KRAUS: Sure.

MR. McCULLOCH: After they've died.

MR. OTTO: After they've died. And so, that's one distinction that I think would be nice, at some point in time, to make, and you certainly don't have to do that as part of the emergency rule. But to get to the point, that's the difference between a seller and a provider, and they can be one in the same, but the seller is the legal entity that's responsible for collecting the money, accounting for the money, and then giving the money to who -- almost like a bank.

MS. GERSTEIN: So, you're saying you can be a seller and have 100 funeral establishments?

MR. OTTO: Correct. Because you have established this is the legal entity that's responsible for the money.

MS. GERSTEIN: So, no other -- one establishment is all you have to pay for, you don't have to pay for the other 99?

MR. OTTO: You have to pay for the

establishment, but the seller -- you pay for the seller because the seller is the one that's responsible to do all the stuff under the law.

MR. SPEAKS: Just think of it like the corporation in business. The corporation is the legal entity --

MS. GERSTEIN: Right.

MR. SPEAKS: But you could have a variety of stores or places of business that belong to that legal entity. You've just got the one now.

MS. GERSTEIN: (Inaudible.)

MR. OTTO: Yeah. Yeah. The main corporation has filed the tax return, but you have a lot of different stores.

CHAIRMAN: The thought was just expressed, and since everybody -- most folks, we'll say, are providers in keeping that thought legal, just reverse the thought process of the seller to being the less expensive license and the provider being the more expensive license.

MS. DUNN: But --

MS. CLARKSTON: But there's a problem with that.

MR. McCULLOCH: I'd like to make a motion that we just move on and we'll review this later.

MS. GERSTEIN: Guys, thank you for explaining that.

MR. McCULLOCH: Can I do that?

CHAIRMAN: You made a motion. Somebody second it.

MR. KRAUS: I think the provider --

MS. DUNN: Well, the problem is --

MR. KRAUS: -- has to be half of the seller.

MS. DUNN: -- the statute --

MR. REINHARD: I want to ask her. I mean, you've got to give her an answer before you do that.

MR. McCULLOCH: Oh, okay.

CHAIRMAN: Your motion died -- (inaudible.)

(Several people talking simultaneously.)

MR. KRAUS: You're up, Connie.

MS. CLARKSTON: There is no renewal fee for -- no. Let me see. Where's the one that says about the agent has to be set as half.

MS. BATTAGLER: As half of the funeral director's application fee.

MS. CLARKSTON: Yeah.

MR. REINHARD: Agent, not the provider.

MS. BATTAGLER: But we're not talking about agent, you're talking about sellers and providers and establishments, not agent and funeral director.

MR. REINHARD: That's the way to do it. Everybody is a provider, it's 200 bucks, $50 -- (inaudible.)

MS. BATTAGLER: But the agent, they can only be half of what the funeral director's fee is.

(Several people talking simultaneously.)

MR. REINHARD: Yeah. Put it on the provider, which everybody is.

MS. GERSTEIN: But who came up with that? It's a good idea.

CHAIRMAN: Connie, while you're looking, just if you know this answer. The amount of money that we're talking about here -- no. I'm wrong. Well, actually, I'm right. At 300 sellers at the $200 figure, we're talking about $60,000 here of the overall --

of the fund, we'll call it, I guess. Now, I guess if you're talking about all 600 of those folks coming on board at $200, there's an extra $60,000 in there --

MR. MAHN: Right.

CHAIRMAN: -- that you're trying to balance with equality.

MR. MAHN: Yeah.

MR. OTTO: Another thing to watch out for if you're going to change what you've already -- you know, you already voted on this last week to change it.

CHAIRMAN: That's true. We did.

MR. OTTO: You already voted on this last week, and you can revisit it at any time. It's just -- you can. If the distinction between a lot of people saying -- and this confuses our members, too. A funeral home and your funeral-establishment license, because if you word it that every funeral establishment is going to pay something, you might have five funeral-establishment licenses at your location, so just be careful how you word stuff because that is a problem sometimes, you know. You might -- you know, what you

consider your funeral home might have multiple establishment licenses.

MR. MAHN: Not funeral-home-establishment license. You might have a pet-crematory license or something or florist or something like that, but not funeral-home-establishment license.

MR. OTTO: I mean, if your two buildings -- you might have two buildings that you consider one funeral home, but they're each separately established licenses because they're two funeral homes.

MR. MAHN: But two different funeral homes?

MR. REINHARD: Well, give us an example of that, Don. I'm not --

MR. MAHN: Two different funeral homes?

MR. OTTO: If you have two buildings that are not connected by a walk or a driveway or walkway or something. Like, for example, your crematory is across the street, a public highway, that has to have a separate establishment license.

MR. SPEAKS: Yeah. I've got three establishment licenses.

MR. REINHARD: Well, we're just talking about putting it on the providers.

MR. McCULLOCH: In one building?

MR. SPEAKS: Yeah. But --

MR. REINHARD: You're not providing out of each one of those buildings.

MR. MAHN: He's talking about one building.

MR. OTTO: Well, I'm just saying you want to be careful how you word it because you might accidentally be charging somebody --

MR. REINHARD: A lot of that -- (inaudible.)

MR. OTTO: -- five times what you really think you're charging. I'm just --

MR. McCULLOCH: Okay.

MR. REINHARD: But if you put it on the providers, which they haven't found yet, $200, and $50 for the sellers, and you've done -- then everybody -- you've done the right thing.

CHAIRMAN: Right. Just if it's legal.

MR. MAHN: Well, how about we do this? Can we let legal visit about it? We're going to -- well --

MR. REINHARD: Well, no. We're having

chicken here in ten minutes.

MR. MAHN: Yeah. I was going to say, let's just --

MR. FRAKER: Let's put this in the form of a motion for the record and let's vote on it and put it in Earl's lap.

(Several people talking simultaneously.)

MS. GERSTEIN: Gary?

MR. FRAKER: Yes.

MS. GERSTEIN: We need to know what legal says -- (inaudible.)

CHAIRMAN: Actually, we already voted and approved what it is -- what we're debating right now.

MR. FRAKER: We're revisiting this.

CHAIRMAN: I understand that, but we're going to have to go through the motions of pulling all that back --

MR. MAHN: Retract it.

CHAIRMAN: -- and retracting it all. So, we probably really should just let them --

MR. FRAKER: Well, we'd only be retracting one of those things we voted on.

MR. MAHN: Right. Right.

MR. FRAKER: Why can't we pull this

out and vote on it?

CHAIRMAN: I'm not sure which way is the best on that, whether to let them --

MR. REINHARD: Well, we were all over the board, 100 percent, 85, 90. By the time we were done, they didn't know where the hell we were other than in Jeff City.

MR. MAHN: We went with a number we never even talked about, 85-15.

MR. REINHARD: Zero.

MR. MAHN: And we had people come up with that number that had never been in the business.

MR. FRAKER: Why don't you say that again, Jim, just what you said. We've been talking it an hour and a half, so --

MR. MAHN: We've got to let them --

MR. REINHARD: Do you want to crunch some numbers before we go?

MS. CLARKSTON: I do.

MR. MAHN: Yeah.

MR. MOORE: Well, all you're doing is just reversing it.

MR. KRAUS: Crunch numbers for what? I mean, let's be clear about what we're

talking about.

MR. REINHARD: Well, are you going -- you're going to -- if we do this -- I mean, I think that's what we're leaning to is, like, make a provider $200, make a seller $50.

MR. KRAUS: Okay.

MR. REINHARD: Okay.

MR. KRAUS: And see how that comes out revenuewise.

MR. REINHARD: Right.

MR. MAHN: And if it's legal. And if it's legal.

MR. REINHARD: But I think -- where is the legal -- Sharon, where the hell are you?

MS. EULER: I'm right here.

MR. REINHARD: Well, is it legal or not?

MR. KRAUS: I think there is some concern that there's language in the statute about one particular licensee or registrant, and I think maybe the agent, has to be half of another licensee, which I think --

MS. EULER: Right. That's the agent's fee.

MR. KRAUS: Yeah.

MS. EULER: But the statute doesn't offer limitations on any other fees.

MS. DUNN: Yeah. That was the funeral director and agent.

MR. KRAUS: So, if that's it, then you could set the others at the amount that you think is fair.

MR. REINHARD: And all you've got to do is just, like, rescind that motion on that particular two items for the fees.

MR. MAHN: Well, can I make a motion? It's nine till 12:00. You guys need to crunch the numbers. There ain't no sense in getting started on anything else. We break for lunch and --

MR. FRAKER: We're this close.

MR. MAHN: -- and we'll come back and visit with the numbers.

MR. FRAKER: We're this close. We're this close.

MR. MAHN: Or do you want to wait -- can you do it in ten minutes?

CHAIRMAN: Say what you just said one more time because I'm in another land. What was your motion? I'm not trying to do a

motion, but what did you just say?

MR. MAHN: I just said --

MS. CLARKSTON: We have -- (inaudible) -- I'm sorry. I can't -- I don't want to be held responsible for setting fees within ten minutes to -- (inaudible.)

MR. MAHN: They want to go look at this.

MS. CLARKSTON: I think I'll -- (inaudible.)

MR. MAHN: Do you just want to break early? I just said do we want to break early for lunch?

CHAIRMAN: Yes, we do. That's exactly what we want to do.

MR. FRAKER: Let's finish this. Let's finish this part right here. Not now, after lunch, but let's do this.

MR. KRAUS: Yeah. All right. And then on the amounts that you're asking -- Connie, are you clear on what they want you to look at?

MS. CLARKSTON: Yes.

MR. KRAUS: Okay.

CHAIRMAN: All right. So, that, we

will revisit when we come back. Hey, that sounded like a TV commercial. Let's go to lunch.

(Off the record)

CHAIRMAN: Okay. Where we left off a while ago was Connie was going to do some research, I think, and that thought of the provider thinking --

MS. CLARKSTON: Yes.

CHAIRMAN: -- and the fee structure, so what did we find?

MS. CLARKSTON: Do you want to go ahead, Becky?

MS. DUNN: Well, what Connie and I looked at is the projections that we had previously done, and if the -- if it's the Board's intention to insure that every funeral home pays their fair share or whatever way that you feel would be appropriate because it appears that not every funeral home is going to be a seller, so we don't want this to be an undue or unfair assessment on the smaller funeral homes. Would that be the way to explain it, Connie?

MS. CLARKSTON: (Ms. Clarkston nods

head affirmatively.)

MS. DUNN: So, the sellers -- let's say we have 360, you can assess the application fee to be $50 and you could have the provider-license-application fee be $100 no matter what. I mean, you know, they could be $100 if they were a funeral home or they could be a $100 if they were a cemetery, and that would still keep you at the level of appropriation that would be reasonable, and it would be helping those small-business entities that you feel are assessed more because maybe your bigger corporations are going to have one seller. Now, the other thing to keep in mind if you do that, that only gets you through this year because, you know, the statute says that there cannot be a renewal fee for a provider.

MS. CLARKSTON: If their licensed funeral establishment is current and active.

MS. DUNN: Right.

MR. MAHN: And I make a motion we do that.

MS. DUNN: Now, the only thing is you have, I think, previously voted on the fee

rule; is that correct?

MR. KRAUS: Yeah. But, I mean, you can readdress it at any time you want. We haven't filed anything yet.

MS. DUNN: Do we need to withdraw the previous?

MR. KRAUS: I think you just vote to amend what you were doing before to what you want to do now.

CHAIRMAN: So, does your motion take into consideration, I guess, the fact that this gets us started?

MR. MAHN: Right.

CHAIRMAN: But then we're going to have to go back and relook at all that again?

MR. MAHN: Right.

MR. FRAKER: And I'll second it.

CHAIRMAN: Okay.

MS. CLARKSTON: Mr. Chairman, the other thing, and I'm going to probably throw a big wrench in here --

MS. DUNN: And we can't hear you.

MS. CLARKSTON: I don't want you to hear me. The other thing that we could do is -- and it's going to take probably more than

today, but you could set up through whenever this rule becomes effective by emergency or whatever, from that date to December or whatever your magic date would be -- December 31st -- this is your fee structure from just January 1st to here, it's this fee. We could go ahead and establish those. But I'm with Becky. We have to be careful because that provider fee is going to be a one-time fee to generate your revenue. So, after you collect your application fees at this time, that fee will go away. Basically, that revenue will no longer be something that we can project -- (inaudible) -- so we'll have to make the fee up in some other fashion.

MS. DUNN: Because your application fees would drop substantially --

MS. CLARKSTON: Right.

MS. DUNN: -- and then we wouldn't have that renewal fee to depend upon.

MS. CLARKSTON: Correct.

CHAIRMAN: The seller fee would, too, though, for all practical purposes, after the first round.

MS. DUNN: We have --

CHAIRMAN: There would be some, but --

MS. CLARKSTON: But you'll still collect a renewal fee from the sellers where, on the providers, you cannot based on what the statute says.

CHAIRMAN: Yeah. We're not talking about renewal, we're talking about registration.

MS. CLARKSTON: I agree.

MS. DUNN: Original license.

MS. CLARKSTON: Original license.

CHAIRMAN: Yeah.

MS. DUNN: And then after you have -- after review next year, how your projections and your revenue came -- you know, ended up, you could certainly assess your renewal fee for sellers or whatever you need to do to do business.

CHAIRMAN: Okay. Got a motion, got a second. Jim?

MR. REINHARD: Yes.

CHAIRMAN: John?

MR. McCULLOCH: Okay. Explain to me one more time exactly how this is going to happen.

CHAIRMAN: Say that one more time.

MS. CLARKSTON: Okay. So -- and I'm going to take you back to last week. Last week, we said the provider who had an establishment, fee of $10, and we set the seller fee at $200. So, with the scenario that not all sellers are going to get a license at each establishment, the thought process is to make it fair for small business and have establishments who are providers pay their fair share. So --

MR. McCULLOCH: So, the provider one is the one that's going to go up from $10 to $100?

MS. CLARKSTON: To $100, and the seller is going to drop from $200 to $75.

UNIDENTIFIED: It would still benefit the seller -- (inaudible) -- and it levels the playing field, and that's the key -- (inaudible.)

MS. DUNN: And the only thing you didn't address is the nonestablishment providers because we left those at $100, as well.

CHAIRMAN: So --

MR. KRAUS: So, we can just make that a provider. We don't have to distinguish between establishment and nonestablishment; right?

MS. DUNN: If that's what the Board's vote is.

MR. KRAUS: Because it's all 100 bucks.

CHAIRMAN: That would have been your motion; right?

MR. FRAKER: Yes.

MR. MAHN: My motion.

MR. McCULLOCH: But you still have to distinguish between them; right?

CHAIRMAN: Not on this vote.

MR. KRAUS: Not if they all pay the same amount regardless of whether you're one or the other.

MR. McCULLOCH: Will those guys think they don't apply if they're a nonestablishment, though -- think they don't owe anything?

MR. KRAUS: Well, this is just --

CHAIRMAN: If you have a provider, you're what?

MR. KRAUS: Provider license, whether you also have an establishment or not.

CHAIRMAN: But if you're going to be one, it makes no different who you are, what you are.

MR. KRAUS: Right. Because the reason we were distinguishing is the difference in the fee.

MR. McCULLOCH: Because the people this was -- they were trying to catch were the nonestablishment, the stores or what have you?

MR. KRAUS: Uh-huh.

MR. McCULLOCH: But they're still providers?

MR. KRAUS: Yeah.

MR. McCULLOCH: Okay.

MS. DUNN: And they would still have to pay $100.

MR. KRAUS: Pay 100 bucks.

MR. McCULLOCH: Okay.

MR. MAHN: And can I ask this once we stop the -- while we're adjusting this, or is this too much to ask, can you not -- can we take the nonestablishment provider to $200 while we're fixing this, because the establishment is already paying their establishment fee, now they've got to pay

their provider fee. A nonestablishment is just going to pay a provider fee. So, can we take the nonestablishment provider to $200, because I'll include that in my motion if we can, Earl.

MR. McCULLOCH: Is the problem that --

MR. KRAUS: I mean, that changes the calculation. I don't know.

MR. STALTER: But there aren't that many of them.

MS CLARKSTON: There aren't that many.

MR. MAHN: There aren't that many of them, but I'm just saying that to make it equal --

MR. STALTER: Yeah. Otherwise, they're not consistent, so that, really, there's a --

MR. MAHN: Right.

MS. DUNN: Connie, I need to ask you something.

CHAIRMAN: Tell you what. Why don't you just withdraw your motion for a second. Let's fix all this and then let's go, because we need to rescind what we had already done.

MR. MAHN: I'll withdraw my motion one

second.

CHAIRMAN: Yeah. And then let's get it right and then we'll do it. Yes, ma'am.

MS. GERSTEIN: May I ask a question?

CHAIRMAN: Sure.

MS. GERSTEIN: Why do we have a motion on the floor we haven't voted on -- (inaudible.)

CHAIRMAN: Well, he withdrew his motion.

MS. GERSTEIN: Oh, he did. Okay.

CHAIRMAN: Just now. So we can get it all right, because we're getting too many fragments going here.

MR. REINHARD: Okay. So, I voted yes. Joy --

CHAIRMAN: And then we stopped. You voted yes and John and Joy never did vote.

MR. REINHARD: Okay. So, it's --

MS. GERSTEIN: (Inaudible.)

CHAIRMAN: Well, just -- you don't need to.

MR. REINHARD: He withdrew the motion of the whole thing?

CHAIRMAN: Just for the moment to get

this cleaned up right.

MR. REINHARD: Oh, okay.

MS. GERSTEIN: Oh, okay. So, the first motion is -- (inaudible.)

CHAIRMAN: Well, it started, but it quit.

(Several people talking simultaneously.)

(Off the record)

CHAIRMAN: I think we're back in business here after the magic of technology and all the good things. Part of the wording that you want is in your motion that we amend to reflect --

MR. MAHN: We amend to reflect that we'd like to make the nonprovider $200, the provider establishment that is a provider $100, a seller $75, and an agent $50. That's my motion.

CHAIRMAN: All right. There's the motion. Is there a second?

MR. REINHARD: Second.

CHAIRMAN: Jim seconds. Joy?

MS. GERSTEIN: Yes.

CHAIRMAN: John?

MR. McCULLOCH: No.

CHAIRMAN: Does that take care of it on its own? You had the motion, one up, one down.

MR. KRAUS: What was the vote again?

CHAIRMAN: You had a motion, a second, a yes, and a no.

MR. SPEAKS: The nos have it.

MR. REINHARD: Three to one.

MR. KRAUS: Who first and who seconded?

MR. MAHN: I first.

MR. REINHARD: I seconded.

CHAIRMAN: He seconded.

MR. KRAUS: So, therefore --

MR. MAHN: Joy said yes.

CHAIRMAN: Joy said yes.

MR. McCULLOCH: No.

MR. KRAUS: No. So that passes.

CHAIRMAN: Okay. I wanted to make sure.

UNIDENTIFIED: Say you vote yes, because you could second something and still vote no.

UNIDENTIFIED: Right.

UNIDENTIFIED: True.

MR. KRAUS: Yeah. I think they're

assuming that who seconded actually votes yes, but -- so, if that's ever not the case, please let the Board know.

CHAIRMAN: Okay. And Gary is not here for the vote. So --

MR. KRAUS: Yeah. Because that would be three to one.

CHAIRMAN: Yes. All right. That's solved; correct?

MR. KRAUS: All right. Moving on to #7?

(Several people talking simultaneously.)

MS. CLARKSTON: I'm just waiting to see if I need to be up here.

CHAIRMAN: Okay. It was brought to the attention a while ago, and I'm not sure how you all are thinking because I was personally thinking that in the law and there is no provision that a fee be charged to the funeral director/agent, so that will be zero. If you are a funeral director/agent, there is zero fee. Only the seller/agent will pay the $50 fee.

MR. McCULLOCH: So, funeral director/agent, no fee?

CHAIRMAN: No fee.

MR. MOORE: For registration?

CHAIRMAN: For registration.

MR. MOORE: What about annual renewal?

MS. BATTAGLER: Well, they don't have to register, though. They just have to notify the Board that they can act as an agent for --

CHAIRMAN: Just -- it's basically an FYI.

MS. DUNN: Well, the Board maintains a register, so whatever form that --

MS. BATTAGLER: So, they have to fill out that form?

MS. DUNN: Well, no.

MS. BATTAGLER: Oh.

MS. DUNN: We haven't determined that. I'm just saying somehow the Board is going to have to know how to maintain a registry of agents.

MS. BATTAGLER: Sure.

MS. DUNN: In some way besides somebody calling us in -- or for us to put every funeral director as an agent because that may not be, either.

MR. MOORE: Is there a renewal fee for

a funeral director/agent?

CHAIRMAN: We haven't got to that one yet.

MS. DUNN: We haven't set any renewal fees this year.

MR. KRAUS: But there wouldn't be because if there can't be an initial fee, there can't be a renewal fee?

MS. DUNN: Oh, that's true. Not for a funeral director/agent.

MR. KRAUS: Right.

CHAIRMAN: Okay. So, there's your answer.

MR. KRAUS: Do you think we should put some kind of asterisk or caveat on the agent-registration fee here to clarify that --

MS. DUNN: Yes.

MR. KRAUS: -- with regard to funeral directors?

MS. DUNN: Does the Board agree with that?

MR. REINHARD: Yes.

MR. McCULLOCH: Yes.

MR. MAHN: Let's move on.

CHAIRMAN: Okay. I actually was under

the assumption the funeral director/agent would pay the $50 fee, so --

(Several people talking simultaneously.)

CHAIRMAN: Okay. Any other issue with fees -- emergency-rule fees? So, we can consider those approved then.

MR. MOORE: So, the establishment or the provider and seller license we had prior to August 28th are no longer in effect, even though they were good till October 31st of 2009; correct?

MR. KRAUS: The registrations that you had are no longer valid.

MR. MOORE: The license?

CHAIRMAN: Don't take it wrong, but he made it go away.

MR. KRAUS: Well, you didn't actually have a license, you had a registration.

MS. DUNN: (Inaudible) -- they were called registrations; that's why Earl said that they weren't called licenses.

MR. MOORE: Okay.

MS. DUNN: But, now, they're licenses.

MR. MOORE: So, are you going to refund us that September and October's money

that we've already paid?

MS. DUNN: No.

MR. KRAUS: Fees are not refundable, so no.

MR. SPEAKS: Nice try, John.

UNIDENTIFIED: There's an inspector in your area.

MR. KRAUS: Good question.

MR. MOORE: Okay.

UNIDENTIFIED: Bring him on.

MS. DUNN: Okay. But what would we refund?

MR. MAHN: Oh, let's not even go there. Let's move on.

MR. KRAUS: Yeah. The answer is no.

(Several people talking simultaneously.)

MR. MOORE: They did last year for the one that's good till October of 2009.

MR. MAHN: Let's not even go there. We've talked for an hour before -- (inaudible.)

MR. KRAUS: All right. Number 7.

(Several people talking simultaneously.)

CHAIRMAN: Hang on just a half a second here. That one's not emergency. That one -- (inaudible.)

MR. KRAUS: Number 7?

CHAIRMAN: Connie asked the question -- back up to #4 for just a second. Let's clean up house for a second. We approved #4 as okay as is. Now, Connie needs to know what the impact to small business would be on #4.

UNIDENTIFIED: Four?

MR. KRAUS: Seller cancellation of contracts.

MR. OTTO: There isn't -- just clarify.

MS. BATTAGLER: I think it's just a clarification, isn't it?

MR. OTTO: It's a clarification.

MS. BATTAGLER: Yeah.

MR. MAHN: No.

MS. BATTAGLER: No?

MR. McCULLOCH: Well, are you going to have notification and mailing and that kind of stuff; is that what you're asking for?

MS. CLARKSTON: Uh-huh.

MR. KRAUS: But is that required by the rule or is that required by the statute?

MS. RUSSELL: That's by the statute.

MS. CLARKSTON: But if you've got a

rule, you still have to -- you still have to do small business.

MS. RUSSELL: The rule doesn't say that.

MR. KRAUS: Oh, I know.

MS. RUSSELL: Okay.

MR. KRAUS: I'm just saying is that an impact of the rule when the rule doesn't repeat that. Does that make sense?

MS. BATTAGLER: But it doesn't say -- it doesn't say --

MR. KRAUS: If the rule doesn't say anything about the notice that you have to give --

MS. RUSSELL: Yeah.

MS. BATTAGLER: Yeah.

MR. KRAUS: -- but statute does, then how is that an impact of the rule?

MS. BATTAGLER: This isn't going to impact us, because this doesn't say anything about a notification that we have to give to the purchaser or anything. It's just clarifying what the cancellations can apply to, which situation.

UNIDENTIFIED: (Inaudible.)

MR. McCULLOCH: So, the rule and statute are two different things in this; is that what you're saying?

MS. BATTAGLER: Uh-huh.

MS. RUSSELL: The statute calls for the notification.

MR. McCULLOCH: Yeah, I know that.

(Several people talking simultaneously.)

MS. CLARKSTON: I don't think there's going to be a fiscal impact, but I think that we're going to have -- I would feel more comfortable if we just disclaimed up front. It's not that it's going to -- we're going to say it's going to cost you more, but I think we need to recognize that this means and pursuant to the statute, there would be notification and mailing, but no fiscal impact. There's a split and it's --

MS. BATTAGLER: Notification and mailing of what?

MR. McCULLOCH: When you cancel then now, you have to notify them, you know.

MS. RUSSELL: When the sellers cancel. We're on the seller cancellation.

MR. McCULLOCH: Where, used to, you

could just cancel it.

MS. RUSSELL: When you cancel them for nonpayment.

MS. BATTAGLER: Oh, seller cancellations for nonpayment --

MS. RUSSELL: Yeah. For nonpayment.

MS. BATTAGLER: -- you have to notify them.

MR. McCULLOCH: You didn't have to do it before. You didn't have to.

MS. BATTAGLER: Oh.

MR. McCULLOCH: You could just cancel them.

MS. CLARKSTON: Okay. I think I've got enough.

MR. McCULLOCH: Yeah. After 90 days -- (inaudible.)

CHAIRMAN: Are you good? Okay. And #5 on the annual report, we had approved it as is, so same thing.

MS. CLARKSTON: Okay. For licensees, file an annual report, there's going to be, I'm assuming, mailing, postage?

CHAIRMAN: Time.

MS. EULER: Mr. Chairman?

CHAIRMAN: Yes, ma'am?

MS. EULER: The Board also needs to make a finding that there is competent and substantial evidence to support the need for the rule.

CHAIRMAN: Okay. We did.

MR. KRAUS: I think that's true for every rule approved today.

MS. CLARKSTON: Okay. For small-business impact, then I'm assuming it's going to impact staff of a small business for tracking and accounting purposes. Is there something -- take me a little bit further into the accounting and tracking purposes, then you would also be contacting either the trust, the insurance, or is that all information that you would have -- the seller would have? You would have to have some conversations between --

MS. RUSSELL: The trustee or the insurance company --

MS. CLARKSTON: -- the funding source or -- yeah.

MS. RUSSELL: -- or the bank, yeah.

MS. CLARKSTON: And so, then I'm going

to take it a step further. On their end, it would be the tracking and the accounting and those record-keeping requirements kind of would near that of the seller. Even though different in purpose, they would still kind of mirror; correct?

MR. McCULLOCH: Well, I think for trust funding, the seller is sending them the information.

MS. CLARKSTON: Okay.

UNIDENTIFIED: They get the information from someone.

MR. McCULLOCH: But in the insurance part, the insurance company is probably generating that information if it's insurance funded.

MS. CLARKSTON: Okay. And then for joint accounts then, that would be the bank generating that back to what's in the joint account; correct?

MS. RUSSELL: Yeah.

MR. McCULLOCH: Well, you'll have, more likely, like a certificate of deposit, so you'll have a record of that as a seller.

MS. CLARKSTON: Okay. Anything else

on that?

MS. RUSSELL: You have to have it notarized, too, so you'll include --

MS. CLARKSTON: Okay. Okay. So, in Section 5 where it talks about maintain a list including name, address, contract number, and funding mechanism, is that something that sellers already have established or is that going to be --

MS. BATTAGLER: Where is that at?

MS. CLARKSTON: Section 5 on page 6. It says the report shall contain a list, including the name, address, contract number, and funding mechanism of preneed contracts fulfilled, canceled, or transferred.

MS. BATTAGLER: Where are you?

MS. CLARKSTON: Page 6, sub 5.

CHAIRMAN: You're going to need to hire a full-time person to make sure your contracts are numbered correctly.

MS. CLARKSTON: Oh. Do I have a different copy?

MS. KRAUS: There is an updated version.

MS. CLARKSTON: (Inaudible.)

MS. RUSSELL: Where might that be?

MS. CLARKSTON: I think I'm going to start my day over.

MS. BATTAGLER: A good one -- (inaudible.)

MR. KRAUS: The updated version should say group-three rules at the top, but it starts with #1.

MR. MOORE: We've just got to give up having our children -- (inaudible.)

MS. CLARKSTON: Because that still requires some tracking. Report shall -- in Section 2.

MR. McCULLOCH: So, are you asking if that's something new?

MS. CLARKSTON: Is that something new or is that something that sellers would already have. I mean, is that going to be an addition?

MR. McCULLOCH: I would think most of them would have to have some type of numbering system --

MS. CLARKSTON: Okay.

MR. McCULLOCH: Because that's required to keep them -- even though it's

commingled like in a trust, you still had to have them separated out by individual.

MS. CLARKSTON: So, if I say it's no additional burden --

MS. RUSSELL: I don't know. Some have. Some do not have that, do not have -- the joint-account people, they didn't do contract numbers. I mean, I'm hearing from several people. People had trusts, yes, and then some that didn't, that had joint accounts or insurance didn't have -- didn't give the contract numbers, so, all of a sudden, it's a big deal to them about having to have this contract number.

MS. BATTAGLER: But is that part of the contract provisions, or is that part of this --

MS. RUSSELL: It's right here. It's --

MS. BATTAGLER: -- seller reports that we have to account for that way?

MS. RUSSELL: Only one number shall be assigned to each contract.

MS. BATTAGLER: But isn't that under that contract provisions, though?

MS. RUSSELL: Under the annual report.

MS. BATTAGLER: Isn't that where that

came in or is it on this that's making that provision on the contracts?

CHAIRMAN: Can't they just start at #1 on their new ones?

MS. RUSSELL: That's what we said.

MS. BATTAGLER: Well, I intend to. I mean, I've had calls today asking about this from an insurance company. But is it this rule that's making the individual contract number, or is it the contract-provision rule that's making them individual contract number?

MS. RUSSELL: Amy is saying that you're going to have to address it either place, this one or --

MS. BATTAGLER: One or the other.

MR. KRAUS: Yeah. If it's referenced here --

MS. CLARKSTON: Well, small business, we have to address it in both. For fiscal note, we have to decide which one. This is where it's kind of a hard -- and we really need to talk about small business. We've got to do something next year about that because it's off.

MS. BATTAGLER: I mean, as far as the

individual contract numbers, yeah, there's going to be a huge impact.

MS. CLARKSTON: Okay.

MS. BATTAGLER: Because that's a big expense to be able to do that.

MS. CLARKSTON: Explain the expense. Is it because you're hiring somebody? Is it because you have to go back into --

MS. BATTAGLER: No. It's because of the printing of them, I guess, more than anything, because you have to be preassigned numbers. I want to say -- I can't remember what it cost us to go to that.

MR. WARREN: Administration to do annual reports is -- (inaudible.)

MS. BATTAGLER: Yeah. That's going to be it, too.

CHAIRMAN: Now, that expense wouldn't necessarily fall on everybody, though, to have a preprinted number on the contract?

MS. BATTAGLER: Right.

MS. RUSSELL: Exactly.

MS. BATTAGLER: But --

MR. KRAUS: But if you had some small enterprise that just had a file cabinet, and

they've got to pull them all out and number them and put them all back and -- I mean --

CHAIRMAN: Not if you have a logbook.

MS. BATTAGLER: Yeah. And how do you know who gets the next number?

CHAIRMAN: If you start with #1 on the new ones?

MR. McCULLOCH: I think it says you have to have a number on it, so you're going to have to physically put a number on it. I think that's what it says.

CHAIRMAN: Which I do, but -- so, the law says you have to go back and number all of your old ones?

MR. KRAUS: No, not the old ones.

MR. McCULLOCH: Not go back. Going forward. Going -- (inaudible.)

CHAIRMAN: Yeah. So, you just start with #1.

MR. McCULLOCH: Yeah.

MS. CLARKSTON: Okay.

CHAIRMAN: Do what?

UNIDENTIFIED: We couldn't hear that.

CHAIRMAN: He was just reflecting that the law said you could start with the new

contracts for numbering and that you did not have to go back to the old for that.

MS. DUNN: So, the effective date of August 28th forward.

CHAIRMAN: Correct.

Mr. McCULLOCH: Correct. And like in our case, we have two numbers. We number the contract; okay? But then we also have the report that we send to the trust that has a separate one. Two different types of numbering systems.

UNIDENTIFIED: Oh.

MR. McCULLOCH: Does anybody else do it that way?

MR. OTTO: We use just one.

MR. McCULLOCH: You just have one?

UNIDENTIFIED: Yes.

MR. McCULLOCH: Because -- well, anyway, we've been numbering contracts for a long, long time. I didn't see the purpose of it, but we've been doing that. But then the number we assign to that contract, which is in our report that goes to the trust, is a whole different number.

MS. BATTAGLER: I mean, we've been

numbering ours for a few years now, but I've been getting calls from the insurance-funding companies, Homesteaders and Forethought, about how do we go about numbering our contracts to make it work with you all because we're the ones that turn the report in? So, I know it's going to be a big impact on them.

CHAIRMAN: Well, just saying that, I saw some applications the other day that just have a blank for you to write your own number on under that banner.

MS. BATTAGLER: And when you've got ten different people out selling in different homes and different cities and everything for the same one, how do you keep up with that? I mean, that's --

CHAIRMAN: I would think you would have to do it through location.

MR. McCULLOCH: Well, what we do is, we assign you, if you're the counselor, say, numbers 1 through 20 --

MS. BATTAGLER: Right.

MR. McCULLOCH: -- and we keep track of that. And if you mess up #15, then we expect to get it back and we destroy it.

MS. BATTAGLER: It's prenumbered; right?

MR. McCULLOCH: Prenumbered. So, now we -- (Inaudible.)

MS. BATTAGLER: Right. He's talking about nonprenumbered. He's saying that not everybody has to.

CHAIRMAN: What I'm saying is, for her point of view, though, you're going to have impact on some people, but you're not going to have impact on other people.

MS. BATTAGLER: Right. So, you're going to have to weigh it out in the middle for everybody.

CHAIRMAN: Yeah. So, did you get that, to the best that you need? I don't know -- so, have you got what you need?

MS. CLARKSTON: I think this is another one of those I'm going to have to just start drafting and maybe pick up the phone and start calling because until we get into it. Sometimes when you start drafting, then it leads you down different paths of where your questions may be, but I think this is a good start.

CHAIRMAN: Okay. All right. So, that takes care of #5, and got Connie what she needed there. We approved #6 a while ago with the amendment to reflect and to find the -- wherever I wrote that -- the substantiation of the government --

MR. KRAUS: Compelling government interest.

CHAIRMAN: -- compelling government interest to have an emergency rule. And, now, your impact on the peace?

MS. CLARKSTON: Okay. I think that these are, in my mind, based on the conversation that we had this morning and some of the methods that the Board has used to reduce costs to make it an equal playing field for small business, I think we can draft that fairly easy. In addition to the fees for the fiscal impact, it is just going to be the number of applications or renewals that we think we're going to receive from the fees, so I think that one is somewhat self-explanatory in my mind.

CHAIRMAN: Okay. So, you're okay?

MS. CLARKSTON: I'm okay.

CHAIRMAN: Good enough. Now, #7. Do you have a question?

MS. RUSSELL: I've been looking at #7 and I was wondering, Earl, if there was a reason you didn't include the five years that the statute calls for the records to be kept, if maybe it wouldn't be a good idea to put that five years in there? Page 30 of the Senate Bill, line #8.

MR. KRAUS: I was just going to look at my notes, but I would guess that --

MS. RUSSELL: Yeah. That's why I wanted the clarification. Amy had a good point. We were -- what I meant to say is for the clarification of you only have to keep them five years after the performance of the contract or the cancellation.

MS. EULER: Darlene?

MS. RUSSELL: Yes.

MS. EULER: We looked at that, and since that's already in the statute, we don't know that it needs to be included in the rule, as well, because rules aren't meant to be duplicative of what's in the statutes. They're meant to add or clarify. It wouldn't

hurt anything to put it in, but I just wanted to let you know we had kind of looked at that and talked about it.

MS. RUSSELL: Okay. I was just thinking for somebody that's looking at the rule as a clarification thing, you know, how long do I have to keep those records, it would just be an easy thing to stick it right in there, but I understand.

MS. EULER: It doesn't hurt anything to put it in, but it's already in the statute, so that's why we didn't include it. And it's up to the Board if they want to put it in or not, we can.

MR. KRAUS: Yeah. And we actually looked at that type of issue in drafting a number of these different rules. And I think in comparing the two versions today, you'll see that, often, the first version is much longer than the second one, and then we decided to cut a lot of things out because it was merely duplicating the statute.

MS. RUSSELL: Oh, I just -- the Board --

MR. KRAUS: But I see your point in

just wanted to look in one place.

MS. RUSSELL: Yeah. Well, the Board addressed it on at-need contracts. They have it in a rule on at-need contracts, the length of period of time, and I was just thinking that, you know, if they were going to do a rule on at-need, they might as well do it the same with preneed.

MR. KRAUS: I mean, if the Board wants to do that, we can.

MR. OTTO: On paragraph 5 --

MR. McCULLOCH: Probably didn't need to do it on at-need. That's probably more the --

MS. RUSSELL: Take it out of at-need?

MR. McCULLOCH: Yeah. I mean, it's right here in plain English, and for no less than five years. I mean, that just seems pretty clear to me.

MS. RUSSELL: Well, fine. I'm fine with it then.

MR. OTTO: On paragraph 5, the time the records must be capable of being copied, either immediately or within three business days or as otherwise requested by the State Board, is

pretty wide open and vague. If you've got a warehouse full of records, they're not going to be capable -- and they're all paper -- they're not going to be capable of being copied in three days.

MS. EULER: Don?

MR. OTTO: Yeah.

MS. EULER: That's why I put in the or as requested by the Board, so that there is room for negotiation there to make sure it's reasonable.

MR. KRAUS: Yeah. I think that's also meant to encompass when you have, say, an inspector standing right there and wants to look at the records.

MR. OTTO: Well, who decides whether it's immediately or within three business days?

MS. BATTAGLER: Yeah. And if an inspector is standing right there, it's fine, but shouldn't we be able to get maybe a few days for some off-the-wall, you know, records, you know, that we have to produce from 20 years ago. I mean, we -- honestly, we've had to go back before and get some records from 20 years ago for some monument stuff, but I just

know that it can take a while to get that.

MR. KRAUS: Right. And I think you're right that the wording there could be better. I think, logistically, how that would pan out is if the inspector is standing right there and says I want to see your records and you say, well, these are the ones I have right here, right this minute. It'll take me a couple days to get the others. Then if they're on -- you know, if Lori -- that makes Lori mad and she stomps back to the Board and says they wouldn't give me all the records, then the Board can say, well, yeah, but they can get them in a couple days, that's fine with the Board. We'll send you back out and work that out. MS. BATTAGLER: Is there a way to put, you know --

MR. KRAUS: But, yeah, if you have other suggested wording to encompass that, then --

MS. BATTAGLER: Something to say that we have a minimum of so many days to produce it if we -- you know, if it is not on-site. I don't know.

MR. McCULLOCH: That makes sense.

MS. BATTAGLER: Three days is not, honestly, enough in some situations.

MR. McCULLOCH: You know, that works for us, but I'm not sure it works for big companies; you know what I mean? (Inaudible.)

CHAIRMAN: Is there some way to write some latitude in there because if you're at a smaller place, the same -- by creating the issue to give them the latitude they need, you give some other guy that could produce it right now two weeks.

MR. KRAUS: Yeah. And that's the balance is giving people latitude that's reasonable without requiring so much latitude that you let people put the Board off just because they want to put the Board off.

MS. BATTAGLER: Wasn't the previous one written for at least five days? That's even a couple of extra days. I thought it said something about five days -- having to produce the records within five days or something?

MR. McCULLOCH: Is that going to -- I mean, are we doing anything that's going to be a problem if it is five days? I mean, that we're in such a rush, you think?

MR. KRAUS: I mean, I --

MR. McCULLOCH: I can't imagine.

MR. KRAUS: I don't know. I mean, that's hard to --

MR. McCULLOCH: I mean, a lot of this --

MR. KRAUS: And that's why. I mean, it's hard to imagine all the situations. I mean, is a situation going come up where you want to send an inspector out that day to go check something and you want them to be responsive that day instead of having the inspector show up and they say we don't have to give you anything for 15 days because that's what the rule says. So -- (the speaker makes sound) -- see you in 15 days.

MR. OTTO: There's a difference between having your books and records open for inspection and having to produce copies.

MS. BATTAGLER: Right.

MR. OTTO: So, it's one thing if you say your books and records during normal business hours must be open for inspection by the inspector that comes in. That's perfectly reasonable because you're right, you know.

But it's a different matter to say I want this warehouse photocopied and it says immediately.

MS. BATTAGLER: And if my trustee is on vacation for a week, I can't produce those records in five days. There is no way I can get them electronically to you in that time.

MR. KRAUS: But then can you make them available for inspection?

MS. BATTAGLER: I can in so many days. In a week.

MR. KRAUS: So, then is there a difference?

MS. BATTAGLER: Well, what he's talking about is anything you've got in-house, right here, you're willing -- you're able to look at it at any point in time, go through it, do whatever you need to do to it, make copies, whatever. But if it's something that I have to produce that's not kept because it's electronically kept somewhere else, give me some time to produce that.

CHAIRMAN: Hang on. Mark?

MR. WARREN: And what if there's an audit and they say I want, you know, all these records within three days? And then if you

don't produce them, then you're in violation.

MS. BATTAGLER: Right.

MR. WARREN: And the problem with that, and I see this with the insurance market conduct exams where the examiners go in and they say I want to see, you know, X number of files. You can't produce X number -- you know, if it's a large company, you can't produce X number of files, or if that person is on vacation, and that law used to give ten days and now I think it's up to 15, but you might want to clarify it at least a little bit --

MS. BATTAGLER: Right.

MR. WARREN: -- in the context in which they're requesting the records. If the inspector is standing there and you've got a whole warehouse of records, you can say, yeah, knock yourself out, you know. They're on aisle 3, box whatever. But I see what you're saying. If the inspector is standing there and it's a recent record on the computer, then they shouldn't be able to, you know, get that immediately. But I tend to agree that three days is a little bit short.

MS. BATTAGLER: Yeah. Five days is really short, too.

CHAIRMAN: Go ahead, Joy.

MS. GERSTEIN: As a public member and, you know, an owner of an outside business, if you've had a business for 15, 20 years, your records are not on the premises. First of all, they've all been microfiched and they're someplace that's fireproof. And it's not -- it's going to take more than three to five days to get those records.

MS. GROSS: You're just looking at five years worth.

MS. GERSTEIN: Well --

MS. GROSS: Right? Because you can only go back five years?

MS. GERSTEIN: They're still not --

CHAIRMAN: Is there some way --

MS. GERSTEIN: I don't know.

CHAIRMAN: Kind of back to Sharon's original statement. The wording is immediately or within three business days or as otherwise requested by the Board. But is there some way -- what I hear you guys saying is, is there some -- because, in my mind,

there is nothing wrong with immediately; there is nothing wrong with three days, depending upon the situation. And that's what you guys are reflecting on in the --

MR. OTTO: Who decides if it's immediately?

MS. BATTAGLER: Right. Who decides what the situation is?

MR. KRAUS: I mean, I'm not saying that this is necessarily the wording we should go with, but, technically, if you say it's required either immediately or within three business days, if you're doing one of those, you are compliant with that requirement. So, essentially, that means three days is the requirement.

MS. GERSTEIN: But when you're talking about --

MR. KRAUS: But I'm not saying that this is how it should be worded, but --

MR. McCULLOCH: So, just change that to 15.

MS. GERSTEIN: Well, can I ask a question? I mean, if it's something that has happened in the last two months, then I think

you would be able to get them immediately. But if it's something that is older, they're probably not on -- I don't know about all of them, but --

MR. McCULLOCH: Fifteen?

MS. GERSTEIN: -- but I don't know that they'd be on the premises.

CHAIRMAN: Is the word "reasonable" in there somewhere? I mean, that may be way too --

MS. BATTAGLER: Yeah. But who determines what's reasonable?

MR. KRAUS: Once you throw that in, then you go back to Don's question of who decides, and then it just basically circles back to the Board with the Board determining how quickly you have to get them, and then it's --

CHAIRMAN: Well, maybe that's okay.

MR. KRAUS: And then there's no set standard.

CHAIRMAN: Maybe that is okay.

MR. KRAUS: And that's another way to go, saying the Board can just say give us those.

MS. DUNN: Rule drafter.

CHAIRMAN: Somebody tell me what's wrong with the Board making the call on whether it's reasonable or not.

MR. McCULLOCH: Well, because if no one is here and it's Todd, you know what it'll be. How about you just take that last part out as otherwise requested and put 15 in place of three and be done with it? Can I make that motion.

MS. BATTAGLER: Or no later than 15 business days?

MR. McCULLOCH: Or no later. Okay. That's even probably better.

MS. EULER: Because there are going to be situations that 30 or 60 days will be reasonable. There are going to be situations where two days is reasonable. I think we want to give the flexibility to both the Board and the licensees because we want to be fair. So, I think that needs to be kept in mind when you're deciding what this rule should say.

MR. KRAUS: Yeah. I think that's true, because you're going to have your everyday folks and responses and who the longer time

frame may be completely reasonable, and you may have your -- what the Board considers serious situations where you want to get in and look at something where maybe a shorter time period is appropriate. And if you lock yourself into a longer or shorter time period, you're making it difficult in one situation or the other.

CHAIRMAN: The part I don't like about it, though, is when she's standing out there in somebody's office and he just looks her in the face and says I've got 15 days to deal with this.

MR. OTTO: That's 15 days to provide copies, not if you're going to look at them.

MR. WARREN: I would imagine you also have a subpoena power, too, under the new law where you can wander in and the inspector can say, you know, here's an administrative subpoena; I want it now. But where I see this abused is when they're over time on records requests and it's used by the agency -- not that you all would do that -- to extract money from the entity because they hadn't complied with the records request. And

they're saying, oh, well, you didn't require it, you didn't respond timely in 15 instances, you know, we're going to fine you 100 bucks apiece.

MS. CLARKSTON: We don't have fining authority.

MS. DUNN: We don't have fining authority. Darn.

MR. WARREN: Well, it's still a filing exemption. I mean, it would still be -- yeah. And I'm not going to talk about other agencies, but --

MR. KRAUS: There's still other levels of discipline.

MR. WARREN: Yeah.

MR. KRAUS: Yeah.

CHAIRMAN: Okay. Don?

MR. WARREN: Whatever.

CHAIRMAN: I thought you had --

MR. OTTO: No. I think it was -- (inaudible.)

MR. KRAUS: Yeah. And I don't mean to -- I certainly don't mean to be promoting any particular length of time, you know. It's what the Board wants the time to be.

MR. OTTO: I'm going to ask: Is this an emergency-rule problem?

MS. EULER: No.

CHAIRMAN: You're back.

MS. EULER: I'm back. I'm sorry. I pushed the wrong button.

CHAIRMAN: All right.

MR. OTTO: Well, if this is not an emergency-rule problem, maybe it should just be put off for further discussion.

MS. GERSTEIN: Why can't we just change -- I would say that either immediately or within three business days, depending on what for, or change those last four words.

CHAIRMAN: Okay. I'm going to go back and say now from the perspective of legal advice here, do you see that this -- you need to go back and redo this and work on it for yourself?

MR. KRAUS: Well, I think in order to do that, I think we would want some indication as to what the Board wants the effect of the rule to be. And if we know what the Board wants the effect of the rule to be, then we can draft something to fit that.

CHAIRMAN: Okay. So, the next statement then is, number one, do you all feel this is an emergency rule, so we need some action on that thought? That thought was brought up maybe it wasn't. Or do you think we need to clarify this better, or it's fine as it is?

MR. MAHN: Well, that's a lot of questions.

CHAIRMAN: Yeah, I know.

MR. KRAUS: Well, of course, I think the most important one is if it's -- whether -- if it's not an emergency rule, then we should deal with it another day.

MR. McCULLOCH: I just don't see where it's so important that you've got to have it, like, within three days. Why not just make it 15? That's fine. We're not in that big a hurry. We're going to get them anyway, if that's the situation. Do you see that as a problem, Lori? I mean, have you ever encountered that where you think, well, if I could have got those records in three days, I could have really nailed these people, but because they waited 15 -- you know what I'm

getting at?

MS. HAYES: Well, we don't really do that. Right now, we're going in there and looking at what you have in the current year or the past year. They always have them.

MR. McCULLOCH: Yeah.

MS. HAYES: (Inaudible.)

MR. McCULLOCH: But I'm just playing devil's advocate. I mean, seriously, I mean, do you think that would be the case? I go in there and, boy, if I could have gotten those records in three days, I would have had something to --

MS. HAYES: I don't think so, because --

MR. McCULLOCH: -- but if I wait 15, what's the difference? The records are there.

MS. DUNN: The auditors are going to be there anyway, so --

MR. McCULLOCH: Yeah. Why not just change the --

MR. SPEAKS: Is there any thought that a business could alter the records if they have too much time?

UNIDENTIFIED: NPS.

UNIDENTIFIED: Well, good point.

MR. KRAUS: Alter or destroy?

MR. SPEAKS: Alter or destroy, falsify. Lori is coming back in 15 days. Everybody get busy with your white-out and let's --

MR. KRAUS: Oh, that never happens.

MR. MOORE: If they're to that point, do you think they already haven't done it?

MR. McCULLOCH: I think each case is going to be dependent upon the case, and we ought to just take out the three days altogether and just put at the Board's discretion. If there's a situation going on where we will need access to something because there's something really bad, we can; if we want to give them 30 days, we can give them 30 days.

MR. KRAUS: Well, you know, and Mark's point earlier was a good one, I thought, that if the Board runs into a problem, you can subpoena. Do it that way.

MS. GERSTEIN: That's true.

MR. MAHN: I'd just take the three days out and put in at the Board's discretion;

you know what I'm saying? I'll give you some examples. I don't know if I should do that now, but --

CHAIRMAN: Okay. Well, we have two differing opinions on both sides of the table, but I don't have a motion on any of them.

MR. McCULLOCH: I think the problem with that is, you get the wrong -- somebody in here doesn't like somebody and they go put undue pressure on them, you know, to --

MR. MAHN: But it's going to take an entire Board vote.

CHAIRMAN: The good thing is, is the subpoena thought. You can just go get them if you need them.

MS. GERSTEIN: Yeah, but we're not always going to be the Board.

MR. McCULLOCH: Huh?

CHAIRMAN: I said the good thing is the subpoena thought. You can just go get them if you need to go get them.

MR. McCULLOCH: But you won't be able to get them that day anyway.

CHAIRMAN: Well, I understand, but at least you do have --

MR. McCULLOCH: Unless you just say here's the key to the storage. Go out there and have at it.

CHAIRMAN: Yeah. But if you thought they were going to destroy them, you might want to take a truck with you.

MR. McCULLOCH: Yeah. Yeah.

MS. DUNN: Well, based on --

MR. McCULLOCH: But if they destroy them, then they've broken the law anyway because you've got to have records. So, it's -- you know.

MS. GERSTEIN: Yeah. You have to keep them so many years.

CHAIRMAN: All right. Who is going to do what here? And I would suggest through a -- and you don't have to do this, but through a discussion between the executive director and myself, and thinking that why not, blame it on both of us.

MS. DUNN: Okay.

CHAIRMAN: So, come on, take some heat.

MS. DUNN: I do every day. I do every day.

MR. KRAUS: Becky never gets any heat.

MS. DUNN: Yeah.

CHAIRMAN: That's right. Let's reconsider the retention of the five-year statement in the text. So, I would entertain a motion to something.

UNIDENTIFIED: What are you wanting us to do?

CHAIRMAN: Just like the at-need, that the record -- the rule actually -- even though the statute says it, but that the rule actually reflect that the retention is five years for retaining the records.

MR. FRAKER: I'll make the motion.

CHAIRMAN: For what part?

MR. FRAKER: Five years.

CHAIRMAN: Okay. So, there's one for that. Do you want to do it in two different pieces?

MR. McCULLOCH: So, this is just to retain the records?

MR. FRAKER: I'm okay with that, two in one.

CHAIRMAN: Okay.

MR. McCULLOCH: Okay. I would second that.

CHAIRMAN: Okay. We'll just do that one then; okay? There is a first and a second on that we do add the five years into the rule, and that the Board makes a finding that there is competent and substantial evidence in the record to support the need for the addition to this rule, so --

(Several people talking simultaneously.)

MR. REINHARD: It says five years in the --

MR. McCULLOCH: Yeah. I take that second back.

MR. REINHARD: Why are we doing that?

MR. McCULLOCH: I'm confused on what we're doing here. I thought we got past that.

CHAIRMAN: Well, we kind of did, but the chairman just was advising that maybe that would be a good idea. You don't have to do it.

MR. McCULLOCH: Yeah. I don't want to do that, because I think it's pretty clear. It says right there for no less than five years, so, I mean, how much clearer are you going to make it? I mean, redo it in your rule.

(Several people talking simultaneously.)

CHAIRMAN: Well, I guess we'll vote on that thought because there was a motion, unless you're going to withdraw it.

MR. FRAKER: I'll withdraw the motion.

CHAIRMAN: Okay. So -- all right. So, now, does somebody have an idea on a motion for nonemergency rule or redo for cleanup language in this thing?

MR. MAHN: Line 5, you mean?

CHAIRMAN: Uh-huh. Are you going to send it back to him and let him work on it, or -- but you've got to give him some direction.

MR. MAHN: I make a motion to take out the three business days and put at the Board's discretion.

CHAIRMAN: Okay. There's a motion. Anybody going to second it?

MR. KRAUS: That's to where it would read upon request either immediately or as otherwise requested by the Board?

MR. MAHN: Right.

CHAIRMAN: Is that a second?

MS. GERSTEIN: I'll second it.

CHAIRMAN: Joy seconded. Gary?

MR. FRAKER: Yes.

CHAIRMAN: There's a yes. John?

MR. McCULLOCH: Yes.

CHAIRMAN: There's a yes. Jim?

MR. REINHARD: Yes.

CHAIRMAN: All right. So, you have the language for that. And, yes, that the Board make a fact and finding of the competent and substantial evidence in the record to support the need for the rule. All right. Do you want to do that or do you want to wait?

MR. KRAUS: Oh, yeah. Small business?

CHAIRMAN: Well, but it's not an approved rule, really, yet. Isn't it going to have to come back or are we going come back to that?

MS. CLARKSTON: Okay. We can do it when it's approved. That's probably -- (inaudible.)

MR. KRAUS: Or, no. I thought the suggested edit was simply to delete the words "or within three business days."

CHAIRMAN: Okay.

MR. KRAUS: Which -- just draw a line

through that. I assume you're approving it with that edit.

CHAIRMAN: So, draw a line through that and then it was with approval; is that what everybody's motion -- is that what everybody understood in their vote, that it is approved with that language change?

MR. FRAKER: Yes.

CHAIRMAN: The rule is approved with that language change.

MR. MOORE: Which rule?

MR. McCULLOCH: At Board's discretion.

MR. KRAUS: With deleting the words in paren 5 "or within three business days" so that it would read "either immediately or as otherwise requested by the Board"; right?

(Numerous people respond yes.)

MR. KRAUS: Okay.

MS. GERSTEIN: (Inaudible.)

CHAIRMAN: Okay.

MR. KRAUS: Yeah.

CHAIRMAN: So, go ahead and do. It's approved with that language change.

MS. CLARKSTON: Okay. So, the tracking and copying impact for small business

may vary depending on the number of -- (inaudible) -- correct? Okay. Section 3 talks about in a manner that prevents decay. What kind of costs are associated with that and --

CHAIRMAN: Just keep them out of the rain.

MS. CLARKSTON: Okay.

MS. BATTAGLER: Bill Stalter would be the one to ask because he knows very well about how records are kept electronically and who maintains them, things like that -- the company that does that.

MS. CLARKSTON: Okay. All right. And I can visit with him. For the small business, is there -- or for any business, is there additional storage space that's going to protect the -- if you're keeping paper records, or are most people going to electronic?

MR. McCULLOCH: In our case, we just still have paper, so we just have storage space.

MS. CLARKSTON: You have storage space.

CHAIRMAN: I have a file cabinet.

MS. CLARKSTON: Okay.

MR. MOORE: A file cabinet for five years' worth?

CHAIRMAN: Sure.

MS. BATTAGLER: Fireproof one, airtight?

UNIDENTIFIED: Water resistant or waterproof?

MR. OTTO: He keeps them all in the -- he keeps them all in the information chamber.

MS. BATTAGLER: No degradation.

MS. CLARKSTON: Okay. So, is there any other cost to small business that you can think of besides tracking, storage, copying costs, storage space?

MS. BATTAGLER: Storage or electronic storage space. However they do it.

MS. CLARKSTON: Okay. Okay.

MS. BATTAGLER: Somebody has to maintain them.

MS. RUSSELL: You have staff time to copy that.

MS. CLARKSTON: Staff time. Is it the funeral home copying or the seller?

MS. RUSSELL: Yeah. The seller.

MS. CLARKSTON: And I'm assuming then that the seller will pay copying costs?

CHAIRMAN: If he had to.

MR. McCULLOCH: I thought about that a while ago. Who pays for all that?

MS. RUSSELL: The seller.

MR. McCULLOCH: The seller has to? Does it say that?

CHAIRMAN: Well, what -- if you -- if the Board requested X amount of files, regardless of whether you hired outside somebody to come in, you'd have to put one of your staff people in there doing it or do it yourself, which would be time.

MS. CLARKSTON: No. But our -- okay. And I'm just going to play that out. Then are we going to send out our -- basically, our new folks out with paper in hand if they have to copy, or is that going to be a cost to the funeral -- or to the seller? I'm sorry.

MR. REINHARD: I just think Lori needs to take a trunkload of paper and a copy machine.

MR. OTTO: In most legal proceedings, if you get an order to produce copies, you

have as an alternative to say they're all right here; come and knock yourself out, copy all you want. In which case, then the person requesting them brings in their own copy machine and their own paper and their own person to copy them. So, the person being requested from has the option. If they want to copy themselves, great. That's on their expense then. But if you think that it's burdensome or oppressive because you've got a warehouse full, which could happen for five years for a big business, you can say they're all in there, have fun. I spent a month in Los Angeles doing that once.

MR. MAHN: I think one of the things you're going to have to take a look at here, too, and keep in mind is we've got a few more of these to go through and it's 2:15, and you're just asking about costs -- (inaudible.)

MS. CLARKSTON: I'm talking about impact.

MR. MAHN: Right.

MS. CLARKSTON: All the way across. So, if it is truly that there is an impact to the small business --

(Several people talking simultaneously.)

MR. REINHARD: (Inaudible) -- at 4:00?

MS. CLARKSTON: But if there is truly an impact to small business that they're going to have to -- I mean, if there's an unspoken expectation that the small businesses are paying for the copies, it needs to be calculated.

MR. MAHN: Sure.

MS. CLARKSTON: But them I'm concerned about this statement --

MR. McCULLOCH: Is it true what he just said, because I didn't -- I would have thought I had to do it myself, but --

MS. CLARKSTON: I don't know.

MS. EULER: Yes. What Don said is absolutely true.

MR. McCULLOCH: It is true?

MS. EULER: I once spent six months at UtiliCorp pushing the copy button.

MR. REINHARD: So, is that why you are like you are?

MS. EULER: That doesn't fully explain everything; partially.

CHAIRMAN: That, again -- do what?

(Several people talking simultaneously.)

MR. McCULLOCH: If people knew that, they'd probably say bring your copy machine and paper.

MS. BATTAGLER: If we -- if my company sent you electronic files that we have, you would have to print those out. I mean, if we produced them electronically.

MS. CLARKSTON: Okay. But my next question is, but if you produce them -- and I'm probably going down a path that's going to start a lot of conversation, but if the Board requests that, the seller produces that, then are they, in turn, going to send a bill in for an agency to pay for those costs?

MR. McCULLOCH: Now that I know it, I will.

MS. CLARKSTON: Thanks. I'm glad I brought it to your attention.

MR. McCULLOCH: Before this, I thought I just had to do it, so now --

MS. CLARKSTON: Shoot. But I saw that from the record, we want John to pay.

MR. McCULLOCH: Thanks, Don.

MS. CLARKSTON: Yeah. No problem.

Glad I could help you out there. But, seriously, I mean, I do think it's something that needs to be addressed.

MR. McCULLOCH: Do you have a copy machine that travels well?

MS. HAYES: No.

MS. CLARKSTON: Have you got a big truck to haul everything?

MS. HAYES: No.

CHAIRMAN: So, how are you going to come up with the information you need to finish what you're --

MS. CLARKSTON: I guess I need some clarity on is there an expectation then, from a small-business perspective, that I can recoup some of my costs which will affect -- will be an impact to me. If somebody comes into my business to copy, that they will provide their own paper and staffing, or the alternative is, I copy, provide the paper, and I send a bill in for the Board to pay.

CHAIRMAN: I've been here almost five years and I've never seen a bill come to the Board because we requested something.

MR. McCULLOCH: But now we know we can.

CHAIRMAN: I guess.

MS. BATTAGLER: You're in trouble now.

MS. CLARKSTON: That's a Sharon and Don thing, not me. I was just asking impact.

MR. OTTO: I think a savvy -- for a savvy seller, there is -- there could very well be no cost because they know to put that onto the State.

MS. CLARKSTON: So, now, you're savvy, John.

MR. OTTO: For the unsophisticated seller, there could be a very significant cost.

MR. McCULLOCH: No, I was very unsavvy.

MS. CLARKSTON: Now, you're going to be savvy.

MR. MAHN: Of course, the following week, they're going to be gone if -- (inaudible) -- doesn't balance out.

MR. OTTO: And if we go -- that's the next one, going out of business.

CHAIRMAN: I have no idea how to get you where you need to be on that part.

MS. CLARKSTON: How about I start. We may need to visit again.

CHAIRMAN: Okay.

MR. McCULLOCH: Well, there's definitely going to be impact, if that's the question.

MS. CLARKSTON: There's going to be an impact.

CHAIRMAN: Joy has a question for Sharon?

MS. GERSTEIN: Yes. And for Earl. And in case -- I seconded a motion that we passed a few moments ago. And it was brought to my attention and I became then concerned that we had this written up through -- on #5. Earl, the way that we left that, does that mean that if we got a real crazy Board in, they could request somebody bring their stuff in within 24 hours?

MS. DUNN: It could be, but it also meant that if you had a really bad player, this Board could suspend them within five days, which we did.

MR. McCULLOCH: I think the answer is yes.

MS. GERSTEIN: Okay. So, we're okay on the rule?

MS. DUNN: So, I was just making that

clear, too, because last year that happened real fast.

MS. GERSTEIN: Okay. So, without putting the number in, we're still -- the Board, if it would request, like, in one or two days the info --

MR. KRAUS: The Board could do that.

MR. McCULLOCH: But it's also going to give that person -- and this is how I -- the reason I went ahead and said okay to it. That gives that person the opportunity to come and say, hey, guys, look, you're being unreasonable, you know, and you can explain your situation. Then whoever is on the Board at that time can assess it and say, okay, we trust you, or whatever the case may be, or we do not, and we want those now.

MS. GERSTEIN: Well, and like Becky referred, it has helped us probably in that little bit of time get somebody, so -- okay. That's it. Thank you.

CHAIRMAN: Okay. So, off to #8?

MR. MAHN: Let me make a motion to accept that.

CHAIRMAN: Okay.

MR. MAHN: I make a motion to accept #8 as is.

MR. FRAKER: Second.

CHAIRMAN: There's a motion, second.

MR. McCULLOCH: I don't know that people can comply with that. But it saves the Foster situation, you know. It goes up there and the doors are locked, he's not going to have time to notify all those people, but I don't think he would care because they're not -- (inaudible.)

MR. MAHN: Right.

MR. McCULLOCH: So, maybe it doesn't matter.

MR. MAHN: (Inaudible) -- not pay taxes.

MR. McCULLOCH: That's true. But, I mean, does that impact it? Does that matter?

CHAIRMAN: Would that fall under make all reasonable good-faith efforts even though there is -- there was none in that one.

MR. McCULLOCH: (Inaudible.)

MR. MAHN: Well, we got a second, so --

CHAIRMAN: Joy?

MS. GERSTEIN: Yes.

CHAIRMAN: Okay. Jim?

MR. KRAUS: That's, of course, approving your compelling government interest to promulgate an emergency rule?

CHAIRMAN: Okay.

MR. REINHARD: All right.

CHAIRMAN: Yes? Okay. John?

MR. McCULLOCH: Let me just finish reading this. So, it's saying here you have -- does the law say you have to provide written notice to the purchaser, or is that just the rule saying that?

MR. KRAUS: I don't recall. Sharon, do you recall?

MS. EULER: I'm sorry? What?

MR. KRAUS: Whether the law requires a notice to be -- written notice to be given to the purchaser when ceasing?

MS. EULER: No.

MR. KRAUS: I was thinking that it did, but I don't remember for sure.

MS. EULER: The -- for a seller?

MS. RUSSELL: The seller has to -- the seller, but not the provider.

CHAIRMAN: Actually, if you want to

vote no just for the principle of it, John, you're outvoted anyway, so --

MR. McCULLOCH: Well, you guys might want to change your mind after you read this thing, though.

CHAIRMAN: Oh, okay.

MR. McCULLOCH: That's the point.

MS. EULER: So, a seller ceases doing business.

MS. RUSSELL: This is on the provider, but on the seller, yes.

MR. KRAUS: Well, this is actually a provider.

MS. EULER: A provider ceases doing business.

MR. MAHN: I think it would be more important for them to notify all of us.

MR. KRAUS: I may be thinking of the seller. I think the seller is required to.

MR. McCULLOCH: I just kind of quickly read it. I don't see anything in there about that. I don't think it says anything, so why would we want it in here?

MR. KRAUS: Well, they're required to notify each seller.

MS. EULER: Right.

MR. OTTO: Well, it's 2E requires written notice to the purchaser of their right to obtain a new provider. You, obviously, would be explaining what the situation is.

MR. MAHN: You're thinking we wouldn't want that in there?

MR. OTTO: No. I think it's good. It's good. I'm just saying that -- you know.

MR. MAHN: No, I mean John.

MR. McCULLOCH: Maybe not.

MR. MAHN: How come?

MR. McCULLOCH: I don't know. I'm just questioning it. I'll have to think about it.

MR. MAHN: I just thought maybe you had a reason I wasn't thinking of. I'm not being smart.

MR. McCULLOCH: No, not really.

MR. KRAUS: Well, I think that's a good question as to whether you're going beyond the scope of the statute because you don't want to do that.

MS. EULER: That's true.

MR. McCULLOCH: So, maybe that should come out of there -- E? And then everything

else is okay?

MS. EULER: Well, the --

MR. MAHN: I wouldn't take it out of there.

MS. EULER: The statute also says any other information required by applicable statute or regulation.

MR. KRAUS: Yeah. But isn't that within the report to the Board?

MS. EULER: Yes.

MR. MAHN: If you've got a provider that's ceasing doing business, wouldn't you want them to tell -- wasn't that the problem we went through where all those people started calling here and calling your office when Ted Foster did go out of business? He hadn't notified anybody and none knew what was going on. Wouldn't we want him -- he had plenty of time. He knew the bank was coming to take the place. He had plenty of time.

MR. MOORE: But would he have done it? I mean, if I'm going out of business and I'm getting ready to dodge town, what are you going to do to me? I'm going to lock the doors and run.

MR. OTTO: They'll require you to open up for two weeks so they can shut you down.

MR. KRAUS: Yeah. Get injunctive relief and appoint a receiver, take over the business.

MR. MAHN: It's one more thing, though --

MR. MOORE: I'm leaving town. There it is, go get it.

MR. McCULLOCH: I guess, in a perfect world, you might say, yeah, that's the nice thing to do, but is it really going to happen? Probably not.

CHAIRMAN: But at least it says so.

MR. McCULLOCH: It depends on the circumstances, you know.

MR. MAHN: But at least it said he should have done it. One more thing you can rack up.

MR. MOORE: Yeah. I'm going broke. I can't pay my bills, but now you want me to mail this stuff?

MR. McCULLOCH: I couldn't afford postage.

MS. DUNN: Well, we've had occasions

where funeral homes --

MR. McCULLOCH: Plus the State Board does have all that information, so you guys are going to handle that for me.

MS. DUNN: Well, we've had some funeral homes that --

MR. KRAUS: But, of course, if the Board is going to do all that and that means more expenses of the Board, which means higher fees. Instead of having the person who's ceasing pay for it, everybody pays for it.

MR. McCULLOCH: I mean, the guy that does it --

MS. EULER: Of course, it requires that part of the report, the certification that the provider has contacted -- so, this is only if the provider can't find anybody to cover the contract.

MS. KRAUS: Right.

CHAIRMAN: She said this is only providing that they can't find someone to take the contract.

MR. KRAUS: Right. Because within sub 2, it says if they're unable to find any new providers.

MS. EULER: But the Board can certainly require notice that the provider has made -- that they never -- to notify his customers that he's closing his doors.

CHAIRMAN: Anybody interested in revisiting the thinking?

MR. MAHN: Well, I think it's already passed and --

CHAIRMAN: That's what I'm saying. Anybody interested in revisiting the thinking?

MR. FRAKER: Yeah. But we've already voted.

MR. MAHN: (Inaudible.)

CHAIRMAN: All right. So, an official vote, John, would be?

MR. McCULLOCH: No.

CHAIRMAN: No. All right. So, that is approved.

MR. KRAUS: As is; right?

CHAIRMAN: As is. Do you have thoughts?

MS. CLARKSTON: Okay. Written notice, I think, is fine. Are there any -- and this is a far stretch here, but good-faith efforts. Are there -- what are you talking about? Are

you talking a phone call? Are you talking about another paper? Impact -- I mean, tell me what -- define good-faith efforts and how that would impact small business. In John's situation where he's leaving town, we've got gas money, but I'm not going to use that one. For those others --

CHAIRMAN: Wouldn't all of those could apply?

MS. CLARKSTON: Yeah, they could.

MS. EULER: Yeah. They could publish or take out an ad in the local newspaper.

MR. KRAUS: Yeah. Or if there's only three providers in their area, they could call those. I mean, there's -- I think, really, it depends on the situation.

MR. OTTO: This is a small business and it's going out of business.

MS. CLARKSTON: Okay.

MR. OTTO: So, the impact will be it's going out of business.

MR. KRAUS: Well, it may be a small business that's going out of business, it may be a large business that's going out of business that's going to impact the small

business in the area.

MS. CLARKSTON: Or it could be a small business going out of business, a new business starting a business, or a large business coming in that we could play all kind of scenarios.

MS. GERSTEIN: Or it could be a large business that's shutting down that's going to make the little business grow rapidly.

MS. CLARKSTON: This is what -- it might seem like an elementary, ridiculous question, but, you know, if we're talking an establishment-type facility, are we looking at a realtor? Does that ever come into play, far stretch as it may be, or is that just something that's handled kind of within the industry?

MR. MAHN: Is there a box to check all of the above?

MS. CLARKSTON: Sure.

MR. MAHN: Then do that.

MS. CLARKSTON: Okay.

MR. MAHN: On each one.

MS. CLARKSTON: But I don't have a checklist for it.

MR. MAHN: Oh, you don't?

MS. CLARKSTON: I'm just making this up as I go.

MR. KRAUS: You can just insert Todd's phone number in there; right?

MS. CLARKSTON: Yeah. Call Todd Mahn. No, I'm going to mark not call Todd.

CHAIRMAN: Okay. Are you good with yours?

MS. CLARKSTON: Yeah.

MS. DUNN: Do you need to say your statement or anything, or are you --

CHAIRMAN: They already did that.

MS. DUNN: Okay.

CHAIRMAN: But I'll do it one more time just for the record, #8, the Board makes a finding that there is a competent and substantial evidence in the record to support the need for this rule. All right.

MS. CLARKSTON: (Inaudible.)

CHAIRMAN: We have one more to go. But prior to the one more to go, and -- sorry, Darlene -- we're going to take a break.

MS. EULER: Chairman Martin?

CHAIRMAN: Yes.

MS. EULER: I just want to let you know I have another meeting at 3:00.

CHAIRMAN: I know, and that's why we're taking a break, so --

MR. KRAUS: And, actually, Sharon, there's -- Sarah has brought in a number of drafts, which I think she e-mailed to you, too.

MS. EULER: Yes.

MR. KRAUS: If you want to speak briefly on those, then maybe you and I can do that.

MS. EULER: Okay.

MR. KRAUS: And then we can bring something back to the whole board when we come back.

MS. EULER: Do you want me to stay on the line here, or do you want to go back to the office?

CHAIRMAN: Well, hang on because, because you're leaving, we're taking a break. I need a motion for the Board to go into closed because we're going to go into closed session while we're on that break, and we're going to visit with you guys.

UNIDENTIFIED: Maybe you don't get to

go on a break.

CHAIRMAN: We'll take another break here in a second.

MR. MAHN: I make a motion.

CHAIRMAN: There's the motion to go to close.

MR. FRAKER: Second.

CHAIRMAN: Second by Gary. John?

MR. McCULLOCH: Yes.

CHAIRMAN: Joy?

MS. GERSTEIN: Yes.

CHAIRMAN: Jim?

MR. REINHARD: Yes.

CHAIRMAN: All right. So, we'll invite the rest of you all to take a break.

(Off the record)

CHAIRMAN: Okay. Let's pick it up. Back on the emergency rules, we have one left, #9. Sellers ceasing business requirements. Comments?

MR. McCULLOCH: So, again, does the law say you have to come back to the seller's agent?

MR. KRAUS: Which part are you referring to?

MR. McCULLOCH: A. Two and A1.
MR. KRAUS: 2A?
CHAIRMAN: Is there a downside to not collecting or notifying the seller's agent?
MR. McCULLOCH: What did you say, now?
CHAIRMAN: You just asked the question of does the law require, and I said what is the downside of not --
MR. McCULLOCH: Extra expense, that's all. And it serves no purpose. They could care less and who cares? Collecting joint accounts, notifying the bank. It serves no purpose. You still have a CD there, fine. And if you don't, they don't care. It's gone; you know what I mean? I'm just wondering why all this stuff is put in there and is it really in the law or is it just -- where does it talk about all this?
MR. KRAUS: Under 436.500 starting on page 34.
MR. McCULLOCH: Thirty-four?
MR. KRAUS: Yeah.
CHAIRMAN: Why would the bank not care?
MR. McCULLOCH: That you have gone out of business? If you still have a CD there,

that's all they care. They don't care if you go out of business or not. They still have to take care of it and manage it, and they don't have anything to do --

MR. KRAUS: Yeah, but who do they contact about that account?

MR. McCULLOCH: Huh?

MR. KRAUS: Who do they contact about that account?

MR. McCULLOCH: The person that's on there. You've got the person and the business now on that.

MR. MAHN: The person is the funeral home.

MR. McCULLOCH: So, if the funeral home goes out of business, they don't care.

MR. MAHN: What if the person is dead?

MR. McCULLOCH: Huh?

MR. MAHN: What if they leave the CDs there and nobody does anything about them and the person dies?

MR. McCULLOCH: The money goes back to the State, probably. I mean, I don't know how banks have to handle that, but I would assume.

MR. KRAUS: As unclaimed property, you

mean?

MR. McCULLOCH: Yeah. I don't know.

CHAIRMAN: Anybody else with comments?

MR. REINHARD: What about the hecklers over there?

CHAIRMAN: They must think it's fine as it is.

MR. REINHARD: What's the matter, Don?

MR. OTTO: If I have ever any concern about us going out of the business, I'd make a comment, but we're so secure in our ability to remain in business, I have no -- I'm not worried about what the rule says. And that should be in bold face in red.

MR. McCULLOCH: The fact that I brought it up doesn't mean that I'm going out, either.

MR. OTTO: Yeah. I was going to say let the record reflect --

(Several people talking simultaneously.)

MR. McCULLOCH: My point is, I don't -- it doesn't hurt anything. I just think it doesn't make any sense. It's like -- if it's part of the law, fine. It doesn't -- a lot of it doesn't make sense to me, but -- so,

move on.

CHAIRMAN: Somebody make a motion.

MR. KRAUS: Yeah. And don't take my, you know, not coming back on that as agreeing or disagreeing. I mean, I think that's discussion for the Board.

MR. McCULLOCH: Certainly.

MR. REINHARD: And I kind of agree with you. I think it's just some busywork to be done and it doesn't amount to nothing; it doesn't need to be there.

MR. McCULLOCH: Yeah.

MR. REINHARD: I mean, it's like you're just making statements that we could really be doing later on sometime, clean it up a lot better or clearer or -- what do you think? Just like you said, the damn trust bank don't give a damn -- not a trust, a joint account. It's -- they have nothing to do with it other than they're holding the money. What do they care? Truth.

MR. McCULLOCH: In fact, they would just as soon no one notify them, then the money will sit there and they'll make a -- (inaudible.)

MR. MOORE: If I go out of business and I'm the beneficiary -- a revocable beneficiary -- (inaudible.)

(Several people talking simultaneously.)

MR. REINHARD: Or a joint account, yeah.

MR. McCULLOCH: A certain time, they've got to do something with that money, don't you think?

MR. REINHARD: (Inaudible) -- how you write your contracts up.

MR. KRAUS: Yeah. True. I mean, you could argue that you're already notifying the provider and the purchaser, so why do you have to notify the agent.

(Several people talking simultaneously.)

MR. MAHN: I'll make a motion just leave it as is.

MR. FRAKER: Second.

CHAIRMAN: There was a motion and there was a second. Joy?

MS. GERSTEIN: Sure.

CHAIRMAN: John?

MR. McCULLOCH: Okay.

CHAIRMAN: Jim?

MR. REINHARD: I'm willing.

CHAIRMAN: All right.

MR. REINHARD: Just a lot to do about nothing.

CHAIRMAN: Unanimous approval.

MR. KRAUS: Overwhelmingly approved.

CHAIRMAN: Connie, do you think there's any impact here?

MS. CLARKSTON: Written-notice stuff, which we can pick up the same as the provider. Good-faith effort stuff, similar.

CHAIRMAN: And that was approved with the Board makes a finding that there was competent and substantial evidence in the record to support the need for the rule, regardless of what's -- all right.

MR. KRAUS: All right.

CHAIRMAN: That's the end of the rules.

MR. KRAUS: That's the end of those.

MR. McCULLOCH: Is this one of them, this #12, -- (inaudible.)

MR. REINHARD: Do you want one?

CHAIRMAN: Is there another loose one?

MR. McCULLOCH: It jumped from #9 and then I have a single page of #12.

CHAIRMAN: Yeah. What is -- where did #12 come from?

MR. KRAUS: The single page of #12 is actually from group two, which --

MR. MAHN: We already went over?

MR. KRAUS: No. Well, I believe you had discussed it and then had asked for something to be redrafted and brought back to the Board, and that's what the new draft is. Although I don't -- I'm not confident that I was actually in on that discussion. So, this is the draft that Sharon had done and that relates to seller's obligations, and there you go.

MR. MAHN: And we want to approve that?

MR. McCULLOCH: Number 2 is the one we were talking about on the finance charges, if they should have to go into the trust or if you could hold them out. And Sharon was saying that in the case of the insurance companies, they wouldn't have to send in fees. And my response was, well, why do we have to, as preneed people, have to send in our finance charges and they don't, and she was going to fix it, she said, to satisfy both. That's all

I remember about this. It doesn't appear as though it was changed, though.

MR. KRAUS: Right. But I -- and we talked about this very briefly the first thing this morning. And from what I understand, the fix was that the all funds applies to everybody, so that to be consistent within the law, then that includes all the types of funding.

MR. McCULLOCH: And so, when you say they make their payment, the payment would be the principal portion and the finance charges not. So, why would you have to remit the finance charges if it's not part of the principal payment?

MR. KRAUS: She might be able to answer that question. Sharon, so your answer is what? I don't think she could hear me.

MS. EULER: I'm here. (Inaudible.)

MR. KRAUS: Sharon, that's good timing. So, your answer is what to the question?

MS. EULER: Thirty-two.

MR. KRAUS: Thirty-two. That's right. No. We're looking at #12 from group two. We

just picked that up. That's the seller obligations regarding payments.

MR. OTTO: My only suggestion is perhaps another sentence on paragraph 4 that makes it clear that if this 30 -- well, if the per-contract fee is deposited into the trust, it is not considered part of the trust for purposes of any refund or transfer to another funeral home, just to make it clear that, you know, the consumer buys a contract in January, you're still going to have to pay that $36 even if they cancel it in May. And so, if you leave that money in the trust, as was allowed under paragraph 4, just to make it clear that that money is not refunded to the consumer, neither does it go to another funeral home.

MS. EULER: Good point, Don.

MR. OTTO: It's not part of the trust corpus, I guess.

MR. McCULLOCH: And you're talking about the $36?

MR. OTTO: Yeah.

MR. McCULLOCH: Okay. So, are you going to make the insurance companies pay that

in, too, then? Are we going to -- are they going to have to collect that $36, because I don't think they're going to like that.

MR. OTTO: I talked with one big insurance company yesterday and they're working on procedures to try to collect that and give it then -- then return it to the funeral-home seller so the funeral-home seller can then pay it with their annual report.

MS. RUSSELL: I don't think they're going to -- they can't.

MR. KRAUS: Well, of course, nobody -- nobody has to pay it.

MS. BATTAGLER: They can't. No. They will not.

(Several people talking simultaneously.)

MS. RUSSELL: No, they can't, because the law -- insurance laws won't allow an insurance company to do that. They get audited, also, so --

MR. McCULLOCH: It's going to cause them a nightmare accountingwise.

MS. RUSSELL: Yeah. Insurance companies can't do it because of their audits from the State. Mark?

MR. McCULLOCH: Why not just leave it alone?

MR. WARREN: (Inaudible.)

(Several people talking simultaneously.)

MS. RUSSELL: No. I don't know anyone that's going to do it. I don't know which one you said.

MS. EULER: (Inaudible) -- last week, per-contract fee is an obligation of the seller. It's not the obligation of the consumer, it's the obligation of the seller. And so, even -- no matter how this preneed contract is funded, the seller has an obligation to pay that per-contract fee.

UNIDENTIFIED: Right. Yeah.

MR. OTTO: I agree. I just think, like, paragraph 4 allows that money to be put into the trust, which is probably the easiest way for a lot of people to do it if it's a trust-funded one.

MS. EULER: Right.

MR. OTTO: But another sentence that makes it clear that that's not subject to a refund to the consumer because that money goes to the State.

MS. EULER: I think that's a good suggestion, Don.

MR. KRAUS: But can you actually do that -- separate that out? I mean, if it's -- you're depositing into the trust, but you say it's not really part of the trust. I mean, if it's all payments, then that would be an all payment, whether the seller is then going to turn around and use that money to pay some amount to the Board is something -- is a decision of the seller, that's not -- it doesn't really have any impact on the -- what's a part of the trust and what's not a part of the trust. I'm not explaining that very well, but -- I just don't know how you do that.

MR. OTTO: Well, I think the statute already allows -- already says that a seller is not supposed to collect more of it -- you know, fees other than what's authorized by the law or the State Board.

MS. EULER: Right.

MR. OTTO: So, I think -- I don't think it's a problem saying the State Board has specifically authorized this fee and if

it's -- you know. I mean, we're not going to -- for what it's worth, we're not going to put it in the trust fund. We're opening up a separate account to put that money in so it could be tracked very easily, and at the end of the year, we cut a check out of it. But --

MS. BATTAGLER: Well, if you're allowing somebody to put those $36 amounts into a trust, doesn't it have to go under a specific name? And you have no way -- I mean, each one of those -- I mean, I guess you could, but what a pain that would be to be able to allow it to go into trust if you're going to put -- you know, even -- we put 1,000 of them in there, we're going to have to have a name associated with each one of those that was funded by insurance.

MR. OTTO: Well, yeah.

MS. BATTAGLER: Not by trust.

MR. OTTO: I mean, the way we envision doing it was just taking that $36 and putting it into a separate checking account.

MS. BATTAGLER: Right.

MR. OTTO: So, it's not commingled with the trust funds, and then in October or

whatever year, that we've got that money to pay to the State of Missouri. I think that's a better way to do it than commingling it with the trust funds. But if you do allow what's under paragraph 4, I think you need to make it clear that that 36 bucks is going to the State.

MR. REINHARD: And while we're on that subject of a year, I had a guy call me the other day. He wanted to know could he just, like, pay his quarterly instead of, like, one -- instead of, like, at the end of the year. Well, it makes sense. I mean, you've got 1,000 contracts, that's a lot of money. You know, I've got --

(Several people talking simultaneously.)

MS. EULER: And, you know, Jim, I had thought about that, because people pay their sales tax quarterly, you know. It would --

MR. REINHARD: Then what are you worried about a quarterly thing then?

(Several people talking simultaneously.)

MS. EULER: I don't see any reason why the Board couldn't allow people to do that by rule. I'm concerned about it being a bit of an accounting problem for the Division, but --

MR. MAHN: I was kind of wondering if the consumer could write a check out every time he took a contract to the Board and just mail the check in with the name of the --

MR. REINHARD: And save those up till the end of the year and just send them all in.

MR. MAHN: Well, six months.

MR. REINHARD: There you go.

MR. MAHN: Because the checks are only good for six months.

MR. McCULLOCH: On #2, it's saying that all these fees and charges and finance charges have to go into the trust. Is that still the way you're thinking?

MS. EULER: You have to send all payments.

MR. KRAUS: And that's what I'm --

MR. McCULLOCH: But it says here if the seller charges any finance or interest charges or any other fees as part of the preneed contract, those payments must be deposited into the trust and may not be retained by the seller.

MS. EULER: I think that's what the statute says, John.

MS. BATTAGLER: Can it not be payments toward the total contract price, not including -- I mean, because --

MR. McCULLOCH: I don't think it does.

MS. BATTAGLER: -- that's --

MR. KRAUS: Well, and that's what I'm struggling with is if the statute says all payments, then this is a payment. I mean, whether -- unless you try to call it something different, say, well, this isn't really a payment; we'll call it whatever.

MR. MOORE: Doesn't the statute allow you to remove expenses and the 15 percent?

MR. KRAUS: You can get your 5 percent and then your 10 percent. And if within that amount is your 36 bucks, well, then that's up to you. But I don't think you get to withdraw at a 5 percent and the 10 percent and 36 bucks.

MS. BATTAGLER: And your finance charges, too? I mean, that's not a part of the trust. That's not -- or, you know, if you want to count whatever they're going to do. Joint accounts don't do that, but -- I mean --

MR. KRAUS: I mean, I'm struggling with how to get around the all-payments language.

MS. BATTAGLER: Could it not be all payments toward -- I don't even know how to word it.

MR. KRAUS: Because they're payments under the contract. And if you write them up outside of the contract, well, then is that still part of the contract? I mean, that's a whole different set of problems.

MR. OTTO: All payments is almost never used in the statute. It's cropped up in the rules on a couple of occasions, but in the statute, it usually says the value of the trust or the amount in the trust, which might be different than all payments made.

MR. KRAUS: Well, it talks about payments collected under the contract. I mean, that's pretty clear.

MS. EULER: Right. 436.430.2. The seller must deposit all payments --

MR. KRAUS: All.

MS. EULER: -- it receives on a preneed contract into the trust.

CHAIRMAN: So, what if you're just --

MR. McCULLOCH: But they're talking about the principal, they're not talking about finance charges and fees.

MS. EULER: All payments.

MR. KRAUS: It doesn't say that.

MR. McCULLOCH: Well, that's my interpretation of it.

CHAIRMAN: Yeah. But what if you don't make the $36 a part of the preneed contract, you just tell the purchaser that there's going to be --

(Several people talking simultaneously.)

MS. BATTAGLER: Well, how come you're allowing this, but insurance gets to keep their own interest -- finance charges or whatever?

MR. KRAUS: Yes.

MR. McCULLOCH: Which one of them is it?

MS. DUNN: Isn't it in statute, though?

MR. McCULLOCH: Which one of these statutes shows that?

MS. DUNN: Because I remember some of the discussions that occurred.

MS. BATTAGLER: I thought we talked about this last week and she thought there was a way she could write it to where it was going to exclude the interest payment or the finance and interest payments, not income, though. I mean --

MR. McCULLOCH: Sharon, what statute did you say that was?

MR. KRAUS: Sharon, what section were you looking at? She was looking at a different one.

MS. EULER: 436.430.2.

MR. McCULLOCH: 436 --

MR. KRAUS: On page 18.

MS. EULER: That's for joint accounts.

MS. DUNN: Page 18.

MS. EULER: It is 436.455.2.

(Several people talking simultaneously.)

MR. McCULLOCH: I just don't think that is part of the payment.

MS. EULER: How do you figure?

MR. McCULLOCH: Well, I think the principal is what they're intending to go into the trust. They never -- the intention was never for all of those other things.

MS. EULER: You know, John, I would like to agree with you --

MR. McCULLOCH: And what's the benefit of that anyway?

MS. EULER: -- but when I read the statute, it says all payments, and then another place in the statute it says customers shall not be charged any payments other than what's in the contract or as allowed by the State under law.

MS. BATTAGLER: State or federal law, and finance charges are allowed by federal law.

MR. McCULLOCH: It says here on page 14 and 15, such contracts include, but are not limited to, agreements providing for a membership fee or any other fee for the purpose of furnishing final disposition, funeral or burial services or facilities, blah, blah, blah. So, a finance charge would come under that because you can charge finance charges. You just have to have your truth in lending and put that on your contract.

MS. EULER: I'm just telling you what the statute says.

MR. McCULLOCH: Well, we disagree --

MS. BATTAGLER: So were we.

MR. McCULLOCH: -- or I am.

MR. KRAUS: And I think there can be a distinction there as to what can be charged and then what you have to do with that money. I think those are two different things. You may be able to charge all sorts of different things, but --

MR. MAHN: But it doesn't -- (inaudible.)

MR. KRAUS: -- the other section says then when you get those, payments must be deposited. Now, not that I like that section, but that is what it says. So, then if you have to deposit them, then you have to deposit them.

MS. EULER: It doesn't say payments for the goods and services.

MR. MOORE: Well, why can't -- if everything has got to go into the trust, if it's a trust preneed, then why can't the Board just have a rule that waives that $36 until that preneed is used and then that $36 gets paid to the Board?

UNIDENTIFIED: (Inaudible.)

MR. SPEAKS: I think it comes back to John McCulloch's point, though, that those can't properly be termed payments into the trust -- the finance charges. So, the person transfers their contract to somebody else, those finance charges don't go with that. Those belong to the seller. That was the money they earned for loaning the money.

MS. RUSSELL: That's right.

MR. KRAUS: Right. But are they -- I think they're being termed by the statute as payments under the contract.

MS. BATTAGLER: Well, can -- okay. So, if we have a contract that has the statement of funeral goods and services with a total contract price at the bottom, that's your total contract price. And then you've got another section that says, okay, well, this is your total contract price, but we're going to charge finance charges on top of it, and then you're going to have a total of -- I can't even remember the terminology on the truth-in-lending part of it. But is that truth-in-lending part, the finalized number, all of that considered your payments toward

that contract or is it just on the total contract price based on what goods and services were selected?

MR. KRAUS: I think if it's pursuant to any term of the contract, then it's a payment under the contract.

MR. OTTO: Well, that brings -- my point is, well, at least on the $36. There's two separate things here, the $36 and then there's finance charges. At least on the $36 part of it, I think you can pass a rule that says that is not a payment -- a definitional rule that the phrase "payments received on a preneed contract shall not include the per-contract fee charged by the State of Missouri if that is passed on to the consumer."

UNIDENTIFIED: Yeah, that would do it.

MR. OTTO: You just, by definition -- because what does payment on the contract mean? We already have a dispute as to what that is. I think you can pass a rule that says payment on the contract shall not include those fees authorized by the State Board -- per-contract fees authorized by the State Board. Does that sound okay, Sharon? Then

you can put that money in a separate spot that the State, you know, can get at.

MR. REINHARD: And then let's pass a rule about auditing the $36 -- (inaudible.)

MR. KRAUS: I mean, I think that would be going beyond the scope of the statute, just doing it through a definition. Others may disagree with that. The Board doesn't have to agree with that. That's just my interpretation. Sharon, I think we're on the same page, but I'm not sure.

MS. EULER: Yes, we are.

CHAIRMAN: Is the thought of the statute that interest charges -- and pardon my ignorance showing here, I guess -- but that the interest charges and other fees -- forget the $36 -- that might be added to a contract, that they stay in the contract till the person dies?

MR. McCULLOCH: They're not saying that. I think they're saying that you can take them back out, you've just got to put them all in there and cause this additional accounting by the trustee, which is going to cost you more, you know, in a contract.

CHAIRMAN: Where does it say you can take them out?

MR. McCULLOCH: Huh?

CHAIRMAN: Where does it say you can take them out?

MR. McCULLOCH: Well, maybe it doesn't.

MR. OTTO: It's paragraph 4 on this one. If the seller deposits those fees to the trust, the trustee shall distribute those fees to the seller in September or October of each year so that seller will have the funds available to pay those fees to the State Board. And my point --

MR. SPEAKS: That's just the contract fee. They're talking about the contract fee.

MS. RUSSELL: Yeah. That's the contract --

CHAIRMAN: Yeah. I'm talking about if there's interest charges and stuff on the --

MR. REINHARD: Yeah.

CHAIRMAN: -- how --

MR. SPEAKS: I don't think it addresses it.

CHAIRMAN: How is the seller going to recoup those? You just wait until they die?

MR. SPEAKS: That can't work.

MS. BATTAGLER: No.

MR. McCULLOCH: That's like telling the banks, you know, you can loan money, but you can't use any of it until the guy pays his loan off.

MS. BATTAGLER: Yeah.

MR. McCULLOCH: That's how stupid it is.

MR. SPEAKS: Yeah. That cannot work.

MR. REINHARD: Put that one down in your memoirs.

MR. MAHN: But isn't it the idea for it to accumulate interest to pay for the funeral at the time of death? Is that what we're talking about here? The interest that's accumulated goes back into the trust; right?

MR. OTTO: No, we're not talking about interest on the principal, we're talking about separate finance charges.

MS. BATTAGLER: We're not talking about income off the trust.

MR. McCULLOCH: This would be a finance charge like you pay on a car loan or something like that. You have to show truth

in lending by the federal thing; okay?

MR. KRAUS: Right.

MR. McCULLOCH: And then those finance charges will allow you to make up for some of this 5 percent that you're losing; okay? Well, my point is, why do you have to send it to the trust, then the trust turns around and sends it back to you? It just doesn't make sense.

MR. REINHARD: And then your point was -- (inaudible) -- send it back to you.

CHAIRMAN: Well, I'm not counting on getting it back.

MR. McCULLOCH: It's not part of the principal amount, it's not what has to be required in trust.

MR. REINHARD: Because it says it just stays in there until --

(Several people talking simultaneously.)

CHAIRMAN: Where does it say, you know?

MR. McCULLOCH: The insurance -- the insurance that you sell, it has finance charges, they just don't call it that.

MR. MAHN: I was thinking of interest on the account.

MR. McCULLOCH: They call it premium. But it's in there.

MR. MAHN: I was thinking about interest on the account.

MR. REINHARD: And how come they get to keep theirs, like she said?

MS. BATTAGLER: That's right. How come insurance gets to keep it and trusts don't?

MR. REINHARD: How come, Darlene?

CHAIRMAN: You're good to go on this one; right?

MS. RUSSELL: I'm not even going to touch interest.

MR. OTTO: Well, Sharon and Earl, is there a way that we can write the rule for the $36 part of it so that that money can be put into a -- you know, be taken out of the trust immediately, because we're going to have two different situations. We're going to have some cases where for a $5,000 funeral, the consumer writes a check for $5,036. And so, that money -- and the bylaw said $65; I know. Then we're going to have some situations where the funeral home has decided to eat that, so they're going to have to pay that money. Not

many, but I've already heard a couple are planning to. And then we might have the situation where the consumer writes two separate checks, one for $5,000 and one for $36. So, it would be nice if the rule made it clear the seller is responsible for paying that, obviously. But if they receive that money from the consumer, it can be put into a separate account that is paid out once a year. Because, otherwise, then in October, we'll have to make 2,000 withdrawals from 2,000 different accounts.

MS. EULER: Right. Now, this rule is drafted and it contemplates that having a separate account to hold that $36. I did not want to put that in here because I didn't want people to think they had to open an account for that, but we could.

MR. OTTO: I'd like to make, from my end, since that's what we're planning to do, it would be nice for it to be clear that that's okay. And that makes it easier for the State to go look at it, too, because --

MS. BATTAGLER: And then it's not subject to refund? I mean --

MR. OTTO: Yeah. Yeah. Then it's safe from refund.

CHAIRMAN: Your analogies, I like. I had actually first thought, from personal, I liked the two-check thought. That's what I just actually thought we would do. But, actually, just hearing you say that, my mind just was like, well, the people are going to write the check to Holman-Howe Funeral Home, and if they did write it for $5,036, I'm going to go put that in the clearing account first, and then turn around and write a check back to the trust. I'm not going to have them write the check to XYZ trust. So, we actually can -- I mean, we still need what you said, but I just saw the way that you wouldn't -- you really don't have to ask them for two checks because your clearing account to send the money to the trust will pick it up.

MR. REINHARD: But it says all money deposited --

MS. BATTAGLER: Yeah. Then you can't ever get it back because -- well, I guess you can.

MR. REINHARD: -- so you're putting it

in -- you're depositing it in an account for a clearing account, which is intended to be used for funding your preneed to your trust.

MR. MOORE: But he's making the payment to the trust, the family is not.

MR. REINHARD: Well, but is that illegal now?

MR. MOORE: If the check is made to him, why not?

MR. REINHARD: Well, but should it be made to him?

MR. SPEAKS: Yeah. He's depositing it into his own account first, then wrote a check or transferred money from that. That's the deposit in the trust, that second transaction.

MR. McCULLOCH: Yeah. Because the seller is responsible for collecting it, so if it needs to be paid to the funeral home or whoever --

CHAIRMAN: And the trust is going to get one check -- I mean, one check from me for X amount of dollars, and here's the list.

MR. SPEAKS: The problem, though, is on the insurance where they're sending the check directly to the insurance carrier. In

other words, they don't make it out to Martin's funeral home for $5,036, they make it out to Homesteaders or Forethought or Darlene Russell.

MS. RUSSELL: Yeah. Make them all out to me.

CHAIRMAN: So, in that case, you need to split checks up.

MR. MAHN: You've got to split the checks up on that.

MR. SPEAKS: So, now, they need two checks.

CHAIRMAN: So, now, they need two checks.

MR. SPEAKS: I don't see anyplace in here where it defines payment.

UNIDENTIFIED: Right.

MR. SPEAKS: There is definitions of the contract, of all kinds of things, but getting back to Don's point, what McCulloch was saying, there is no definition of payment.

MR. OTTO: Well, particularly the phrase payment on the contract.

MR. SPEAKS: Payment on the contract.

MR. OTTO: "Payment on the contract."

What does that mean?

MS. BATTAGLER: Can you define that to say that it's payments -- monies received towards a preneed-funeral contract, towards the --

MR. SPEAKS: Excluding interest, State --

MS. BATTAGLER: Finance charges --

MR. SPEAKS: -- finance charges --

MS. BATTAGLER: -- State preneed-contract fee, you know, or payments towards the principal contract amount -- principal --

MR. WARREN: Excluding all interest, excluding charges.

(Several people talking simultaneously.)

MS. BATTAGLER: Yeah.

MR. WARREN: Because that's -- (inaudible.)

MS. BATTAGLER: Right.

MR. SPEAKS: That's not a payment on the contract, but it has to be defined for that to work.

MS. BATTAGLER: Right.

MR. KRAUS: And I think the issue of

doing that is, if you start off your definition as payments received on a preneed contract include payments received on a preneed contract except for this and this and this and this, then you're explicitly going beyond the language of the statute and narrowing payments received on a contract.

MR. SPEAKS: Yeah, because the statute does not address that at all.

MS. EULER: (Inaudible) -- rule -- (inaudible) -- in the State of Missouri is that you look to the common, ordinary definitions of the word.

MR. KRAUS: I mean, if the person sends in money pursuant to a term on the contract, how can that not be a payment on the contract? I mean, no, I'm sure -- I understand it's not classically what the industry thinks, and I don't disagree with all the logistical and difficulties with this. I'm just saying that's what that statute says.

MR. McCULLOCH: Earl, when you do the finance charges, you have to do the truth in lending. Everybody has seen that on their little notes you give them. You've got to

have each little box, and it breaks it all out what the principal is, so there's definitely a difference, because they make you spell it all out -- how much the interest is, how much it is with interest and principal, how much it is with interest, principal, and down payment, and total. So, it's real specific.

MR. KRAUS: Sure.

MR. McCULLOCH: So, you can look on there and know exactly this is the payment, this is the principal. I think there's a definite difference there on the contract.

MR. KRAUS: And all those are in the contract.

MR. McCULLOCH: They certainly are and have to --

MS. BATTAGLER: Yes. Truth in lending, it has to be.

MR. McCULLOCH: It's a requirement -- federal.

MS. BATTAGLER: It's required federally.

CHAIRMAN: Well, I think we're at the place that --

MR. McCULLOCH: And Representative

Meadows did say we could interpret audit, so I would assume we can interpret payment the same way.

CHAIRMAN: Well, obviously, we're going to have to --

MR. SPEAKS: They didn't think of this. That's clear. Nobody thought of this.

MR. McCULLOCH: Oh, yeah. But the intent was to get the money that's supposed to be in trust in trust.

MR. SPEAKS: Right. The money was supposed to stay with that.

MR. McCULLOCH: That was the idea. Everybody wanted 100 percent, settled on 95 and whatever else we ended up with.

MR. SPEAKS: Right. Finance charge is not that same money.

MR. McCULLOCH: It wasn't to get finance charges and it wasn't to get the 36 bucks, either.

MR. SPEAKS: Right.

CHAIRMAN: DJ?

MS. GROSS: Are you going to allow the $35 to be broken away and sent into the State ahead of time, whether that --

UNIDENTIFIED: What was the question?

MR. OTTO: That goes once a year.

MS. GROSS: Okay. But you're saying that it has to go into trust, as well?

MR. OTTO: It doesn't have to.

MR. SPEAKS: That's what they're saying.

MR. McCULLOCH: That's what they're saying. We're not even sure.

MS. GROSS: But what's the different -- it's on a contract, too, so how can you separate out the $35 contract fee --

UNIDENTIFIED: Thirty-six.

MS. GROSS: -- or $36. And you'll have to help with the accounting process in the office.

MR. MAHN: I want it depending on each account, one at a time.

MS. BATTAGLER: I want to do that, too.

MS. GROSS: What is the difference on separating that out from the finance charges?

MR. MAHN: Once a week or twice a week.

MS. GROSS: Is there a difference?

MR. KRAUS: I'm not sure I was with you there.

MS. GROSS: Well, on this, it looks like that it's -- the rule would allow the $36 to be paid out of the trust once a year.

MR. KRAUS: Okay.

MS. GROSS: But that's part of the contract payment, so if that can be broken out, why cannot the finance charges be broken out?

MR. KRAUS: To be paid out?

MS. GROSS: To be paid out. I mean, what's --

MR. KRAUS: I thought the discussion was whether you have to pay it in?

MR. OTTO: Well, it was. I think she's trying to come to an alternate solution.

MS. GROSS: Well, the question is, those that charge finance charges, it looks like it has to stay in there because it's part of the contract and you don't get paid until the person dies; is that what it's kind of looking at right now?

MR. SPEAKS: That's what we're arguing against; right.

MS. GROSS: But my point is, if you can take the $36 contract fee out in a year,

which is what this is saying, what is the difference in pulling that out than pulling out the finance charges? I don't know. Maybe I'm missing it.

MR. KRAUS: Well, I mean, honestly, I question whether you can pull out the $36. We have it here in the draft, but I question that.

MS. GROSS: And that was my question. If you can pull one thing out --

(Several people talking simultaneously.)

MR. KRAUS: I mean, if you want to ask the question, that's --

MR. McCULLOCH: Can we then define what payment is -- I mean, in rule?

MR. KRAUS: I mean, purely, the statute goes towards you trust all the payments that are made under the contract. You can pull out the 5-percent origination fee, you can pull out the 10 percent. That's it.

MR. McCULLOCH: Can we define what payment is and say it's the principal -- the principal amount, not finance charges, fees, and this other stuff? Can that be done by rule?

MR. SPEAKS: Well, that's what we're saying we want.

MS. BATTAGLER: Yeah.

MR. McCULLOCH: Well, I know that; I'm just --

MR. SPEAKS: Oh, sorry.

MR. KRAUS: Can you do that and would it go through? Maybe. Do I think -- are you asking my opinion as to whether that goes beyond the scope of the statute? I think it does. It doesn't mean that's how the Board has to go forward. That's my opinion.

MR. McCULLOCH: The folks looking at the rule making, will they -- I mean, they know we're the experts, so they'll probably take it; right?

MR. KRAUS: They --

CHAIRMAN: I hope not.

MR. OTTO: Talk with the Department of Health on that.

MR. KRAUS: They have, in the past, questioned and they have recently questioned whether there's authority for particular rules. So, I mean, as to whether they're going to question this one or not, I don't

know. They do look at them.

CHAIRMAN: I don't know how we get here, but it's either by a motion or by whatever you guys tell me, because I don't know.

MR. McCULLOCH: Well, I'd like to make a motion then that we define payment as the principal so that that would allow folks to take out the $36 and the finance charges and membership fees and any other fee for the purpose of furnishing final disposition, just like it says in here.

MR. REINHARD: We'll run it up the flagpole and see if it gets shot up.

MR. McCULLOCH: See what happens.

MR. SPEAKS: Good motion.

CHAIRMAN: Well, I think everybody agrees that's what makes sense.

MR. REINHARD: Well, let's do it. Just -- what are you going to do -- (inaudible) -- another screwed-up deal? Try it again.

MS. DUNN: They will just --

MR. KRAUS: Well, they could reject it and then you have to do something else, or you

don't have a rule.

MR. SPEAKS: Okay. Let's try it.

MS. EULER: The other thing is if you think a lawsuit, you're exceeding our authority in promulgating a rule that exceeds the statutory authority.

MR. McCULLOCH: Well, we're going to take our chances on that one.

MR. KRAUS: That's true.

MR. WARREN: But you're also going to draw a lawsuit from people who are saying that you're forcing them to deposit a finance charge that's not a payment.

MS. EULER: Well, and you're also opening the door for people to charge a $10,000 finance fee on a $10,000 contract.

MR. McCULLOCH: No, there's limits on that.

MS. EULER: But they get their finance fee up front.

MR. McCULLOCH: There's limits on that, what you can charge.

MS. EULER: But not in this statute, there's not.

MR. McCULLOCH: There's federal

restrictions.

MS. BATTAGLER: Federal law on this.

MR. McCULLOCH: Federal.

MR. SPEAKS: Federal laws.

MR. McCULLOCH: Haven't you been listening about the credit cards?

MR. MOORE: Can we make it the NPS makeup charge?

MS. EULER: Ha-ha. No. Nice try, though.

CHAIRMAN: So, your motion still stands?

MR. McCULLOCH: I would like for it to.

CHAIRMAN: Anybody --

MR. KRAUS: In that motion, you refer -- which section are you referring to, again, in that motion?

MR. REINHARD: What kind of jail time are we talking about?

MS. EULER: I would like to go on record as saying that it's against legal advice.

MR. McCULLOCH: Okay. It's, again -- it's page 14, it's at the bottom.

MS. BATTAGLER: What about saying the

payments shall not include any federal or state allowed fee -- federal or state regulated fees or charges?

MR. REINHARD: Hey, Sharon, what kind of jail time does a Board member serve on something like that?

MS. EULER: Well, it's a Class C felony.

UNIDENTIFIED: Go ahead and second that motion, Jim.

MR. McCULLOCH: That's okay. We'll get the AG to defend us.

MR. SPEAKS: Did you hear what she said?

MR. McCULLOCH: Yeah. I was just listening. Say that -- you say it.

MS. BATTAGLER: What about payments shall not include any federal or state regulated fees or charges -- or state allowed and regulated -- I don't know. And/or regulated fees or charges.

MR. McCULLOCH: Would be excluded as the definition of payment?

MR. SPEAKS: Right.

MS. BATTAGLER: Yeah.

MR. McCULLOCH: Something like that.
MR. OTTO: Definition of payment on the contract.
MR. McCULLOCH: Definition of payment on the contract.
MR. REINHARD: (Inaudible.)
CHAIRMAN: Waiting on a second.
MR. REINHARD: That Class C felony thing kind of shocked us.
CHAIRMAN: Is this like a wrestling match? One, two --
MR. McCULLOCH: Come on. Jump in there.
MR. REINHARD: Go ahead, Joy.
(Several people talking simultaneously.)
MR. McCULLOCH: Don't let her scare you guys. Jesus Christ. Anybody can sue you.
UNIDENTIFIED: But not everybody can put you in jail.
MR. McCULLOCH: Well, they ain't going to do that.
UNIDENTIFIED: And I don't want to be up there with Randy Sutton.
CHAIRMAN: Maybe we do, we could go kill him. Well, you know, even in the thought

of the finance charges and everything that your motion has just made, he's challenging the thought of 4 that says you can even pull the $36 off even though this says it does. So, somebody is going to have to clarify something somewhere.

MR. KRAUS: I said that I had concerns with that.

CHAIRMAN: So --

MR. KRAUS: But the draft is the draft, so --

MR. REINHARD: And the law is the law.

MS. BATTAGLER: Does anybody know the laws on the truth in lending about how -- I mean, can we still keep that money that required them to trust that money?

(Several people talking simultaneously.)

CHAIRMAN: So, how can we -- what is there that can really let us know where this is? I mean --

MR. KRAUS: You mean, what's the right legal answer?

CHAIRMAN: Yeah.

MR. SPEAKS: Yeah. Because if it's not this, then there needs to be a different

one.

CHAIRMAN: There has to be one.

MR. SPEAKS: There has to be one. Just saying, no, it doesn't, it says that, will not fly. It's not going to work.

CHAIRMAN: Earl, where's the payment thing again -- that number?

MR. KRAUS: That's in 436.430.2 on page 18.

MR. REINHARD: Yeah.

(Several people talking simultaneously.)

MR. REINHARD: Well, if Sharon trumped this, it was bad news.

(Several people talking simultaneously.)

CHAIRMAN: I'm seeking information more than I'm seeking let's go.

MR. REINHARD: Well, we could make a motion and then it'll get beat and so what.

MR. MAHN: The same thing, we can just let them loose --

MR. FRAKER: You may get a first, like Jim does.

CHAIRMAN: Does the chairman have the authority to say to legal counsel go work on this and figure this out in a better way?

MR. MAHN: If you think there's a better way to do it. Can we do that?

MR. KRAUS: Is that a legal question?

CHAIRMAN: Yeah.

MR. KRAUS: Well, I mean, if your question is, really, go change your opinion --

MR. REINHARD: Well, that's what we're asking, isn't it?

(Several people talking simultaneously.)

MR. KRAUS: -- I'm not going to do that.

CHAIRMAN: Well, we have conflicting --

MR. KRAUS: Sharon and I are on the same page.

CHAIRMAN: Oh, you would agree then that we can take out the $36 fee?

MR. SPEAKS: Earl, you see the problem.

MR. KRAUS: I said that I have concerns with that, but I -- if you want to go forward with that, that draft, then I'm happy to do that. But I do have concerns there. But as to what has to be deposited in the trust, I think that says payments made -- payments under the contract. And my opinion is that that means any money received pursuant

to any terms of the contract. I understand that's not -- people aren't happy about that, but that is my opinion.

MR. MOORE: Can you have two contracts -- (inaudible.)

MR. KRAUS: And then it's up to you to decide how you want to go forward considering that advice.

MR. OTTO: Well, the $36 isn't pursuant to the contract; it's pursuant to the statute that authorizes the State Board to do a per-contract fee. So, at least as to the --

MR. KRAUS: No. That's -- whether -- how you collect that $36 is completely separate than what you have to put into the contract.

MR. OTTO: But what I'm saying is --

MR. KRAUS: -- or what you have to put into the trust.

MR. OTTO: I mean -- well, that's what I'm saying.

MR. KRAUS: Because you don't have to collect that at all.

(Several people talking simultaneously.)

MR. OTTO: If you're talking about

payments under the contract, the $36 is a payment under the statute and the regulation.

MR. KRAUS: And if you don't have it in the contract, then you don't have to deposit it in the trust. But if you have it in the contract, you've got to deposit it because then it's a payment pursuant to the contract.

MR. OTTO: Well, I would disagree -- see, I disagree that that's a payment pursuant to the contract.

MR. KRAUS: Well, then we disagree.

MR. OTTO: And I don't think there's anything wrong with the Board defining what the phrase "payment under the contract" means. We've run into this two or three times on other things about does it include this, does it include that.

MS. BATTAGLER: Right. So, why can't we do it with this?

MR. KRAUS: And the Board can decide to do that, but that's not going to be at my recommendation.

MR. OTTO: I understand. And if it goes up the chain and somebody up ahead says

it's no good, then we find out it's no good.

MR. MOORE: Can you have two contracts? You have a contract to sell the funeral, but then they've got to go to another department of the funeral home to get it financed. So, they do the finance part with the F & I, and then the F & I pays the --

(Several people talking simultaneously.)

MR. KRAUS: That second contract is in return for doing what?

MR. MOORE: They've got to finance it, just like when you --

MR. KRAUS: But you have to tie the payment to the services received some way. And if you do that --

(Several people talking simultaneously.)

MR. MOORE: When I buy a car --

MR. KRAUS: -- that makes the contract.

MR. MOORE: When I buy a car --

MR. KRAUS: So, then those two contracts form the contract and you still haven't accomplished anything.

MR. MOORE: But when I buy a car, I pay the party, but I make my payments to the bank. The same thing here. My sellers are

selling the contracts, my F & I guys are collecting the money, paying the seller, and paying the trust.

(Several people talking simultaneously.)

MR. KRAUS: If the $36 is a term of the contract, it's my opinion that's a payment under the contract. You don't have to go with that if you don't want to.

MR. REINHARD: Well, I'm going with Earl.

MS. GERSTEIN: What do you -- Earl, if you were to redo this, it's a lot of words that don't have a lot of depth, I think. I don't know. I mean, I don't understand it when I read it. How is the consumer going to understand it? I mean, it goes nowhere.

MR. McCULLOCH: They're not going to have to understand that.

MR. KRAUS: So, your suggestion is to what?

MS. GERSTEIN: No, but this goes nowhere, so it leaves it open for a lot of interpretation. I mean, I agree; I think this needs to be rewritten.

MR. KRAUS: Then give me some

direction as to how to rewrite it.

MS. GERSTEIN: Because I think --

MR. REINHARD: She means the whole law, I think.

MS. GERSTEIN: No. But, I mean, I think this section --

MR. KRAUS: I'm happy to rewrite it. Tell me what you want me to write.

MS. GERSTEIN: I mean, I personally, I've read it four or five times --

MR. MAHN: Did you and Sharon write this?

MS. GERSTEIN: -- and every person is going to interpret it differently, I think. I think everybody is going to interpret this differently. And, right now, I vote no against this.

MR. KRAUS: Well, I'm -- like I said, I'm happy to --

MR. REINHARD: Somebody is going to have to go to court on this.

MR. KRAUS: -- draft what you want me to draft.

MR. SPEAKS: Well, can we approach it from the back end, Earl, and say, okay, you

know what ought to happen, which the State ends up with $36 and the seller ends up with the finance charge. You get that part?

MR. KRAUS: I'm with you.

MR. SPEAKS: Okay. How did we get there? I mean, how would -- what would -- what mechanism needs to be in place in order for that to happen, and that's what the rule should spell out. And if it's not defining the terms of the, you know, purchase under the contract, then it's something else, but there has to be an answer.

MR. KRAUS: Well, and, Sharon, we may disagree on this to some extent. I'm not entirely sure if we do. But from my perspective, the seller is obligated to pay the $36.

MS. EULER: Right.

MR. KRAUS: And whether they try to collect that from the purchaser is completely up to them. They don't have to. If they do that and it's a term of the contract -- which if they collect it, it pretty much has to be a term of the contract -- then that's a payment under the contract and has to be

trusted. It's --

MR. SPEAKS: But how does it come out of the trust?

MR. KRAUS: It's my view that if -- and this isn't necessarily what is in the proposal, but this is my view, since you asked, that the statute allows for the seller to get the initial 5-percent origination fee and then they can get the 10 percent. And if that $36 happens to be in there, great for them, but I don't think they get the 5 percent and the 10 percent and the $36 because that's more than 15 percent. The statute doesn't say that. It says you get 5 percent and you get 10 percent. It doesn't say anything about drawing out 36 bucks. Sharon, I'm not sure if we differ on that, but -- so, if you're asking me alone, I think --

MR. McCULLOCH: So, if you go with his deal now, you're going to pay the 36 bucks out of your pocket for all these preneeds that your insurance company is going to write for you.

MR. MOORE: Until they die, and then you get your money.

MR. KRAUS: Now, if you choose to have a 4-percent origination fee because you're a good guy, then you could do that, and then you could also draw out the $36 because you're still under the 5 percent. Maybe you do it that way. I don't know. But that -- and that way, you don't exceed the 5 percent and the 10 percent, which is what the law allows, I think.

CHAIRMAN: Hang on one second. Mark, you still have a question? You had your hand up earlier.

MR. WARREN: No. I just -- I think that you can define what it is, send it up and see what the heck they do. I mean, I don't know that you can -- this is simply my opinion. A fee is not part of the contract amount and neither is the finance charge. The contract amount is the amount the parties agree upon for the price of what they've bargained for, the funeral or whatever. The fee is something that the law requires to be charged. The interest rates, et cetera, are controlled by state law and also by agreement of the parties. So, I -- you know, to me,

just from a practical standpoint, the contract amount is whatever they agree upon for the price of the funeral. You should be able to cut out and define then that this X and these other things are just ancillary to it, they don't include payments. It's a practical matter, and see what they say.

CHAIRMAN: Don?

MR. OTTO: Well, I may have one. Page 20 in Senate Bill 1, paragraph 9. All expenses of establishing and administering the preneed trust, including the trustee's fees, legal and accounting fees, investment expenses, and taxes, may be paid from the income generated from the investment of the trust. So, we know you can use income to pay all the expenses related to the trust.

MR. KRAUS: Did you say page 20?

MR. OTTO: Page 20.

MR. KRAUS: Oh, paragraph 9.

MR. OTTO: Paragraph 9.

MR. KRAUS: Okay. I was looking for line 9. I'm sorry.

MR. OTTO: So, we know from the first sentence that you can use income generated to

pay any expenses, fees, taxes, whatever. The second sentence says you cannot use principal to do that. This $36 is neither income nor principal. Thus, the statute is silent as to whether or not that $36 may be used to pay expenses. I would argue then that that is an appropriate rule because we have now three things that are in the trust. You've got principal, you've got income, and you've got the $36 fee, whatever you want to call that. We know you can use interest and pull that out at any time you want to to pay for expenses. We know principal always has to stay in and can never be touched. Now, we have this third category of the $36 fee, which isn't addressed one way or the other. It doesn't say you have to leave it in, it doesn't say you can't take it out. So, at least as to the $36, I think you have the authority to say that that $36 may be paid out of the trust because nothing in the statute excludes that. And that $36 -- the per-contract fee is elsewhere an authorized fee. Finance charges is a little tricky.

MR. MOORE: So, then isn't that

basically what #4 says?

MR. OTTO: That is pretty much -- what I just said is pretty close to what #4 says.

MR. MOORE: And didn't you and Sharon write this?

MR. KRAUS: I assisted in writing that. Sharon did, too, yes.

MS. GERSTEIN: I'm not saying you guys wrote a bad thing here. I'm just not getting it, I guess.

MR. OTTO: Well, I mean, speaking on behalf of a seller that is going -- collecting this $36, I would greatly appreciate a rule such as the one that is proposed to make it clear that I can, perhaps with the -- what we talked about earlier, the clarification that you can pull that out right away and don't have to, you know, put it in a separate account where it's -- but, in any case, to make it clear that I can be doing that. And I think that is okay. The finance charges is a little trickier, I agree.

MS. EULER: In my mind, the $36 is very different from the finance fee -- the interest fee.

MR. OTTO: I agree with you, Sharon. It is a different matter and more complicated.

MS. EULER: Now, here is a question. And I'm going to leave the $36 aside. But towards the finance fee, I'm going to play a little devil's advocate here. Why should the seller be entitled to interest -- finance charges on the preneed contract as it goes along? And, see, I'm far, far away, so none of you can hit me.

MR. McCULLOCH: Well, again, Sharon, my example, why a bank -- how would they exist if they couldn't use the funds, if they had to wait until everybody paid in full or paid their loan off? You have a car financed, you've got to wait until it's paid for. It doesn't work that way. You can't run a business that way.

MS. EULER: But --

MR. McCULLOCH: Credit-card companies, they get to use those.

MS. EULER: But that's different.

MR. McCULLOCH: How?

MS. BATTAGLER: How?

MR. OTTO: No. Actually, John, Sharon

is going one step beyond. She's saying you shouldn't be able to charge a finance charge, period.

MR. McCULLOCH: But it says you can right here.

MR. SPEAKS: Yeah. Her question is, you know, it's moot, because you can.

MR. MAHN: Right. (Inaudible.)

MR. OTTO: I know. I'm not saying --

MR. SPEAKS: (Inaudible.)

MR. McCULLOCH: Page 14, down at the bottom, it starts --

MR. OTTO: She said she was playing devil's advocate, though.

(Several people talking simultaneously.)

MR. McCULLOCH: Such contracts include, but are not limited to, agreements provided for a membership fee or any other fee for the purpose of furnishing -- (inaudible.)

MS. EULER: But that's not a finance-fee charge.

MR. McCULLOCH: It's a fee, isn't it? They're going to be leaving the interest off the principal.

MS. EULER: Right. So --

MR. McCULLOCH: Why shouldn't we be able to charge a finance charge?

MS. EULER: A situation like --

MR. McCULLOCH: If someone doesn't pay you for your funeral, you're allowed to charge a finance charge so they pay you.

MS. EULER: Only if that's in your contract.

MR. McCULLOCH: Well, that's what I'm trying to tell you, it's in our contract.

MS. EULER: So -- but that's for something that's already been done. See a lawyer, for example. A lawyer is required to have a trust fee -- a trust account. When a client pays you in advance for a divorce -- pays you $2,000 in advance for a divorce, you're not allowed to take that money out of trust until you've actually performed the services and earned the money, and then you're allowed to take that money out of trust. Now, in my mind, the preneed funeral world is the same way, and the statute says you take the money for the funeral and you put it into trust, then you don't get that money out until you've earned it, until you've performed the

services?

MR. MOORE: The principal amount?

MS. EULER: The principal and the interest. The money that somebody gives you to pay for your funeral --

MR. MOORE: Finance charges isn't considered interest.

MS. EULER: -- placed in the trust and it stays there and it sits there and accumulates interest until the time you've actually done what needs to be done to earn that money.

MR. McCULLOCH: I agree with you it does say you have to leave the interest in there. It doesn't say anything about a finance charge, which is two different things.

MS. EULER: So, how is a finance charge any different than interest?

MR. McCULLOCH: It just is.

MS. BATTAGLER: You leave the income in.

MR. McCULLOCH: They're just different. I mean, I'd have to look up the definition.

MS. EULER: What's the difference?

MS. BATTAGLER: Interest earned income --

MR. SPEAKS: It's interest earned.

MS. BATTAGLER: Earned. Interest earned.

(Several people talking simultaneously.)

MR. McCULLOCH: Finance charge is something you're charging a person for taking time to pay something.

MS. EULER: I understand that. But in the --

MR. McCULLOCH: It's kind of like time use of money. I mean --

MS. EULER: The way the rest of the statute works, why is the seller -- what has the seller done or what risk is there for the seller that entitles them to interest along the way when the statute clearly says that the money goes into trust and it sits there and, hopefully, accumulates and increases in value until such time as the services are actually performed?

MR. McCULLOCH: What is the risk? Have you looked to see what they're paying on money in the bank these days?

MS. EULER: Oh, I know.

MR. McCULLOCH: Okay. So, there's your interest-rate risk. It's a huge risk. All these insurance companies are faced with that, along with the death risk, you know -- mortality risk. Those are the two main things we have to deal with. This is a way to help make up for some of that, plus some bright-minded person came up with the idea that they wanted this to knock off another 5 percent. Most businesses can't stand that. You're taking out the profit that you just can't do the things.

MS. EULER: So, again, from a consumer point of view, as a consumer, I would look at this and I would read the statute and I would say the statute says you don't get interest paid until the time you provide the services. So, what I see you doing by charging me a finance charge is you're trying to get around that and paying -- and have me pay you interest now so you can make money now even though that's not what the statute says. The statute says you don't get paid until you provide the goods and services.

MR. MOORE: Well, what if I back that contract up with credit life and they pay me one check, how am I supposed to make that credit-life payment if you're not going to let me have that credit-life payment?

MR. SPEAKS: That's a good point.

MR. MOORE: If I finance that funeral for five years and they're making me a payment and I issue credit life on it, how am I supposed to pay that credit-life payment?

MR. SPEAKS: That protects the consumer.

MR. MOORE: I can use another NPS plan there and use white-out and change it, but how am I supposed to make that credit-life payment? There is no difference between making a credit-life payment or what Mr. McCulloch is talking about about making a finance charge.

MS. BATTAGLER: And what if we're financing a contract and we go ahead and charge the finance -- charge finance charges on it, because they're making small payments on it, instead of one paid in full, and it's guaranteed.

MR. SPEAKS: It's an administrative -- (inaudible.)

MS. BATTAGLER: We're -- I mean, it is an administrative part of it because we're guaranteeing that contract even though we're not requiring them to pay the whole entire amount up front.

MS. EULER: Right. Why should -- and I'm playing devil's advocate here. So, why should that money not go into trust so that there is more money available at the time of death?

MR. MOORE: How am I going to make my credit-life payment?

MS. RUSSELL: John, she's got that --

MS. EULER: That's separate.

MS. RUSSELL: That's separate on page 31.

CHAIRMAN: And your philosophy or whatever there is that the principal is in the trust, the earnings from the trust growth is in the trust, and then the people are paying their own interest on top of it as an earnings?

MS. EULER: Well, that's -- the statute doesn't say anything about financing charges,

but it does say that all payments go into the trust, and so, that is exactly my question. What in this law entitles the seller to get interest all along when the statute clearly says you don't get paid until the goods and services are provided? How can the Board enact a rule that's contrary to that?

MR. WARREN: I think they're looking -- well, everybody -- this is Mark -- for a rule that defines it, not changes it.

MS. EULER: How do you say a finance charge is not a payment on the contract? From the consumer point of view --

MR. WARREN: Because it's not. If you pay the contract in full, you don't have a finance charge. If you don't pay the contract in full, then you have a finance charge to help pay the company for the cost they incur in administering it. If you want to take that out, then the price of the contracts go up.

MS. BATTAGLER: And we send out bills every month to ask them to remit payment.

MR. WARREN: There's a lot of it. And then, you know --

MR. McCULLOCH: Sharon, it's just like

with credit-card companies. They charge a finance charge.

MR. WARREN: And I would note it's not specifically excluded.

MR. McCULLOCH: If you take that out, they can't do it unless you -- you know, and you're going to have to pay those finance charges unless you pay your bill off every month, but if you don't --

MS. EULER: Right. I understand that, but you --

MR. McCULLOCH: -- you know, they're entitled to charge you something. Now --

MS. EULER: I am just looking for something in this statute that authorizes --

MR. McCULLOCH: Well, because we haven't defined payment. That's the problem. If we define payment, then we'll be okay. I think payment means -- and I think the intent of this whole thing -- was we get the principal in the trust. It didn't have anything to do with getting the $36 in the trust, finance charges, or anything else. You know that as well as I do, because it was never discussed.

MS. RUSSELL: John, they're talking --

MS. EULER: I think that if you're challenged, you will lose. I think all payments means all payments.

MR. McCULLOCH: Oh, I don't agree with that.

MS. RUSSELL: Sharon, back to the reporting fee, on page 30, not talking about the finance fee, just the reporting fee. On page 30, line 93 and 94, this reporting fee shall be paid annually and may be collected from the purchaser of the preneed contract as an additional charge.

MS. EULER: Right.

MS. RUSSELL: Or remitted to the Board from the funds of the seller. Does that help as an additional charge?

MR. McCULLOCH: That's a pretty good one there.

MS. RUSSELL: Yeah.

MR. McCULLOCH: Good job.

MS. RUSSELL: Thank you.

MS. EULER: (Inaudible) -- collected from the consumer.

MS. RUSSELL: We took care of the

reporting, not the finance as the additional --

CHAIRMAN: What does it say?

MR. McCULLOCH: It says the reporting fee shall be paid annually and may be collected from the purchaser of the preneed contract as an additional charge or remitted to the Board from the funds of the seller. The reporting fee shall be in addition to any other fees authorized under sections --

MR. KRAUS: Where are you looking, again?

MR. McCULLOCH: Page 30 --

MR. OTTO: The one I was just looking at.

MS. BATTAGLER: Also, can I say that contracts -- as far as finance charges go, contracts specifically state exactly what the finance charge is. I mean, it's totally separate. Why does that have to be included in the contract price and payments received on that? It's not -- they're just making one check out. They could make two separate ones, one for the contract amount and one for the finance charge, but they're not doing that. It's just included in one payment.

MR. KRAUS: And like all the discussion here has been, I think, you know, if the Board decides they want to define payment as something other than every piece of cash remitted under the contract, that's up to the Board. That's not what I would recommend, but if the Board wants to do that, we'll draft it up and you can go forward.

MR. McCULLOCH: Well, that certainly would clear up a lot of stuff, if we could define what a payment is.

MR. KRAUS: Oh, I don't disagree that there's all kinds of logistical problems with this interpretation.

UNIDENTIFIED: (Inaudible.)

MR. KRAUS: But those are logistical problems, not legal problems.

MS. BATTAGLER: Not to mention the accounting or the auditing nightmares about trying to figure out if they have, you know, the right amount of money in or too much money in the trust for funding the actual face value of the contract.

MR. KRAUS: I don't disagree with all the concerns you're raising.

MR. OTTO: Well, just something to think about as you're redrafting this, if that's what you're directed to do. We -- there are multiple things. There is nothing that says you can't put more stuff in the trust than the statute requires. The statute requires you need to put whatever you define as payments into the trust. And then after you do that, you now have two things in the trust, for sure, principal and income. Well, what if there's something else? You've got principal, income, and then the $36 fee or the finance charge or whatever it is. We know you can never touch the principal for expenses. We know you can touch the interest for expenses. The remainder of that interest or income stays in until at-need. Then we have other things, which are not prohibited from you putting into the trust, with nothing saying you can't take it out, either.

MS. BATTAGLER: Right.

MR. KRAUS: Yeah. I agree with you on that.

CHAIRMAN: So, you think it's just an interpretation for the individual to just go

with under their own thought? In other words, if I just decide, hey, that's what the law says and it's silent, my lawyer advises me that I'm fine, and I'm willing to roll the ball and go for it till somebody tells me I'm wrong.

MR. KRAUS: Well, you know, that is an approach to not do a rule at all.

MS. RUSSELL: Yeah. There you go.

UNIDENTIFIED: (Inaudible.)

MS. EULER: And then we can wait until the audit and we'll charge you with a Class C felony.

MS. BATTAGLER: Yeah.

MR. McCULLOCH: If you win.

MR. KRAUS: May win; may not. I mean, that's a good -- you're -- that's an excellent point.

MR. McCULLOCH: Jesus Christ, Sharon. You need to get with it.

MR. KRAUS: I mean, obviously, there could be differing opinions on it than what the judges will ultimately say, you know. I don't know the answer to that. I can only tell you what I think they will say.

MS. BATTAGLER: Talk to Senator Scott. I guarantee that's not what his intentions were whenever they wrote this thing.

MR. KRAUS: And I don't disagree with that, either. But in statutory construction, you have to look at these are the words, so --

MS. RUSSELL: Can I address something else on this page? Can we go through one other thing since we're tearing it apart?

CHAIRMAN: Sure.

MS. RUSSELL: Number 5, I think you're going to say if, but the word "nonguaranteed" would need to be inserted in there. In a preneed seller -- if a preneed seller receives a payment from insurance, a joint account, or a trust, and the payment exceeds the cost, the statute clearly says unguaranteed or nonguaranteed. They don't have to give the excess back if it's a guaranteed. On the insurance, it's page 24, line 40, of Senate Bill 1. And on the trust, I believe it's page 20.

UNIDENTIFIED: Yeah.

MS. RUSSELL: Yes. On the trust, it's page 20, line 58, the seller and provider of a

trust fund at guaranteed preneed, so you would have to use the word "nonguaranteed" in there. Does that make sense, Earl?

MR. KRAUS: That makes sense to me. The other reference you made was -- what was the first reference?

MS. RUSSELL: Oh, the first reference was page 24, line 40, and the second reference was --

MR. KRAUS: Twenty, line 58?

MS. RUSSELL: Yes. Uh-huh.

MR. KRAUS: Okay.

MS. EULER: Let me check what Chapter 208 says about that because I don't think Chapter 208 makes a differentiation between guaranteed and nonguaranteed. And we have had situations where the preneed contract was for a $10,000 funeral and, at the time of need, the funeral home talked the family into doing a direct cremation that cost $750, so that would go into a windfall of $9,500 -- how much -- $8,500 or $8,000 for the funeral home.

MS. RUSSELL: Well, I think that would be a Department of Insurance complaint that the funeral home did --

MS. EULER: No. Actually, though, that was an attorney-general matter, and we won on that. It was a trust-funded contract.

MS. RUSSELL: Yeah. I was going to say on the insurance side, I mean, I think you get the insurance companies would --

MS. EULER: No. Because the insurance company paid out. The insurance company didn't do anything wrong. The funeral home was the beneficiary and the insurance company paid the beneficiary.

MS. RUSSELL: Yeah. I didn't finish. I said if the insurance company was involved, they would encourage the family to turn that over to a regulatory agency if they -- you know, they felt like they were --

MS. EULER: That's not what happened in this case.

MS. RUSSELL: Oh, okay.

MS. EULER: The insurance company paid the beneficiary, as they were required to do under their contract.

MS. RUSSELL: Right.

MS. EULER: The beneficiary was the funeral home. And so, the funeral home kept

all the money, and they did that in a number of cases with different insurance companies.

MS. RUSSELL: I know. But if the wording that you have here requires that no matter if you use trust, joint account --

MS. EULER: Right.

MS. RUSSELL: -- or anything else, every -- all the overage --

MS. EULER: Well, that's why I say let me double-check what Chapter 208 says about Medicaid recovery.

MS. RUSSELL: Okay.

MS. EULER: And we will make it in accordance with what Chapter 208 says.

MS. RUSSELL: And what Senate Bill 1 says?

MS. EULER: Right. Right.

MS. RUSSELL: Okay.

CHAIRMAN: Okay. So, there's some clarification that needs to go on #5. Did we actually solve the $36 thought totally, or does there need to be something redone in that #4 thing?

MR. OTTO: I think #4 is fine the way it is.

CHAIRMAN: Okay. And #4 being that you just -- is the definition broader or is it just a one-time deduction at the end of the year? What are you seeing, with what you were just saying with #4?

MR. OTTO: Well, with #4, it says -- because it says -- because of the way it's worded, I've got no problem with #4. I could write it to make it clearer, but I don't think there's any reason to open that can of worms.

CHAIRMAN: But this is talking -- is it being trusted as a part of the contract? I heard you guys talking about some other parts of --

MS. BATTAGLER: Well, it says if it is.

MR. OTTO: It says if it is --

CHAIRMAN: Just if it is?

MR. OTTO: If it is, you pay it in September or October of each year.

CHAIRMAN: Okay. So, the key word is "if" there?

MS. BATTAGLER: Yeah.

MR. OTTO: Yeah.

CHAIRMAN: All right. So, there's latitude in that to work however it needs to

be worked. Okay. What are we doing on the other part of it? Is there a motion here, or are we just going to --

MR. KRAUS: I mean, I think at this point, the Board can either go with some form of this language with some adjustments that have been talked about, can move forward towards asking the drafting of defining payments, as we talked about, or it could decide they don't want to deal with this right now, do it as a regular rule, or not even do a rule at all.

MR. McCULLOCH: No rule at all, maybe.

MR. KRAUS: That's the Board's option.

MR. McCULLOCH: Let everybody just do what they think is best.

MR. SPEAKS: Well, but if Sharon is dead set on charging everybody the -- or interprets it the correct way with a Class C felony, that's just setting every funeral home in the state up criminally.

MS. EULER: I didn't say I would charge everybody, I just said that's -- (inaudible.)

(Several people talking simultaneously.)

MR. OTTO: That was John. Just John.

It was only John; I remember that.

MS. EULER: And I might have prefaced that.

MR. SPEAKS: Well, I want clarification, and I suspect Stuart Enterprises does, and I'll bet SCI does, as well.

MR. McCULLOCH: Well, could #2 come out of this? And then you could interpret --

MS. BATTAGLER: I think #2 actually needs to be defined better because I think it needs to be -- when it says -- the statute does say all payments, but it needs to say all payments toward the principal.

MR. McCULLOCH: Well, I wish we would define what payment is.

MS. BATTAGLER: Total -- yeah. The total contract price, not including finance charges or fees that were allowed by the state or federal -- you know, state.

MR. McCULLOCH: Yeah. I mean, I agree with that.

MS. BATTAGLER: Yeah.

MS. GERSTEIN: Mr. Chairman?

CHAIRMAN: Yes.

MS. GERSTEIN: I have a question.
MR. MARTIN: Yes, ma'am.
MS. GERSTEIN: Sharon?
MS. EULER: Yes.
MS. GERSTEIN: Okay. We were given three options as to what we might do with this. The last one of not having any rule at all, what is your take on that? I'm personally not comfortable with that idea.
MS. EULER: Joy, can you get closer to a microphone?
CHAIRMAN: Let me just paraphrase for her.
MS. DUNN: No, not that. Through the phone.
CHAIRMAN: Even though you said John, you really do think that the Class C felony is coming to anybody on the doing nothing; correct?
MS. EULER: No. I -- no. I don't know that. I'm telling you that if the Board passes a rule and defines that it is all payments and there's a challenge, I think the Board will lose. In terms of whether anybody will be prosecuted or not, I don't -- I can't

speak to that. I can tell you, though, that if there is an audit done or an investigation done, and there are charges being charged outside of what the statute requires and outside of the trust, that those will be looked at. But I'm not going to say we're going to prosecute everybody who does because we're not, and I don't want anybody to perceive that as a threat because it's not. But plain reading of the statute says all payments.

MS. GERSTEIN: Okay. That's part of my question. What would you recommend at this point; reword this, what we have in front of us now?

MS. EULER: Well, I think that if you just reject the entire rule, you would be throwing out the baby with the bath water. There are parts of the rule that are problematic and you don't want to do right now. Take those parts out and we'll continue to work on those or we'll do something else. Or if you want to send the whole rule back to legal counsel to look at and give us direction as to how you want it redrafted, we can do

that. It's really a Board decision at this point.

MS. GERSTEIN: And what would you recommend as our third option?

MS. EULER: I'm sorry; I didn't hear all of that.

MS. GERSTEIN: What would you recommend as our third option on this?

MS. EULER: Or you could do no rule at all.

MS. GERSTEIN: Well, we already talked about that part.

MS. EULER: So, what I have been hearing throughout these meetings is that -- are concerns and need clarification. And so, if the Board wants to go forward with a rule addressing some of these things, tell us how you want it changed and we'll change it. If there's parts of this you're okay with, tell us what parts you're okay with, and we can make that a separate rule and then we can continue to work on the other issues.

CHAIRMAN: Well, we're okay with #5 and that you want to check with 208. We're okay with #4. Nobody here really agrees or

the thought of the finance charges or other fees or whatever, we don't know how to deal with that, but -- so, how -- so, if we just bring it back and say redraft it, I'm not sure what the point of that is.

MS. RUSSELL: So, Martin, you said you were looking like #1, #3, and #4 are okay; is that what you're saying? Two is the only problem one?

CHAIRMAN: Well, is #1 okay with that word "all payments," because that's what's causing the issue.

MS. RUSSELL: Oh, okay. So, #3 and #4 are okay?

MS. GERSTEIN: Four and five.

CHAIRMAN: And #5 is just consideration. It's not like it's out.

MS. RUSSELL: In consideration, yeah. It just needs a word added.

CHAIRMAN: So, #1 and #2 is really the issue, but I don't know how to get there, so --

MR. OTTO: You can leave #1 just to say all payments received by a seller or its agents must be promptly remitted to the appropriate payee, period, without specifying

who that payee is at this point since there, apparently, is dispute.

CHAIRMAN: Say what?

MR. OTTO: You could make #1 just say all payments received by the seller or its agents must be promptly remitted to the appropriate payee, period, since the rest of that, apparently, is a dispute at this point. You drop off #2 completely at this point, since nobody agrees how to handle that. Three and four sound okay, and, five, we're waiting on further clarification.

CHAIRMAN: So, does that work, Sharon?

MS. RUSSELL: Or do #1 and just take the word "all" and just say payments received.

MS. EULER: You lost me there. Can you repeat that?

MR. OTTO: One would be all payments received by a seller or its agents must be promptly remitted to the appropriate payee, period.

MS. EULER: Okay.

MR. OTTO: Without the -- and end it there. Two goes out completely because people can't agree on that right now.

MR. McCULLOCH: Don, what if you take out "all."

MS. BATTAGLER: Just say payments received by a seller.

MS. RUSSELL: Yeah. Just leave the payments received and leave the rest of it.

MR. OTTO: Okay.

MS. RUSSELL: Take the word "all" and make it --

MR. OTTO: Take the word "all" out and just say payments received by the seller.

MS. RUSSELL: And then all the rest stay in there.

MR. OTTO: Well --

MS. RUSSELL: Yes, because you have to say appropriate payee. I mean, you don't want somebody to say, well, I'm the appropriate payee.

MR. OTTO: Well, no. Well, no. That gets you right back before, because the seller is an appropriate -- the seller might -- with a finance charge, that's the argument. Who is the appropriate payee on a finance charge.

MS. BATTAGLER: Yeah. That's true.

MR. OTTO: Or the $36.

MS. RUSSELL: All right. But you're not considering the finance changes as a payment, she just said, so you're not using the word "all."

MR. OTTO: They are.

MS. BATTAGLER: They are.

MR. OTTO: They are.

MR. McCULLOCH: We're not.

MS. RUSSELL: I know, but that should address that, just taking out the word "all."

MR. OTTO: Well, it sounds like maybe #1 and #2 should just go out for now. I stand corrected.

MR. MAHN: Mr. Chairman, can I make a motion?

CHAIRMAN: Yes. Please do.

MR. MAHN: I'd like to make a motion that our attorneys go back and cool heads prevail and think about this and we'll come back to this at a later date. That's my motion.

MS. DUNN: Well, now, a later date would be much later.

MR. MAHN: I don't care when. I just -- I mean, everybody is fighting about it.

Nobody agrees on anything. They need to think about it. It's too serious of an issue.

MR. McCULLOCH: But it's going to affect a lot of these folks in here and that's --

MR. MAHN: Well, it may, but --

MS. RUSSELL: It affects you, too, the $36.

MR. MAHN: It might -- it does affect me. I'd rather just -- let's just think about it, breathe a little bit, go outside. Something.

MR. McCULLOCH: Well, we're pretty close.

MR. SPEAKS: John, if you -- just thinking this through --

MR. MAHN: I mean, I -- well, hold on a second guys. I made a motion.

MR. SPEAKS: -- on the finance charge on a nonguaranteed preneed-trust contract --

MR. MAHN: I guess it don't matter if the State Board makes a motion here or not.

MR. KRAUS: Yeah, he's right.

MR. SPEAKS: -- you would not charge a finance charge on that because that's the

consumer's money, there is no guarantee.

CHAIRMAN: Okay. All right.

MR. McCULLOCH: That's true.

MR. SPEAKS: Right. So, really, the way things stand now, we're --

CHAIRMAN; Brad, hang on. Hang on.

MR. SPEAKS: -- forced everybody into not carrying the contract.

CHAIRMAN: All right. Okay. Todd made a motion. Gary seconded the motion. Need a vote.

MS. GERSTEIN: Well, I'd like some discussion. I'm not comfortable in us not having anything protecting us for a couple of months.

CHAIRMAN: So, say no.

MS. GERSTEIN: I am saying no.

CHAIRMAN: All right.

MR. McCULLOCH: I say no.

MR. REINHARD: No.

CHAIRMAN: All right. End of the road of that.

MS. GERSTEIN: Now, I do -- I mean, I'm not saying we need to throw the whole thing out, but what I am saying is some of

the wording people are recommending, take out "all," different things like that. I think everybody is very tired, so I think that some things are happening that wouldn't happen if it was 9:00 in the morning. So, my -- I recommend, again, sending it back to our attorneys and clarifying what we think about it.

CHAIRMAN: The first question they have, though, is what --

MS. DUNN: But they have to know.

CHAIRMAN: The first question is, as they keep saying, is what am I supposed to clarify. We want to say you guys go clarify.

MR. KRAUS: Because I can make the language of the rule say whatever you want it to say, but I need to know what your intention is, what you want it to accomplish. Even if I disagree with that, I'm happy to draft it however you want me to draft it.

MS. GERSTEIN: Well --

MR. KRAUS: But I need to know what you want it to do.

MS. GERSTEIN: What I want it to say, what I want to clarify is how it's going to

affect the public; that's why we're here, and that's going to make us -- the Board secure, that nobody can come back and sue us, and it's going to last more than a year.

MR. KRAUS: Well, I need more specifics than that.

CHAIRMAN: They've already gave us their opinion that what this says is you can't do what we're saying. That's what they're saying.

MS. GERSTEIN: So, this -- they're saying --

MR. KRAUS: But I'm also saying that if the Board wants us to draft something that is even in disagreement with that legal opinion, I will draft that, but I need to know what you want it to say.

MS. GERSTEIN: Okay.

MR. KRAUS: And if there's a motion and it's seconded and you vote on it that this is what we want it to accomplish, I will go back and draft that for you.

MS. GERSTEIN: Okay. So, Sharon and Earl are telling us this will protect the consumer and protect the Board; right?

CHAIRMAN: Well, the Board would be protected in it. There would be nothing that would be harmful, I guess.

MS. EULER: Right. And the Board can't be prosecuted.

MR. MOORE: Oh, see, you're safe.

(Several people talking simultaneously.)

CHAIRMAN: Okay. Don, you're next. Hang on.

MR. OTTO: Might I suggest -- this #12 really consists of three separate things. Might I suggest there be three separate rules that come out of #12. One rule would be paragraphs 3 and 4, which, it sounds like, nobody has a problem with. A second rule would be how to deal with finance charges, which people have a problem with. The third rule is paragraph 5, which I don't think anybody has a problem with in concept, but Sharon needs to check on Chapter 208. So, perhaps, if you broke this up into three rules, the Board could vote on a rule which includes paragraphs 3 and 4, that takes care of your $36, direct Sharon to go back and research paragraph 5 and come up with language

that makes sure you meet 208 and 436, and then, if you wanted to, table the third rule, which is the finance charge, for a later date when it's not 5:15 and people's nerves are frayed.

MS. EULER: Right.

CHAIRMAN: Okay.

MS. EULER: And to follow up with Joy, for the downside is the penalty, if an action is filed and they found a rule void, that it's exceeded the Board's authority, the penalty for that is that the Board is -- runs the risk of being assessed to pay the other side's legal fees.

CHAIRMAN: John?

MR. McCULLOCH: Who is the other side?

MR. KRAUS: Whoever files suit.

MS. DUNN: Whoever has filed.

MR. McCULLOCH: And who would file suit?

MS. EULER: I don't know.

MR. McCULLOCH: Nobody. For example, if we define payment, who's to complain?

MS. EULER: The consumers.

MR. McCULLOCH: They are not.

UNIDENTIFIED: The consumers get that.

MS. EULER: Well, anybody can file a declaratory-judgment action who has an interest, so anyone who has a prepaid funeral plan in Missouri could file a declaratory-judgement action, and especially a consumer who had a prepaid funeral plan that had a finance charge attached to it.

MR. KRAUS: Like Legal Aid of Missouri.

MR. McCULLOCH: I think people understand finance charges. They pay them all the time -- homes, cars, credit cards, any any other things that they purchase.

MS. EULER: But, John, I'm just saying to you that the risk is there that somebody could file.

MR. McCULLOCH: Well, there's a risk to that every day with everything, but you don't -- you can't live your life that way. I know attorneys are like that, but that's really the --

MS. EULER: That's why they pay us the big bucks, John.

MR. McCULLOCH: Well, okay.

CHAIRMAN: Okay.

MR. KRAUS: And you don't have to give a lot of weight to that risk, but it's there.

MR. McCULLOCH: Yeah. Okay.

CHAIRMAN: The next thought. Did you have something else?

MR. REINHARD: Well, no.

CHAIRMAN: Okay. Mark?

MR. REINHARD: Thank you, Earl.

CHAIRMAN: All right. The next motion, do you want to work towards Don's thought? Anybody? Let's solve #3, #4, and #5, and --

MS. GERSTEIN: I didn't know what Don's thoughts were.

CHAIRMAN: Just forget #1 and #2 at the moment.

MS. GERSTEIN: Okay. If we tabled this right now, how long would it be before we would have another structured copy?

MR. KRAUS: That's up to the Board. I mean, when you want to meet again and talk about it.

MS. DUNN: We don't have another meeting scheduled after tomorrow right now.

MR. KRAUS: You can have it be as soon

as or as late as you want it to be.

CHAIRMAN: Do you guys want to come back tomorrow for the #1 and #2?

MR. SPEAKS: Yeah.

MS. BATTAGLER: Yeah.

CHAIRMAN: Can we do open tomorrow?

MS. DUNN: Uh-huh.

MR. KRAUS: Yeah. Do you all want to hang it up. You're going to have other stuff anyway. You've got all those jobs to look at.

CHAIRMAN: What time do we start?

MR. OTTO: Do you have an open meeting posted for tomorrow?

MS. BATTAGLER: Yes, they do.

MR. OTTO: Aha.

MS. BATTAGLER: Yes, they do.

MS. DUNN: I posted it open, closed, open, closed, open, closed.

(Several people talking simultaneously.)

CHAIRMAN: Okay. So --

MR. KRAUS: Which, actually, would be better to do tomorrow because then we can make sure we have the drafts straight.

CHAIRMAN: From legal's point of view, is it better for us to go ahead and solve #3,

#4, and #5, or just leave it all till tomorrow?

MR. KRAUS: I don't think there's a legal difference one way or the other.

CHAIRMAN: But is it cleaner to have this all together on one page, or now we have more pages?

MS. DUNN: Well, they agreed upon a couple of things, but they haven't agreed upon #1 and #2; right?

MR. KRAUS: I mean, if the question is can you set -- is it okay to separate those out? Sure.

CHAIRMAN: Okay. Does that make it harder for you, separating these out?

MR. REINHARD: (Inaudible.)

MS. CLARKSTON: I'll do whatever you would like, Mr. Chairman.

MR. REINHARD: What's the matter with Don's suggestion about that, and then -- (inaudible.)

CHAIRMAN: Right. So, I'm for. That's why I was asking him if we were getting ready to create hardships by doing that, but they're saying everything is cool and fine, so somebody --

MR. REINHARD: Well, Don, repeat what you said.

MR. OTTO: My suggestion was that #3 and #4 be separated out as a separate rule and considered for approval; that #5 be separated out as a separate rule with the direction to Sharon to go back and make sure the wording is okay with Chapter 208.

CHAIRMAN: And back by tomorrow with that thought.

MR. OTTO: And back by tomorrow with that thought. And then #1 and #2 be tabled until tomorrow. So, you would wind up with three different rules, but you could vote on two of them today. You could approve #3 and #4 as written; you could approve #5 tentatively with double-checking to make sure the language is okay; and then you could come back and deal with #1 and #2 tomorrow.

MR. KRAUS: And, honestly, whether it's approved as a separate rule or simply just approved separately doesn't make a lot of difference because whether it ultimately ends up as a part of this rule or a part of another rule, it still has the same, you know,

legal meaning, so I think you can do the approvals.

MR. OTTO: But -- so, you have three votes then.

MR. KRAUS: Exactly.

CHAIRMAN: Okay. So, we'll just start it out by I say I'll entertain a motion that we go ahead and solve #3 and #4. Anybody up for that?

MR. McCULLOCH: Second.

CHAIRMAN: John? No. Make a motion.

MR. McCULLOCH: Oh, make a motion. I'm sorry.

CHAIRMAN: John makes the motion. Jim seconds the motion. Gary? Todd?

MR. MAHN: Sure.

CHAIRMAN: Joy?

MS. GERSTEIN: Sure.

CHAIRMAN: Okay. Three and four is taken care of.

MR. KRAUS: That's approving #3 and #4.

CHAIRMAN: Approving #3 and #4.

MR. KRAUS: And there's a compelling government interest in adopting an emergency rule with respect to #3 and #4.

CHAIRMAN: Absolutely. There it is. Okay.

MR. KRAUS: All right.

CHAIRMAN: Somebody entertain -- I'm entertaining a motion that Sharon do her homework on 208 for #5 and have an answer back by tomorrow. Need a motion.

MR. McCULLOCH: Make a motion.

CHAIRMAN: John.

MR. MAHN: Second.

CHAIRMAN: Todd seconds. Gary?

MR. FRAKER: Yes.

CHAIRMAN: Joy?

MS. GERSTEIN: Yes.

CHAIRMAN: And Jim? Yes. Okay. So, that takes care of that.

MS. EULER: Mr. Chairman, may I speak?

CHAIRMAN: Yes, ma'am.

MS. EULER: Do you have a time frame? Can I have it by noon.

CHAIRMAN: What time are we starting? What time are we scheduled?

MS. DUNN: Nine. Well, 7:30 in closed, and 9:00 in open.

CHAIRMAN: Okay.

MS. EULER: I will make every effort to have an answer by 9:00.

CHAIRMAN: Perfect. All right. And tabling #1 and #2; is that the correct thought? Tabling #1 and #2; that's the thought?

MR. KRAUS: That's what I heard.

CHAIRMAN: Tabling #1 and #2; is that what you said in that thought? Okay. So, I'm entertaining the motion that we table #1 and #2 till open session tomorrow morning.

MR. McCULLOCH: I'll make that motion.

CHAIRMAN: Motion.

MR. MAHN: Second.

CHAIRMAN: Second. Gary?

MR. FRAKER: Yeah.

CHAIRMAN: Joy? Jim? Yes. Okay. That takes care of that. All right.

MS. DUNN: DJ, are you staying tomorrow or --

CHAIRMAN: Are these passed out?

MS. DUNN: Yeah.

CHAIRMAN: (Inaudible.)

MS. DUNN: Well, I didn't know. This is something DJ had brought up.

CHAIRMAN: Is she staying tomorrow?

MS. DUNN: We don't know. No, she's not.

CHAIRMAN: No. Okay.

MS. DUNN: I don't know. It's up to you, Chairman.

CHAIRMAN: All right. This is just -- she's wanting to reference this; right?

MS. DUNN: Yeah. This is -- this was the topic she brought up earlier today.

CHAIRMAN: Okay. All right. So, I guess we need to pass those down and around. Actually, Sharon, you might have a thought in here.

MS. DUNN: Oh. Sharon, we just passed out the Section 208.010 that you had researched earlier.

MS. EULER: Okay.

CHAIRMAN: All right. DJ has asked us to look at this and, actually, I'm just going to ask DJ to state her concerns. Why don't you come --

MR. REINHARD: Do you all have a copy over there, Earl?

MR. KRAUS: Of the e-mail? Yes. Yes.

Thank you.

CHAIRMAN: Yeah. Yeah. We've got it.

MR. REINHARD: Do you want another one?

MS. RUSSELL: Yeah.

MS. GROSS: So, the concern on that is when a consumer comes in to prearrange that has their own private policy, and they make the funeral home the beneficiary or the -- give an assignment to the funeral home, is there a contract that needs to be written, because in our area, Family Services requires that a contract be done and we fax a copy to them. And if that is the case, they would need to have a contract and, thus, you would need to have a seller's license.

CHAIRMAN: Okay. Did everybody comprehend what we're talking about here? Somebody is just bringing a $5,000 Old American policy or XYZ policy.

MS. GROSS: And then on 208, it does say that if it's irrevocable, a prearranged funeral or burial contract, so --

CHAIRMAN: I will add behind your thought not all areas require that you send them a copy of the contract. Your particular

location is, ours doesn't.

MR. MOORE: Mine just wants a copy of the irrevocable agreement.

CHAIRMAN: So, actually, mine just sends the little form that says fill in the little boxes and sign it, so --

MR. REINHARD: I'd say, yes, you need a seller's license.

CHAIRMAN: And part of DJ's question --

MR. REINHARD: I'll go out on a limb.

MR. MAHN: Is that a motion?

MR. REINHARD: I don't care. The goddamn things, you've got an agreement with the funeral -- verbal, whatever the hell it is. You've got to be a seller.

MR. MAHN: Is that a motion?

UNIDENTIFIED: (Inaudible) -- pay $36 on that?

MR. REINHARD: I don't give a shit. Pay $36 and call it good.

CHAIRMAN: Well, that is a part of her question.

MR. REINHARD: Yes. Well, I think it is. (Inaudible.)

CHAIRMAN: It is the seller's -- it is

-- if someone brings that individual policy in, does that constitute you have to write a prearrangement contract?

MR. REINHARD: (Inaudible) -- they got it and probably be glad to give it to you.

UNIDENTIFIED: They're on welfare. They ain't got no money.

CHAIRMAN: And then does it require the $36?

MR. REINHARD: (Inaudible.)

CHAIRMAN: John?

MR. McCULLOCH: I think, personally, I think that if they just do an assignment, obviously, that's outside of what we're talking about here. But if you are going to do up a contract and you're listing services and merchandise on that, then I think that makes it become a contract -- a preneed contract, and it will probably fall under all the guidelines that we have here; okay? And the $36 and everything else. I could agree that you probably shouldn't have to because you're not getting anything, but I'm not sure that there's a place that says you can't not charge that, so --

MR. REINHARD: Well, let's put it this way --

MR. KRAUS: I think that's right, and I think there's a separate consideration as to whether you're required to do a preneed contract. I think that's a 208 and a DFS thing, that's not anything that the Board requires. Now, DFS or Chapter 208 may require that in certain instances. If they do and you comply with that and enter into a preneed a contract, then it's a preneed contract, there has to be a seller. If you don't and you're in compliance or you're out of compliance, then there is not a preneed contract and Senate Bill 1 doesn't come into play.

MS. CLARKSTON: Earl, how does that come into play if that section is repealed?

MR. REINHARD: You make the funeral home beneficiary, you sign an irrevocability saying that you're going to -- you relinquish that claim to the money to the funeral home because they've got to be the owner and the beneficiary because that money has to be completely out of their hands, that has to be subject to law. It has to be.

MR. KRAUS: Well, yeah. Connie, what -- this section is going towards what you have to do with regard to something completely outside of what the Board does with qualifying or meeting an exception or --

MS. CLARKSTON: But the two sections of 436 that are referenced are repealed. Does that have an effect on any of this?

MR. KRAUS: It -- well, that may impact -- see, I'm viewing them as two separate things.

MS. CLARKSTON: Okay.

MR. KRAUS: Is someone required to do a contract? Well, they might be, but the Board doesn't require people to do preneed contracts. You may need or want to do that for some other criteria within state government -- DFS or whatever -- but the Board doesn't require that. Now, whether a person actually does -- enters into a preneed contract is ultimately up to them. They may do it because they have an incentive because some other agency is making them do it. But if they do enter into a preneed contract, then there's a preneed contract, and all the

provisions, like John said, of this law apply, including there has to be a seller. If you don't enter into a preneed contract and you simply accept the assignments of an insurance policy, say, then there's not a preneed contract. Does that mean you might have issues with compliance with DFS? You might. But you don't have issues with the Board because there is not a preneed contract.

CHAIRMAN: You had some other comments.

MR. KRAUS: Does that make sense?

MR. McCULLOCH: Yeah.

MS. RUSSELL: Yeah. I see a loophole. You have to be careful with that statement in saying assignment because you can take an existing insurance company, they can go ahead and write a life-insurance policy on Jane Doe. They just wrote the life-insurance policy, an agent did, and says now you go take this to your funeral home and we'll just assign it over to the funeral home. Don't even -- the preneed contract doesn't come into play then; right?

MR. McCULLOCH: True.

MS. RUSSELL: That's a way around it.

So -- and that's not what 436 intended. I mean, Senate Bill 1 didn't intend to let insurance companies get around that. Not insurance companies, but insurance funding.

MR. KRAUS: I think if someone is --

MR. McCULLOCH: Well, that's different, though, isn't it?

MR. KRAUS: If someone decides that it's in their interest, for whatever reason, to assign their insurance policy to a funeral home, then that's up to them.

MR. SPEAKS: You can assign it to anybody.

MR. KRAUS: You can -- yes. You can assign it to Brad, if you want to, just because he's a great guy.

MS. GROSS: If someone comes in to prearrange because of State assistance --

(Several people talking simultaneously.)

MS. GROSS: -- and they assign a policy that has a cash value --

(Several people talking simultaneously.)

CHAIRMAN: Hang on. Hang on. Getting too many going.

MS. GROSS: -- (inaudible) -- assignee.

CHAIRMAN: State it louder.

MS. GROSS: So, if a consumer comes in and they're needing to get State assistance, they have an Old American policy, it's got a $500 cash value on it. The State is making them come in to assign it to the funeral home. I would need to have a contract at that point, or are you saying I don't?

MR. KRAUS: I'm saying the Board doesn't require you to have a contract.

MS. GROSS: So, if it's --

MR. KRAUS: But if you enter into a contract for whatever reason, then you fall under the requirements of the Board.

MS. GROSS: And then if you don't do an assignment, then that deals with something under 208 that's --

MR. KRAUS: I mean, the thing is, the person is probably going to -- the person is probably going to want something in return for assigning this.

MS. GROSS: No, they don't care.

MR. KRAUS: And if they don't care --

MS. GROSS: So, then, seriously, consumers are so trusting.

MR. KRAUS: Now, if -- now, they may be in the situation where if they don't get anything in return, then they may fall out of getting the exemption that they want. So, their goal is to get the exemption, so they know what they're doing, they may or should say I really need the preneed contract so that I fall under the exemption appropriately.

CHAIRMAN: So, maybe you're just --

MR. KRAUS: But that's their deal. The thing is, once you cross the line of entering into the preneed contract, whether you had to or not, you did, then you fall under the requirements of the Board. And I think it's --

CHAIRMAN: So, is your question actually does this -- if someone comes in under this guideline, whatever -- I'm not sure what my right word is there at the moment -- does that trigger a preneed contract; is that what you're asking?

MS. GROSS: That is my question.

CHAIRMAN: And you're saying -- do we have -- can we define that at that point?

MR. KRAUS: I'm saying --

CHAIRMAN: Hang on, because I think he may have an answer.

MR. OTTO: Well, the -- Earl -- I hate to let the record reflect I'm agreeing with Earl. But, yeah. That's not your call, it's DFS is the one that's triggering 436 by demanding a preneed contract. Now, what this Board, I think, could do is, one, perhaps pass a resolution asking that DFS be consistent throughout the state on this issue because, you know, my point that I go knocking on their door all the time or calling them up, and I don't really care what the rule is if they would just tell me what the rule is, and I knew the rule was the same in Chillicothe as it was in Dexter as it was in St. Louis, but it's not. So, if this Board could somehow, some way push for consistency on DFS across the state, that would be a wonderful thing. Secondly, I think this Board probably could, if you wanted to, say that for a preneed contract that is funded solely by the assignment of a preexisting paid-in-full insurance policy, there is not a $36 fee.

CHAIRMAN: And did you use the word --

the eligibility for benefits, did you add that into that because DJ and I was actually saying basically the same thing --

MR. OTTO: Basically, the same thing.

CHAIRMAN: -- as a qualification. If someone came in under that --

MR. OTTO: Yeah.

CHAIRMAN: -- under that guideline of 208, that the fee could be waived?

MR. OTTO: Yeah. But, now, obviously, somebody might come in with an assignment where they had a $1,000 policy and then they also give you $5,000; that's different.

CHAIRMAN: That's different.

MR. OTTO: But if all they're doing is assigning something to you and they're not giving you anything else, I think it's within this Board's power to say that's not a fee-generating incident.

MR. KRAUS: Well, and we discussed a little bit earlier about how -- you know, while this may not be a Board determination, that doesn't mean that there can't be communication between the Board and a State agency like DFS to try to facilitate

consistency for the industry. You could certainly do that.

MS. GROSS: But on this 208, to make it clear, the State -- and I can only speak for the area that I deal with, and reading on this that the consumer comes in, they're going to get assistance if they come away with a contract that shows that they've assigned or made the funeral home the beneficiary. And that's what this looks like here because it says assignor has taken into account that it's considered an asset if they enter into that, whether it's cash or insurance or whatever. So, if you don't write a contract, is there a possibility that you could be in trouble with DFS because you falsely said to them we have a contract and you don't?

UNIDENTIFIED: That's a good point.

MR. KRAUS: Well, I think that person may have -- I think that person who is trying to get that exemption may have issues with DFS. As to whether you'll have legal issues with DFS --

MS. GROSS: Well, we have to sign -- they will fax us reports stating does this

person have something, and we have to put yes or no. And if it -- and is it irrevocable.

MR. MOORE: Yeah. They've got a life insurance for future services and it's irrevocable.

MR. REINHARD: Well, but he's saying -- Martin is saying -- (inaudible) -- irrevocability -- (inaudible.)

MR. McCULLOCH: That's the key.

MS. GROSS: But this -- the law states it has to be an irrevocable, prearranged funeral with a funeral contract; right?

CHAIRMAN: I've never --

UNIDENTIFIED: I've done verbal contracts.

MR. REINHARD: Even if you had an irrevocability saying you're going to put the money toward -- you know, that they're planning toward the funeral or --

CHAIRMAN: I don't know that we have answered your question, but --

MR. KRAUS: Yeah. I mean, if your question is are you subject to any liability, legal or otherwise, with respect to signing some document that someone is going to take to

DFS, I don't think that's my place to address that, because I think that's a question -- a proper question for either DFS or your own private legal counsel.

CHAIRMAN: I think we can say the precedent set by DFS at this point is they've never went after anybody.

MS. GROSS: But we -- and I know this is not 436, but we refer to this section in all of our things on irrevocable on the contracts, and it's -- it looks like that -- I mean, we have to look at that. Is it a contract that they are doing?

CHAIRMAN: I guess the only thing I --

MS. GROSS: I mean, it's just like it's not a written or a verbal -- I mean, it's not just a verbal thing or whatever, wouldn't that be a contract? This is why -- this is the statute here, too, that we're referring to. I mean, don't we put it on all our contracts and it's in 436, so if you were getting assistance under it?

CHAIRMAN: You're taking the position, though, that you need to write a contract for yourself; correct?

MS. GROSS: I'm thinking that's what it is by the law. And if you --

MR. KRAUS: Right. But if your question is does this section in 208 that falls under DFS require you to enter into a preneed contract and you're asking this Board's opinion of that, that's not anything that this Board has authority over, as to whether you're required to enter into a contract. I think the Board can tell you that the Board doesn't require you to enter into a contract, but this section might.

MS. GROSS: So, if you do --

MR. KRAUS: But that's not the Board's deal.

MS. GROSS: Okay. So, if you go into a -- if you write a contract on the person that's getting assistance, then you have to follow 208? That's the only time it would come through all of that?

MR. MAHN: 436.

MS. GROSS: No. If you --

MR. OTTO: You're asking the wrong group is the problem.

MR. KRAUS: Yeah.

CHAIRMAN: Yeah.

MR. OTTO: You need to be in front of the 208 people.

MS. GROSS: Okay.

CHAIRMAN: All right.

MS. GROSS: That didn't answer it, but that's okay.

CHAIRMAN: Best we can do at the moment, I guess, so --

MR. FRAKER: I like Don's idea about if it's just a policy and no money changed hands, no $35 fee, even though you might write a contract to meet DFS's requirements.

CHAIRMAN: Bring that up at the open tomorrow.

MR. FRAKER: I kind of like that.

MS. DUNN: Well, the fee is not discussed at $35, it's discussed at $36.

(Several people talking simultaneously.)

CHAIRMAN: Yes. Okay. All right.

MR. KRAUS: DJ, I can tell you that a guy over at the Division of Legal Services, which is in the Department of Social Services within which is the Division of Family Services, is Mark Gutchen, who does deal with

this kind of thing all the time. I don't know if he talked to you about it, but he might be a resource.

MS. GROSS: Okay.

CHAIRMAN: Okay. All right. Two announcements. Board members, we're back tomorrow morning, 7:30, for closed. Public, we're back in open at 9:00 tomorrow morning, so anyone --

MS. DUNN: And we're in the room down the hall, which is much smaller, so everybody needs to really get along.

MR. KRAUS: We're in the Missouri? And bring your jackets; it's really cold in there.

MS. BATTAGLER: Is it?

MR. KRAUS: Yes.

(Several people talking simultaneously.)

MS. EULER: If there are enough people in the room, it won't be.

MR. MAHN: Sharon, have you got an opinion on that yet?

MS. EULER: I'm working on it.

MR. MAHN: I mean, nothing you can share at this moment so we wouldn't have to

have an open in the morning?

CHAIRMAN: No. We're sharing it tomorrow.

MS. RUSSELL: Are we going to -- are you going to be bringing up the preneed-contract requirements, because after hearing the word "all," I don't think I want to bring that back up, but at least we need the disclosures and --

CHAIRMAN: You bring that up at open tomorrow.

MS. RUSSELL: I'm just asking if we're going to discuss that to --

CHAIRMAN: If you bring it up.

MR. KRAUS: I saw a further draft of that and I expect that we will.

MS. RUSSELL: Perfect.

MR. MOORE: Does the Board have an opinion yet on the electronic-death-certification situation?

CHAIRMAN: Not yet, but we will tomorrow morning. So, somebody make a motion to adjourn because our court reporter needs to leave.

MR. REINHARD: Yes, she does.

MR. MAHN: Motion, first.

CHAIRMAN: First. Second?

MS. GERSTEIN: I will second.

CHAIRMAN: Second. All right. Everybody else said yes, yes, yes. We are adjourned.

(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 September 2, 2009; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 19th day of October, 2009.

Kristy B. Bradshaw

KRISTY B. BRADSHAW, CCR

ORIGINAL

MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

TRANSCRIPTION OF MEETING

DIVISION OF PROFESSIONAL REGISTRATION
3605 MISSOURI BOULEVARD
JEFFERSON CITY, MISSOURI

SEPTEMBER 3, 2009
9:15 A.M. - 3:55 P.M.

CHAIRMAN: Let's pick it up. So, does it matter which one? I don't guess it does, does it?

MR. KRAUS: Well, let's see. There's redrafts that we talked about early yesterday. Then there's the 208 redraft that we have from Sharon. And, shortly, we'll have a disclosure sheet to look at. Why don't we start with --

MS. DUNN: I have a question. On the provider and seller annual reports with all the dates that there was such a conversation about yesterday, is that one done now, or was there going to be a word change in that?

MR. KRAUS: I'll have to look at my notes. I don't recall.

MS. DUNN: Okay. That one is important because we need to get that one filed.

MR. KRAUS: Right. Right. Yeah, I'll look at my notes.

MR. OTTO: It was on a handout here.

MS. DUNN: It's on the handout today?

MR. OTTO: One of the things in the packet, yeah.

MS. DUNN: Oh, okay.

MR. OTTO: It's still got 4, 5, 6

instead of 1, 2, 3.

MS. DUNN: I don't think I gave it as a handout today.

MR. OTTO: I didn't bring anything in with me.

MS. DUNN: You didn't?

MR. KRAUS: There is a redraft of it.

MR. OTTO: There's a redraft.

MS. DUNN: Okay.

MR. OTTO: Instead of colors, the one that we'll get today was red. This is front and back.

MS. DUNN: I don't have one like that.

UNIDENTIFIED: What are you asking? I'm confused.

MS. DUNN: Okay.

UNIDENTIFIED: Oh. Annual -- (inaudible).

MS. DUNN: It didn't look like his, but that's okay. I see it now. Okay. We'll start wherever he wants to start.

MR. KRAUS: Yeah. We could start with that if you want.

MS. DUNN: Okay. We're going to start on the emergency rule regarding filing of

annual reports.

MR. KRAUS: Right. And it's the one that should have redraft after comments on 9/2/09 at the top.

MR. OTTO: No. You're looking at the wrong.

MS. GERSTEIN: And then this is the other one.

MS. BATTAGLER: It's got one on each side. One is a revised and one is -- or suggested.

MR. OTTO: Is this what you're talking about for the annual report?

MR. KRAUS: Well, but they did a redo.

MS. DUNN: Okay.

MR. KRAUS: The one that should --

UNIDENTIFIED: Mine doesn't look like that.

UNIDENTIFIED: Mine, either.

MS. DUNN: Mine doesn't look like yours.

MR. OTTO: Oh, this was in the packet over here.

UNIDENTIFIED: Okay.

UNIDENTIFIED: Okay.

MR. MAHN: Yes. That's right.

MS. GERSTEIN: Okay. I don't know which one he's talking about.

(Several people talking simultaneously.)

MS. CLARKSTON: Don, did you get the -- I think that was in yesterday's agenda.

MR. OTTO: This was -- no. This was in today, because --

MR. KRAUS: This is the group. It was in the group of four or so that I sent last time.

MS. DUNN: Yes. I thought we made these copies, so I don't know what's out there.

CHAIRMAN: Well, you did something because I got it.

MR. KRAUS: You have it.

MR. SPEAKS: Oh, yeah. It's in the stapled items.

MS. RUSSELL: Oh, it's in the stapled -- never mind, Becky.

MR. OTTO: Okay. We just got an extra sheet of paper then. We should be fine.

MS. GERSTEIN: This one, I don't think I have.

MR. OTTO: No, that's fine.

UNIDENTIFIED: Here it is.

(Several people talking simultaneously.)

MR. KRAUS: All right. So, we have redraft after comments on 9/2/09 --

MS. GERSTEIN: I do have it.

MR. KRAUS: -- of the emergency rule regarding filing of annual reports.

MS. DUNN: This is the one that I would really like for you all to read to see if people are going to understand this.

MR. OTTO: This might take just an overnight read.

MR. SPEAKS: The disclosure?

MS. DUNN: No. We're on this -- the annual report.

MR. SPEAKS: Oh, okay.

MS. BATTAGLER: The only suggestion I think I could make is #2. Instead of saying between August 28th, 2009, and August 31st, it should say executed from August 28th, 2009, through August 31st, so they know to include those dates, but, otherwise, it seemed very clear.

MR. OTTO: Yeah. That's about as good as you can get.

MR. KRAUS: From and then through?

MS. BATTAGLER: And through, yeah.

MS. DUNN: Executed from August 28th through August 31st.

MR. KRAUS: So, you're not excluding those two dates?

MS. BATTAGLER: Right.

MS. DUNN: And if we get this rule, I changed a lot of froms and throughs on those annual reports, so I hope everyone understands the froms and throughs.

MS. BATTAGLER: Yeah. Right. It's just so that -- yeah. It seems very clear on the rest of it.

MS. RUSSELL: I think so, too. I think it's --

MR. OTTO: Paragraph 3, is that the right -- is that the reference you wanted?

MR. KRAUS: For providers? I think so.

MR. OTTO: So, for the reporting year ending October 31st, 2009, providers shall file an annual report as provided in Senate Bill 1. Or did you want under the old law?

MS. DUNN: Yeah. Because that may not be right. Because providers under the new law

have to have an annual fee.

MR. KRAUS: 333.315.3(4) is file an annual report with the State Board which shall contain.

MS. DUNN: Okay. But there will be an annual fee with that; right? Oh, no. That's ending October 31st. I understand. So, providers that are going to --

MR. KRAUS: Because that -- and sub 3 just addresses that first reporting period for providers.

MR. OTTO: And the way that's worded now is somebody would have to be following the new law for a contract sold under the previous law.

MR. KRAUS: They would have to comply with the new law --

MR. OTTO: Reporting -- for reporting.

MR. KRAUS: -- for reporting.

MR. OTTO: For contracts sold under the old law.

MR. KRAUS: For reporting requirements as of October 31st, 2009.

MR. OTTO: But since they do that -- most people do that on a yearly basis --

MR. KRAUS: That's right.

MR. OTTO: -- that will include contracts -- I just want to make sure that's what you intended.

MR. KRAUS: It is.

MR. OTTO: It doesn't matter to me one way or the other, I don't think, but if that's what you intended, that's fine. I just--

MS. DUNN: So, the providers in #3 are going to file a report from what date?

MS. BATTAGLER: Does that even match up with the sellers, the -- it needs to match up with the sellers to be consistent.

MR. KRAUS: Well, for providers, it would be the -- for the reporting year ending October 31, and that goes back to their previous reporting, whenever that was.

MR. MAHN: September 1st, 2008.

MS. DUNN: Don't we want all these reports to be on the same schedule -- providers and sellers? I mean, I know we've hashed this out a hundred times, and I apologize, Earl. I just noticed -- so, don't crown me.

MR. KRAUS: The thing is, what

providers report and what sellers report is very, very different.

MS. DUNN: Yes.

MR. KRAUS: And so, I think we were looking at it as for providers, it's a whole lot more straightforward, so why spell out all this different stuff for providers when you don't really need to?

MS. DUNN: Well, because we have to issue a license to providers.

MR. KRAUS: Do what? Well, what does that have to do with this reporting?

MS. DUNN: So, in future years, are we going to be designating a reporting period for providers? Is that taken care of above? Our biggest problem is, people call in and say, okay, now I know I have to get a license issued by this date, and I also need to get a report issued by this date, so I'm going to make my reporting period as of August 31st. And we go okay. So, I just want to make sure we're covering the providers for the future as we are doing the sellers.

MR. KRAUS: I mean, if you want to specify here what the reporting period for

providers is, the reporting period, not the deadline, the period, that's what I'm talking about, anyway, either for this past year or for successive years or both, you can. It's okay.

MS. DUNN: I would -- what do you think, Lori?

MS. HAYES: Keep them on the same.

MS. DUNN: I would like to keep them on the same reporting dates so that it's consistent.

MR. KRAUS: That's fine.

MS. DUNN: Does everyone understand?

MS. RUSSELL: Absolutely. Absolutely.

MR. KRAUS: I agree with that.

MR. OTTO: And, also, you know, the providers are supposed to tell you what sellers you're dealing with, and the seller is supposed to tell you what providers you're dealing with. And if you've got different reporting years, you can't match them up.

MS. DUNN: Right. And I should have brought this up before, but that's what I'd like for this to include so the providers have the same reporting periods as sellers even

though the content of the report is different.

MR. MAHN: (Inaudible.)

MR. KRAUS: And it's much less -- it is much less date specific for providers, too. But that doesn't mean you can't set it out and then it's consistent, and then it's the same for everybody.

MS. DUNN: Right.

MR. KRAUS: Which is a good thing.

MS. DUNN: Because they send them all in together.

MR. MAHN: Would #3 just match -- mirror #2 then, basically?

MS. DUNN: Pardon me?

MR. MAHN: Would #3 kind of mirror #2 on the dates?

MR. KRAUS: Oh, I would assume --

MS. RUSSELL: Maybe you should separate it --

MS. BATTAGLER: Number 1 and #2.

MS. RUSSELL: Maybe you should put #1 and #2 as sellers and then do another category for providers, you know.

MS. BATTAGLER: Where the providers shall follow the same reporting period as the

sellers.

MR. KRAUS: Well, I think I would probably just set it out again in #3 what the providers dates are.

MS. RUSSELL: Perfect. Perfect.

MR. KRAUS: And they happen to be the same as the ones above.

MS. RUSSELL: As the sellers.

MS. DUNN: Great.

MR. KRAUS: So, then everybody knows.

MS. RUSSELL: There you go.

MR. SPEAKS: That makes sense to me.

MS. RUSSELL: That would do it.

MS. CLARKSTON: And I'm going to toss out another formatting thing, Earl. What we might do is make section 1 sellers, A and B, section 2, providers, A and B.

MR. KRAUS: Okay.

UNIDENTIFIED: Yeah.

MS. DUNN: And we think this is a big concern for the small-business-impact statement.

MS. CLARKSTON: I started that small-business-impact statement and I am seeing that it probably is.

MS. RUSSELL: Oh, yeah.

MS. CLARKSTON: And I think I have a fairly decent handle on that one.

UNIDENTIFIED: (Inaudible) -- small business out of business in the state of Missouri -- (inaudible.)

MS. CLARKSTON: I envision -- (inaudible) -- hearing. What do you think?

MS. DUNN: I think the whole room agrees on this one.

UNIDENTIFIED: Yeah.

UNIDENTIFIED: Yeah.

MR. KRAUS: Excellent.

CHAIRMAN: That was pretty simple.

UNIDENTIFIED: Yeah. That's a good start.

MR. SPEAKS: Meeting adjourned.

(Several people talking simultaneously.)

CHAIRMAN: It took 20 minutes to figure out a date, but -- you know.

MR. KRAUS: Does the Board want to see it again, or do you want us to just make those changes and go forward?

UNIDENTIFIED: Make them and go forward.

CHAIRMAN: Just make the changes. Everybody agree?

MR. KRAUS: So, we need a motion and a vote.

CHAIRMAN: Motion to just make the changes and it's approved?

MR. FRAKER: I'll make the motion.

CHAIRMAN: John seconds, Gary made the motion. Todd?

MR. MAHN: Yes.

CHAIRMAN: Joy?

MS. DUNN: And if Lori and I just see it to make sure.

MR. KRAUS: Oh, well, yeah. No. I'm just going to give it to Connie; we're going to file it, and send it out.

MS. CLARKSTON: Yeah. I was going to say, the secrets are -- (inaudible.)

MR. KRAUS: Include a provision for all fees to be paid to Earl.

CHAIRMAN: There you go. Can I get in on that action?

MS. CLARKSTON: Do I need to establish you a fund through this whole process then?

MR. KRAUS: There won't be any

small-business impact.

MS. CLARKSTON: Okay. But I wasn't worried about small business, but I am worried about how you're going to deposit all that.

MR. KRAUS: Actually, have we talked about small business on this already? We have; right?

MS. CLARKSTON: I think I've got enough on this one.

MR. KRAUS: Okay. All right.

CHAIRMAN: And the motion included that the Board makes a finding that there is competent and substantial evidence in the record to support the need for making the date change in this rule.

MS. RUSSELL: You're getting good at that, Martin.

CHAIRMAN: Becky helped me out.

MS. DUNN: I typed it out for him.

MR. SPEAKS: He's got it memorized now.

MR. KRAUS: All right. Well, on the -- then we also have -- if we're moving on?

CHAIRMAN: Yes.

MR. KRAUS: The next one, redraft, again, on alternative A rule regarding seller

requirements upon change of provider. All right. And I forget what the changes were that we made to this. Get my notes from yesterday.

MS. BATTAGLER: Let me ask how you would attempt to provide a new -- on #5. In the event that a new contract was executed, how would you put that into a contract with the new provider or the -- yeah -- the new contract does not have the origination fee. When you write out all the statement of funeral goods and services, minus an origination fee, I'm at a loss to how you account for no origination fee.

MR. KRAUS: You mean, how you impose that on the new seller?

MS. BATTAGLER: And you have to trust or if you're doing a trust, you have to trust all that money, how do you show that you're not taking the 5 percent if you're trusting? I mean, it's -- I think it can get very confusing with the accounting and -- because you have the right to take 5 percent out of anything.

MR. SPEAKS: In other words, how would

the trustee know not to let you have that?

MS. BATTAGLER: Right.

MR. KRAUS: Yeah. And that's an excellent question. I don't know that they will. And I foresee this as being a requirement that the old seller needs to be aware of and comply with, the new seller needs to be aware of and comply with. And then if there's some kind of complaint about that, then it will addressed through a discipline-type thing.

MS. BATTAGLER: And how do you account to people?

MR. KRAUS: But I don't foresee it as something -- and there's no requirement, I don't think, at all, that the old seller, you know, try to impose any kind of thing on the new seller or make them do something because this requirement applies to the new seller, too.

MR. OTTO: Yeah. There is --

MR. KRAUS: And they need to follow it.

MR. OTTO: You can get it through -- under the statute, you can get away with that because the statute says there shall be no

charge as part of the transfer process to the consumer.

MS. BATTAGLER: Right.

MR. OTTO: So, a new origination fee -- a second origination fee would be a charge to the --

MS. BATTAGLER: But you're not charging a separate fee for an origination fee. It's only 5 percent of the total contract price. So, when you're running out from an old contract to a new contract, and you're explaining all the goods and services that you're going to provide at the cost on the GPL, the price you have listed on the GPL, how do you back out 5 percent?

MR. OTTO: You don't. You just don't take -- you don't take out the 5 percent is what they're trying to get out here. When you first sell a contract --

MS. BATTAGLER: But you're still charging it to the consumer if you don't back it out of the total funeral-contract price.

MR. OTTO: No.

MR. SPEAKS: Well, it's not a charge.

MR. OTTO: It's not a charge, it's

just the 5 -- the origination -- we're not talking about the per-contract fee. The origination fee is the 5 percent you're allowed to withdraw from the trust to keep for yourself.

MS. BATTAGLER: Right.

MR. OTTO: You just don't do that when it's been transferred from another funeral home to you.

MS. BATTAGLER: I understand that, but if a new contract has to be written, you have to put that entire amount into trust; okay? You're not -- whenever that money is transferred, you're not putting that entire amount into trust, you're only putting 95 percent of it into trust -- into the new trust.

MR. OTTO: No.

MR. KRAUS: Well, you would be depositing the entire amount that you, as the new seller, received into trust.

MR. OTTO: Yeah. The amount that you get --

MS. BATTAGLER: But it's not going to match the contract that you write.

MR. KRAUS: That's true.

MR. SPEAKS: That is true.

MR. OTTO: That's okay.

MR. KRAUS: It'll be 5 percent less than that.

MS. BATTAGLER: Right.

MR. KRAUS: And it -- I mean, it may be a good practice to indicate either on that contract or in some kind of written exchange between the old and the new seller that this amount has been taken out by the old seller, and that that's why you don't have it.

MS. BATTAGLER: It's going to get real confusing.

MR. KRAUS: I don't know of a better way to do that.

MR. SPEAKS: I guess I'd be more worried about the new seller trying to withdraw the 5 percent from the trustee.

(Several people talking simultaneously.)

MR. KRAUS: See, I think there would be potential for that. They shouldn't do that. It says they shouldn't do that, and then they shouldn't.

MR. SPEAKS: They shouldn't, but how would the trustee know?

MS. RUSSELL: Yeah. You're going to have to -- (inaudible.)

MR. SPEAKS: What if the old seller has to notify the trustee that the --

MR. KRAUS: Yeah.

MR. SPEAKS: If it's the same trustee, I don't think there's a problem, but if there's a new trustee, too.

MR. OTTO: Well, there's a lot of bank to bank -- there's a lot of banking --

MR. KRAUS: Yeah. I mean, there could be a whole new -- there could be a whole new trust with it, also. And, you know, then you're putting a bunch of burdens on the trustee to that -- you know, they're not cops.

MR. SPEAKS: Yeah. Well, that's true. And, truthfully, it doesn't happen that often, probably.

MS. BATTAGLER: And it is going to be a big impact on the small business for -- just because you switch from one place to another doesn't mean you don't still have the same costs involved from one to another. You've still got to set up a trust, you've still got to set up, you know, commissions on whoever is

writing the contract, and whatever you've got to do, all your administrative fees and things like that. You're still going to have all those same costs that the original provider had.

MR. KRAUS: That's true. And that's an issue that's reflective in the -- that's in the statute and is reflected in this rule. You're exactly right. It looks like the other changes we tried to get in here were building in that it's the option of the seller.

MR. OTTO: Yeah. I think you did that good.

MR. KRAUS: And addressing all the different kinds of accounts.

CHAIRMAN: I'm sure it is, but #5 is the one you were talking about for making sure that another 5 percent was not taken out; right?

MR. KRAUS: Yes.

UNIDENTIFIED: Plus you're not entitled to it anyway, so -- (inaudible.)

MS. BATTAGLER: Right. But it would get the money back -- (inaudible.)

MR. McCULLOCH: And, yet, I have to

tell you how much it is --

(Several people talking simultaneously.)

MR. McCULLOCH: -- and you're going to report it on this form.

MR. SPEAKS: And the trustee -- (inaudible) -- to provide that, and now we're going to say, John, you should bring this up and that is wrong.

UNIDENTIFIED: Yeah.

MR. SPEAKS: You're going to point to the trustee and go I just used the number that guy gave me.

MR. McCULLOCH: But the bottom line is it's not your income, and you're never going to get it anyway, so -- (inaudible.)

MR. SPEAKS: So, what do you care?

(Several people talking simultaneously.)

MR. OTTO: Well, it's the new seller that cares. The new seller is the funeral home that cares, not the consumer.

MR. SPEAKS: Right.

MR. McCULLOCH: Well, I'm just saying that someone -- well, you're right.

MS. BATTAGLER: Yeah.

MR. McCULLOCH: So, the new seller

might want to argue that then.

MS. BATTAGLER: But they didn't make enough money, so it's not worth it for me to transfer.

MR. OTTO: Well, that's why a new funeral home should not do this without checking first and seeing how much am I going to get.

(Several people talking simultaneously.)

MR. OTTO: Now, if you're dumb enough to say I'll take that without checking --

MS. RUSSELL: Exactly.

MS. BATTAGLER: Uh-huh.

MR. SPEAKS: It's your fault.

MR. OTTO: -- it's your fault.

MS. RUSSELL: Yeah.

MR. McCULLOCH: I mean, it is based on what the agreement is, too; right?

MS. RUSSELL: Between the seller and the provider, yeah.

UNIDENTIFIED: Yeah.

MR. McCULLOCH: So, if you have an agreement that you're going to get zero, then --

(Several people talking simultaneously.)

MR. RUSSELL: Yeah. Tough luck.

MS. BATTAGLER: Then you get a zero.

MR. OTTO: But this is as good as you're going to get.

MS. RUSSELL: Oh, sorry. We're okay. Aren't we, John?

UNIDENTIFIED: If you're changing the provider, then you can't -- basically, you can't --

(Several people talking simultaneously.)

CHAIRMAN: I told Gary Fraker last night whenever we were having dinner together, I said I hope folks don't think, well, he doesn't run this very organized or something, because we need to work these things out. So, conversations that happen around the room and sometimes it gets a little chaotic and whatever, but if we don't wrestle this now, where are you going to wrestle it?

MS. RUSSELL: Exactly.

(Several people talking simultaneously.)

MS. BATTAGLER: Right. I love the small, open atmosphere. I've got to tell you, I've been to a few State meetings.

UNIDENTIFIED: It's a dialogue.

MS. RUSSELL: Absolutely.

MS. BATTAGLER: It's good.

UNIDENTIFIED: I wish we had more people here.

MS. BATTAGLER: Yeah.

UNIDENTIFIED: Yeah. That's the only embarrassing thing. The people who complain are going to be the ones who could have been here and just weren't.

MS. BATTAGLER: Yeah. And then they're not going to have a clue about most of the stuff that we've been discussing and why it was decided.

UNIDENTIFIED: Why did they do this? Why did they do that?

(Several people talking simultaneously.)

MS. DUNN: But Brad is going to defend us. Okay. Put that in the small-business-impact statement. Okay. We got that small area -- (inaudible.)

MR. MAHN: Did we make a motion on that?

CHAIRMAN: Okay. Do what?

MR. SPEAKS: Good rule.

MR. OTTO: Well, given the statute. I

mean --

CHAIRMAN: Everybody seems to be okay. Was there something in the very beginning there that we needed or just fine as is? I guess we're open for the motion then?

MR. MAHN: Motion.

CHAIRMAN: There's Todd.

MR. FRAKER: Second.

CHAIRMAN: Gary seconds. John? Yes. Joy? Yes. So, then it will be approved in final draft and the Board makes the finding that there is competent and substantial evidence that the redo of this rule will support the need for the rule.

MS. DUNN: Connie.

CHAIRMAN: Oh, yes. Connie. I am so sorry, Connie.

MS. CLARKSTON: No. I've been making notes as we've gone through, so --

MS. DUNN: Do we need anything else?

MS. CLARKSTON: I don't think so. There's not going to be a cost to the Board on this rule and licensees aren't going to have to pay any fees to the Board, but I've noted small-business concerns as they've been

stated.

MS. BATTAGLER: Basically, 5 percent of every contract that's transferred.

CHAIRMAN: Did you already do your impact statements on the first one that we just did? Have you already done those, or did we have to --

MS. DUNN: On the annual reports?

CHAIRMAN: On the annual reports?

MS. CLARKSTON: Those are the -- that's the one I've been working on this past week trying to document and I've sent back a draft of that. But at some point -- Gina brought it down this morning, I thought.

MS. DUNN: Oh. I didn't know what -- okay.

MS. CLARKSTON: And it is a very rough draft, but --

MS. DUNN: Okay.

MS. CLARKSTON: -- it may behoove us at some point to open that.

MS. DUNN: I thought that was my -- I thought I was supposed to be paying attention to this, so I'm glad you told me. I did get something else, but I didn't know. Okay.

Thanks.

MS. CLARKSTON: We can talk about that later.

CHAIRMAN: Okay. So, you're okay with it, though, for here? Okay. So, first page of those are done. I guess we are to #2 there. What is irrevocable and irrevocable contract?

MR. KRAUS: All right. Again, a redraft, and we have taken that back to try to address the different types of funding mechanisms. I think that was it. Because, initially, I think we just talked about trusts.

CHAIRMAN: We just thought it needed to be broader? Is that what the thought was?

MR. KRAUS: They said, well, what about joint accounts and what about insurance funded.

CHAIRMAN: Yeah. Okay. Yes, sir.

MR. OTTO: On that first one, after the semicolon -- I mean, the first paragraph, I think, was dealing with changes to the contract. But after that semicolon, it talks about new providers, which is really the second paragraph.

MR. KRAUS: Well, I think the first paragraph was talking about changing the provider. I suppose that may --

MR. OTTO: Yeah. I mean, there's two issues; one, the consumer comes in and says I don't want this, I want -- you know, I want a different casket. I want a different thing. I don't have -- and then the second issue is I want a completely different funeral home. And that paragraph 2 covers the different funeral home. Really, I mean, I think in paragraph 1, I think everything after the semicolon could go out because that's covered by paragraph 2. Well, maybe that's not correct, but you need that third paragraph. I'm incorrect. Because you've got three situations: One, where the consumer just wants to make changes in the goods and services; secondly, where they want to make a change of provider where there is a contract between the seller and the provider; and third, where they want to change provider where there is no contract between the seller and the provider.

MR. KRAUS: Well, do we need a rule addressing when someone just comes in and

wants to make changes to an irrevocable contract? I mean, that's new; that's the first I've heard that.

MR. OTTO: Well, that first sentence covers that. But the first sentence through the semicolon, the first two -- to the semicolon covered, because somebody might have a bronze Triune and come in and say --

MR. KRAUS: Well, the first one talks about changing providers.

MS. RUSSELL: Change the provider, not just the --

MR. KRAUS: Not changing terms.

MS. RUSSELL: Yeah.

MR. OTTO: Okay.

MR. MAHN: I don't see how this --

MS. BATTAGLER: I think it's just clarifying that no funds actually go to the purchaser and it just goes directly from one bank to another. (Inaudible.)

MR. OTTO: Okay. I guess you're right. But what I was looking for is when the consumer comes in, the original contract was for the bronze Triune, and they say I want -- I'm going to change it, I want the concrete

box.

MS. RUSSELL: Well, that would be between them and the original contract.

MR. McCULLOCH: That's a change of the contract, though.

MS. RUSSELL: But if they're going to the new person and they want to change that, that would be under the new preneed contract.

MR. OTTO: Well, I mean --

MS. BATTAGLER: And it's fine, but they still don't get a refund, they just have to use the money towards something else.

MR. OTTO: Yeah. See, that's what's not clear. That's where was I was coming from.

MS. RUSSELL: I think -- (inaudible) -- put that in here.

MS. BATTAGLER: No. It just says they get no refund on it, so I think that's pretty clear.

MS. RUSSELL: Yeah. Yeah. Pretty clear.

MR. OTTO: Well, I just don't know. Are the rules -- withdraw everything I said about this rule. It's fine, because I was misreading it. But you need a separate

paragraph that says what happens when the consumer is keeping the original provider, but wants to change the goods and services, making it clear that the purchaser is not getting that extra back. It was originally a $10,000 funeral. They come into the funeral home and say I want to change this, it's now only a $5,000 funeral, because that happens quite a bit, and then the nephew thinks that we're getting that other $5,000 back.

MS. BATTAGLER: But if they're told that they can get a refund -- (inaudible.)

(Several people talking simultaneously.)

MR. OTTO: I know. That's what I'm saying is, should there be a rule to make this specific.

MS. BATTAGLER: Make it clear for the consumer, like Don just said, that they know that they're not getting -- they can change it, they can drop it, but they're not getting any money back. It goes --

MR. OTTO: It goes to the State.

MS. RUSSELL: You've got that word "any" in there.

MS. BATTAGLER: That's what State

assistance was, but if it's not state assistance and it's just irrevocable, I mean, not that -- (inaudible.)

CHAIRMAN: That depends on -- okay. I just --

MR. KRAUS: I don't know. I mean, do people really think they can --

MR. OTTO: Yes.

MS. BATTAGLER: Yes, they do.

MR. KRAUS: -- after they sign an irrevocable contract --

UNIDENTIFIED: Oh, yes.

MR. KRAUS: -- and they come in and say I'm revoking it?

MR. OTTO: But it's usually not the -- it's usually not Grandma, it's Grandma's nephew who now has power of attorney.

MS. BATTAGLER: It's the mom and dad that's the --

MR. McCULLOCH: Yes, they do. But then you have to explain it to them.

MS. BATTAGLER: It's the mom that put $10,000 in their funeral and the kid comes in after she dies and says, well, she didn't really need that, she -- you know, we'll do a

direct cremation or something. Well, they've got all this extra money thinking they're going to get it back.

MR. KRAUS: And for those people who don't understand that, will a rule and CSR by the Board help them?

MS. BATTAGLER: They don't know. I don't know.

MR. McCULLOCH: No.

CHAIRMAN: Well, hang on a second, because I want to -- that's -- I wanted to go to this point --

MR. KRAUS: Maybe. I don't know.

CHAIRMAN: -- and let's kind of, like, get ahead of that thought, before we get to that place of that irrevocable that they can't. Correct me at the possibility of showing my ignorance. The only reason, other than just making it that way because you want to -- I mean, that's legitimate. But the real only reason for making a contract irrevocable is to request to be receiving benefits; correct?

MS. BATTAGLER: Not necessarily.

MR. OTTO: Not quite.

MS. BATTAGLER: Because we have had ladies that come in that say, well, I don't trust my nephew or my kid or something like that.

CHAIRMAN: Okay.

MS. BATTAGLER: I want to make sure that I'm getting what I want.

CHAIRMAN: That's legitimate. That's legitimate. Somehow that, I would think, would want to be notated -- I mean, I know it's that way, but there should be some, maybe, notation on file. Here's the part that's spinning in my head right now. Board, how many times have we looked at these and the funeral director said I'm not going to give them their money back because it's an irrevocable contract. Well, it was just some counselor somewhere just checked the irrevocable box.

MS. BATTAGLER: You don't do that. They have to sign for irrevocable.

CHAIRMAN: Well, oh, yeah. But the counselor says, you know, some day you might be needing Medicaid or whatever. So, let's go ahead and get this -- let's just --

MR. SPEAKS: It would be easier to do it now.

MS. RUSSELL: Yeah. Let's just do it now.

CHAIRMAN: Let's just get this irrevocable thing. Oh, I've heard that a thousand times.

MS. RUSSELL: Oh, absolutely.

CHAIRMAN: Let's just go ahead and get it in that condition so if you ever find yourself in a problem and then it's no big deal. You've already got it taken care of. So, then funeral director -- family comes in, they're madder than hops because the funeral director won't give them their money back because it's an irrevocable contract. And on what grounds? Just because I --

MS. BATTAGLER: So, what do you do? You can't give them the money back if it's irrevocable.

MR. MAHN: Yeah, you can.

MS. RUSSELL: Funeral homes do. Funeral homes do, and --

MR. MAHN: Only if they're on Medicaid.

MS. RUSSELL: Most of the funeral

homes do give their money back now --
(inaudible.)
(Several people talking simultaneously.)
CHAIRMAN: Well, you have the grounds. You have the grounds to fight it. If it did, you have the grounds.
MS. DUNN: But they're not what?
MS. RUSSELL: I said most of the funeral homes I know do that if the family comes in and they give them the money back if they have a notarized statement saying that this individual is not on public assistance, and some require even they go to Family Services and get that signed by one of them that they are not on assistance, and then they give it back, you know. I guess they're a party to the contract.
CHAIRMAN: But they don't have to.
MS. RUSSELL: They don't have to, but they're a party to the contract, so they have the right to go ahead and cancel it and give it back, I guess, even if it is irrevocable, but they don't have to is the right. But the majority of the funeral homes I work with, you know, if they say if the family doesn't want

us, they don't want us.

CHAIRMAN: Bingo.

MS. RUSSELL: You know. So, we're not going to make them mad and hold their money, you know.

CHAIRMAN: Or if they're playing the $10,000 funeral, now I want the $5,000 cremation, and there's no public assistance in it or whatever. Go ahead, Don.

MR. OTTO: Well, there's two different situations. There's cancellation and there's just change in what you want. A court, under the old 436, just because of the way the cancellation paragraphs were worded where it said irrespective of anything else in here or something like that, you could cancel an irrevocable contract, in my opinion. And I think the AG's office actually agreed with us on that at one point. But you had to get -- if you were going to give any money, the check was made out to the State of Missouri. Now, the way the new Senate Bill 1 -- or the new 436 is worded, it says -- that little quirk isn't in there anymore, and I don't think anybody can cancel an irrevocable contract,

period. Now, that doesn't mean you can't make changes to the goods and services or providers, but you can't cancel it.

MS. RUSSELL: If both parties agree.

MS. BATTAGLER: (Inaudible) -- have to stay.

MS. RUSSELL: If both parties agree -- or if the seller and the purchaser and the provider, all three, agree to cancel it, I think you can cancel an irrevocable, if all the parties of the contract agree.

MR. KRAUS: Right. And that's a private matter.

MS. RUSSELL: Yeah. Exactly.

MR. KRAUS: But I think what this was put in place to address is the Senate Bill 1 provides some specific rights to purchasers with regard to change in providers.

MR. OTTO: Be careful about that.

MR. KRAUS: And you want to be -- and I think this was suggested to cover the instance that when there is a change of providers, that money that changes hands does not go back through the purchaser.

MS. RUSSELL: Exactly.

MR. KRAUS: Because, if it does, then that's a problem, and for a lot of reasons.

MS. RUSSELL: Right.

MR. KRAUS: So, that's why we're trying to address here the two instances where that could happen; purchaser where there is a contract between the seller and the purchaser where there is not a contract between the seller and the new provider, and just addressing that. There are all these other issues with irrevocability, but they don't go towards the right of the purchaser to change providers.

MR. OTTO: This rule was good for what it was trying to do.

MS. RUSSELL: Absolutely. Right.

MR. OTTO: But there might be -- and it might not need to be an emergency rule.

CHAIRMAN: Okay. That's what I was get ready to say.

MR. OTTO: It might not need to be an emergency rule, but, at some point, we might want to clarify, because you can also -- there's also people that make them irrevocable to shelter assets against creditors. Even

though it has nothing to do with public assistance, they want to make it irrevocable because there's arguments -- it doesn't always work, but there's arguments that certain irrevocable contracts are not reachable in certain creditor situations. I don't necessarily agree with that, but at least people try it.

CHAIRMAN: Okay. All right. Well, I just wanted to bring that aspect into this, but, obviously, I see where you went.

MR. FRAKER: Well, let's talk about this for just a second; okay? And, Martin, you and I talked about this last night. The guy that brings in the insurance policy and he just wants an irrevocable waiver on it, you know. You can't -- you cannot do that. You cannot take that policy and issue that waiver unless the policy is in your name. And that may not -- maybe this isn't the right time to talk about it, but it is something that we need to address.

CHAIRMAN: I think you hit the nail. The point that he's wanting and is applicable is that this is just saying what's going to be

-- what you can do if it is irrevocable.

MR. FRAKER: If it is.

CHAIRMAN: Yeah.

MR. FRAKER: But we do need to talk about that.

CHAIRMAN: Okay. Help me remember that. Go ahead.

MR. MAHN: I make a motion that we accept it.

MR. FRAKER: Second.

CHAIRMAN: Second. John?

MR. McCULLOCH: Okay.

CHAIRMAN: Joy?

MS. GERSTEIN: Yes.

CHAIRMAN: Okay. So, final approval is accepted, and with the redo, the Board makes the finding that there is competent and substantial evidence in the record to support the need for the redo of this emergency rule. Did you do the other part yesterday on this one?

MR. KRAUS: I don't think so.

MS. CLARKSTON: I think that I did. I've got too many piles going. You can go to the next one and I'll catch up.

CHAIRMAN: Okay. Well, my mind is just if you didn't, there's really not going to be --

MR. KRAUS: Yeah. I think the draft before this was the first time -- was the first draft before the Board.

MS. CLARKSTON: Okay.

MR. KRAUS: So, it would have been the draft yesterday that would have been the first time. So, unless we did that right after suggested edits, then we probably haven't.

MS. CLARKSTON: Okay.

CHAIRMAN: I'm thinking there really isn't a lot of impact here. I mean, there's kind of choice, honestly. I mean, you would have addressed in some of your other stuff the wire-transfer thought and all of that, but that was -- that's available to just about any contract; right? So, that would have been on --

MR. KRAUS: There could be costs to that, though, to -- costs of the wire transfer itself.

CHAIRMAN: But would you address it --

MS. CLARKSTON: I'll have to --

CHAIRMAN: You know, this -- but this is just a rule on what is irrevocable, so to speak.

MR. KRAUS: But it does require that it be through some kind of secured transaction like that, and it requires it in the rule, so that would be impact on small business pursuant to the rule.

CHAIRMAN: Okay.

MS. CLARKSTON: We have to note it in all, so each rule stands on its own.

CHAIRMAN: So, each rule would have the same -- some of the same information in it.

MS. CLARKSTON: Yes. Correct.

CHAIRMAN: Okay. I thought maybe the level above this one that's really the same thing, other than this just makes it irrevocable. I didn't know.

MS. CLARKSTON: I wish it was that. It would make my life easier, but if we did with the wire transfers and then tracking record management and all of those similar things that we've talked about before would be applicable to this rule, as well.

CHAIRMAN: Sure. Of course, you would

have the record-keeping from the first folks and then the new record-keeping for the second folks.

MR. KRAUS: Uh-huh.

CHAIRMAN: And the bank is bound to charge 5 percent to transfer the money. Are you okay with that one?

MS. CLARKSTON: Uh-huh.

CHAIRMAN: Okay. All right. The next page.

MR. KRAUS: Next. This should be #3, redraft after comments, this was disposition of funds upon cancellation. There was discussion on that one. The changes we were asked to make were to, instead of having the money go from the trustee to the purchaser and then deal with how the seller is supposed to get the money that they have, if any, to the purchaser, also, then why not have it all go to the seller and then the seller pay the whole amount to the purchaser. So, we drafted that. But in looking at that more closely, we noticed that in 436.456, it's noted at the bottom there, actually requires the trustee to pay the purchaser, so I don't know that we can

actually do it this way. But the draft is there, you know, for discussion, and we can talk about what we want to do.

CHAIRMAN: Go ahead.

MR. OTTO: Well, yeah. Well, you're right about the trustee going to the purchaser, but we still, under this, have a problem where the trustee is distributing money it doesn't have. The trustee cannot distribute money it doesn't have. To me, what it should be is, the rule should say upon cancellation, the trustee -- and I think under the statutes, it's 15 days, isn't it?

UNIDENTIFIED: Yes.

MR. OTTO: The trustee has 15 days to distribute to the purchaser on written notice of cancellation the principal in the trust, period. Then you need something else that says in the event of a cancellation, the seller shall refund to the purchaser that 10 percent if it's been withdrawn from the trust.

MS. BATTAGLER: Right here on B, you've got -- that amount was already distributed, so they don't have it there in the trust anymore. The trustee can't give it

back because they've already given it out. So, that needs to come out.

MR. KRAUS: But aren't there some instances where the trustee may still have that money?

MS. BATTAGLER: They could, but it's part of the principal of the trust fund.

MR. KRAUS: And if they do, aren't they required to distribute it out to the purchaser?

MS. BATTAGLER: Yes. But it's already a part of the -- it's still a part of the principal of the trust, so --

MR. OTTO: Just the way this is worded is wrong.

MS. BATTAGLER: It's just worded -- B can come out.

MR. KRAUS: So, just word it more simply as principal and --

MS. BATTAGLER: B can actually come out and just say the principal of the trust, including -- and when it says all payments received, shouldn't that say any income?

MR. OTTO: No. Because on a cancellation, they don't get income.

UNIDENTIFIED: Yeah. (Inaudible.)

MS. BATTAGLER: Well, but you're -- but this is showing -- and I know you were questioning this. This is showing that the trustee pays it to the seller.

MR. OTTO: Well, but that should be the contract because --

MR. KRAUS: Right. Because that was the added that was suggested, so we drafted that, and then we saw that it can't really be done that way.

MS. BATTAGLER: It really can't be done that way?

MR. KRAUS: No.

MR. OTTO: That's between -- that's the contract between the seller and the trustee anyway.

MR. KRAUS: Well, the statute says the trustee shall pay to the purchaser, so you can't really say in a rule he has to pay it to the seller when that's not what the law says.

MR. OTTO: But if you just say within 15 days upon written receipt of notice of cancellation, the trustee shall pay to the purchaser the principal held in the trust,

period. Then a second paragraph that upon written notice of cancellation, the seller shall pay to the purchaser any amount withdrawn under whatever that section is, the 10-percent section, if it has been withdrawn. If it hasn't, then it's already included in the principal --

MS. BATTAGLER: Right.

MR. OTTO: -- that the bank is sending.

MR. KRAUS: Do you think there is a need to clarify that within paragraph A, if you delete paragraph B, that the principal as addressed in paragraph A does include any of the amount referenced in 436.430.4 if there is any contained within that principal?

MR. OTTO: I think that's --

MS. BATTAGLER: No, because it's still a part of it.

MR. OTTO: Well, I think -- I don't think there's anything wrong.

MR. KRAUS: Well, I mean, because will someone argue that --

MR. OTTO: Yeah. That's not --

MR. KRAUS: -- to the trustee that that's not -- I have -- yes, trustee, I

haven't withdrawn that yet, as the seller, but I can, so that's not part of the principal you're supposed to give to the purchaser.

MR. OTTO: I mean, I think you could put in there the principal --

MR. KRAUS: Because, I mean, I think that's the purpose of B.

MR. OTTO: Yeah.

MS. BATTAGLER: Oh, I got you. I understand that.

MR. OTTO: Yeah. You could do that.

MS. BATTAGLER: I mean, I guess you could just to clarify it.

MR. KRAUS: Yeah.

MR. OTTO: Yeah. That's fine. The principal of the trust including any amounts referenced in the 10-percent section that have not been distributed to the seller.

MR. KRAUS: Right. I mean, you could even say just the principal of the trust including any amounts received, plus any amount of funds not yet distributed from the trust to the seller pursuant to that section.

MR. OTTO: Well, I wouldn't suggest you just say the principal because then,

otherwise, once again, as we talked about before, you risk -- the trustee can't give what it doesn't have. So, if the market has gone down and what was $5,000 is now worth $4,900, the trustee can only give the principal back, it can't give what it doesn't have.

MR. KRAUS: Right.

MR. OTTO: So, to say all payments received is incorrect.

CHAIRMAN: And I hate like the dickens to even ask this question, but I'm going to.

MR. OTTO: Oh, no.

CHAIRMAN: In that statement of the all payments received, are you going to refund all of the finance charges and --

MS. BATTAGLER: But we can't go there now because we'll have an argument against that.

CHAIRMAN: Well, I know, but I'm serious.

MR. OTTO: But that's why -- that's one of the reasons why, at least in this section -- in this section --

CHAIRMAN: I know.

MS. BATTAGLER: It would be a part of the principal.

MR. SPEAKS: All payments received in Don's example is $5,000, but now the market has dipped a little bit and it's worth $4,950. You can't give back all payments received because 50 bucks is gone because the market went down.

MR. McCULLOCH: On somebody canceling?

MR. SPEAKS: Yeah.

MR. McCULLOCH: You're going to have to give back the whole thing regardless.

MR. MAHN: But I thought the law said 95 percent. You've got to give back the 95 percent, period, market down or not.

MR. OTTO: The bank can't give you money they don't have.

MR. SPEAKS: You can't give out money you don't have.

MR. MAHN: Somebody's got to cough it up.

MR. McCULLOCH: The bank, but the seller will have to make up the difference; right.

MR. OTTO: And that's another rule.

That's another reason --

MR. MAHN: The seller?

MR. McCULLOCH: Okay. I thought you were trying to say you didn't have to give it back.

MR. OTTO: Well, that's another issue that we have to deal with, but --

MR. MAHN: (Inaudible) -- the law says 95 percent of the contract -- (inaudible.)

CHAIRMAN: Say it louder so she gets your words.

MR. MAHN: Is it 95 percent -- if they cancel, it's 95 percent; correct?

MR. McCULLOCH: Ultimately, they're going to get back 95 percent.

MR. MAHN: Right.

MS. BATTAGLER: What they paid in.

MR. KRAUS: Right. And that's what this is saying.

MR. McCULLOCH: It could come from two different places.

MR. MAHN: But if the market is down, who makes up that difference?

MR. McCULLOCH: The seller.

MR. MAHN: Somebody has to make up the

difference.

MR. KRAUS: Yeah. The seller does.

MR. OTTO: The trustee still can't pay it back if they don't have it.

MR. MAHN: All right.

MR. SPEAKS: The trustee doesn't if they don't have it.

MR. MAHN: All right. So --

MR. OTTO: That's the only thing. So, for this section, it should say the trustee pays the principal. Not all payments received, but the principal.

MR. MAHN: So, the seller might actually have to cough up even more than 10 percent; are you saying then? So, the seller may already have to be -- come up with 10 percent. So, if the market is down on top of that, then the seller is going to have to come up with that money, too?

MR. OTTO: I don't think so, but that's an interpretation of the statute.

MR. MAHN: Well, who comes up with that? Well, who would then?

MR. SPEAKS: Good question.

MS. GERSTEIN: (Inaudible.)

MR. MAHN: But somebody has to.

MR. McCULLOCH: Who do you think will have to come up with it?

MR. OTTO: See, it does -- the statute doesn't --

MR. MAHN: Who comes up with it?

MR. OTTO: The statute doesn't say you get -- I don't think. Correct me if I'm wrong. The statute doesn't say upon cancellation, it does it backwards. The statute doesn't say upon cancellation, the consumer gets 95 percent of the payments back. It says they get the money in the trust back less the 5-percent fee.

MS. BATTAGLER: Right. It's a different amount.

MR. OTTO: And this is -- I tried to make this clear to the -- at the Capitol, and they didn't get me; okay? If you cancel -- if you're paying $100 a month on a $10,000 contract and you've paid five months, so you're up to the 5 percent, and you cancel, the consumer gets nothing back.

MS. BATTAGLER: Right.

MR. OTTO: Because it's not -- because

that 5 percent is gone.

MS. BATTAGLER: It's not 95 percent of their payments that they've made, it's 95 percent of the entire contract amount minus --

MR. OTTO: Well, no, it's not even that.

MS. BATTAGLER: It's 100 percent of the contract amount minus 5 percent.

MR. OTTO: It's not even that.

MS. BATTAGLER: Five percent of what they --

MR. OTTO: It's the amount of money in trust.

MS. BATTAGLER: It is.

MR. OTTO: Period.

MS. BATTAGLER: (Inaudible.)

MR. OTTO: Plus it's the amount of money in -- when the consumer cancels, they get the principal in the trust, plus the 10 percent if it's been withheld. So, everybody has said the consumer -- and I tried to make this clear and they didn't get it. Everybody kept saying this -- you get 95 percent of your money back if you cancel. No, you don't, necessarily.

(Several people talking simultaneously.)

MR. OTTO: You might, but you don't. You get the principal of the trust that's in there. Now, if that 5 percent is in there still, if you didn't withdraw it, you don't get that back.

MR. McCULLOCH: Because the old law said you get back -- you get the money deposited in trust.

MR. OTTO: Well, yeah. And then it's not too different from the new law. So, even if --

MR. McCULLOCH: Well, it's the difference of money deposited in and the market going down. There's a big difference.

MR. OTTO: Yeah. Even if you don't take that 5 percent out, you would go ahead and let it go in the trust. You do 100-percent trusting. The way it's worded, the seller can keep that money still. That's always there. So, in my scenario where the consumer is paying $100 a month on a $10,000 contract, they've paid for five months, that's $500. It's in the trust. They cancel it, they still get nothing back if the seller

wants to keep that $500. And so, also, if they pay for 30 years and they cancel, but the market has gone down, they don't get 95 percent of their payments. And I know everybody said that, and I kept saying, no, that's not the way you've worded it. You get the amount of money in the trust, not income, you know. You get -- because it specifically says income doesn't go back to the consumer. So, you get the principal.

MR. McCULLOCH: So, it simply says you get the principal that's in the trust?

MR. OTTO: Yeah. You get the principal in the trust.

MR. McCULLOCH: And that's all it says?

MR. OTTO: Plus you get that 10 percent back as a refund, you know, if that's been withdrawn.

MR. KRAUS: And that's what I'm thinking we can say on here and we almost say is if -- and for in #1, we change seller to purchaser, and then we say in sub A, the principal of the trust including all payments received, which, of course, that's principal, so I don't think that necessarily changes

anything.

MR. OTTO: No. No.

MS. BATTAGLER: No, not all payments received.

MR. OTTO: Because if the market has gone down --

MR. KRAUS: No. I don't -- since that's including, I don't think that's restrictive of principal at all.

MR. OTTO: No. It should just say the principal in the trust -- okay -- including -- to make this clear, what we talked about before -- including any amounts referenced under 436 whatever, the 10-percent clause --

MR. KRAUS: Yes.

MR. OTTO: -- if that money has not already been distributed.

MS. BATTAGLER: Right.

MR. OTTO: That makes that -- that obviates the argument.

MS. BATTAGLER: Because all payments received means any payments they've made, but it also includes that 5-percent origination fee that we were able to take out. So, you can't say all payments received.

UNIDENTIFIED: No.

UNIDENTIFIED: Yeah. She's right.

MR. WARREN: One-hundred percent of the trust property including any percentage of the total payments received under trust by the contract.

MR. KRAUS: I could see that.

MR. WARREN: Which would be included in that.

MR. KRAUS: So, is it the principal of the trust, plus any amount of funds not yet distributed from the trust to the purchaser pursuant to 436.430.4?

MS. BATTAGLER: Yes, that's it.

MR. MAHN: And what if the trust is way down?

MR. McCULLOCH: It's already been distributed, it's gone.

MR. OTTO: Yeah. It's gone, yeah. Now, if it's distributed, it's not a problem. But if it hasn't been, you do need to make it clear that that's -- (inaudible.)

MR. KRAUS: Then they get the principal of the trust? And then there's a requirement down below about the seller.

MR. OTTO: But somebody will take it out.

MR. KRAUS: I'm going to change #2 to purchaser and then #3, the seller shall distribute the funds described -- I'll have to change that.

MS. BATTAGLER: And #3 is the seller has to distribute within 30 days of when -- the notice -- 30 days of the notice; right? Oh, it's got it in there, 15 days of -- yeah. No, it doesn't -- 30 days of the notice, distribute any amount withdrawn.

MR. KRAUS: Any amount distributed --

MS. BATTAGLER: Under 436.430.

MR. KRAUS: -- to the seller pursuant to 436.430.3.

MR. OTTO: And just make sure you get the 10 and the 5 percents right.

MS. BATTAGLER: The seller distributes to the purchaser.

MR. OTTO: That 10 percent.

MS. BATTAGLER: Yeah. If it's been withheld, yeah.

MR. KRAUS: Yeah. In that the seller has to distribute to the purchaser any amounts

distributed from the trustee to the seller pursuant to the .4 provision.

MR. OTTO: The 10-percent rule.

MS. BATTAGLER: Yes. So, the purchaser is still going to get two checks.

MR. McCULLOCH: So, it says that the trustee shall distribute 100 percent of the --

(Several people talking simultaneously.)

MR. KRAUS: If there's been money paid out on .4. And 30 days is what everyone likes on that? I think you picked that time frame, because that time frame is not in the statute, so -- but then they get more time than the trustee, but they need to know what the trustee does before they know what their supposed to do.

(Several people talking simultaneously.)

MS. BATTAGLER: Right.

MR. OTTO: The problem we're talking is built into the --

UNIDENTIFIED: I got you.

MR. OTTO: The rule helps it a lot.

MS. GERSTEIN: I don't understand when you're going to say if it's been withdrawn. Where does it go? If I buy that, where is

that money going? Where did you get it?

MR. OTTO: Yeah. There's two different things. If you paid that $10,000 lump sum --

MR. KRAUS: Okay. I think I got it. Do you all want to see this again later? There's quite a few changes.

MR. McCULLOCH: Yeah.

MR. OTTO: -- the seller gets to keep 5 percent of that.

CHAIRMAN: All right. Have you done the impact statements here?

MR. KRAUS: Redraft.

MS. CLARKSTON: I just tried to catch it as we've gone through. What I've got are tracking for the small business, trustee, possibly banking fees, and refund of 5 percent. Am I missing anything else?

CHAIRMAN: Anybody else see any impact thoughts that Connie didn't mention just now?

(Several people talking simultaneously.)

MS. BATTAGLER: The possibility of separate checks -- (inaudible.)

MR. OTTO: Yeah. It's very confusing.

MS. GERSTEIN: Where is my money going?

MR. OTTO: I pointed that out.

MR. McCULLOCH: I never caught that at all. I guess I was just looking on you've got to give the money --

(Several people talking simultaneously.)

CHAIRMAN: Okay. Everybody got it worked out? So, are you going to redo a --

MR. KRAUS: Yeah. I'm going to redraft that and bring it back in a little bit.

CHAIRMAN: Okay. Now, where are we at?

MR. KRAUS: Although Sarah is out today, so I'll have to actually step out at some point and redraft it and come back. That is the initial redrafts. There was also a redraft from Sharon in response to following research on 208, which is titled "Revised following comments 9/2/09 and research by Sharon E."

MS. DUNN: Everybody have this?

CHAIRMAN: Oh, yeah. The Board made the findings and all that on that last deal. Go ahead, Don. What?

MR. OTTO: This one, I understand where they're going with this, but it's got a bunch of problems with it, because there's a difference between the purchaser and the

beneficiary. My mother might be on public assistance, but I want to buy her a funeral. And so, the way this is worded, if the preneed seller receives payment from insurance, joint account, blah, blah, blah, the seller shall distribute the overage to the estate of the beneficiary. No. It goes to the purchaser. Now, that may be one in the same, but any --

UNIDENTIFIED: But not necessarily.

MR. OTTO: -- but not necessarily. So, the overage must go to the purchaser and it doesn't matter if -- in many cases, it doesn't matter if the beneficiary received public assistance. If I bought one for my mom, I can get my money back even though she's on public assistance because it was not a spend down for her. And the same problem with #2. If a beneficiary of a preneed contract has received public assistance, the purchaser can't get their money back. That's wrong. That's only where the purchaser and the beneficiary are one in the same.

CHAIRMAN: Well, actually, there's a middle ground in what you just said there. What if the purchaser comes in and uses the

beneficiary's money?

MR. OTTO: Well, then it really isn't the -- then the person who is signing is signing on behalf of the beneficiary.

MS. BATTAGLER: Right.

MR. OTTO: And with power of attorney or whatever or something like that. But --

MR. KRAUS: Yeah. And if they're doing that under the table, then that would just be the --

MR. SPEAKS: Yeah. That's between them. (Inaudible.)

MR. OTTO: Yeah. That's -- they might be breaking the law, but that's their problem.

MR. KRAUS: Yeah. They're cheating on an exemption by having an unauthorized transfer.

MR. OTTO: But, yeah. It needs to be worded differently because the purchaser might be paying this for their mom who is on public assistance, and they should be able to get their money back because it was not part of the spend down.

MS. BATTAGLER: So, instead of the beneficiary, it should be purchaser, or does

it just need to be reworded because it's --
(inaudible.)

MR. OTTO: It's really worded bass ackwards.

MR. KRAUS: But the main issue you're seeing is that the purchaser may not be the recipient of the services?

UNIDENTIFIED: Correct.

MR. OTTO: Yes.

CHAIRMAN: Yes, sir.

MR. WARREN: I think we've made this point before that very rarely does a preneed seller or is a preneed seller the beneficiary of an insurance policy. Most people -- most companies won't allow it, but if they are, I don't know. And it says the seller shall distribute the overage to the extent of the preneed beneficiary. I mean, the insurance contract would default, and if there were -- if the preneed seller were the beneficiary of the contract, then I guess it would be up to the preneed seller to say that he doesn't have to do this, but there may be or could be an argument by the contingent beneficiaries on the policy that they're entitled to overage or

--

MR. KRAUS: Well, I wondered about that myself with --

MR. WARREN: Well, you could -- you know, the way it's worded, it's kind of broad because let's say the seller -- someone gave an assignment to say, seller, you get X amount of proceeds from this insurance policy for which you are not the beneficiary, but it's Joe Jones was the beneficiary. Then if there's overage on the policy, I mean, you could do an assignment that says I hereby assign to XYZ seller $3,000 on a $10,000 policy, which is made payable to me, you know, to pay the cost of a funeral; okay? This may or may not ever happen, but, you know, it's bound to happen because the scenarios you think will never happen are the ones that always do. Then you would have an issue with what do you do with the rest of it. The seller can't force the other individual to pay the overage to the State or to the estate of anyone else, for that matter, because that belongs to the beneficiary.

CHAIRMAN: Darlene?

MR. OTTO: Also, you're putting a duty -- oh, sorry.

CHAIRMAN: Hang on. Go ahead.

MS. RUSSELL: Earl, is this rule necessary, because I think the statute pretty well says it -- what's in there about, you know, the nonguaranteed and the guaranteed. Because I think, like Mark was saying, this could have some problems with it, but I think the statute is pretty clear on the guaranteed and the nonguaranteed. And you figure it out on the irrevocable, you've covered that. I just don't see this one as being something necessary. I think every funeral home knows that they can -- or anyone knows not to give money back to somebody if they're on public assistance because --

MR. OTTO: You may not know.

MS. RUSSELL: How do you not know?

MR. OTTO: You may not know. You may not -- see, this -- that's one of the problems with it. I mean, if you corrected the split between the beneficiary and purchaser problem on this, this deals with nonirrevocable contracts, as well.

MS. RUSSELL: Yeah.

MR. OTTO: So, the way this is worded, it covers any contract. So --

MR. KRAUS: And you could have people who were on public assistance a year ago and they're not right now.

MS. RUSSELL: Yeah.

MR. OTTO: Yeah. So, well, but so this rule puts it -- arguably puts a new duty on the funeral director to check everybody who dies where there's a refund to see if they were on public assistance or not before you give them the money back.

MR. SPEAKS: It's a bad rule.

MR. KRAUS: I don't know. I mean, maybe you don't need a rule, you know, which is one way the Board could go.

MR. OTTO: And it just pops up as a problem.

MR. KRAUS: Actually, I think Sharon is going to be back this afternoon if you want to talk to her about it, and she drafted this yesterday and I haven't looked at it real closely. Or you decide you don't need a rule and go on.

MR. McCULLOCH: We don't need a rule.
MR. MAHN: Is that a motion?
MR. McCULLOCH: Motion.
MR. MAHN: Second.
CHAIRMAN: Gary?
MR. FRAKER: Yes.
CHAIRMAN: Joy?
MS. GERSTEIN: Yes.
CHAIRMAN: Okay.
MS. DUNN: No. No rule.
MR. KRAUS: You can't vote.
MS. DUNN: I'm confirming the vote.
CHAIRMAN: There may be some good points that we need to think about that a little bit. I think I can see where, especially in the complaint process, where this -- there could be some benefit to having something like this where we have to split hairs sometimes, but maybe that's just think through it and come up with something later.
MR. KRAUS: Yeah. If you think about it and decide, well, we need to talk about this some more, you can revisit it. All right. So, that --
CHAIRMAN: And, actually, there might

even be just as much as -- well, maybe you need a rule to be able to do that, but, obviously, it's definitely an education issue if maybe it's nothing else. So, okay. Go ahead.

MR. KRAUS: I've got a few that have gone that way that we decided didn't need a rule, but educate people.

CHAIRMAN: Yeah.

MR. KRAUS: All right.

CHAIRMAN: Hold it. Hold it. The Board does not find facts and findings that there is competent substantial evidence to need this rule.

MR. KRAUS: Well, there could have been, you just elected not to.

MR. OTTO: Is there a small-business impact if the Board does nothing?

MR. KRAUS: All right. So, that takes us through the redrafts from yesterday. So, then other matters. There is a disclosure -- draft disclosure sheet which I think everyone has now. Let's see if I have that -- which you can take a look at. That's kind of lengthy. Would you want to take a short break

and let people look -- read it over?

CHAIRMAN: I think that would be a great idea. Why don't we just break for a minute. If you need to go run to the rest room or whatever, go do that. Take a few minutes to look at this, and then we'll have some conversation.

(Off the record)

CHAIRMAN: Has anyone got any comments, thoughts? Two hands, three hands. Oh, my. Well, we'll just start on that way and we'll come this way. So, Don, go ahead.

MR. OTTO: This is a very nice job, I think. The qualifying-for-public-assistance paragraph on the first page, we've talked about this in the corner here, and we think it would be nice if, in that second sentence, it would read even if you have agreed to make this irrevocable as part of your qualification for public assistance, you may change providers at any time and make changes to the goods and services to be provided. However, you cannot cancel this contract and cannot -- add the word "cannot" a second time -- receive any refund. The example being if somebody has

put in a bronze Triune in their preneed, but they convert to Judaism, they're not going to use it. But they're -- like I said, now they're going to have a whole lot of hearses and flowers, but they're going to have to spend that money somewhere else. But it would be nice to make it clear that the consumer can change the goods and services, but add that second "cannot" so that it's absolutely clear they cannot get a refund on an irrevocable.

CHAIRMAN: Okay. Brad?

MR. SPEAKS: I would suggest having a spot for initials on each of these sections. It's an affirmative --

MR. OTTO: For the consumer.

MR. SPEAKS: -- for the consumer.

MS. RUSSELL: Or you can put it in the contract. You can include it in the contract and they are signing --

MR. SPEAKS: Or include it as part of the contract.

MS. RUSSELL: Yeah. Yeah. Because the Board voted that we could include it in this --

MR. SPEAKS: I think the idea with

this was it would be a separate sheet of paper, an addendum, sort of, in which case you want --

MS. RUSSELL: But you still -- the Board did vote that we could include it in our contract, all these disclosures; correct?

MR. KRAUS: Well, I think that's something that -- something for the Board to decide how. I mean, we stuck it at the top here to be provided at the initiation of a preneed contract, but as to whether this is a requirement that this very sheet must be provided or whether it's a requirement that this language must be included in some way, and is that an option. Or is this simply suggested language the Board is putting out there for people to use should they choose, saying, hey, we think this is a good idea? But you're doing you're doing your contracts, so do your contracts, and if it turns out it's not complying with the statute, well, then that's your deal. I think the Board has all those options.

MS. RUSSELL: Okay.

MR. KRAUS: I don't know which one of

those is best for the Board, but --

CHAIRMAN: Well, Brad actually had the floor, other than you made the suggestion for initials.

MR. SPEAKS: Well, I like the idea of having it be an addendum to the contract because, otherwise, I think you'll have people manipulating the font size, burying it in the middle where nobody saw it, and all that sort of stuff.

MR. KRAUS: Of course, there's a rule on the font size.

(Several people talking simultaneously.)

MR. KRAUS: But, yeah. You could make it eight and stick it in the middle somewhere.

MS. BATTAGLER: But I can make the argument we've already got all but -- we'll we've got every single one of these disclosures already on our contracts, but I have to do an addendum to change a couple of them to make them compliant with this law, but we've already got them all on our contracts.

MR. KRAUS: Does anyone see -- and I guess this may be more of a legal question, but does anyone see any issues with the Board

requiring that certain specific language must be in a contract and does that impinge upon the rights to contract when the statute requires that certain -- that they must be notified of this, they must be notified of that? It doesn't really say how, and does that infringe upon, you know, basically, the rights of the contract?

MR. OTTO: I think the statute says shall include any disclosures required by the State Board. I think in there --

MS. RUSSELL: The contract shall include.

MR. OTTO: Yeah. The contract shall include any disclosures required by the State Board. And so, speaking from a guy that's got to write these contracts, I would prefer to have mandatory language that the State Board says I have to use this, either included in my contract -- the body of my contract or as a separate sheet of paper that the consumer signs separately.

MS. RUSSELL: Earl, on the back of page 2 of your disclosure, the word minus any interest regarding joint accounts, that's

called for by contract, so I don't know if you can really put that in there. Page 26, line 10, of the Senate Bill 1. Because it's as called -- because some joint accounts would put -- don't include that in their contract. They let 100 percent of the interest stay in it and they put that in their contract. They still have that right.

MR. OTTO: It would probably be easier if it just said, going back to page 1, the financial institution must give you the principal of the account within 15 days of your request. Interest will be distributed as provided in this contract.

MS. RUSSELL: So, just thinking about taking out minus any interest, because interest will be distributed as provided in this contract, you've already covered it. So, just taking out that word minus any interest.

MR. OTTO: Well, I think you want to put principal in there, though, because otherwise --

MS. BATTAGLER: Yes. Must give you --

MR. OTTO: The financial institution must give you the principal on the account

within 15 days.

MS. RUSSELL: Okay.

MR. OTTO: Interest will be done as provided by this contract.

MS. RUSSELL: That would fix that.

MR. McCULLOCH: You know, a lot -- some of these things are just standard things that are in your contract. So, if you're going to have to give them this stuff on top of it, it's just like we're overdoing it here.

MS. RUSSELL: One more correction or suggestion. On that what happens if I die before my contract is paid in full is fine for trust and joint-account language, but for insurance, it's a self-completing factor on insurance. So, they might think that, oh, you know, I have an insurance; I still have to pay. So, it doesn't really apply to insurance. Mark and I were talking about that before at the door.

CHAIRMAN: Darlene, are you looking at these as when we had the conversation on all of the disclosures on the contract? But are you looking at these as those disclosures or are you looking at something else?

MS. RUSSELL: I'm looking at putting it inside the preneed contract and putting it --

CHAIRMAN: Yeah. But the discussion that was had about whether it's a joint or whether it's a trust or whether it's -- you know, and then that discussion of I've got to include all of the trust disclosures. I've got to include all of the CD -- were you thinking something else or is this exactly what you were thinking about?

MS. BATTAGLER: This is part of it.

MS. RUSSELL: This is -- yeah. This has to -- this is part of it, but as Amy said, this, in addition to other requirements, needs to be in there. These are just the disclosures that the Board has to do by rule, so --

MS. BATTAGLER: But you're right. Under this, it says your right to cancel this contract, it states on the different types of accounts. Insurance -- well, my trust accounts are never going to be insurance funded, so why should I have to put the insurance information on there?

CHAIRMAN: But I'm still a tad confused in that in that conversation we had that night, it was, no, you could have an insurance contract, you could have it as a trust, or you could have it as a joint account, and that you would not -- we fought like cats and dogs for a while, but --

MS. RUSSELL: Exactly.

CHAIRMAN: But then it came out that you would be able to just do -- but I'm saying --

MS. BATTAGLER: Can you clarify that, though, on this?

CHAIRMAN: But are these the exact points that you were trying to make, or are there others that you were trying to make?

MS. RUSSELL: There was others --

CHAIRMAN: Does this sum it up, or --

MS. RUSSELL: No, there was others.

CHAIRMAN: Because the idea here at the moment, really, almost, is that this language would be on all contracts.

MR. SPEAKS: Somehow.

MR. OTTO: Either in the body of the contract or attached separately.

MR. McCULLOCH: So, it could be either/or, you're saying?

MR. OTTO: Well, yeah. Particularly, you passed an emergency rule that until the end of the year, you can use your old contracts, but before the end of the year, you will send to the consumer the disclosure sheet that's going to be approved by this Board.

MS. RUSSELL: And, Martin, I'm a little confused as to whether that preneed-contract rule, if we ever passed -- if the Board ever passed that rule to set -- you know, the discussion was all preneed contracts must include and you had to include everything regardless if you were trust, joint, or insurance. And I'm not sure if that -- did that rule ever get finished; do you know, Earl? I have a copy of one here and it doesn't mark it as -- I didn't mark it as passed, so I was --

MR. McCULLOCH: Yeah. I don't think we did.

MR. KRAUS: Yeah. I don't recall if that one was passed. Let me look in the stack of approved ones.

MR. McCULLOCH: I don't think we agreed on that totally. We just kind of tabled it.

MS. RUSSELL: This one was passed -- #7 and #9 was passed.

CHAIRMAN: Well, we were going to go back.

MS. RUSSELL: This one was passed. This one, you passed, but it --

CHAIRMAN: The language was -- the problem was just the language in that verbiage of all contracts.

MS. RUSSELL: Exactly.

MS. BATTAGLER: Right.

MS. RUSSELL: That was the only thing that, I think, was left off of this one regarding the preneed contract, #7 and #9.

MS. DUNN: In group?

CHAIRMAN: Is it group two?

MR. KRAUS: I think it was group two.

CHAIRMAN: It was probably group two.

MS. RUSSELL: Yes. But I don't remember. Do you?

MR. KRAUS: I don't have my stack of approved group-two rules.

MS. BATTAGLER: I believe it was group two.

MS. RUSSELL: Oh, here. I've got it in this stack. The one that gave you -- you know, allowed us to do the addendums till December 31st.

CHAIRMAN: And we were in the heat of that discussion when we had pizza.

MS. RUSSELL: Exactly.

CHAIRMAN: And then we all went and ate pizza and then we came back.

MS. RUSSELL: But I think --

MS. DUNN: And Earl wasn't here.

MR. KRAUS: No, I wasn't there. Yeah.

MS. RUSSELL: I think as far as the preneed contract --

MR. KRAUS: Well, if there was one approved, it would be in the group of approved rules that has a table of contents on it.

MS. DUNN: Okay.

MR. KRAUS: It would be one of those.

MS. RUSSELL: This one passed, and the only one, preneed contracts.

MR. KRAUS: I don't remember seeing it, but there could have been.

MS. RUSSELL: The only thing it doesn't address is the question of the all, whether we have to include every preneed contract no different than the all-payments argument, if that has to include the insurance, the trust, and the joint accounts. And I think it was your guys' opinion that it does, but I think, you know, this doesn't say it.

MR. KRAUS: Yeah. And I remember part of that discussion -- it must have been earlier in the day when I was there, of course, but there may have been some discussion later. But from what I recall, that the statutory sections required this and this and this and this, and just says for preneed contracts. It doesn't say for an insurance-funded preneed contract or for a trust-funded preneed contract.

MS. RUSSELL: Right.

MR. KRAUS: And it just says for contracts, and says this with regard to insurance, this with regard to trusts, and this with regard -- it sounds to me like that's for every contract.

MS. RUSSELL: Okay.

MR. KRAUS: Now, I don't know if there was then later discussion that went in another direction --

MS. DUNN: I'm getting that.

MR. KRAUS: -- or even if there was a rule. I don't remember seeing a rule on that, but --

MS. RUSSELL: And I understand your legal position, so I'm okay with that because we'll put everything in. It's only one section for us, it's the trust people, so I'm fine.

MR. KRAUS: Well, and if there's an issue like that then, you know, sometimes it's better not to do a rule.

CHAIRMAN: I thought we settled it, though.

MS. BATTAGLER: Well, I think it's very confusing to the consumer if they're not going to have disclosures in the trust contract.

MR. McCULLOCH: Can common sense cost a lot? No. No. Common sense can't.

CHAIRMAN: Go ahead, Don.

MR. OTTO: Well, I would say although for the people who only sell insurance and the

people who only sell trusts, it's a problem. You know, it seems like extra verbiage. There are a lot of the sellers out there in the funeral homes, and they're selling all three different things, you know. Today, they may be selling insurance, fact one, tomorrow, they're going to put it in a joint account. And if they have three stacks of three separate contracts, one for insurance, you know, it creates a possibility they've pulled the contract out of the wrong stack.

UNIDENTIFIED: Yeah. Oh, yeah.

MR. OTTO: Also, something that we've never talked about is we've run into a number of mixed ones where the consumer has got a $5,000 insurance policy and that's going to pay for part of it and the rest is going to be in the trust.

CHAIRMAN: Right.

MR. OTTO: So, we get a bunch of those, you know. That they're spending down -- you know, whatever it is. So, sometimes, it's mixed. So, Darlene's comment on the last paragraph that you might need something separate for insurance because insurance is

always a self-executing because it will pay for the funeral -- not necessarily, because they might also have a trust or a joint account in addition to the insurance policy that's paying for some extras or something like that.

MR. KRAUS: On that -- the last section there, what happens if I die before my contract is paid in full, Darlene, if we qualified that if -- on the very last one. If you die before the contract is paid in full, your survivors have the option in trust-funded or joint-account-funded contracts to pay the balance due, just make it not address insurance.

MS. RUSSELL: Yes. Yes.

MR. KRAUS: And I think that then leads to, well, then do you add a section about insurance, but I think if we get into disclosures about what's going to happen with your insurance policy when you die, that's something for insurance and not for the Board.

MS. RUSSELL: Insurance. Right.

MR. McCULLOCH: That does apply to insurance.

MR. KRAUS: Because, of course, if you die, well, then, hopefully, your life insurance will pay.

(Several people talking simultaneously.)

MR. OTTO: Can you word that if your contract is funded in whole or in part by trust or joint account? That's the situation that we run into. Somebody ten years had a $5,000 insurance policy and was paying for the funeral. Now, they've come in and redone it, and they've added another $5,000 that's in a trust. So, they've got a $5,000 insurance policy and a $5,000 trust, it's all paid in one.

MR. KRAUS: Sure. And I think you could. What I might suggest is that if someone has one that's funded in part by a trust, then you say, well, is it trust funded? Well, yeah, in part. Well, okay, then this applies. I mean, if you get into some -- and that's something that we've struggled with on this disclosure sheet for quite a bit is how much detail do we put in and what's that going to make the reading level? I think this has been pounded down to, I think Sharon said she

arrived at a tenth-grade reading level. We were hoping to get it below that, but we were at, like, 12th- and 14th-grade reading levels for a while, and it was just not useful as a disclosure to people.

MR. FRAKER: So, should we leave that? Should we not address that anymore and let it go?

CHAIRMAN: Which -- what?

MR. FRAKER: What he's talking about.

CHAIRMAN: The all or --

MS. RUSSELL: Yeah. But that's under the insurance.

MR. McCULLOCH: (Inaudible.)

CHAIRMAN: Well, I don't -- I think -- in my mind, I don't -- I'm not sure we're resolved, but -- okay. Guys, can you let us in on the conversation because we want to be able to understand, too.

MR. KRAUS: The change that I was suggesting was in the last paragraph, to insert after the word "option" in the first line in trust-funded or joint-account-funded contracts, and then to not say anything further about it.

MR. WARREN: With respect to insurance, would you -- because John was just talking about if it's a graded-benefit policy, then it's possible there might be additional premium due.

MR. McCULLOCH: Well, no. But say you have a graded policy, and so, it's only going to pay a certain amount if you die in the first year.

MR. WARREN: Right. Right.

MR. McCULLOCH: So, the family would still have the option of going ahead and paying off their contract.

MR. WARREN: Right. So, would you want something in there to the effect that insurance contracts would be governed by the insurance contract?

MS. RUSSELL: Yeah. Insurance. Yeah. Insurance -- you know, for an insurance-contract funded, consult with the insurance laws, you know, or --

MR. WARREN: But look at your contract is the best -- (inaudible.)

MR. McCULLOCH: But I think that little statement covers that. You don't have to have

anything, is what I'm getting at.

MR. WARREN: Yeah. I mean, I didn't have a problem with this language.

MR. KRAUS: And we really struggled with all of that in these because, you know, with the disclosure, it's a lot different than when we're drafting the rules.

MR. WARREN: Well, because -- and I agree with what you were saying because this says preneed-contract disclosure. And, to me, an insurance policy is not a preneed contract, so I think if you added that language you just said -- (inaudible.)

(Several people talking simultaneously.)

CHAIRMAN: Bring us all in, guys.

MS. DUNN: We can't get this for the record if we're all talking.

MS. RUSSELL: Sorry.

CHAIRMAN: That's okay. We just want to -- we all want to hear.

MR. McCULLOCH: (Inaudible) -- yours is a guaranteed issue even on day one and they're going to pay full -- (inaudible.)

MS. RUSSELL: We have graded, too, but we have guaranteed issue, yeah.

MR. McCULLOCH: Okay. So, they're -- (inaudible.) So, if you have a graded policy, it's not going to pay it all.

MS. RUSSELL: Yeah. But not -- yeah. And just addressing one part of an insurance, you know --

MR. McCULLOCH: You're not. The statement covers you; that's what I'm saying.

MS. RUSSELL: Okay. All right. If you say so. I just didn't want the consumer to think on an insurance contract that wasn't graded that they would have to pay any more.

MR. McCULLOCH: No. But if it is graded. If it's not graded, it's going to pay off, so there's no big deal on that one. I see your point, though.

MS. RUSSELL: Yeah. Well, I'm fine.

MR. McCULLOCH: Because you're right. If it wasn't -- I see your point. Okay.

MS. RUSSELL: So, you're okay with what Earl has in there about the trust/joint account, just to clarify it?

MR. McCULLOCH: I actually didn't hear it. I was over there -- (inaudible.)

MR. KRAUS: The last paragraph; is

that what we're talking about? A revised reading would be if you die before the contract is paid in full, your survivors have the option in trust-funded or joint-account-funded contracts to pay the balance, blah, blah, blah, blah, blah.

UNIDENTIFIED: That's good.

MS. DUNN: Now, Mark was making a comment originally. Did you get your comment included?

MR. WARREN: Yeah. I mean, I tend to agree with what John was saying that, you know, if it was a graded-benefit policy, then they would have to deal with them with their insurance policy. I think if you added more language, it would just make it more confusing.

MR. KRAUS: I think so.

MR. WARREN: Because, really, the way I read this document, it says preneed-contract disclosure. I mean, insurance policies, by definition, are not preneed contracts, just a funding mechanism, so --

CHAIRMAN: I was just sitting here --

MR. KRAUS: And if you open that door, you could put in all kinds of stuff about

insurance law.

MR. WARREN: Yeah. You may as well just put every policy on -- I mean, it's just -- it's --

CHAIRMAN: But you -- and I'm not -- I understand that thought. I was just sitting here thinking, okay, like -- I'm trying to be practical. One of our funeral homes is 100-percent insurance. And if I'm passing this out to everybody and it talks about your survivors have the option to pay the balance due on whatever.

MR. WARREN: With the language, you're just going to add to it, or do we say your survivors have the option on the joint account or trust-funded contract to pay the balance?

MR. FRAKER: If there is a balance.

CHAIRMAN: And I understand --

MR. KRAUS: But you're thinking what about the insurance company.

CHAIRMAN: Well, I'm thinking somebody that might just think, well, they have the option even though I know -- I understand that the life insurance is -- you know, it will just take care of itself. It'll just pay it

off or whatever. But --

MR. WARREN: The only thing I --

CHAIRMAN: -- do you think somebody would read that and go, well, maybe I don't have to pay the balance off on an insurance, even though it does it; you know what I'm saying?

MR. FRAKER: If there is a balance.

MS. RUSSELL: Oh. I never thought of it that way.

MR. SPEAKS: It's an option.

MR. WARREN: You could have a sentence --

MR. SPEAKS: I choose not to.

CHAIRMAN: Yeah.

MR. WARREN: You could put a sentence on there that says --

MR. KRAUS: And then you suffer the repercussions.

MR. WARREN: -- if it's an insurance-funded contract, please consult the insurance policy.

CHAIRMAN: That would work, something like that. Just some little --

MR. SPEAKS: Disclaimer.

CHAIRMAN: Yeah.

MR. KRAUS: Call your insurance underwriter at.

MS. DUNN: So, are we saying we're going to put that in ours then? If insurance funded, consult your --

MR. WARREN: Insurance policy.

MS. RUSSELL: Insurance policy is correct.

CHAIRMAN: That's fine. That would be fine.

MR. WARREN: (Inaudible.)

MR. FRAKER: Yeah. That would take all the heat off.

CHAIRMAN: Yeah.

MS. DUNN: Now, did we go each -- are we okay with each one of these?

MR. KRAUS: Insurance funded, consult your insurance policy.

MS. DUNN: We've skipped around so much, I'm --

CHAIRMAN: We'll go back and double-check.

MS. DUNN: Okay.

CHAIRMAN: Did you still have

something else, Don? You were --

MR. OTTO: No. I think this -- other than what I said, I think this is good.

MS. DUNN: Okay.

MR. OTTO: The only thing is, you know, at the very top in the parentheses, it says to be provided at the initiation of every preneed contract. I mean, we bounced around that. Do you want to -- I don't care which one it is. I mean, you could say that this needs either to be included in the body of the contract or provided as a second sheet of paper if you want to do that. Or you could say that this needs to be provided as a separate sheet of paper just like your GPL, you know. It doesn't matter, but it would be good if it were clear so that people knew, well, can I include this in the body of the contract and not give them a separate sheet, or do I have to give them a separate sheet or what? Either way is fine, but it would be --

CHAIRMAN: Does anyone actually see where there's a down side to leaving it that broad? In other words, here's your choice; you can do it this way, you can do this way,

you can do it this way?

MS. RUSSELL: A choice.

MS. BATTAGLER: A choice is great.

MR. OTTO: A choice is great.

MS. RUSSELL: A choice is great.

CHAIRMAN: Just as long as it's there.

MS. BATTAGLER: Because if I always have to do a separate sheet of paper, I mean, it is going to be a bigger expense. We'd rather just have the whole thing right there in the contract like we do now.

MS. RUSSELL: A choice. As long as they use this wording.

MR. OTTO: A choice is great.

MR. McCULLOCH: So, the parentheses come out of this?

MR. OTTO: Well, you would just replace the following disclosures must be either included in the body of the contract or provided to the consumer separately --

MS. BATTAGLER: As a separate addendum.

MR. OTTO: -- as a separate -- yeah.

MR. McCULLOCH: Well, this is making it sound like you've got to give it to them at the very beginning.

MR. OTTO: Either one.

MR. SPEAKS: What if you just title it mandatory preneed-contract disclosures.

MR. OTTO: Yeah, that's a good one.

MS. BATTAGLER: There you go.

CHAIRMAN: There you go.

MS. DUNN: Okay. Now, Earl is looking at something else, so let's wait a moment to see where we're at and what we're doing.

MR. KRAUS: That's actually on another related matter. I'm going to look at that in a second.

MS. DUNN: What is?

MR. KRAUS: I said I can look at that in a second.

MS. DUNN: Okay. Okay. So, they were talking about --

CHAIRMAN: Well, Don's -- the quotation up here in parentheses to be provided at the initiation of every preneed contract, Don's thought was maybe just lose that whole line and say mandatory preneed-contract disclosures.

MR. KRAUS: And the section that you were referring to earlier, Don, where the --

in Senate Bill 1 where it says the Board can mandate disclosures in the contract --

MR. OTTO: Yeah.

MR. KRAUS: -- is where?

MR. OTTO: Oh. I don't -- I don't have it in front of me.

MS. RUSSELL: Oh. It's on page 16.

MR. OTTO: I'm sure it's in there somewhere.

MR. KRAUS: I think it is, too. Before we actually make the rule --

MS. RUSSELL: It's on page 17 of the Senate Bill. I don't know if it says mandatory. It says include notice that the Board provides by rule, #7, that the purchaser has the right to transfer the provider designation to another provider. You did that by rule. And then #14, include any applicable consumer disclosures required by the Board by rule. And #15, include a disclosure on all guaranteed installment-payment contracts informing the purchaser what will take place, and you've covered that one, too; okay?

MR. KRAUS: Right. And that is shall language under sub 1.

MS. RUSSELL: Yeah. So, it's #7, #14, #15.

MR. KRAUS: Okay. Good. Yeah. And that's where I was talking about where it starts off all preneed contracts shall -- I mean --

MS. RUSSELL: You're right.

CHAIRMAN: Good. So, option #1 are the --

MR. McCULLOCH: So, it just has to include these things?

CHAIRMAN: How do you feel -- or not feel, but what -- I know you'll do whatever we tell you to do, but you're tired of hearing that.

UNIDENTIFIED: We don't want --

CHAIRMAN: I'm getting it. I'm getting this.

UNIDENTIFIED: Yeah.

CHAIRMAN: But what are you going to do? What you tell me to do. But I think everybody is under the thought process that this needs to go because this sounds like it has to be a general price list, you've got to see this.

MR. KRAUS: And that's one way of doing it.

CHAIRMAN: So --

MR. KRAUS: I think there was discussion early, early, early on about how there wants there to be some separate thing that's not buried somewhere in the contract that here you go, read this, these are disclosures for your protection.

CHAIRMAN: Oh, okay. But from legal advice, do we have the latitude in the law to do what we said, give people a choice where you can make this a separate sheet and do just what we just said?

MR. KRAUS: Yeah.

CHAIRMAN: You can -- as long as this language, these points are all included in your contract, that's okay?

MR. KRAUS: That is okay.

CHAIRMAN: That's okay. Okay. And the general consensus of around the room was give us the latitude.

MS. RUSSELL: Give us a choice.

CHAIRMAN: Give us a choice.

MS. DUNN: So, if a consumer files a

complaint, they can say to the Board I received this disclosure somewhere? I mean, as a --

MS. BATTAGLER: Absolutely. It's on an additional -- (inaudible.)

MS. DUNN: Okay. So, you all could --

MS. BATTAGLER: This number one is on the front of the contract.

MR. McCULLOCH: But they may not all be in one form, they may be in different spots.

MS. RUSSELL: It's in the contract.

MS. BATTAGLER: Right.

MS. DUNN: Right.

MS. RUSSELL: It's in the contract under -- like under the right to cancel will be the parts about what happens.

MS. BATTAGLER: Right.

MS. DUNN: Right

MS. RUSSELL: And so, we won't have it worded exactly like this --

MS. DUNN: Right.

MS. RUSSELL: -- but it will be in there.

MS. DUNN: Okay.

MS. RUSSELL: Everything will be in

there.

MS. BATTAGLER: I mean, all this -- before you sign this contract, that's before --

MS. RUSSELL: Yeah.

MS. BATTAGLER: -- they sign. I mean, it's above where they sign where --

MR. KRAUS: Right.

MS. DUNN: I mean, I'm just --

MR. KRAUS: Yeah. I mean, you could require --

MS. DUNN: I'm just telling you that's what a consumer --

MS. BATTAGLER: Absolutely.

MS. DUNN: -- especially one that gets someone involved from a consumer-advocate group and make --

MS. BATTAGLER: That's right.

MS. RUSSELL: Absolutely.

MR. McCULLOCH: What's the consumer going to say? What do you think they'll say that's educated?

MS. DUNN: Well, that involves a consumer-advocate group, they'll go through the statutes and say -- you know, because we've seen this happen.

MR. McCULLOCH: And they'll say do you have all of these?

MS. DUNN: Yes. Somewhere.

MS. RUSSELL: Somewhere.

MS. DUNN: And then we just want to make sure that they're covered somewhere in your contracts.

MS. BATTAGLER: Absolutely.

CHAIRMAN: Now, from a regulatory point of view, when I'm sitting up at midnight trying to read a complaint, would it be easier to have initials by each one of these saying, yes, I understood all of those and I did get all of this, or do I get to take the contract and go through and go, okay, is this one in here somewhere?

MS. DUNN: That's what you would have to do, Board. The Board would have to do that.

CHAIRMAN: Is this one in here somewhere?

MR. KRAUS: Well, and if you require all those to be initialed, but, yet, you can choose to incorporate these terms within your contract, then do you have initials beside those items within the contract?

MS. BATTAGLER: And if you do that, then you're going to have people on the back side of the contracts initialing.

MR. McCULLOCH: I'd say no.

MS. RUSSELL: That's already initialed for the FTC.

CHAIRMAN: So, from that point of view, this would be -- would this be easier?

MS. RUSSELL: Yeah.

MS. BATTAGLER: Well --

MR. McCULLOCH: We don't want to dumb down our society. Make them learn how to read and understand and, you know, speak English, those sort of things.

MS. BATTAGLER: Here's the thing. You're required to give the consumer an exact copy of the contract. And if this is part of the contract, then you're going to have people having to put these out in triplicates, things like that, for them to sign. You're going to have a huge expense on that one. Why can't you include it in the contract?

MR. WARREN: If they do have them initial it -- and I would assume that would be at the discretion of whoever was selling this

thing -- it at least provides a defense to a complaint by a consumer that they didn't know what they were getting into, you know. Whether they read it or not is irrelevant, you know.

MR. McCULLOCH: But, you know, just like us, we have them sign the irrevocable, separate signature, it's part of the application. But, you know, if they want to complain, they're still going to complain, so it doesn't matter if you initial it or not. They're just gonna --

MR. WARREN: Yeah. Really, in a way, it doesn't. They just say that --

MR. McCULLOCH: Well, but I just signed it. They didn't --

MR. WARREN: They didn't describe it or I was drunk or -- you know.

MR. McCULLOCH: They forced me to sign my name.

MS. GERSTEIN: It probably would protect you in court.

MR. McCULLOCH: Ma'am?

MS. GERSTEIN: It would protect you in court.

MR. WARREN: Yeah. I was drunk -- (inaudible.)

MR. McCULLOCH: Well, we have the signatures, you know. How many times --

MS. GERSTEIN: Right. If it doesn't include this, then this won't protect you.

(Several people talking simultaneously.)

MR. McCULLOCH: Well, yeah. You have all of these in there. It's just why do you have to go through and say, now, I need you to initial this one.

MS. GERSTEIN: Well, just initial the whole thing, just require that --

MS. RUSSELL: Just require one signature if you use this. It isn't mandatory. Just one signature at the end.

MR. McCULLOCH: Well, you do. That's the thing. You have to have a signature. But with the irrevocable, they even sign it again, you know, so it's kind of like -- but they still will try to tell you that they didn't know what they were doing, I guess.

MS. GERSTEIN: Well, you can't help that.

CHAIRMAN: You think that the cost of

making this a document could be worse than the thought of trying to point it all out or --

MS. BATTAGLER: Well, the thing is, we're going to have to do it at some point in time anyway. And the statute says that it should be included in the contract.

MS. RUSSELL: Yeah, it does say that.

MS. BATTAGLER: So, why can't we just put it in the contract? I guess, I don't have a problem if you want every single one of these initialed except for if you're going to have a contract, this number-one statement is on every contract. I mean, it's a contract, and that's just a gimme. That's a -- it should on there. That should be on every single contract anyway. There's a lot of these that we already have on our contracts, and I know most of everybody else that sells preneed funerals has this -- these disclosures already on their contracts because it's the way to cover themselves.

MR. McCULLOCH: But the law doesn't say you have to have the initials, so can we make a rule saying that? I would hope not.

MS. BATTAGLER: I think we just --

MS. RUSSELL: It requires their signature. The contract requires a signature.

MS. BATTAGLER: Right.

MS. RUSSELL: You could say then an addendum would require a signature. If you do an addendum to a contract, you get a signature; correct?

MR. WARREN: Sure.

MS. BATTAGLER: Well, it's a part of your contract, so, yeah.

MS. RUSSELL: So, if you're just requiring a signature -- if you're going to give us a choice to put it in our contract, which I agree with Amy, the statute gives us that. It says a preneed contract shall include the disclosures. And you give us the choice to put it in our contract or to use this mandatory disclosure sheet, require a signature on this because the preneed contract -- it becomes an addendum to the contract then; right?

MR. KRAUS: Yeah. But, of course, if this is an addendum to the contract, then when you're signing the contract, you're signing all of the contract, including all

incorporated addendums.

MS. RUSSELL: But most addendums require a signature, though, usually; correct?

MR. WARREN: Yeah. You could do -- I mean --

MR. KRAUS: I think that's done as a good practice.

MR. WARREN: You could put -- if all these are in the body of the contract, then I think you would be covered. If they're a separate sheet attached to the contract and made a part of the contract, I don't think you would be covered. Or you could put it in the contract and have them sign it as a separate sheet, too. I mean, if I were writing the thing and was using that as part of the contract freestanding, I'd make it, you know, like, page 3 of 5, or page 4 of 5, and then put the attestation at the end of all that, that they read and understood everything and, you know --

MR. KRAUS: Right.

MR. WARREN: -- were reasonably sober at the time.

MR. KRAUS: So, there is no claim of

sticking something on later.

MS. RUSSELL: You would reference it.

MR. WARREN: Yeah.

MS. RUSSELL: Yeah.

MR. WARREN: Absolutely, because that's your defense.

MS. RUSSELL: Exactly.

MR. KRAUS: Yeah.

MR. WARREN: That's your defense. If somebody says, well, they didn't tell me that I couldn't do X, well, yes, I did, it's right here and you signed that you understood, you know. You know, at least with insurance contracts in the state of Missouri, you're deemed to know what's in it, whether -- you know -- (inaudible) -- four corners of the contract are -- (inaudible) -- with some exceptions, so --

CHAIRMAN: Okay. Personal opinion, and then we'll see what you guys think. Just from seeing problems on both sides of it, giving them flexibility, which is us, too, on the one side of it, but I sat up till midnight reading the complaint book last night, too. So, seeing from that point of

view, too, I would just say this can be a sheet if you want it to be a sheet. It can be built into the contract if you want it in the contract, but it says this, these words, under those headings, where if I have to sit down and go through somebody's contract that you can barely read anyway because of all that, I can go checkmark, checkmark, checkmark, checkmark, and it's there.

MR. KRAUS: So, under that suggestion, this language will be included somewhere within the contract, either --

CHAIRMAN: As it is.

MR. KRAUS: -- either in the contract itself --

CHAIRMAN: Or there it is.

MR. KRAUS: -- or on a separate sheet.

CHAIRMAN: Yes.

MR. KRAUS: And if it's in the contract itself, it can even be in different places?

CHAIRMAN: Uh-huh.

MR. KRAUS: It doesn't have to be this whole group together.

CHAIRMAN: But all I've got to look for are those headers.

MR. KRAUS: But these headers don't have to all be together?

CHAIRMAN: No.

MR. KRAUS: Okay.

MS. RUSSELL: Excellent.

MR. McCULLOCH: Oh, yeah. That's good.

MR. WARREN: Super Gumby.

MS. BATTAGLER: Super Gumby.

MS. RUSSELL: Super Gumby?

MS. DUNN: So, does everybody agree?

MR. McCULLOCH: Do you agree?

UNIDENTIFIED: That's wonderful.

UNIDENTIFIED: Yeah. That's fine. I think that works.

CHAIRMAN: Now, is there --

MR. KRAUS: Not signature or initials.

CHAIRMAN: Not by each one of them.

MR. SPEAKS: Yeah. But you could.

CHAIRMAN: But you could.

MR. KRAUS: Not required.

MS. DUNN: But that contract --

MR. SPEAKS: But it has to be exactly this language.

CHAIRMAN: Yeah. This exact language -- (inaudible.)

MR. KRAUS: But we go in this language. Okay.

MS. GERSTEIN: Wait a minute. Are you going to add that addition to it that you talked about?

MS. DUNN: Well, we've made some modifications to this --

MR. KRAUS: Yeah.

MS. DUNN: -- that Earl is going to include and, hopefully, be able to bring back.

MS. BATTAGLER: Especially under your right to cancel this contract -- (inaudible.)

MR. KRAUS: Oh, yeah. Yeah. Very easy.

MR. FRAKER: But you're going to bring this -- (inaudible.)

MS. CLARKSTON: Earl, from a rule process, for our side of the world, will this be -- will this language then be included in the rule?

MR. KRAUS: Yeah, I think it would. If you want to require this exact language, then I think we would include it in the rule. And, of course, there would have to be a rule --

MS. DUNN: For disclaimers.

MR. KRAUS: -- saying that this is required language in all contracts.

MS. DUNN: In accordance with --

MR. KRAUS: Which, of course, I'd have to bring back not just the revised language of this, but also a draft rule where you could then approve to make sure it's what you want it to be.

MR. FRAKER: Let's do that.

MR. MAHN: Do we need to make a motion?

CHAIRMAN: Well, hang on. Hang on.

MS. DUNN: No. Please.

CHAIRMAN: Okay. Just because of that thinking and before I even say that, I think part of my statement and I just thought of, you know, for the folks that -- I mean, we were hearing folks that still don't even have a computer, you know. The easy thing for them here is just to take this piece of paper and make it part of their contract.

UNIDENTIFIED: Yeah. Right.

CHAIRMAN: So, we've helped a lot of folks out by doing that.

MS. RUSSELL: Absolutely.

CHAIRMAN: So -- okay. Let's -- just for the official action, let's look at every one of those quickly, one at a time, and --

MS. DUNN: Don, pay attention. The first one is yours.

MR. OTTO: Okay.

CHAIRMAN: So, if there's something -- if you've got a comment or you think there's anything to be changed, and this contract is a legal, binding document, is there anything there that needs to be --

MS. DUNN: Well, before that --

CHAIRMAN: Oh, okay.

MS. DUNN: -- the statement right before that.

CHAIRMAN: Okay. Well, even the statement. Okay. The statement then.

MR. KRAUS: What do you want to call them?

MR. OTTO: Mandatory preneed-contract disclosures to the --

MR. McCULLOCH: Well, if you put these throughout your contract, you're not going to have this up there because they're throughout; correct?

CHAIRMAN: But they still would be mandatory preneed-contract disclosures to the consumer.

MS. RUSSELL: Yes. That would cover it regardless if you put it in your contract or if you handed this sheet out.

MR. McCULLOCH: Okay.

MR. FRAKER: Yeah. What's the name of this?

CHAIRMAN: So, everybody -- so mandatory -- everybody is good on --

MS. DUNN: Preneed contract disclosures to consumer; correct?

MR. McCULLOCH: But you don't have to have that in your contract somewhere because they're going to be scattered throughout.

CHAIRMAN: Actually, probably not. I mean, I guess that makes --

MS. RUSSELL: You wouldn't have to use that --

MS. BATTAGLER: You've got the parentheses part.

MR. FRAKER: If you use this as an addendum, let this be your header.

CHAIRMAN: Yeah, that would be fine if

you're using it as an addendum.

MR. McCULLOCH: But if you have them scattered out, so now you just have this thing that says preneed contract disclosures to consumer.

MS. GERSTEIN: Right.

MR. McCULLOCH: But they're going to say, well, where are they?

CHAIRMAN: Yeah, that would be difficult. Yeah, that would be difficult.

MR. FRAKER: I wouldn't worry about that.

CHAIRMAN: So, how do we do that?

MR. KRAUS: Well, we could try to write the rule that requires this language to be used, and if you use this sheet, include -- then including the heading. If you're not using this sheet, not including the heading, something like that.

MS. RUSSELL: Perfect.

MR. WARREN: That would be an easier way to do it.

MR. McCULLOCH: And the parentheses comes out?

MR. KRAUS: Well, I would include that

within the heading -- count that as part of the heading. Oh. You mean, if you do use the sheet?

MR. McCULLOCH: Where it says to be provided at the initiation of every preneed contract.

MR. KRAUS: What do you think?

MS. BATTAGLER: Well, if you use that as an addendum, you probably should use that.

CHAIRMAN: Well, the "initiation" word is the key there, though.

MR. McCULLOCH: This stuff doesn't make any sense to them when you first sit down with them.

MS. BATTAGLER: Yeah, that's true. That's true.

MR. FRAKER: Leave that out. We don't need that.

MR. KRAUS: We could take that out if you want. All right.

MR. McCULLOCH: I mean, like the old FTC, and somebody called up --

UNIDENTIFIED: Scare them to death.

MR. McCULLOCH: -- you've got to tell them all your prices.

MS. BATTAGLER: I know.

MR. McCULLOCH: But I just called to see if I could borrow some chairs.

MS. BATTAGLER: So, you just took it out?

UNIDENTIFIED: Right.

MR. KRAUS: That was what was suggested.

CHAIRMAN: Okay. So, we're going to drop, unless somebody else says -- has an issue that we need to look at, just drop the "to be provided at the initiation." That's gone.

MR. MAHN: I've got a couple of comments, Chairman.

CHAIRMAN: Okay.

MR. MAHN: When you look at this, you get the feeling that it kind of pertains -- at least I do -- to trust or joint accounts. And buried in there on the back page is about the cancellation is -- does not apply to insurance policies. I think that needs to be highlighted or something somewhere more openly because a lot of places are just going to be doing insurance and a lot of this, you know,

doesn't apply to that. And then down at the bottom, I notice, a seller's right to cancel this contract -- (inaudible) -- 85 percent of your contract payment made. But didn't we go over that this morning and it may not be 85 percent?

MR. OTTO: Yes. I was waiting till we got to that.

CHAIRMAN: Okay.

MR. MAHN: Okay.

MS. DUNN: I think we're going to deal with each section now.

CHAIRMAN: Yeah. Save that, as we're just point by point.

MR. MAHN: Okay. Okay.

CHAIRMAN: And then we'll go back.

MR. MAHN: All right.

CHAIRMAN: Okay.

MR. KRAUS: Going towards one part of that, though, I think there are many of these sections that do apply to insurance funded.

MR. MAHN: Sure. Sure.

CHAIRMAN: So, keep that in mind if we need to address that as we're moving down this page. But, right now, the only thing is the

top two lines is the thought is the word "mandatory" with the header and then drop the "to be provided at the initiation of every preneed contract." Anybody see anything else that would need help or thought or whatever there? Okay. Do you want to vote on every one of those?

MR. McCULLOCH: So, you're adding the word "mandatory"?

CHAIRMAN: Uh-huh. All right. Seeing no more, next section. This contract is a legally binding document. Anybody got a comment?

MS. BATTAGLER: I don't know exactly what our contracts state right now, and the only thing I could ask is, I know that we've got this statement, I just don't know the exact words. And these are the exact words that have to be used?

CHAIRMAN: I'm thinking so.

MS. BATTAGLER: And it's only because we added more to it about blank -- you know, don't sign if there's any blanks on the contract kind of thing. I mean, I know we added, but it was all part of, like, sentences

and stuff like that. I don't know.

MR. KRAUS: Well, I think you would still have the -- even if this is required language, if you choose to also include additional language that you just want to include, you can.

MR. SPEAKS: Just like your GPL.

MS. BATTAGLER: Right. You can add to it. I just -- okay.

MR. SPEAKS: The FTC mandates certain language, but you can add to that. You just don't subtract from it.

MS. BATTAGLER: Right. As long as these words are actually in there?

MR. KRAUS: Uh-huh. In the order that they're in.

(Several people talking simultaneously.)

MR. McCULLOCH: I was going to say, can we kind of move them around, but --

MR. SPEAKS: The word "sign" is in there, we just reversed the -- (inaudible.)

MR. McCULLOCH: You're way too smart, Earl.

MR. KRAUS: Well, that's why we include these within the rule itself. Put it

in the rule and there it is. But, of course, once it's in the rule, then anytime you want to make changes to it, you have to actually repromulgate a rule to make any changes to the disclosure, and that's the disadvantage of doing it that way, which, you know, is a process.

MS. RUSSELL: I think she was talking about, it says, "Do not sign this agreement before you have read it completely or it contains any blank spaces."

UNIDENTIFIED: Yeah, that's fine. You can put that in there.

UNIDENTIFIED: Yeah.

MS. BATTAGLER: I mean, that way, they -- it still says you need to read this and understand it, but --

MS. RUSSELL: Yeah.

MS. BATTAGLER: And, really, they shouldn't sign it if there's blank spaces because anybody can go through and -- (inaudible.)

CHAIRMAN: Your contract has that in it now?

MS. BATTAGLER: Oh, yeah.

MS. RUSSELL: Mine has that.
MR. KRAUS: Really?
MS. RUSSELL: Yeah.
MS. BATTAGLER: Is that not -- (inaudible.)
MS. RUSSELL: It's under an FTC.
MS. BATTAGLER: Yeah. It's under an FTC requirement.
MR. KRAUS: Really?
MR. McCULLOCH: Do -- oh. We're not there yet.
MS. RUSSELL: It's FTC.
MS. BATTAGLER: Probably ought to consult the FTC requirements on funeral before we get into terminology on all this.
MR. OTTO: No. We need to have this rule passed quick.
MR. SPEAKS: We're not afraid of them.
CHAIRMAN: Okay. And are you suggesting we add that or --
MS. RUSSELL: No.
MS. BATTAGLER: I would suggest that you -- I mean, because some of this is probably -- is already an FTC requirement, I'm just suggesting that maybe you look at the FTC

required wording before you revise it.

MR. KRAUS: And make it --

MS. BATTAGLER: Make it match with the FTC and maybe even a little more if you want it to be.

MR. KRAUS: So, then you would actually have a much -- you could have a much smaller disclosure statement --

MS. BATTAGLER: Or you could add to it and make it more.

MR. KRAUS: -- because FTC is already required, and then say this is required by the Board.

MS. BATTAGLER: That's right. That's right. You wouldn't even have to have this if this is FTC.

MS. DUNN: I don't know how we're going to get all this done today.

MR. KRAUS: But then you have fewer disclosures in one place.

MS. RUSSELL: No. I think just let him go with this because they've got to get this disclosure.

MR. OTTO: Yeah. We've got to get this disclosure out to people, like, now.

MR. KRAUS: Yeah. And then every time the FTC changes, then do we --

MS. RUSSELL: Yeah.

CHAIRMAN: Okay. So, anybody else think it's important to put fill in the spaces?

MR. McCULLOCH: No.

CHAIRMAN: All right.

MR. McCULLOCH: But they can add it to theirs if they want.

CHAIRMAN: Okay. So, everybody cool then with the thinking of that as is?

UNIDENTIFIED: Sure.

CHAIRMAN: All right. Jump to the next one. Right to receive a copy of the contract.

MR. McCULLOCH: Do all life-insurance companies do the -- does the life policy always go to the person or the --

MS. RUSSELL: No. It goes to the owner of the policy, which is usually the funeral home.

MR. McCULLOCH: Okay.

MS. RUSSELL: And if they -- you take an assignment, so that's a good point right there, John. Well, any documents relates,

such as any life insurance.

MR. McCULLOCH: Of course, I guess that's the same. You have a right to receive any -- a copy of --

MS. RUSSELL: You have a right to receive a copy of it, so if they called the funeral home and said show me a copy, I'm sure the funeral home would show them a copy and give them a copy of the policy.

MR. McCULLOCH: Run it off or something.

MR. OTTO: Yeah. You want proof that they've bought the insurance policy that they said they were going to buy.

MS. RUSSELL: Yeah. Yeah. So, that's probably not a big deal.

MR. McCULLOCH: Okay.

MS. RUSSELL: What do you think, Mark?

MR. OTTO: It doesn't say you have to send it to them. It just says if they want -- they have a right to it if they want it.

CHAIRMAN: Everybody okay there? All right. Right to change providers. Go ahead, Don.

MR. OTTO: Do you need to include

anything in there that indicates that your new provider must be willing to accept the contract? I can see a consumer saying -- complaining because funeral home B didn't -- refused to do it. And it says here, I have a right to change providers.

MS. RUSSELL: It also says your seller and provider can help you determine whether a new contract is required or not, but wouldn't that fall under that?

MR. OTTO: No. Because that's -- a new contract is required if the seller chooses option B and doesn't continue the trust. My concern is that they had a funeral -- somebody has a funeral plan at Brad's funeral home, they come to me and say I want to transfer it to you, and I say I don't want to do that. Then they say, oh, the law says I have the right to change providers; you have to take it.

MS. BATTAGLER: It doesn't say you have to take it. Oh. If the new provider agrees, that's what the law says -- or what the statute says.

MR. OTTO: Yeah. So, I'm just wondering if you don't need to stick something

in there that says --

MR. McCULLOCH: If the new provider agrees.

MS. BATTAGLER: If the new provider agrees.

UNIDENTIFIED: If the new provider agrees.

MR. OTTO: Yeah. But it gives you the right to change the provider named in this contract if -- you know, or something. Just -- I don't now. Something that says that if your new provider choice agrees or something.

MR. McCULLOCH: (Inaudible.))

MS. BATTAGLER: Agrees to the terms of the contract.

MR. OTTO: Well, I don't want to word --

MS. BATTAGLER: (Inaudible.)

MR. McCULLOCH: (Inaudible) -- contains the provider named in this contract if -- (inaudible.)

MR. OTTO: You could do it in the second-to-the-last sentence. A change of providers may require a new preneed contract and will require the acquiescence of the new

provider, something like that.

MS. BATTAGLER: Acceptance or --

CHAIRMAN: Why couldn't you just add there in that sentence that talks about if you want to change providers, you must provide the seller and la, da, da, and the written notice you wish to change your providers, and you must include the name and address of who you want to be your new provider if they agree?

MS. BATTAGLER: If they agree or if the new provider agrees.

MR. KRAUS: A change in providers requires agreement of the new provider and may require a new contract.

MR. OTTO: Yeah. There -- that's a good one.

MS. BATTAGLER: Good.

MS. RUSSELL: Say it again, Earl.

MR. KRAUS: A change in providers may require -- or a change in providers requires --

MR. OTTO: The agreement.

MR. KRAUS: -- the agreement of the new provider --

MR. OTTO: And may require -- yeah. That's good.

MR. KRAUS: -- with the contract part there. And my require a new preneed contract.

CHAIRMAN: So, you really just lost the last sentence.

MR. KRAUS: A change in -- on -- I wasn't changing the last sentence at all.

CHAIRMAN: Oh. Okay.

MR. KRAUS: Just the second sentence -- second-to-the-last sentence. A change in providers requires the agreement of the new provider and may require a new preneed contract. Your seller and provider can help you determine, blah, blah, blah.

MS. DUNN: Wouldn't it need a new preneed provider? I don't know.

MR. KRAUS: Well, of course, the thing is, I mean, to --

MS. DUNN: Yeah.

MR. KRAUS: -- logically, to enter into a new contract, you have to have the agreement of the provider, but --

MS. DUNN: Yeah. Right.

MR. KRAUS: We're spelling this out for you.

MS. DUNN: I understand, and it's a

very good thing.

MR. KRAUS: I love the word "acquiesce," but I really don't want to use that.

MR. OTTO: I guess, are we above the eighth-grade level?

MR. KRAUS: It might exacerbate our problems.

CHAIRMAN: Okay. So, everybody is cool here with those changes?

(Multiple people answer yes.)

CHAIRMAN: Okay. Qualifying for public assistance.

MR. OTTO: I thought we mentioned it earlier.

MR. KRAUS: Now, on this one from before, I had noted -- let's see -- in the second sentence, even if you have agreed to make this irrevocable as part of your qualification for public assistance, you may still change providers at any time and make changes to the goods and services at any time. However, you cannot cancel this contract and cannot receive any refund.

CHAIRMAN: Yeah. That was it, because

I had it written. Okay. So, those are in.

MS. RUSSELL: Were you going to correct the back on that same section, the second or the top line about the minus any interest, or are we just going to take that out?

MS. BATTAGLER: We're not there yet.

MR. KRAUS: Where?

UNIDENTIFIED: We're not there yet.

MS. RUSSELL: Oh, I'm sorry. Sorry. I'm sorry. I'm ahead of you.

MR. KRAUS: Yeah. Okay.

CHAIRMAN: Oh, in the cancel it -- okay. Okay. So, everybody is fine with that one now?

MS. GERSTEIN: Which one?

CHAIRMAN: The qualifying for public assistance.

MR. MAHN: Yes.

CHAIRMAN: Okay. All right. Next one, your right to cancel this contract. You had notes on that one already or not?

MR. KRAUS: I did. In the second paragraph, the second sentence, the financial institution must give you the principal in the

account within 15 days of your request. So, I'm changing funds to principal and deleting "minus any interest."

MR. McCULLOCH: Deleting "minus any interest"?

MR. KRAUS: Correct.

CHAIRMAN: Any other comments?

MS. GERSTEIN: I have a question. I'm a layman; I'm the person that's going to be addressing this. Okay. If my -- okay. Interest will be distributed as provided in this contract. Is that the contract that you have signed other than this? I mean, because over here, it says minus any interest. That's what I'm trying to figure out.

MR. OTTO: Get rid of the minus any interest.

MR. KRAUS: Yeah. We're deleting the minus any interest, and the contract that this is referring to is the contract that this language is a part of.

MS. GERSTEIN: Okay. So, get rid of that part then. All right.

CHAIRMAN: Okay. Any other comments, or everybody happy?

MS. CLARKSTON: In the last paragraph, it says if the contract is funded with a trust, you must provide written notice to the seller and to the trustee. The first paragraph says to the seller. I just wondered if -- I mean, it sound --

MS. BATTAGLER: Shouldn't it just be the seller?

MS. CLARKSTON: Is trustee required? I can't remember.

MS. BATTAGLER: It is.

UNIDENTIFIED: It is?

MS. CLARKSTON: It is.

UNIDENTIFIED: On a trust?

MS. BATTAGLER: I'll assume that the trustee can distribute the money to the purchaser.

MR. OTTO: Probably that last paragraph should probably then read if your contract is coming from the trust, you must also provide --

MS. CLARKSTON: Also provide to the seller.

MR. OTTO: -- written notice to the seller or --

MS. CLARKSTON: Or just to the trustee, because if you say also, take out seller there --

MR. OTTO: Yeah.

MS. CLARKSTON: -- and refer back to here.

MR. OTTO: Yeah. So, if your contract is funded with a trust, you must also provide written notice to the trustee.

MR. SPEAKS: How does the consumer then do that --

MR. OTTO: It's on the contract -- (inaudible.)

MR. SPEAKS: All right.

MR. KRAUS: So, put also between must and provide?

MR. OTTO: Well, you should also get rid of seller on that, because the first paragraph says any time you cancel a contract, you've got to provide notice to the seller.

MS. RUSSELL: Right.

MR. OTTO: That's easy. But then the last paragraph is if your contract is funded with a trust, you must also provide written notice to the trustee.

CHAIRMAN: What you just said was the first one is in the first paragraph; right?

MR. OTTO: Yeah.

CHAIRMAN: Yeah.

MR. KRAUS: So, then the first sentence of the last paragraph would read if your contract is funded with a trust, you must also provide written notice to the trustee?

CHAIRMAN: Yeah.

MR. KRAUS: So, dropping the seller and.

CHAIRMAN: Okay. Any other thought? Ready to move on?

MR. OTTO: Well, did you want to on that -- well, I guess not. This is what -- this is -- well, a comment that was made earlier on the insurance cancellation, was there some desire to highlight that more?

MR. MAHN: Well, that's a good question. I mean, I brought that up, but, Darlene, how do you feel? The insurance --

MS. RUSSELL: I think it addresses all three here.

MR. MAHN: Okay.

MS. RUSSELL: Joint account, trust, and

insurance. It's easy.

MR. MAHN: Okay. Okay. I'm all right with that.

MR. OTTO: And in this next section, that 85 percent is correct when the seller is canceling the contract. The statute specifically says if the seller cancels the contract, it's 85 percent of the contract payments made.

MS. BATTAGLER: Wow. That is different.

MR. OTTO: I know.

MS. BATTAGLER: Wow.

CHAIRMAN: You're not -- you're just looking in the next section, though. You're not seeing how that needs something dealt with your right to cancel, are you?

MR. OTTO: No. I'm sorry. I thought we moved to the next section.

CHAIRMAN: Okay.

MR. OTTO: I thought we moved to the seller's right to cancel.

CHAIRMAN: Okay. Not yet. Just making sure.

MR. OTTO: My apologies.

MS. BATTAGLER: So, you get to keep -- (inaudible.)

CHAIRMAN: So, everybody is okay then with your right to cancel this contract?

(Numerous people answer yes.)

CHAIRMAN: Hearing no one complying that thought. Okay. Now, the 85-percent thought, you're just pointing that out, or you think there's something that needs changed there?

MR. OTTO: No, that -- it is different when the consumer cancels versus when the seller cancels.

MR. MAHN: It isn't 85 percent plus some interest?

MR. OTTO: No. No interest.

MS. BATTAGLER: No. The seller gets the interest.

MR. MAHN: I thought it was. I thought we talked about that.

MS. BATTAGLER: Not on a seller cancellation.

MR. OTTO: Yeah. If the seller cancels -- this was another Charlie argument he never got. Bless his heart, he tried.

But if the seller cancels -- because this always pops up in the situation where you've missed your installment payments and you go through this process. Then the seller can cancel and keep 85 percent of whatever the consumer -- I mean, keep 15 percent of what the consumer sent to them and return 85 percent. So, it's not based upon the contract amount, it's based upon what the consumer has actually sent in.

MS. BATTAGLER: And it doesn't say that it actually doesn't allow for the origination fee. Well, I guess, previously, the origination fee is nonrefundable, so --

MR. OTTO: This over -- no. This really overrides that.

MS. BATTAGLER: This overrides that.

MR. OTTO: This really overrides that, so --

MS. BATTAGLER: Except for his 5-percent origination fee.

MR. OTTO: But you keep --

MS. BATTAGLER: No. I mean, it can work either way.

MR. OTTO: Yeah. Depending on how it

works --

MS. BATTAGLER: It just depends on how much they paid in.

MS. GERSTEIN: (Inaudible.)

MR. OTTO: Depending how much they paid in, the consumer might get more under this or less under this. So, it's almost worse because we're giving 80 percent back.

MS. BATTAGLER: Yeah.

MR. OTTO: I don't know. It's not a different number.

MS. BATTAGLER: It is. Well, it is different. I mean --

MR. OTTO: (Inaudible.)

MR. KRAUS: But the language of the disclosure is --

MR. OTTO: The language on the disclosure is correct.

MS. BATTAGLER: It's correct.

CHAIRMAN: I have one question in the language and the part of that you may bring your account current within 30 days, what is that? Thirty days from when?

MS. BATTAGLER: From the written notice.

CHAIRMAN: Okay. All right.

MS. BATTAGLER: That's what the law states in it, I think. Or from the date -- the postmark of the letter is what the statute says. From the postmark of the notice from the --

MS. GERSTEIN: I don't understand this.

MR. OTTO: This is when the customer -- (inaudible.)

CHAIRMAN: Is there an official of that? I mean, the 30 days is of the postmark? I mean --

MS. BATTAGLER: It says it in the statute.

MS. RUSSELL: I don't know where it's at.

MS. BATTAGLER: It's in the statute.

(Several people talking simultaneously.)

MS. BATTAGLER: Notifying purchaser and provider in writing if the contract is canceled and payment is not received within 30 days of the postmarked date of the notice. 436.457(2).

CHAIRMAN: Anyone think that would be important to add that to this?

MR. MAHN: I didn't hear.

CHAIRMAN: It says that you have to send them the written notice that you're canceling the contract, and then it just comes up and says you may bring your contract current or account current within 30 days. My question just was 30 days of what? So, do you think that would be confusing to anyone?

MS. DUNN: Within 30 days of the postmarked date of the notice.

CHAIRMAN: And that's out of the statute, of course.

MS. DUNN: Yes.

MS. RUSSELL: Yes.

MS. BATTAGLER: Yes.

MR. KRAUS: I think you're asking whether we want to include that language in the disclosure.

MR. RUSSELL: Right.

MS. BATTAGLER: Right.

CHAIRMAN: Right. Do you think that would be important?

MR. KRAUS: I think there are a lot of places in the disclosure where we could insert different time frames and notice specifics and

things like that. We had initially done that in an earlier draft and it was five pages long, so we cut it down.

MS. DUNN: Well, this can't contradict the statute.

MS. RUSSELL: This came straight out of the statute.

MS. GERSTEIN: This is in the statute. I'd say leave it in there.

MR. KRAUS: Well, I know. And all that other stuff was in the statute, too.

MS. RUSSELL: Yeah. I see what you're saying.

MR. KRAUS: And we boiled it down to this.

MS. BATTAGLER: You're making our contracts ten pages long.

MS. DUNN: Yeah. But this can't contradict the statute.

MR. KRAUS: And none of that language contradicted the statute, either.

MS. RUSSELL: It doesn't. It doesn't. It just doesn't -- (inaudible.)

MS. DUNN: Right.

CHAIRMAN: My question, really, was

just if somebody really is going to cancel and it's -- they come walking back in and they say, well, it just says you have 30 days right here on your contract, then you're going to have to say, oh, well, but let's get the statute out and it says --

MR. KRAUS: I mean, you could say within 30 days of written notice.

CHAIRMAN: Okay.

MR. KRAUS: And if you wanted to add in the postmark stuff, you could, too. That's pretty detailed, or you could just put the word "notice" behind -- within 30 days of notice.

CHAIRMAN: Yeah. I think there should be another word there.

MS. BATTAGLER: I mean, people are going to accept the money, so, I mean, it's not -- they don't want -- (inaudible.)

CHAIRMAN: I guess, I'm -- I understand it's protected there, but I'm just --

MR. KRAUS: Thirty days --

CHAIRMAN: -- being dumb down for a minute.

MS. RUSSELL: Well, I think it's a good idea, within 30 days of notice.

MR. KRAUS: Thirty days of notice?

CHAIRMAN: If my simple mind is asking the question, somebody else's will. I think what I'm seeing, just, again, in simplistic, is, I think you're going to see more of just this sheet getting added to the contract, so the consumers really are going to end up to start reading this.

MS. RUSSELL: Yeah.

MS. BATTAGLER: Temporarily, that will happen if the contracts can get done.

MS. RUSSELL: Especially the funeral homes using joint accounts that will -- (inaudible.)

CHAIRMAN: But I'm just hearing, you know, folks on the telephone and just all that kind of thing. So, okay. Any other comment there? I stirred that one up, but -- everybody happy? Okay. What happens if I die? You all are lucky.

MR. KRAUS: We would all be very sad.

CHAIRMAN: What was your comment a while ago?

MR. KRAUS: Yes. The current suggested changes are in the first sentence. If you die before the contract is paid in full, your survivors have the option in trust-funded or joint accounts -- let's see. In trust-funded or joint-account-funded contracts. Let me read that again. If you die before the contract is paid in full, your survivors have the option in trust-funded or joint-account-funded contracts to pay the balance, blah, blah, blah, blah, blah. And then adding another sentence at the end, which I haven't drafted yet, with regard to if they're insurance funded, then consult your insurance policy.

CHAIRMAN: Okay. Any other comments?

MR. MAHN: It's a go.

MR. OTTO: You did want to include the phrase the person with the right of sepulcher in there.

CHAIRMAN: All right.

MR. KRAUS: I stayed away from that.

CHAIRMAN: Okay. So, we need a motion then, I suppose, to accept this. Do you want to accept it as with the changes to be made,

or do you want a draft brought back?

MR. KRAUS: Well, I'm going to need to come back with a draft rule anyway.

CHAIRMAN: Okay.

MS. DUNN: Yeah. I would suggest on this a draft come back.

MR. KRAUS: So, you could look at the draft rule and a redrafted version of this all at the same time.

CHAIRMAN: Do you still need -- do we need that motion then to --

MR. KRAUS: And I want to be clear that I have that -- what you're wanting the rule to do clearly -- clear in that must use this language; right?

CHAIRMAN: Uh-huh.

MR. KRAUS: It can be on this separate sheet or it can be incorporated within the contract somehow?

CHAIRMAN: Uh-huh.

MR. KRAUS: No initials. I'm not going to put that in the rule, but that wasn't something you wanted.

CHAIRMAN: I don't think so.

MR. KRAUS: Okay.

CHAIRMAN: Obviously, can if they want, but not required.

MS. DUNN: And it has to be this language; right?

MR. KRAUS: Uh-huh.

MS. DUNN: Okay.

MR. McCULLOCH: It has to be what now? Oh, this language.

MR. KRAUS: This language.

MS. DUNN: That will be a question.

MR. KRAUS: And if you're using this sheet, a header is required. If you're incorporating language elsewhere in the contract, a header is not required.

CHAIRMAN: Right.

MR. McCULLOCH: And the header is only going to say mandatory preneed-contract disclosures?

MR. KRAUS: Mandatory preneed-contract disclosures to consumer.

MR. McCULLOCH: Mandatory preneed-contract disclosures to -- okay.

MR. KRAUS: And I may word that as if you're using this -- well, I don't know. I'll figure out something.

MS. RUSSELL: Something like no alterations can be made if using it.

MR. KRAUS: Or that you can use this sheet exactly.

MS. RUSSELL: Yes. Exactly.

MR. KRAUS: Or you can incorporate the language absent the header somewhere in your contract, something like that.

UNIDENTIFIED: In Chinese.

CHAIRMAN: For most funeral homes, you're just going to see this sheet get used, other than if you're using a contract that's -- and when Becky gets the phone call that says what all am I supposed to include in that contract, just use the sheet.

MS. DUNN: That's right.

MR. KRAUS: And this is just with regard to requiring language in the contract. That doesn't get into at all when it's supposed to be provided to the purchaser; right?

MS. BATTAGLER: Well, but it's --

MR. KRAUS: And then, of course, it's in the contract, so whenever they look at the contract, then it's supposed to be there.

MS. BATTAGLER: It states that you have to have this to the consumer by December 31st.

MR. OTTO: Well, that's a separate issue.

MS. BATTAGLER: Oh, is that something different?

MR. OTTO: That's if you're using your old contracts under the emergency rule.

MS. BATTAGLER: All right.

CHAIRMAN: Your comment was more in the light of, like, an FTC requirement, that before you start discussing services, you have to give this to them or something like that.

MR. KRAUS: And I want to make sure that you're not doing anything like that in the requirements.

CHAIRMAN: Yeah. And the statute has no requirement of that; right? Just as long as it's there. That's what I thought. Yeah.

MS. BATTAGLER: As long as you're disclosing it.

MR. KRAUS: That's another matter.

MS. DUNN: I mean, it's never been clarified to me.

MR. KRAUS: I would have to go back and look, so --

CHAIRMAN: Okay. So --

MR. KRAUS: All right.

CHAIRMAN: Well, just for the official, make a motion that we accept this for Earl to whatever.

MR. KRAUS: Draft that and bring it back.

MR. McCULLOCH: Motion.

CHAIRMAN: John. Gary seconds. Todd?

MR. MAHN: Yes.

CHAIRMAN: Joy?

MS. GERSTEIN: (Ms. Gerstein nods head affirmatively.)

CHAIRMAN: All right. Approval to redo, that the Board finds that there is competent and substantial evidence for Earl to go redraft this for the emergency rule.

MS. RUSSELL: It's Connie's turn, so --

MS. CLARKSTON: I've been trying to make notes.

CHAIRMAN: All right.

MS. CLARKSTON: And maybe, if okay, we can wait till the rule because this is really

part of the rule and not the full language of what's going to be in the rule.

MR. KRAUS: That's right.

MS. CLARKSTON: Address financial and small business at that time, because I'm not going to do anything with it until that time anyway.

CHAIRMAN: Okay. All right.

MS. CLARKSTON: Take one off my list for right now, please.

CHAIRMAN: What's next?

MR. KRAUS: Well, of course, I'll probably go draft it and bring it back today -- maybe.

MS. CLARKSTON: Okay.

MR. KRAUS: I hope.

CHAIRMAN: You've got their attention. Do you want it now?

MS. CLARKSTON: You know, I lost one, now I've gained two back. Man. Man. Okay. Obviously, copying costs, whatever it costs to amend the contracts if someone chooses to do that.

MS. BATTAGLER: Well, we already have to redo the contracts.

MS. CLARKSTON: Okay. So, there's no additional cost.

MS. BATTAGLER: On the rule, but not on the -- no. On the whatever, the statute, but not on --

MS. RUSSELL: No. They're -- yeah. Other than just if you're not putting it in of your contract, you just have to copy it, so --

MS. CLARKSTON: Okay. Is that it?

MS. BATTAGLER: Mailing. We have to -- because we have to make sure that the consumer gets this; right?

MS. RUSSELL: Oh, but that --

MS. BATTAGLER: Was that in the other rule?

MS. RUSSELL: That's in the other one.

MS. BATTAGLER: Okay.

MR. KRAUS: And if there's additional discussion with the purchaser with regard to this, you need to have your time and --

MS. BATTAGLER: Yeah. Never thought of that.

MR. KRAUS: -- questions.

CHAIRMAN: Questions? All right. Do you need more? Let's not start chasing

another horse until we --

MS. DUNN: The only thing I -- to clarify for Connie, as we prepare these statements, we always include who is here and who they represent. So, my only clarification is, like, Mark, are you representing your client only or also your firm? I mean, because you've given us some legal assistance, as well.

MR. WARREN: I'm just here on behalf of my client.

MS. DUNN: Okay.

MR. WARREN: I mean --

MS. DUNN: Okay. I just wanted to make sure, because when we put that on the record --

MR. KRAUS: You mean, because his law firm could also be a small business?

MS. DUNN: Uh-huh. That's right. So --

MS. BATTAGLER: I was having to --

MR. WARREN: I did respond to your e-mail on that, I think, the other day.

MS. DUNN: You did.

MR. WARREN: Okay.

MS. DUNN: But is that it?

MR. WARREN: Yeah. I'm just -- I'm representing them, and any comments I would make you can contribute to that.

MS. DUNN: Okay. Okay. And then Darlene, just solely who you're representing here?

MS. RUSSELL: Well, I'm representing myself as a licensee and CFL Preneed.

MS. DUNN: Okay. And Amy?

MS. BATTAGLER: Just Stuart.

MS. DUNN: Okay. And Brad?

MR. SPEAKS: Well, myself, as a --

MS. DUNN: Funeral director.

MR. SPEAKS: -- funeral director, and potential agent, and I guess that's it. The funeral-home establishment.

MS. DUNN: Okay. But not the CFA group?

MR. SPEAKS: No, not today.

MS. DUNN: Okay. I just want to make sure we have it reflected accurately.

MS. CLARKSTON: Okay. I'm sorry to interrupt, but clarify not today. Have you -- because I have it -- when I started drafting

these, I have not individually put who has been at every meeting. What I have said is, for the most part, we've been followed by the following groups: Licensees, Missouri Funeral Consumer Alliance, and if that's not accurate, I certainly want to take that out if you haven't been representing them, because you've been in almost -- as far as I know, every meeting. So, has it been at times for part of -- for that, or is it --

MR. SPEAKS: Yeah. Through this whole process, I haven't seen that as a factor.

MS. CLARKSTON: Okay. Okay.

MR. SPEAKS: So, when I've signed in every time, I've just put Speaks Funeral Home.

MS. CLARKSTON: Okay.

MR. SPEAKS: There's been other meetings where I felt I was representing CFA -- (inaudible.)

MS. CLARKSTON: Okay. That was outside of the rule-making -- this rule-making process?

MR. SPEAKS: Right.

MS. CLARKSTON: Okay.

MS. DUNN: So, we can't just

automatically --

MS. CLARKSTON: No.

MS. DUNN: -- think that he's -- I just want to make sure that's --

MS. CLARKSTON: Exactly. Now, one thing that might help, and you and I can talk about this later, is if I can get your sign-in sheets for your meetings, and we can try to match up what rules were discussed and kind of come at it that way.

MS. DUNN: Okay. And the sign-in sheets should accurately reflect who you're representing then.

MS. CLARKSTON: Okay.

CHAIRMAN: All right.

MS. DUNN: Don?

MR. OTTO: Missouri Funeral Directors and Embalmers Association, and Missouri Funeral Trust.

CHAIRMAN: The thought was just, out loud and quietly, asked about the use of old contracts, that people are saying I'm still using my old contracts. So, go ahead and express your thought that you expressed to me, because that's easier.

MS. DUNN: Okay. I just want to make sure. Don, I keep hearing you say that, and there's been so much going on here, just to help me remember. Was there an emergency rule addressing that, that you can use your old contracts through December 31st?

MS. RUSSELL: With the exception -- you passed this -- I'm sorry. I'm not Don.

MS. DUNN: No, but that's okay.

MR. OTTO: (Inaudible.)

MS. DUNN: We've got so much going on --

MS. RUSSELL: Okay. You passed -- you passed this, what was -- was it last week?

MS. BATTAGLER: Last week.

MS. RUSSELL: Last week, it says #7 and #9 on it, and it says that you can use your -- I'll read it. "However, preneed contracts executed after" -- and I think we should have put on -- "August 28th, 2009, shall comply with all requirements of Chapter 333 and Section 436.400 through 436.520 RSMo. However, preneed contracts that were valid under the relevant provisions of Chapter 436 on August 27th, 2009, may be used to enter

into a valid preneed contract after August 28th, 2009" -- and here's the part -- "so long as any additional requirements in Section 436.400 through 436.520 RSMo. are provided to purchasers no later than December 31st, 2009, by supplement addendum to the preneed contract."

CHAIRMAN: That would be this; right?

MR. KRAUS: No.

MS. DUNN: No.

MS. RUSSELL: No.

CHAIRMAN: No?

MS. DUNN: But I --

MR. KRAUS: What's the title of that?

MS. RUSSELL: It's #7 and #9.

MS. BATTAGLER: It just says #7 and #9 at the top. We combined group two.

MR. KRAUS: Oh, there's not a title on it?

MS. BATTAGLER: We combined them from group-two rules.

MS. DUNN: Okay. And --

MR. McCULLOCH: What else would you give them if you don't give them that?

MR. OTTO: I would say this would be.

MR. McCULLOCH: This is what you're giving them. This is what you guys send out to them.

MS. RUSSELL: Yeah. And an addendum because there's other things in 436 -- the new 436 that is not --

MS. DUNN: That will be required in the contract.

MS. RUSSELL: Yes. And, for instance --

MS. BATTAGLER: There's eight-point type on the contract, so --

MS. RUSSELL: -- eight point.

MS. BATTAGLER: We're going to have a five-page addendum.

MR. OTTO: But the addendum is not going to change that.

MS. RUSSELL: Signature of the -- you're requiring different signatures, phone numbers, the insurance company.

MR. OTTO: That does not say you have to redo the contract.

MS. RUSSELL: No. You can do an addendum to the contract that includes all the new information.

MR. OTTO: But there's a difference between including information and --

MS. BATTAGLER: Well, it says -- they do this because in the statute it says the contract requirements are, and here's what your requirements are. So, the statute says you can use your old contracts as long as whatever is required in the statute is handed to the customer by December 31st.

MR. OTTO: But you can't --

MS. DUNN: Is it in our packet?

MR. OTTO: You can't hand to the customer New Times Roman eight-point type.

MS. BATTAGLER: I can hand them -- I have to retype all of my terms and conditions on my contracts?

MR. McCULLOCH: I don't think that's what it means.

MR. OTTO: That's not what their rule says.

MR. McCULLOCH: I don't think that's what they mean by that. I don't think that's -- (inaudible.)

MS. BATTAGLER: That's what I took it as.

MS. RUSSELL: I took it as that, too.

MR. KRAUS: So long as any additional requirements in Section 436.400 through 436.520 are provided to purchasers no later than December 31st, 2009, by supplement addendum to the preneed contract.

CHAIRMAN: And your thought is that this would just be one of those articles.

MS. RUSSELL: Exactly.

MS. BATTAGLER: That's right. I thought I was going to have to do in eight-point type all my terms and conditions and send them out to everybody.

MS. RUSSELL: And you can't -- as Earl and Sharon have pointed out in the past, you cannot change the statute is a statute. You've got to follow what's in it, you know, what it says. You know, so the Board --

MR. McCULLOCH: We didn't for years on the trust -- (inaudible) -- so, why -- so, we should be able to pick and choose.

MS. BATTAGLER: So, are we understanding it correctly, that any of our contract requirements plus this, these requirements have to go out to the consumer by

December 31st?

MS. RUSSELL: Correct.

MS. DUNN: That was my understanding of the rule, but --

MS. RUSSELL: You have to do it by statute.

MS. BATTAGLER: I thought that you had to.

MR. KRAUS: Not yet. My understanding of this is that your contracts entered into before August 28th --

MS. RUSSELL: Are okay.

MR. KRAUS: -- need to -- that you need to send something out.

MR. RUSSELL: Before --

MR. KRAUS: Before August -- or before December 31st.

MS. RUSSELL: Oh, yeah. Okay.

MS. BATTAGLER: Right.

MS. RUSSELL: Anything that you write on August 28th.

MS. BATTAGLER: With any new requirements.

MS. DUNN: Uh-huh.

MS. RUSSELL: Yes.

MS. BATTAGLER: That's what I took it as, too.

MS. DUNN: The only --

MR. KRAUS: Then you're in compliance.

MS. RUSSELL: Correct.

MR. OTTO: And would -- I mean --

MS. DUNN: I would like to say something. The only thing I wanted to get for the record before we passed this is Darlene has made a couple good points in this. We may need to clarify a couple of words because where it says after August 28th, that's not the correct word.

MS. RUSSELL: It's on.

MS. DUNN: On August 28th.

MS. RUSSELL: Anything that you wrote on August 28th and thereafter come under the new Senate Bill 1.

MS. DUNN: That's correct.

MR. KRAUS: Well, it should be on or after.

MS. RUSSELL: Right.

MS. DUNN: Yes.

MS. RUSSELL: On or after.

MS. DUNN: Yes. And, right now, we

only have after.

MR. OTTO: And can't we have a rule that says exactly what it is we need to send to the consumer by December 31st?

CHAIRMAN: Do we have to do that as a rule, or can we just be educational --

MS. BATTAGLER: It says it on the rule.

MS. RUSSELL: It says that.

MR. OTTO: No. But that --

MS. BATTAGLER: It says any --

MR. McCULLOCH: I agree with him. I think the Board needs to spell out what that is. That's what you're asking; right?

MR. OTTO: Yeah.

MR. McCULLOCH: Yeah.

MR. OTTO: If the Board would please spell out what it is that I'm sending out.

MR. McCULLOCH: Because you can see where a disagreement about what you would have to send them.

MS. RUSSELL: Lori, would you --

MR. McCULLOCH: I thought it was just this stuff here.

MS. RUSSELL: Would you make a copy of that so everybody can see what passed?

CHAIRMAN: Well, actually, I'm thinking things like what if somebody is not doing the sequential numbering of the contracts.

MR. KRAUS: (Inaudible.)

CHAIRMAN: Well, you're going to have -- anything after that on the August 28th, you're going to have to go back and assign a number to it.

MS. BATTAGLER: Right.

CHAIRMAN: Now, that could be one thing. I'm trying -- maybe the seller's name might not be on there. I mean, I think it probably is, but maybe it's not, you know, so you've got to get that on there. So --

MR. McCULLOCH: That's supposed to be based on the old 436.

CHAIRMAN: Well, you know, there was something, I'm thinking now that we're saying that, we were talking about creating, like, an informational form or something about bullet point or something that said here's all the things that a contract is supposed -- we thought about doing an emergency rule on that, I think, didn't we? And then we decided, no,

that's getting too -- that's going to be way too much. Let's just --

MR. KRAUS: We talked about putting out a contract that everybody has to use, too.

MS. RUSSELL: Here it is.

CHAIRMAN: But -- well, that's what it was. There's where we changed and said --

MS. RUSSELL: This is what you had, but it didn't go.

CHAIRMAN: -- let's just create a list that says here's what has to be in every document, and it's not -- you know, we're not --

MR. KRAUS: Say, an educational list?

CHAIRMAN: Yeah.

MS. RUSSELL: An educational list.

CHAIRMAN: So, like, when everybody calls you and says I don't know, is this compliant, is that compliant, la, la, la, you can just say let me fax you these two pieces of paper.

MS. DUNN: That's right.

CHAIRMAN: And you've got all you need.

MS. DUNN: That's right.

MS. RUSSELL: Yeah. She needs to have

things simple so --

MS. DUNN: Because they want us to go on and interpret things that aren't there, so it's just best to -- like John said, it's here.

CHAIRMAN: And then it --

MR. KRAUS: Well, and you go through every single -- I mean, that's a lot on every single requirement as to what it has to be and not has to be in the contract, and people will disagree on many of those points, and does the Board want to be the one citing each of those things one way or the other and imposing it upon everyone? I think not.

MR. McCULLOCH: Explain, again, on that part about -- because I think the Board should tell people. I mean, that's the whole idea.

MR. KRAUS: Well, educating people and requiring them, you must have this explicit item. There's a big difference there --

MR. McCULLOCH: Okay.

MR. KRAUS: -- I think, between trying to explain --

MS. RUSSELL: Oh, that's different.

MR. KRAUS: -- here's all the places

where things are required and what they are as opposed to you shall include this, you shall include this, you shall include this, or your contract shall be this.

MS. DUNN: So, you don't think it's what was agreed upon?

MR. KRAUS: And that's your only option.

MS. RUSSELL: Oh, I see. It's just written -- (inaudible) -- but that's all right.

MS. BATTAGLER: It's just written -- (inaudible) -- that's all right.

MS. DUNN: Okay.

CHAIRMAN: I get that, shall be, but you think it's okay, though, don't you, to -- actually, we got real specific about this, but to at least come up with that list of what's supposed to be in the requirement? I mean --

MR. KRAUS: Yes. But I would -- I agree with the thought that that should be an educational thing.

CHAIRMAN: Okay.

MR. KRAUS: As opposed to something you're imposing on licensees.

CHAIRMAN: Okay. So, have we --

MR. KRAUS: I don't think we have, but --

CHAIRMAN: Have we come up with that list for educational use? Are we going to come up with that list for educational use? Are you going to draw that -- come up with that thought?

MR. KRAUS: With regard to what should be included in contracts, I don't think so. I haven't seen anything like that, unless someone else is working on it.

MS. DUNN: Not -- we weren't going to -- (inaudible) -- what the preneed contract --

CHAIRMAN: No. Didn't say draw the contract, just here's the bullet points. This is what has to be in there. Now, I guess I need help there because I'm not -- (inaudible.)

MR. KRAUS: Kind of like all the things you need to consider when you're putting together a contract. So, when they call you --

MS. BATTAGLER: That's the educational piece, though, isn't it?

CHAIRMAN: Do what?

MR. KRAUS: Yeah.

MS. BATTAGLER: That's the educational piece that you're talking about?

MR. KRAUS: It is. It is.

MS. BATTAGLER: Because this rule already states that your contracts by December 31st, by --

MR. KRAUS: It is. And what Martin is talking about is have we drafted anything like that yet, any educational -- for educational purposes.

MS. DUNN: No.

MR. KRAUS: I think the answer is no.

MR. MAHN: But are we going to?

MS. DUNN: We can delegate somebody to help us with that on the Board, I guess. We haven't had the time because all we've been doing --

CHAIRMAN: Okay. I understand that. Okay.

MR. OTTO: I mean, for -- just like on this one that was just handed out, all it says is additional requirements. Well, what additional requirements are you going to look at as a Board that if I have not sent them to the consumer by December 31st, you're going to

be mad about?

MS. RUSSELL: Everything that's required as a preneed contract, I think.

MR. OTTO: But if the Board says any additional requirements, I would like to know what those additional requirements are that the Board wants to make sure that I sent the consumer.

MR. McCULLOCH: I would agree.

MS. BATTAGLER: Isn't that under the disclosures?

MR. KRAUS: But isn't that qualified as any additional requirements in Section 436.400 to 436.520?

MR. OTTO: Well, how can I send -- the way this is worded, I must send to the consumer. How do I send to the consumer the signature of the funeral home if it wasn't on the original contract?

MR. KRAUS: You rewrite the contracts.

MR. OTTO: Well, see, if you're going to say rewrite the contract, say rewrite the contract.

MR. KRAUS: That's why it says an addendum to the contract, which could be a

complete rewrite of the contract.

MR. OTTO: But it doesn't say execute, it doesn't say --

MR. KRAUS: Because it doesn't want to require everyone to execute a new contract.

MS. RUSSELL: Absolutely.

MR. KRAUS: Some may not need to.

MR. OTTO: Well, see, this is why -- whether it's a rule or educational piece, it would be nice if you had something that says here's what the consumer has to have in their hand by December 31st.

MR. KRAUS: Well, of course, that's asking the Board to, essentially, do -- I mean, this kind of says, well, you've got to go look at the law and see what's required to be in your contracts under the law, figure it out and put that in your contracts. Whereas you're saying, well, the Board should go do that and then tell everybody.

UNIDENTIFIED: That's part of the educational thing we talked it.

MR. KRAUS: Exactly.

MS. BATTAGLER: Exactly.

MR. KRAUS: But not in a rule.

MR. OTTO: Well, that's what I'm saying. I say whether it's by rule or education.

MR. KRAUS: Oh. Well, we agree.

MR. OTTO: But we need -- we do need that, for you to tell us if you haven't done this, you're in trouble.

MR. McCULLOCH: It should be that nobody is in trouble, but that's the stupid part about all this. We should just give everybody time to get up and going. Going back to these people and having to do all this stuff that you all are saying, you know, that you think has to be done, that's just stupid.

MS. RUSSELL: We're going to do it anyway because that's what it says in the law.

MS. BATTAGLER: It's in the law. It's in the law.

MS. RUSSELL: We're going to follow the law.

MR. McCULLOCH: It's stupid, though. You don't always follow the law. Do you ever speed?

MS. RUSSELL: I try. I haven't got a speeding ticket.

MR. McCULLOCH: No, but you've broke the law, haven't you?

MS. BATTAGLER: That's you personally, not the company.

MR. McCULLOCH: So, there you go. You don't always follow the law. We might could find some more things if we dig a little bit.

MS. BATTAGLER: It's me personally, not the company.

MS. RUSSELL: (Inaudible.)

MR. OTTO: I've never had a speeding ticket that you can prove.

MR. McCULLOCH: There you go.

CHAIRMAN: All right. I actually want to ask one other question on that thought just for my own edification, maybe. We were talking about, like, insurance contracts, we were talking about joint-account contracts, talking about trust contracts. Don made the comment that there may be a contract out there that has both -- a couple things on it; I went and put a CD in the bank, I've got a life-insurance policy. Are we saying that that now is legal, for me to have started out with a joint-CD contract and then, all of a

sudden, I go down and I notate on that contract that I'm holding a $5,000 life-insurance policy that now becomes a part of this contract, or I've got Darlene is going to sell an insurance funded. Is this going to have to -- is the funeral director going to have to go, okay, this one is a joint-CD contract, so I've got to keep that one in this one. And now I'm going to go over here and because they're bringing me a life-insurance policy, instead of tying it to that contract, I've got to write another one now just to make sure that I've covered because this is an insurance-funded part of the contract. And then now I have two contracts stapled together for the individual. Can we do that, or do we have to make sure that the contract that we're using, if it's going to do that, have all of those little disclaimers all the way about every single possible product because I'm mixing it up and shaking up the bag?

MS. BATTAGLER: You're writing separate contracts for those, so the type of contract should have -- (inaudible.)

CHAIRMAN: Well, theoretically, not --

lots of funeral directors out there, including myself, somebody has come in and added something to a contract, I just went and jerked their contract out of the drawer and went da, da, da, da, da, this added this, changed the number, and whatever. So -- but, oh, that's 100 years ago, you know.

MS. RUSSELL: A hundred.

CHAIRMAN: But my point is, there's somebody else out there doing it that way, and how are they -- do they need to know somehow that that's just unacceptable?

MR. OTTO: And the most typical one is somebody has a small insurance policy and they want to use that insurance policy to fund part of their preneed, but then they're also going to add another $2,000 on top of it.

MS. BATTAGLER: You put that all in one contract? You do?

MR. OTTO: Two separate payments. The preneed contract is separate, at least under the old law, particularly. The preneed contract is I am providing the goods and services. How are you paying me? I'm paying you two different ways. I'm giving you cash

that you might be putting in a trust or a CD or a joint account; I'm also going to assign this insurance policy to you.

CHAIRMAN: But, now, the new law says if you've got money in trust, the contract has to show who the trustee is, who all these folks are, and what if that information isn't on the contract that you used in the beginning that was not a trust?

MR. OTTO: Yeah. Well, that's why, at least for us, we're going to have one contract that covers every possibility.

MS. BATTAGLER: Can I ask: Is there a way that you can state that if you use all three funding mechanisms in one contract, you must include all disclosures for all three types of funding?

CHAIRMAN: Absolutely. I agree with that.

MS. BATTAGLER: If you only use trusts, you only have to use the trust-funded disclosures. If you use joint, you use the joint. Can that be stated? I mean, is that -- I mean, is that even feasible?

CHAIRMAN: I think we're back to the

all contracts.

MS. BATTAGLER: Oh, yeah.

MS. RUSSELL: I don't think we can resolve it, can we?

CHAIRMAN: I think you're right. I think that, personally --

MS. BATTAGLER: I just think there's going to be a problem with, like, our trust-funded contracts, whenever they see a disclosure about insurance, they're going to be confused. They're going to think why are you giving me an insurance policy.

MS. RUSSELL: But understanding where Earl and them and Sharon were explaining the word "all" is what tied their hands, see?

MS. BATTAGLER: Yeah.

MR. MAHN: Well, the same could be said for people who take an insurance, though. When I first looked at this, you know, the first thing you think is trust.

MS. BATTAGLER: Yeah.

MR. MAHN: Then they finally say on the back that insurance does not apply, and I don't have it in front of me here, but, anyway, I can see it both ways.

MS. BATTAGLER: It's confusing.

MS. RUSSELL: Yeah. But what they're saying now, Todd, that no matter -- like I sell just insurance, I have to include all the disclosures for the trust and joint accounts in mine, too, because of the way that word "all" is in there.

CHAIRMAN: Now, I want to take issue with that thought for a minute, though, because, yes, that was the battle we had that night before we ate. But when we came back after eating -- and I guess I'll go to legal counsel now, is how are you looking at that because, quite frankly, Sharon caved on that point. Now, whether it stuck, I don't know.

MS. RUSSELL: It's not on any papers.

MR. WARREN: My understanding is that was going to be -- my wife was there and I was elsewhere -- was that was going to be withdrawn or revisited at a later time.

MS. RUSSELL: My notes said Jim --

MR. McCULLOCH: That was my understanding of it, too. We was just going to talk about it more.

MS. RUSSELL: Jim Reinhard brought it

up after pizza and brought up the issue the letter that Greg and I wrote. And Sharon said wait for disclosures. She said we would discuss it --

(Several people talking simultaneously.)

MR. WARREN: But not necessarily an emergency rule.

MS. RUSSELL: Yeah. Wait for disclosures. That's where it was ended.

CHAIRMAN: Okay. So, is all this in tune with you?

MS. DUNN: Well, he wasn't there.

MR. KRAUS: I mean, that sounds fine with me if you want to address it later.

MS. DUNN: I mean, because after disclosures, that means we have the disclosure statement today, now we need to bring it up.

MS. RUSSELL: Now, we need to do this.

CHAIRMAN: So, but for folks that's got to hurry up and by December 31st, that's leaving them in the basket of all disclosures on all contracts?

MS. RUSSELL: The way I understand it, for instance, an addendum that we're doing -- people are using on our existing contracts,

the addendum -- their existing contracts. We're not the seller, so we help the funeral homes with their contracts. So, the addendum they have, that I have to give them to use with that contract is they're going to use it until December 31st, has got to include everything about trusts, joint, and insurance that is in the current law and not covered in that contract; correct?

(Several people talking simultaneously.)

MR. KRAUS: Right. Because I think that circles back because this rule says -- just says all the sections. One of those sections says preneed contracts shall include -- bam, bam -- insurance, trusts, on down the line.

MS. RUSSELL: Correct.

MS. BATTAGLER: Correct.

MR. KRAUS: So, they would include all of those disclaimers.

CHAIRMAN: Okay. So, really, it has to include them all.

MS. RUSSELL: All of them.

CHAIRMAN: She folded on that.

MR. KRAUS: But if at some point down

the road, I mean, the Board wants to --

MS. RUSSELL: Sharon did?

CHAIRMAN: She folded on that.

MS. DUNN: She's not here to defend herself.

CHAIRMAN: I know.

MS. BATTAGLER: Yeah. She folded on another one, too. She -- (inaudible) -- yesterday are all different.

MS. RUSSELL: Yeah. She said it was up to the Board. If the Board wanted to make a rule, you know, she would do what the Board said, no different than -- I mean, she gave her legal advice.

CHAIRMAN: But the Board did not make that rule.

MS. RUSSELL: No. It was supposed to come back.

MR. MAHN: So, right now, there is no rule on having to do a disclaimer on all three; correct?

CHAIRMAN: Well, you know, I guess it would -- in the --

MS. RUSSELL: The statute says that.

MR. KRAUS: There is not one that

specifically says that. There's a rule that refers to all the statutory sections that includes that one statute, but there's not a specific rule.

MR. MAHN: Where is it at?

MR. KRAUS: That's under --

CHAIRMAN: It's in group two.

MR. KRAUS: -- contract requirements.

MS. BATTAGLER: (Inaudible) -- group two -- (inaudible.) Oh, here. Here's an emergency rule.

MS. RUSSELL: (Inaudible.)

CHAIRMAN: You're talking about this one?

MR. KRAUS: Oh, yeah. That's the rule. I think be meant what section -- a statutory section.

CHAIRMAN: Oh, okay. So --

MS. RUSSELL: So, we go back to the legislature next year for cleanup language, that might be the one section we would want cleaned up, and your all-payments section.

MS. BATTAGLER: (Inaudible.)

CHAIRMAN: So, just for my own little clarification because there was the two words

that -- or the three words that brought it all together, is that your legal opinion that all of those --

MS. DUNN: What are you talking about?

MR. KRAUS: The easily read font; is that what --

CHAIRMAN: Oh, no.

MR. KRAUS: What are you pointing to?

CHAIRMAN: Oh, wait. The word "all preneed contracts." I'm sorry. The word "all preneed contracts." It was all stuck on those three words right there, "all preneed contracts." Just like the same deal of --

MR. KRAUS: And I think -- well, let me just try to find it real quick because I think the language actually just says preneeds contracts shall include.

MS. RUSSELL: All. Page 16.

MR. KRAUS: Does it say all?

MS. RUSSELL: Yeah. Page 16, 436, yeah.

MR. KRAUS: Well, that's even worse or better, I guess, depending on how you look at it.

MS. RUSSELL: 436.427.

MR. KRAUS: It does say all preneed contracts.

MS. RUSSELL: Yeah.

MR. KRAUS: Page 16, line 1, I guess.

MS. RUSSELL: And shall include.

UNIDENTIFIED: Well, I think you're just stuck.

MR. KRAUS: All preneed contracts shall be sequentially numbered, da, da, da, da, da, and shall clearly and conspicuously this and this and this and this and this, and Sharon's trust, joint accounting.

MS. RUSSELL: So, it -- but, you know, on one of those contracts, it says do not leave anything blank where, you know, we're putting -- there is no trustee on an insurance contract, so we'll have to --

MR. KRAUS: So, do you write N/A, then it's not blank?

MR. MAHN: Line through it.

MS. RUSSELL: Line through it? Or I guess I'm not sure how we'll do it, but we'll have to address that. We'll have to address that it's a trust, but there is no trust involved with this insurance contract,

something of that nature. I don't know.

MR. OTTO: You could put -- you know, you could put -- obviously, we have this required disclosure language, but you could certainly put the following applies only if this is covered -- only if this is funded by a trust, boom. The following applies only if this is governed by insurance -- or funded by insurance, boom.

MS. RUSSELL: I think I'm going to make it very clear so the consumer is not confused and say this contract is this, although it does not include information -- although includes information about joint accounts and trust accounts, it is an insurance-funded contract. I'll make sure it's in there somewhere so the consumer isn't confused.

CHAIRMAN: I walked away from that meeting thinking we had resolved that, that it wasn't having to be that way, but you would --

MR. KRAUS: Yeah. I don't know. I don't now what that conversation was.

MS. DUNN: He wasn't present. Sharon is going to join us.

MR. KRAUS: It sounds like it was very convincing, though.

MS. BATTAGLER: When is Sharon going to be in?

MS. DUNN: She should have been by now, but --

MR. KRAUS: She said she was going to be in this -- she was going to be available sometime this -- she thought this afternoon.

MS. DUNN: Yeah.

MR. KRAUS: And then was going to e-mail you when she was available.

MS. DUNN: Right.

MR. KRAUS: So, she could get on the call, and I'm here till 1:45 today, so we'll kind of have to tag off.

MS. DUNN: That's right.

CHAIRMAN: So, what's next?

MS. DUNN: We'll probably go into closed --

CHAIRMAN: Okay.

MS. DUNN: -- and give Earl the opportunity to --

MR. KRAUS: And I can step out and do some drafting.

MS. DUNN: Uh-huh.

CHAIRMAN: Okay.

MS. DUNN: And then break for an hour.

CHAIRMAN: Okay. So, just break and do that?

MS. DUNN: Well, we're going to move into closed.

CHAIRMAN: Right. Okay. Okay. So, we'll do the Board go into closed session, give you all an opportunity to go eat lunch and, basically, an hour, I guess.

MS. RUSSELL: Oh, will you go back into open this afternoon?

MS. DUNN: Yes.

MS. RUSSELL: Oh, okay. We're not finished, huh?

MS. DUNN: Well, Earl is going --

MR. KRAUS: There's a couple of redrafts. There's a redraft on the disposition of funds upon cancellation by the purchaser where there were just a lot of changes.

MS. RUSSELL: Okay. Okay.

MR. KRAUS: And then there is a draft -- edits to the disclosure, and then there's a

draft, drafting for the first time a rule about that. And then very slight edits on the requirements for preneed contracts to address the owner on or after, so --

MS. RUSSELL: You don't get lunch.

MS. DUNN: The other -- we haven't scheduled any future meetings, but we will have future meetings and we will notify the group, and we just don't have one scheduled for next week.

CHAIRMAN: Don?

MR. OTTO: One thing that I -- just to make it clear and I think you addressed it partially, but I had specifically asked to be on the agenda, but this was brought up yesterday. It had to do with the assignment of insurance policies to pay for preneed contract. And we did touch on this, but then we got off the track with kind of what D.J. brought up 208 and we went down that strange path. My part, again, was regardless of how it happens under the bizarre world of DFS, if a contract is entered into -- a preneed contract that is funded solely by the assignment of a preexisting insurance policy

that has been paid in full, but is being used to qualify for benefits, I don't think we should charge the 36 bucks for it. But I think you have the power to do that because it says you set the per-contract fee, and this is just a different category for a contract fee because no money is changing hands there and you've got --

MR. FRAKER: I agree. I make that motion if it's in order at this time.

MR. MAHN: I second.

MR. OTTO: Yeah. I don't know how to word it really well, but --

(Several people talking simultaneously.)

MR. SPEAKS: I think it would. The preneed contract -- (inaudible.)

MS. CLARKSTON: I'll just wait and let you finish. Go ahead.

MS. RUSSELL: We still have to audit it.

MR. KRAUS: Legally, I don't think there's a problem with making such a change to the fee structure.

CHAIRMAN: Well, hang on.

MR. KRAUS: Logistically, within the

Division and promo, I think there may be issues with that.

MS. CLARKSTON: Well, and I'm wondering -- and, Lori, help me. I don't know that you're freaking me out on that one. Yesterday, you freaked me a little bit, but I think I'm okay today.

MR. KRAUS: Okay.

MS. CLARKSTON: And this is just my thoughts, obviously, so, Becky, I may step on a little toes here. But if there is the way the form is set up so those that collect the $36 and those that would be exempt from the fee, that shouldn't cause a problem, but that could be verified through the audit or examination of books and records, investigative process, should that come up; is that correct? Or do you see bigger problems with it than I'm seeing?

MS. DUNN: Well, I -- and, Earl, am I understanding you that that is a preneed contract?

MR. KRAUS: Yeah.

MS. DUNN: But there is a position here that's saying the consumer shouldn't have

to pay a fee on that preneed contract, so that's what we're talking about.

MR. KRAUS: Yeah. I think he's talking about saying for all these contracts --

MR. McCULLOCH: They don't have to anyway. It's the responsibility of the seller.

MR. KRAUS: And I think he's saying for all these contracts in the world --

MR. FRAKER: Well, nobody should have to pay it. It's -- there's no money changed hands; right, Don?

MR. OTTO: Well, yeah. Well, my thought is, if it's just an assignment of a policy and you're doing that for purposes of qualifying under 208 for Medicaid, that it's -- I don't think a thirty -- I mean, I don't think you should charge $36.

MR. KRAUS: And I think what you're suggesting is you're suggesting an exemption from the $36 fee for contracts where that is involved.

MR. OTTO: Where the only funding mechanism is the assignment of a preexisting insurance policy for purposes of Medicaid spend down.

MR. KRAUS: Or maybe not an exemption from the fee; maybe the fee is zero.

MR. OTTO: Zero. Make it -- or $1. A dollar.

MS. RUSSELL: (Inaudible.)

MS. CLARKSTON: That's going to cause us problems.

MR. OTTO: Okay. Okay. That's fine.

MS. CLARKSTON: That's the problem.

MR. OTTO: Okay. That's fine.

MS. CLARKSTON: When you start setting those different layers.

MR. OTTO: I understand.

CHAIRMAN: So, zero is bad.

MR. KRAUS: And that's where I was going with that.

MS. RUSSELL: I know.

MS. DUNN: So, on the reporting form every year, there would be preneed contracts and then those that do not have a fee associated because they were this?

MR. OTTO: Yeah. I understand that that creates a paperwork issue, but I'm just thinking --

MR. KRAUS: And then were they really

and how many variations of them do you have and do we need to look at all those individually and --

MR. FRAKER: I think you could put it under one document. I think you could actually just have one document saying how man of these insurance-funded contracts. You've already asked the question.

MS. RUSSELL: Well, these are insurance-funded contracts.

(Several people talking simultaneously.)

MR. KRAUS: No. I guess what I was raising there is beyond the logistical and --

MS. DUNN: Okay. I'm just trying -- (inaudible.)

MR. KRAUS: -- potentially big enforcement issue if someone is fudging that.

MS. DUNN: Who says you have to pass that $36 on?

MS. RUSSELL: You don't.

UNIDENTIFIED: You don't.

MR. KRAUS: You don't.

MR. OTTO: You don't, but --

MS. DUNN: I'm just trying to think through this.

MS. BATTAGLER: But, still, if you write that contract, you've got to submit it.

MR. KRAUS: But somebody could say, well, I had only --

MS. DUNN: Yeah.

MR. KRAUS: You may say I owe $10,000 because of all the contracts I sold. I think three-quarters of them fall within this exception, so I'm only sending you $2,000, and then you've got to go through and sort all that out.

MR. FRAKER: But you can justify -- (inaudible.)

MR. KRAUS: Instead of the straightforward -- I'm just saying that's the advantage of a bright-line rule. Contract, 36 bucks. It's a very bright-line rule. Once you have exceptions, then you're going to have to enforce that.

MR. SPEAKS: Yeah. I agree with that. I think I disagree with Don in this case. There is a contract, it's $36. It doesn't matter what the funding vehicle is.

MS. RUSSELL: On page 39 -- (inaudible.)

MS. CLARKSTON: Then I'd put my hat on the fiscal side and say we've estimated that revenue based on total contracts, so that is going -- and that's our big chunk of revenue coming in for this Board.

MS. RUSSELL: For each.

MS. CLARKSTON: It's just different caveats here we need to pay attention to.

MS. RUSSELL: Right.

MR. FRAKER: This is just a myth. This is just a minute portion of that, so --

MS. RUSSELL: Oh. I see. I see. So, we could set it at half a zero.

MS. BATTAGLER: (Inaudible.)

MR. FRAKER: Well, you've got to cite that on this.

(Several people talking simultaneously.)

CHAIRMAN: Well, it sounds -- okay. We've got a motion and a second. I didn't even see that, so -- okay. So, now, we'll discuss --

MR. MAHN: Sorry, Chairman.

CHAIRMAN: -- at the moment. So -- which we are.

MS. DUNN: Can we talk about questions

on how to implement this?

CHAIRMAN: Well, I guess there can be a discussion, but what I'm hearing it be, if it was a zero fee in that motion and all that, that there's two -- what's the words I need here -- there's two things that trigger that it can be a zero-fee contract. That would be the contract purely for the applying for benefits, or no money changed, it's just a -- like you're saying, just a life-insurance --

MR. OTTO: Yeah. I mean, my suggestion was -- and I understand this does cause enforcement problems and it does cause accounting problems and all that. But I've just heard from a lot of funeral homes out there that say all I do is a little old lady comes in and she's got a $5,000 insurance policy that she's got to get rid of or she can't get on Medicaid, and all she wants to do is assign that to me. And in some parts of the state, you don't have to do a contract, so that's fine; we're good. But in other parts of the state, because DFS isn't consistent, I do have to do a contract. And so, if I live in this district, I don't have to pay 36

bucks, if I live in this district, I have to pay 36 bucks. And if I collect it from one consumer, I feel like I should collect it from all the consumers, and where -- you know. So, I'm just passing that on as a suggestion, and I understand there are significant difficulties in doing it.

MS. CLARKSTON: How many contracts are we talking about?

(Several people talking simultaneously.)

MR. KRAUS: You know, something Martin said made me wonder something else. Does that open a door for a seller to have a box or some paragraph on his contract that, you know, if you check here, we don't have to pay the 36 bucks, which means you don't have to pay the 36 bucks, because you think you may be going on assistance sometime soon and you want to structure it that way.

MR. FRAKER: I think it's at the time.

MS. RUSSELL: Whoa.

MR. KRAUS: And then you don't pay any $36 on any of your contracts.

MR. FRAKER: No. I think that's open to --

MR. MAHN: I think the -- we can retract it for a minute and come back after lunch, but it would help if everybody -- (inaudible) -- that's discussing this. That's the problem that we have right now, you know. You sit there and a family shows up, a little old lady, like Don says, drops off a $5,000 policy, and she just wants to put it in her file. She wants -- you know. You keep it or hold it for her.

MR. FRAKER: Just hold it for her.

MR. MAHN: I mean, there's a lot of factors that go into this. It's just not cut-and-dry.

MR. McCULLOCH: Well, that wouldn't apply because you're just holding it.

MR. MAHN: Or she wants to make you beneficiary.

UNIDENTIFIED: She can do that, too. (Inaudible.)

MR. McCULLOCH: That doesn't institute a contract, so you don't have to pay it.

MR. SPEAKS: Only if there's a contract.

UNIDENTIFIED: Yeah.

MR. McCULLOCH: Only if you tie it to services and goods.

MR. MAHN: And I think what Don is saying is there are certain areas of the state that require a contract in order for them to go on public assistance right now.

MS. RUSSELL: 208 requires a preneed contract. It says it.

MR. OTTO: But the -- yeah, but --

MS. RUSSELL: But the Family Services --

MR. SPEAKS: But they didn't enforce it -- (inaudible.)

MS. RUSSELL: They don't enforce it, but you never know.

MR. OTTO: Or they interpret that language --

MS. RUSSELL: I wouldn't be that funeral director -- (inaudible.)

(Several people talking simultaneously.)

MR. KRAUS: But could consumers be talked into meeting those same requirements to save themselves 36 bucks?

MR. MAHN: No.

MR. McCULLOCH: I don't think so.

MR. KRAUS: But they're sitting there and they say, you know, you could check this box and it'll be 36 bucks less, or you cannot and pay $36 more and then read the language and figure out what it means.

MR. MAHN: Does it matter whether it's guaranteed or not guaranteed?

MR. FRAKER: Yeah, but did you hear what he said? A lot of people just drop these things off and say keep it. We've made you the beneficiary of it. No contract written --

MR. McCULLOCH: That doesn't apply, though, Gary. There is no contract. It doesn't apply.

(Several people talking simultaneously.)

MR. FRAKER: This is the same thing.

MR. McCULLOCH: No, it isn't. There's no contract.

MR. KRAUS: Well, there's no preneed contract there.

MR. FRAKER: Well, contract or not, but you've still got the policy in your possession.

MR. McCULLOCH: It doesn't matter.

MR. FRAKER: Yeah, it does.

MR. McCULLOCH: Well, it doesn't. (Inaudible.)

MR. KRAUS: Well, I think it matters, but it matters to a different issue than this.

MR. McCULLOCH: It doesn't -- no contract.

MR. FRAKER: To the beneficiary, it does.

MS. RUSSELL: It goes to the DFS thing.

MR. MAHN: If they fill out a contract, you are right. It is a funeral contract, and it is a preneed contract.

MS. DUNN: Well, the big thing --

MR. FRAKER: I don't know how many of these policies we're holding I've got in a filing cabinet.

MR. MAHN: But that won't apply to that.

MR. FRAKER: No, it won't apply to that.

MR. KRAUS: Right. And the issue here is whether there is going to be a $36 fee on the preneed contract.

MR. FRAKER: Well, that's what you're

trying to make it --

MR. KRAUS: So, of course, if there is no preneed contract, there is no $36 fee.

MS. RUSSELL: There's no fee.

MR. SPEAKS: And there's no -- right.

MR. FRAKER: That's what you're trying to make it, a $36 fee, every time somebody brings in a policy.

MR. KRAUS: No.

MS. DUNN: No.

MR. McCULLOCH: No.

MR. FRAKER: That's what you're saying.

MR. McCULLOCH: That's not what they're saying at all.

MS. DUNN: No.

MR. KRAUS: No, that's not what I'm saying at all. I'm saying that if someone comes in and assigns an insurance policy, enters into a preneed contract, they're doing it to meet the requirements for public assistance, then for that preneed contract, they don't have to pay the $36 fee.

CHAIRMAN: Let me give you -- okay.

MR. FRAKER: Can you define that?

CHAIRMAN: Hang on. Let me run his

example for a second, because D.J. was giving me in her scenario yesterday just when we were talking, she has to take a copy of a contract to Family Services. She is required to do that. What she is doing is they bring the $5,000 in, she puts it -- of course, it's a nonguaranteed contract. That's something that folks are going to have to get used to a little bit, but she's using a nonguaranteed contract. Now, we split this hair on preneed versus preplanning, but she is going ahead and letting the person say -- forget the money for a minute. Let's go ahead and talk about what you would want that $5,000 spent on. Maybe this casket, maybe this vault, the flowers, the what could be, la, da, da. Now, you fully understand that all we've done is we have just written some of your wishes down so your family will have a track to run on at the time you pass away. We're not -- this may not be, really, the casket they would choose, but that's what you're suggesting to them. Whatever the cost of the -- whatever this all figures out from our regular prices is what it'll be. And in this contract, we're

showing that we're holding a $5,000 that would be deducted from whatever those prices are at that time for what you gave us the information on. Now, her thought is that is a contract even though it's kind of left in the gray area, so to speak. Not really, but is.

MR. McCULLOCH: It doesn't fall under out definition of a preneed contract.

CHAIRMAN: So -- but then her question is, do I owe $36 on that?

MR. McCULLOCH: No.

MS. BATTAGLER: That is a preneed contract.

MS. RUSSELL: That is a preneed contract. It is --

MR. McCULLOCH: She doesn't have a written contract.

(Several people talking simultaneously.)

MR. SPEAKS: A nonguaranteed preneed contract.

MS. BATTAGLER: She wrote it on the contract.

MS. RUSSELL: She had to because DFS would -- and D.J. was explaining that she wrote --

MR. MAHN: Maybe I could help a little bit with this. If the lady comes in and drops a policy off and she wrote on a napkin this is what I would like to have when I die, and you put that in the file, that's not a preneed contract.

MS. RUSSELL: Correct.

MR. SPEAKS: Correct.

MR. KRAUS: No.

MR. MAHN: But if you type something up saying this is her wishes --

MS. RUSSELL: Exactly.

MR. MAHN: -- and she signs it, that's a contract.

MS. BATTAGLER: And this is the price.

MS. RUSSELL: And this is the price. That's exactly right.

MR. KRAUS: If you've tied the services to it, then you have.

(Several people talking simultaneously.)

MS. BATTAGLER: And this is the price.

MS. RUSSELL: That's exactly right.

MR. McCULLOCH: Yeah. I agree. I agree.

MS. BATTAGLER: And we'll deduct that

from this price.

MR. SPEAKS: And, now, she's in violation because she doesn't have the mandatory disclosures on the napkin.

MR. KRAUS: Whatever you type, that's right.

(Several people talking simultaneously.)

MR. KRAUS: She needs to staple this sheet to the napkin.

MR. SPEAKS: To staple that to the napkin.

MS. BATTAGLER: That's right.

MR. KRAUS: That's just the disclosure, so that still won't help.

CHAIRMAN: So, now, the reason they came and brought in the $5,000 is so they can receive assistance, so let's even be more specific. They only brought in $2,500 because that's -- and that was a major cost factor out to this little lady, just to be able to afford $2,500. So, now, the $36, obviously, is an issue, but then thinking towards -- see, I know where you were going there with the check-box thing there, but is there some way we should be able to cut some slack, I guess,

to somebody that --

MR. SPEAKS: Think about it backwards and come backwards. At the end of the year, whenever it is, the contracts all have to be numbered consecutively, so you're going to get this stack of contracts in a date range. You come up with how many contracts there are in that date range. Then you're going to compare that to the $36 and they have to match.

MS. BATTAGLER: Uh-huh. How are you going to -- (inaudible.)

MR. MAHN: I think you've got to go forward with it.

MR. FRAKER: Well, I -- let me add one more scenario to this, and I had this happen recently. A lady passed away and one of the banks called and said you are on her checking account. I didn't know it. You own the rights of survivorship on her checking account, so her checking account will be closed out, you'll get the money that's in that checking account. They sent me a check for it and that was left for her funeral, and she stipulated that. I knew nothing about it. There's lots of stuff out there that we're

added -- you know, that we're put on beneficiaries or whatever that we don't know about.

MR. RUSSELL: That's the key, you don't know. You didn't do a contract.

MR. FRAKER: People write stuff down in their Bibles, you know. This is just a great big deal.

MR. KRAUS: Right. And in that scenario, like a couple of the others we have talked about, there was no meeting of the minds and, therefore, a contract between you and her about that money is for services. There was only her end of it saying I'm going to give you money. There wasn't your end of it saying I'm going to give you services, so there's not a contract. There is the money that's coming to you, but there is not a preneed contract or even preneed planning, really.

MS. BATTAGLER: It's at-need.

MR. KRAUS: There's just she's giving you -- she's just giving you some money, really.

MR. FRAKER: She was thinking about me.

UNIDENTIFIED: Yeah.

MR. KRAUS: But there is certainly no preneed contract and, of course, there wouldn't be any $36 fee where there's no contract.

MR. FRAKER: All in all, I still think there needs -- and however this thing works out, it doesn't matter to me, not that much. But I do think we need to differentiate the difference between these, and I do agree with Don on this. So, if you want to put that on the record, but I do think that there needs to be something. This is a bigger issue than -- we just can't blow past this.

MR. KRAUS: Is there a way to avoid opening the door for everyone to say, well, I'm planning on spending down and apply for Medicaid, so I'll check that box and then you don't have to pay the 36 bucks?

MR. FRAKER: I don't think you can do that. I think it has to be on a case-by-case basis.

MR. McCULLOCH: I think his is if money doesn't change hands.

MR. KRAUS: And the reason I say that

is --

MR. McCULLOCH: That would be the differing --

MR. MAHN: I think it's pretty clear, Gary.

MR. SPEAKS: That's Don's argument.

MR. McCULLOCH: Yeah. If money doesn't change hands.

MR. MAHN: If they bring us in a policy and we don't do a contract, you don't pay the $36.

MR. McCULLOCH: On the ones you're talking about, there would be money changing hands.

MR. MAHN: If we will out a contract and they sign something, we pay the $36.

MR. FRAKER: You know what we do on those whenever DFS asks for a contract -- (inaudible.) Pass it back to Medicare care with the policy number down.

MR. KRAUS: All right. And where I'm eventually leading to is towards revenue production from the $36 if, let's say, it's just where money doesn't change hands. It's just where people assign insurance contracts.

Well, then, potentially, all of the insurance-funded contracts, there won't be a $36 fee paid --

MS. RUSSELL: That's correct.

MR. KRAUS: -- which is going to impact --

MS. DUNN: Substantially.

MS. CLARKSTON: Greatly. Greatly.

MR. McCULLOCH: But money does change hands. (Inaudible.)

MR. KRAUS: -- the revenue, which then means you have to raise some other fee to balance that out.

MS. DUNN: And we can -- we'll have to revisit the fee structure again.

MR. KRAUS: I mean, that's the potential repercussions of that.

MR. MAHN: I thought we were just talking -- when Don brought that up, I thought we were just talking about people bringing in a policy and dropping it off and no contract made. And Gary made a motion and I seconded it, because if there's no contract made up and they just drop off a policy and you just put it in a file for them --

MR. FRAKER: Yeah. And leave it alone.
MR. MAHN: -- no $36.
MR. KRAUS: No.
MR. MAHN: And you agreed on that.
MR. KRAUS: I agree completely on that.
MR. MAHN: Everybody already agreed on that, so I don't know why we're even talking about it.
MR. KRAUS: I didn't think that was what the motion was.
CHAIRMAN: And the Medicaid thing doesn't -- you're not even in the thought of Medicaid or anything like that?
MR. MAHN: No. No.
CHAIRMAN: Just somebody walks in and drops a policy off at the funeral home --
MR. MAHN: Yeah. Yeah.
CHAIRMAN: -- and all that?
MR. MAHN: As soon as there is some paper signed by them, whether it's typed up this way or that way or that way or a bad contract or a good contract --
MR. FRAKER: Do what you've got to do to appease your own local Medicaid people.
MR. MAHN: -- you owe 36 bucks.

CHAIRMAN: Okay. I want to ask one legal question and somebody help me here because this is going to maybe show my ignorance for a second. If you make -- there is something in all -- not the new law, but there is something in all of our laws here somewhere that says if you are made the beneficiary of a life-insurance contract --

MR. OTTO: We took that out.

CHAIRMAN: Is it gone?

MR. OTTO: It's gone.

CHAIRMAN: Okay. Then no big deal.

MS. RUSSELL: Finish what you were saying.

CHAIRMAN: Well, just if that automatically made it that you had to have a contract.

MR. OTTO: Under the old law, it did. Under the old law, if the funeral home, even unbeknownst to him, was made the owner or beneficiary of a life-insurance policy, technically, there was supposed to be a preneed contract. So, you --

CHAIRMAN: Regardless of the fact.

MR. OTTO: Yeah. So, you committed a

felony every time somebody did that without your knowledge.

MR. KRAUS: Yeah. That's not the case.

CHAIRMAN: Okay. So, that's gone now.

MR. OTTO: That's been taken out.

(Several people talking simultaneously.)

CHAIRMAN: So, that's gone now.

MR. KRAUS: Right.

CHAIRMAN: Okay. I just wanted to make sure we weren't doing something illegal even in that vote.

MR. OTTO: No. We -- that was one of the things we wanted out of there.

CHAIRMAN: Okay. All right. We've got a motion, we've got a second.

MR. KRAUS: And to be clear, the motion is what?

MR. MAHN: Do you want me to say it or do you want to try?

MR. FRAKER: No, go ahead.

MR. MAHN: Well, any insurance policies that are dropped off -- you're made beneficiary of, but there's no contract, there's no contract.

CHAIRMAN: Hang on. I just thought of

something that you may need a legal. What if they change ownership of that policy; would that be any different?

MR. FRAKER: It's the same thing. It's the same thing.

CHAIRMAN: I'm asking him from a legal point of view, though.

MR. KRAUS: If there's not a preneed contract --

MR. SPEAKS: There's no contract.

MR. KRAUS: -- it doesn't fall under Senate Bill 1.

CHAIRMAN: Okay. I'm just trying to make sure something didn't kick something else in doing that.

MR. MAHN: Where there's no contract --

MR. KRAUS: Yeah. I don't know that you need a rule for that, but does -- I mean, if there is not a preneed contract and preneed contract is defined, then you don't fall under any of that stuff. But if you want a rule just, you know, to be clear, then you can.

MR. FRAKER: Are we -- to appease Becky here just a little bit, are we going to say that we're going to use our rules that

we've already voted on with this exception?

MS. DUNN: Well, I think we're getting into something we really need to look into here. The only concern I have is if you're making a rule on something right now about what won't be a preneed -- is that what we're doing?

MR. KRAUS: Well, I think we're --

CHAIRMAN: It doesn't exist as a preneed anyway.

MR. MAHN: It doesn't exist.

CHAIRMAN: It never did.

MS. DUNN: So, why do you need a rule on it?

(Several people talking simultaneously.)

MS. RUSSELL: Yes. Exactly.

MR. KRAUS: You're saying something that's not a preneed isn't a preneed.

MR. MAHN: Because everybody in this room is asking the question and they don't even know and we've been talking about it for five days.

CHAIRMAN: Go ahead, Joy.

MS. GERSTEIN: Okay. Before we vote, I would really like for us to get back

together because of the fact we're not talking about the impact this is going to make on the money.

CHAIRMAN: Well, what -- okay. Giving you an example in the way -- use myself for that in the way I handle that, it wouldn't have made any impact on the money anyway because it never, ever is a preneed contract.

MS. DUNN: Right.

MR. KRAUS: Yeah. I was under the --

(Several people talking simultaneously.)

MS. CLARKSTON: But it may make a change to the money if that per-contract fee is increased because --

MR. KRAUS: But I was under the impression that the motion was with regard to when there was a preneed contract.

MR. MAHN: No.

MR. FRAKER: No.

MR. McCULLOCH: You never were getting these.

MR. KRAUS: The motion is that when there is not a preneed contract --

MR. MAHN: There is no preneed contract.

(Several people talking simultaneously.)

MS. GERSTEIN: So, this is not going to impact what we figured yesterday -- (inaudible.)

(Several people talking simultaneously.)

MR. KRAUS: So, of course, there would be no impact on revenue.

MR. OTTO: Although this is not what I originally asked for, and it looks like I've lost what I originally asked for, but that's fine.

MR. MAHN: Thanks for bringing it up a half hour ago.

MR. OTTO: Yeah. Yeah. Yeah. It would probably, based on this discussion, be helpful, whether it's a rule or not, something from this Board that makes it clear that if somebody just drops off that insurance policy and there's no contract entered, don't worry about the $36.

MR. FRAKER: That's what we're doing now. That's what we're doing.

MR. MAHN: That's what -- (inaudible) -- exactly what I was trying to do.

MR. OTTO: That would probably be a

good thing.

CHAIRMAN: Okay.

MR. KRAUS: And do you want to do that by rule or do you want to do it by an education thing where you put it on the Web site or put it on the bullet points or somewhere?

MR. MAHN: It makes me no difference.

MR. FRAKER: I think it needs to be written down somewhere, because, Becky, you're going to be asked this.

MR. McCULLOCH: Education.

CHAIRMAN: Actually, though, she --

MS. DUNN: I need to make sure I totally understand what everybody -- the position of this Board is going to be because --

MR. KRAUS: As I understand it --

MR. MAHN: Whether we make a rule on it or not, it ain't going to affect this Board because it's never going to exist to this Board.

MS. DUNN: Okay. So, why do you need a rule on it?

MR. MAHN: Well, because nobody

understands it.

MR. McCULLOCH: You don't. Just an educational thing.

MS. DUNN: Yeah.

MR. MAHN: You know --

MR. McCULLOCH: Just education.

MS. DUNN: Right. So, we don't need a rule on it -- or, I mean, Gary and Todd think we need a rule.

MR. KRAUS: Well, I think he's -- (inaudible) -- that there was a rule or it might need that there's education.

CHAIRMAN: We just need -- I think the real thing is clarification is what we need.

MR. FRAKER: I think we need a clarification rule.

MR. McCULLOCH: I thought it was always clear as --

CHAIRMAN: Obviously not. Look at all the discussion that we just had.

MR. MAHN: I was clear for the last half hour in here.

MR. McCULLOCH: Pretty small group here.

CHAIRMAN: Yeah. But, come on.

Factor it out into the masses.

MR. McCULLOCH: I guarantee most people out there don't consider those contracts. Why would they?

MR. MAHN: Most people -- (inaudible.)

MR. KRAUS: All right. So, there's been lots of discussion, there's been a motion and a second, I think.

MR. McCULLOCH: So, is the motion to make a rule?

MR. MAHN: Yes.

MR. KRAUS: I think the motion is to make a rule.

CHAIRMAN: Okay. The motion --

MS. GERSTEIN: Do we need a rule?

(Several people talking simultaneously.)

MR. KRAUS: When is the assignment of an insurance policy, there's no money changing hands --

MR. FRAKER: We haven't voted on our original one, but that's okay.

MR. MAHN: There's no contract.

MR. KRAUS: -- there's no contract, that you don't have to pay the $36 feet.

CHAIRMAN: Okay.

MR. KRAUS: Right?

MR. FRAKER: Right. Exactly. Yes.

CHAIRMAN: Second.

MR. McCULLOCH: No.

CHAIRMAN: Joy?

MS. GERSTEIN: I'm confused. Do we need this rule? I mean --

MR. MAHN: Right now, we just need a yes or no, so we can go on.

(Several people talking simultaneously.)

MR. KRAUS: I think you're asking, legally, do you need it. I don't know that you need it. For educational purposes, I mean, there's, apparently -- there's, obviously, confusion about it.

CHAIRMAN: The rule does just solve it, though.

MS. GERSTEIN: Okay. I'll vote for it.

CHAIRMAN: Okay. So, there you have it.

MR. FRAKER: Thank you, Joy.

CHAIRMAN: Does that need to have that the Board makes a fact and finding there?

MR. KRAUS: Oh, yeah.

CHAIRMAN: There is competent and

substantial evidence --

MR. KRAUS: Like any other rule.

CHAIRMAN: -- on the record to support the need for the rule. Do you need an impact statement?

(Several people talking simultaneously.)

MS. CLARKSTON: I want to see the rule first before we go --

CHAIRMAN: Oh, okay.

MR. FRAKER: Are you with us, Becky, on this?

MS. DUNN: No, I'm not with you.

(Several people talking simultaneously.)

MR. FRAKER: Let's give Becky a --

MS. DUNN: No. That's okay. You all voted on it.

MS. BATTAGLER: There's no difference, they're just clarifying.

(Several people talking simultaneously.)

MS. DUNN: So, whenever there's questions, I'll refer them to you and Gary.

MR. MAHN: You can't answer a question on it anyway.

CHAIRMAN: Now, for my own edification for a second, Don Otto, you lost what -- what

difference was what we just did versus what you're wanting?

MR. OTTO: Oh, well, what some of our members wanted was that even if there is a contract, they wanted to be exempt.

MR. MAHN: They want exempt.

CHAIRMAN: Okay.

MR. McCULLOCH: They wanted to be exempt from that 36 bucks.

MR. MAHN: Not going to happen.

MR. OTTO: Now, what you did is still good, I think --

CHAIRMAN: Okay.

MR. OTTO: -- because I bet you you would have had, a year from now when people file their reports, all that happened was Grandma dropped off the insurance policy, but the funeral home thinks that's a contract to trigger the $36 --

CHAIRMAN: Okay. Okay.

MR. OTTO: -- so they -- when it really shouldn't. So, I appreciate the rule --

MR. McCULLOCH: So, he cut you guys out of some money there.

MR. OTTO: -- because I think that

will help people from making a mistake.

MR. McCULLOCH: (Inaudible.)

MS. BATTAGLER: But are they turning that in on their annual reports now as a contract?

MS. DUNN: What's going to happen is the auditors will find it and they'll decide what the Board decides is --

MS. CLARKSTON: See, that's why I'm concerned is because the number of annual reports that we have estimated now, they've reported, so how does that affect the numbers?

(Several people talking simultaneously.)

MS. McCULLOCH: For someone not to know that means that you don't have a clear -- (inaudible.)

MS. BATTAGLER: (Inaudible.)

(Several people talking simultaneously.)

MS. BATTAGLER: So, now they're reporting that as a preneed contract -- (inaudible.)

MR. McCULLOCH: You know what I'm trying to say? For you not to understand that, you don't have a clue what a preneed -- (inaudible) -- nobody knows. Clueless.

(Several people talking simultaneously.)

MR. KRAUS: And there's no way to know.

MR. OTTO: They shouldn't be. They shouldn't include, but that doesn't mean they aren't.

CHAIRMAN: Well, keep us all in the loop so we all know.

MR. KRAUS: Yeah. There's no way to know.

MS. DUNN: Well, Amy, that's my concern, and Connie's --

MS. BATTAGLER: I see why Connie was concerned about it now --

MS. DUNN: Yeah.

MS. BATTAGLER: -- because, yeah, if they -- if those people are turning it in as a preneed contract, even though no money is changing hands, holy cow, that is going to be a huge impact --

MS. DUNN: Yeah. It could greatly impact if these --

MS. BATTAGLER: -- on what your fee schedule is.

CHAIRMAN: But I don't know anyone -- in all of my associations with other funeral

directors, I don't know anyone that's turning those in as a current preneed.

MR. FRAKER: Exactly.

MS. CLARKSTON: So, Gary, in your situation, you weren't turning those in as a preneed?

MR. FRAKER: No.

MR. McCULLOCH: But you just said you thought that there is all this confusion. (Inaudible.)

MS. BATTAGLER: Well, here's the deal now, though. They have to have -- all their contracts have to be numbered.

CHAIRMAN: I just said people I know.

MR. McCULLOCH: And me, too.

(Several people talking simultaneously.)

MS. BATTAGLER: So, if they're not actually going to write down a number and write all this out, then they can't justify that they've actually got a preneed contract, but, before, they may have thought that they had one.

MR. FRAKER: Connie, I may be wrong, but the only contracts I turned into Becky whenever we reported was contracts that had

money involved; money changed hands.

MR. SPEAKS: Right.

MR. FRAKER: When those -- when they brought us an insurance policy and I wrote down something to appease Family Services or somebody, you know, they want a contract, I did not report those -- (inaudible.)

MS. CLARKSTON: So, there was never a scenario that somebody could just bring in $5,000, give it to you, and say on a napkin this is what I want. You didn't count it that.

MR. FRAKER: Not really. If there was no money changed hands, that was my trigger point.

MS. CLARKSTON: They just gave you $5,000.

MS. BATTAGLER: No. Insurance. We're talking about insurance.

MS. CLARKSTON: No. I'm saying -- I'm not talking insurance. I'm asking could somebody bring in the $2,500 that you talked about, say here, money exchanged hands, I wrote out a napkin, but I don't have a contract. Are there ever situations -- and I am not trying --

MR. OTTO: I kind of think it's the flip side.

MS. CLARKSTON: Okay.

MR. OTTO: I think you've got a lot of people out there probably that have, at least under the new law, what are contracts --

MS. CLARKSTON: Okay.

MR. OTTO: -- that have not been reporting them because they didn't consider it a contract, you know. Grandma dropped off the insurance policy, I wrote something that said --

MS. RUSSELL: (Inaudible.)

MR. OTTO: I wrote something down that said, okay, I'm accepting this policy. At the time, I'm going to apply the proceeds to your funeral. Here are your wishes. Now, that is not sufficient to meet 436's requirements, but it is sufficient to trigger, I think, a $36 requirement. And I bet you those haven't been recorded.

MS. CLARKSTON: Okay.

MR. OTTO: And once education gets out there, you're going to get more of those.

MR. MAHN: Right.

MS. CLARKSTON: Okay. For the record --

CHAIRMAN: Okay. Darlene?

MS. CLARKSTON: I'm sorry.

CHAIRMAN: That's all right. She's got something to follow that with, though.

MS. RUSSELL: I was just going to say, this issue has been beaten from not just this Board, but from Sara Rittman day, as the assistant attorney general, and there is a document that says what is an insurance preneed contract that you probably have possession of. I know I still have a copy because the Board put this out, because this is the same discussion that that Board had way back when Senate Bill 644 passed in 1982. You're back at it.

MR. MAHN: Did they make a rule back then?

MS. RUSSELL: They made a statement they gave out explaining --

MR. MAHN: Did they make a rule?

MS. RUSSELL: They gave out a statement. I don't know if there was a rule. No, I don't think there was a rule. They

didn't have rule-making authority. What am I thinking? No, they didn't.

MS. DUNN: It was probably based on the AG opinion, maybe.

MS. RUSSELL: It was based on the attorney general's opinion --

MR. MAHN: See, we fixed it 30 years later.

MS. RUSSELL: -- that the Board took that insurance assignments was, indeed, a preneed -- required a preneed contract if you were making promises to the family, selecting goods and services and stuff. So, I mean, it's been number one --

MR. McCULLOCH: That's the key right there.

MS. RUSSELL: -- that insurance-funded preneed contracts -- or insurance funded is required -- insurance assignments requires a preneed contract. And if you guys are changing that -- I think you've even had audits. I mean, D.J. just said that she was audited and they checked for her insurance funded.

MR. McCULLOCH: But the key is if you

have a contract. If you don't have a contract, it doesn't have anything to do with preneed. It's if you have a contract.

MR. MAHN: If you have a contract.

MS. RUSSELL: If you have -- and Chapter 208 requires a preneed contract for public assistance if that's the --

MR. MAHN: But it's a contract.

MS. RUSSELL: It's a contract.

MR. McCULLOCH: But they may not be following that -- that county or whatever may not be adhering to that, so if there's no contract, it doesn't come under this Board's jurisdiction. It's not a preneed contract.

CHAIRMAN: I'm going to recant on my statement that I just made to you that said I don't know because what I do know a few folks that were doing, is somebody that I think is ludicrous, if somebody brings the $5,000 contract down, you get your money on these that -- well, I know, but the concern was they bring $5,000 down and they wrote a guaranteed preneed contract with the application of a $5,000 insurance policy and nothing else paid until they die and no growth.

MS. RUSSELL: That's ridiculous.

MR. McCULLOCH: And no growth.

CHAIRMAN: I've seen tons of those.

MS. RUSSELL: I have, too.

MS. MAHN: Yeah.

MR. McCULLOCH: But we're not talking about stupid things that people do; right?

(Several people talking simultaneously.)

MR. McCULLOCH: That's just bad business; okay? That's bad business.

CHAIRMAN: I know, but that's out there, and they would include them on that.

(Several people talking simultaneously.)

MS. CLARKSTON: Okay. I think, for the record, it's very important to know that based on this discussion, although we anticipate those fees dropping, if we base future fees based on the actual number of contracts sold, and those for which we receive that $36-per-contract fee, that $23 may vary. I think it's very important to understand that because we're basing that fee in anticipation of what's happening right now for this next reporting cycle and for future reporting is based on the previous year. So, if we exceed

what we anticipate, that fee will be lowered. If it falls short, that fee may hold the same or it may be increased. I think it's very important to understand that those projections and actuals are used to set fee schedules. So, I just want that said.

MR. McCULLOCH: Okay. Did you say $23 on something?

MR. KRAUS: She did.

MS. DUNN: Well, yeah. That was for the future, and so --

MS. CLARKSTON: For future, what we anticipated.

MS. DUNN: So, what we did is looked at --

MR. McCULLOCH: And, realistically, I think preneed sales are going to be down for the next year or so.

MS. CLARKSTON: They are.

MR. McCULLOCH: And then it will -- this will all clear and then it will go back.

MS. CLARKSTON: Okay.

MR. McCULLOCH: And where NPS is taken out of the equation, folks like this and maybe even myself will fill that void.

MS. CLARKSTON: Okay.

MR. McCULLOCH: Or you guys are going to pick up a lot of us, so --

MS. CLARKSTON: Just so that we all understand how those fees are set.

MS. DUNN: Uh-huh.

MS. CLARKSTON: And we base those on actuals, so it may be --

MS. DUNN: So, in order to fulfill the statute requirements, the fees have to support --

MS. CLARKSTON: Absolutely.

MS. DUNN: -- the cost of doing business.

MS. CLARKSTON: Right.

MS. DUNN: So, whatever you projected was based on the knowledge we had at that time.

MS. CLARKSTON: Absolutely.

MS. DUNN: So, if the contracts drop from $17,000 -- well, this past year, $29,000, if they drop to $15,000, then the Board has to have a fee structure in place to support.

MS. CLARKSTON: Understanding that that per-contract fee that will be established in rule is the main source of revenue for this

Board.

MR. FRAKER: Providing everyone is honest and everyone reports -- (inaudible.)

MS. CLARKSTON: Well, hopefully, the other enforcement authorities of Senate Bill 1 will kick in at that point and keep everyone honest.

CHAIRMAN: Something I want to follow. We were discussing whether we really needed that in rule. Darlene made a comment a while ago that D.J. actually made the comment to me when -- well, I may be talking out of -- well, she told us and it was okay, so it was a public statement. She -- when auditors were looking at the -- those contracts like we're talking about, they dinged her on them. They did. They wrote it up as you're in noncompliance. So, this rule then should affect how McBride & Locke or anybody else then will look at that; correct?

MS. RUSSELL: Yeah. Because you've got to have a clear statement.

CHAIRMAN: So, it's solved now. There is no --

MS. DUNN: And then what Darlene said

is --

MR. McCULLOCH: Just because McBride & Locke dings someone doesn't mean they're right.

CHAIRMAN: Well, I know, but --

MS. DUNN: Right. And what --

CHAIRMAN: But, still, it causes you grief. You've got to explain it.

MR. McCULLOCH: Well, yeah. Exactly. So, you're right from making the point it will help them to be educated.

MS. DUNN: And the only thing that -- and then, Darlene, the only thing you said is that there was an AG opinion on this, we may want to look at that.

MS. RUSSELL: I can find it in my stuff -- (inaudible.)

MR. MAHN: That's why we did it.

MR. McCULLOCH: But you'll find that -- no, you didn't. But you'll find that they are not.

MS. DUNN: I could. I know where all my AG opinions are.

CHAIRMAN: Okay.

MR. McCULLOCH: If you've been through one -- (inaudible.)

(Several people talking simultaneously.)

MS. RUSSELL: It was a mailing sent out to all licensees.

MS. DUNN: Okay.

MR. McCULLOCH: But they're getting better the more they do.

MS. RUSSELL: It was sent to all licensees and they did educational seminars.

MR. McCULLOCH: I just thought a rule would be -- I mean --

CHAIRMAN: Now, I want to address Don's issue one more time in the zero fee for -- do we just want to leave that alone?

MR. OTTO: I think that went down.

CHAIRMAN: Okay. All right.

MR. OTTO: But, for what it's worth, that was my agenda item that I had e-mailed, and so, thank you for addressing it.

CHAIRMAN: And it would very seldom happen, but I got to thinking about most of that was if no money transpired or whatever, but what if the insurance policy that they brought in -- I was thinking more in a minimal thing, but what if it was a $15,000 insurance policy that was to guarantee the funeral and

know that you had a lot of possible growth factor there and all of that, that kind of is a loss of the money there, so -- did you follow that one?

MS. CLARKSTON: Yeah. Just the loss of money makes me nervous.

MS. RUSSELL: The loss of money.

CHAIRMAN: Well, a potential loss of fee. Okay. Are we ready to go? Is that the thought?

MS. DUNN: That you're going to go into closed.

CHAIRMAN: Okay. So --

MS. RUSSELL: What time? You said be back at 1:00?

CHAIRMAN: Yeah.

MR. KRAUS: Eighteen minutes.

CHAIRMAN: So, what do we need? Do we need an hour?

MS. DUNN: Well, Earl has to do some things, so --

MR. KRAUS: Have to do some drafting and I'll get --

MS. DUNN: Is an hour sufficient?

CHAIRMAN: Okay. So, what else is on

the open?

MR. KRAUS: I have to be walking out of the building at 1:45, so I'll draft everything I can.

MS. DUNN: Oh, that's right. Oh, I see.

MR. SPEAKS: Are we going to come back to that finance-charge thing?

CHAIRMAN: What else is in open, because I'm lost here. What else do we have to do?

MS. DUNN: Just things that Earl has been asked to draft and he has to leave today at 1:45.

CHAIRMAN: Okay. So, you're going to go draft.

MR. McCULLOCH: And the finance charge, he mentioned, Chairman.

CHAIRMAN: Okay. The question was asked are we going to talk about the finance-charge thing again.

MS. CLARKSTON: And then I have one rule I'd like some clarity on when we were processing on our end.

CHAIRMAN: Okay. So, if he's gone, do

we know when Sharon is going to be here?

MS. DUNN: No. Maybe we need another meeting next week.

MR. KRAUS: Why don't you e-mail her and see?

MS. DUNN: I did.

MR. KRAUS: Oh.

MS. DUNN: Ignoring me. Jim Reinhard is ignoring --

MR. KRAUS: I can't believe that.

MS. DUNN: Yeah.

(Several people talking simultaneously.)

MR. KRAUS: She probably doesn't accept appointments, either.

CHAIRMAN: But he's still got to go draft before you can even do that.

MR. KRAUS: I've got to go write them.

MS. DUNN: Right. And maybe you need another meeting next week.

MR. KRAUS: There's a couple of them that I can -- that are just slight changes I can for sure get done. And the other ones, I'll try to.

MR. MAHN: We have closed stuff, too.

MS. CLARKSTON: Earl, can I help with

any of that?

MR. KRAUS: Yeah.

CHAIRMAN: We could put that off if we had to, though. We'll just have to decide.

MR. MAHN: The closed or on the open?

CHAIRMAN: Closed. Not that that's a good thing, but I'm just saying we have possibilities. Tell me what to do here because I'm not --

MS. DUNN: Oh, you're moving into closed.

CHAIRMAN: Well, I know that, but what about them? Would an hour do? Is there any reason for them to come back in an hour because he's leaving?

MR. KRAUS: Well, you should have some drafts, though, and Sharon should be on, so if you wanted to discuss those in open, you could.

MS. DUNN: Yeah. What I -- you're asking me because I don't --

CHAIRMAN: I just need some advice.

MS. DUNN: Sharon is not responding and Earl is leaving, but he thinks he may have a few drafts to review.

MS. RUSSELL: You need the disclosure

done.

MR. OTTO: The disclosure form, I'd like to have today.

CHAIRMAN: Thirty minutes?

MS. RUSSELL: Thirty minutes?

MS. DUNN: Yeah. So, I'd say be back in an hour.

MR. KRAUS: Well, and, of course, the disclosure form --

MS. GERSTEIN: Thirty minutes?

CHAIRMAN: Well, no. I'm just asking the question.

MR. KRAUS: You know, to the extent you would have an approved disclosure form, there still wouldn't be a rule in place yet --

MS. RUSSELL: I understand. I understand.

MR. KRAUS: -- that requires that language, but you would have what was approved by the Board.

CHAIRMAN: You need to be a funeral director, dear. You --

MS. DUNN: I deal with stress all the time, but not this kind of stress.

MR. OTTO: And I think if I start

sending that out to people today, If I get in trouble, I've got a pretty good argument that I tried to do what was best.

(Several people talking simultaneously.)

MR. MAHN: Well, I would some time. Give him time to get his stuff done, find out what Sharon --

MS. DUNN: Why don't we just say we'll come back at 1:30.

CHAIRMAN: Okay. Is that -- will that work?

MS. RUSSELL: One-thirty.

CHAIRMAN: Okay. That will give us -- (inaudible.)

MS. DUNN: And whatever we have, we have, and we'll schedule a meeting next week.

CHAIRMAN: One-thirty then. Somebody make a motion to go in closed.

MR. MAHN: Motion.

CHAIRMAN: Second? Gary seconded. Okay. Well, Todd beat you, so Todd made the motion, Gary seconded, and they all said yes.

(Off the record)

CHAIRMAN: Okay. We are looking at the approved -- well, let's see. It was #1.

Hang on. Let me go back to my thing here. Where did it go? What did I do? Oh. That was just the change on the on -- on or after in #1, the requirement of the preneed contract -- the dates.

MS. BATTAGLER: I have one fix you may want to add in there. It only states in #7 that you have to include on the preneed contracts all our --

CHAIRMAN: Hang on just a second. Can you hear her?

MS. EULER: Yes, I can.

CHAIRMAN: Okay.

MS. BATTAGLER: That you have to include all requirements of the chapter. It doesn't say anything about requirements of the rules.

MS. RUSSELL: Of the Board rules.

MS. BATTAGLER: The Board -- that the Board promulgated the rules.

CHAIRMAN: Okay.

MS. DUNN: Sharon, did you hear that?

MS. EULER: I did. We can easily add that.

MS. DUNN: Okay.

CHAIRMAN: So --

MS. EULER: I will add that now.

MR. SPEAKS: So, you're making a rule that you have to follow the rules?

MS. BATTAGLER: Well, we just want that -- the contract rules in.

MS. CLARKSTON: How about this other one?

MS. BATTAGLER: Yeah.

MS. EULER: Okay. I have added that.

MS. CLARKSTON: You see a lot of you have to comply with the chapter specifics and the rules and regulations promulgated within this chapter or -- I mean, there's other references.

MS. BATTAGLER: Oh.

UNIDENTIFIED: Just referencing all the rules.

MS. CLARKSTON: Yeah. Especially if you want to tie someone to another rule, so without reduplicating everything from another rule, sometimes you'll just refer. And this is so broad, it covers it.

CHAIRMAN: Okay.

MS. EULER: Does the Board want me to

add that?

(Numerous people answer yes.)

CHAIRMAN: That's simple enough just yes, or do we need a motion on that?

MS. EULER: If everybody says yes, you can consider that a motion if you would like.

CHAIRMAN: Okay. So, we do need the motion then, so we'll consider it the motion and everybody said yes, so it passed.

MS. EULER: Okay.

CHAIRMAN: So, that was really just a two-word cleanup language because this one was totally approved other than just adding those two little words anyway.

MS. DUNN: And we had already made the finding statement.

CHAIRMAN: Okay. So, we can move to the next one.

MS. EULER: And give me just a minute. I'm going to e-mail this back to Becky.

MS. DUNN: Put Tab on there, too, because my e-mail is not working right now.

MS. EULER: Okay. Okay. Done. What's the next one?

CHAIRMAN: Okay. It's rule #3, second

page. We had sent back for redo and the issues were the (a) and the (b) and all those good things.

MS. EULER: Have you already talked about this?

CHAIRMAN: Yes. These -- Earl went back and redid these after we met this morning.

MS. EULER: Okay. Okay. Did you talk about that the statute does not allow the seller to distribute to the purchaser?

CHAIRMAN: Now, wait a minute. There --

MS. BATTAGLER: The trust funds or all of --

MS. EULER: Oh, wait. Oh, no. I got it. I got it.

MR. OTTO: That's just the 10 percent --

MS. BATTAGLER: Yeah.

MS. EULER: I got it.

MR. OTTO: -- that the seller has to give back.

MS. EULER: Yeah. I've got it.

CHAIRMAN: Okay. Does everybody see anything -- everything look good? Okay. Make

a motion we accept it for a final approval.

MR. McCULLOCH: Motion.

CHAIRMAN: And John makes the motion.

MR. FRAKER: Second.

CHAIRMAN: Gary seconds. Joy?

MS. GERSTEIN: Yes.

CHAIRMAN: Todd?

MR. MAHN: Yes.

CHAIRMAN: Final approval. And the Board finds and makes the finding that there is competent and substantial evidence in the record to support the need for this rule. Okay. Okay. We redid some more language on the filing of annual reports. I had made a note that it was just date approval, but he's changed more than that, so --

MS. BATTAGLER: Currently, does the preneed provider report start on October -- did it start on October 31st -- the reporting period?

MR. McCULLOCH: The date of your last report was when it actually started.

MS. BATTAGLER: Well --

MS. DUNN: Under the old law.

MS. BATTAGLER: Right. Under

providers under -- or providers 2(a)(I) or one, whatever, it says that for report due October 31st, 2009, reporting period shall be October 31, 2008, to August 27th. Shouldn't it be the first reporting date -- or the last reporting date --

MS. RUSSELL: Like we did up here somewhere.

MS. BATTAGLER: Yeah. Like we did up in --

MS. RUSSELL: Let's do that, (a).

MS. DUNN: And, actually, that -- there's a word misspelled there, but --

CHAIRMAN: You're talking about down in #2; right?

MS. RUSSELL: Yeah. Since the report, just the same way he did it here.

MS. BATTAGLER: And it just needs to copy the wording over, basically, from 1(a) --

CHAIRMAN: Okay.

MS. BATTAGLER: -- down to 2(a).

CHAIRMAN: Did you get that one, Sharon?

MS. EULER: Well, hang on a minute. I want to look at the statute. The annual

report --

MS. DUNN: Well, this has to be consistent with our other emergency rule.

MS. BATTAGLER: Right.

MS. RUSSELL: Right.

MS. DUNN: That's what you're saying?

MS. BATTAGLER: Yeah.

MS. EULER: All right. The annual report for the providers is that they need to list custodian of records, their business names and addresses, and list the name of each seller with whom it has entered into a written agreement since the last annual report.

MS. BATTAGLER: Since the last annual report then. That's 1(a).

MS. EULER: So, for the first one, sub 2(a)(I) --

MS. DUNN: Yes.

MS. EULER: -- it should say from -- shall be from the date of their last annual report.

MS. DUNN: Yes. Right, Lori? That was consistent.

CHAIRMAN: So, we need to strike October 31, 2008 --

MS. DUNN: Right.

CHAIRMAN: -- and say from their last annual report?

MS. RUSSELL: From the date of their last annual report.

MS. DUNN: Through August 27th, 2009.

MS. EULER: Right.

MS. RUSSELL: Right.

MS. DUNN: And -- okay.

MS. CLARKSTON: The other issue that I was going to bring up was on these, if you look at sub 1(b) -- or sub 1(a), it says annual report shall be accompanied by a $2 fee, and then in (b), we don't speak to fees. Then you go to 2(a), we speak to note these, and 2(a)(2) and (3), we have a question mark on fees, and I think that's where he was going. But I think in 1(b), 2(a)(2) and (3), if we could say something to -- similar to annual reports shall be accompanied by an annual reporting fee as established by the Board.

MS. RUSSELL: Perfect.

MS. CLARKSTON: Or to reference the fee rule.

CHAIRMAN: Did you catch that one, Sharon?

MS. EULER: Uh-huh.

CHAIRMAN: Okay. Suggestions?

MS. EULER: Now, for -- the statute says that for funeral establishments, there is no renewal fee. So, the only people who would pay a renewal fee would be nonfuneral-establishment providers.

MS. DUNN: Right.

MS. BATTAGLER: But it could mean --

MS. DUNN: Providers. But sellers --

MS. RUSSELL: That wouldn't be --

MS. DUNN: Sellers can pay a renewal fee.

MS. RUSSELL: Correct.

MS. EULER: Right.

MS. BATTAGLER: But then can --

MS. EULER: But I thought we were looking at providers.

MS. DUNN: I'm sorry.

MS. CLARKSTON: Well, we are. We're looking at both. But did we not, in our fee structure, set up a nonestablishment-provider fee and an establishment-provider fee? Would

we consistently carry that over to the fee rules, so if we reference the fee rule, that would take care of that issue?

MS. EULER: We set forth an application fee. I don't know if we set forth a renewal feel.

MS. DUNN: Right. That's only an application fee we've set so far.

MS. CLARKSTON: That is a possibility that the Board could explore and then that would take care of this issue.

MS. DUNN: Okay.

MS. EULER: Yes. I'm adding --

MS. RUSSELL: 1(b), you can add it right there to 1(b) already because there is a fee set for $36. You don't have to say $36, but just to say the way you did it.

MS. CLARKSTON: Right.

MS. RUSSELL: Yeah.

MS. CLARKSTON: Right.

MS. DUNN: Because that way, what you're trying to do is avoid these amounts throughout the rules --

MS. CLARKSTON: Yes, I am.

MS. DUNN: -- where a fee rule could

handle everything consistently.

MS. CLARKSTON: And then by referring generically to the fee rule, then for consumers that need to go back and look, they're going to have to go to the index, where if we could just provide them the rule number, it would lessen the burden on consumers and small business.

CHAIRMAN: So, you got it?

MS. EULER: Uh-huh. I will mail this to Becky and to Tab, and -- yeah.

CHAIRMAN: So, actually, we just need probably just turn the page and go on till we get those to come back in?

MS. EULER: Yeah. That's fine.

CHAIRMAN: All right. Jump that. Now, we are on the mandatory preneed-contract disclosures to consumer.

MR. OTTO: I'm a little confused on these two pages and then the following pages.

MS. BATTAGLER: Uh-huh.

MS. CLARKSTON: I think the following pages is possibly the way it's structured a -- well, no. Never mind.

MR. OTTO: Yeah.

MS. CLARKSTON: I thought maybe it was the rule, but that's not it.

MR. OTTO: I mean, pages 1 and 2 is not really set up like a rule yet like you've discussed where it would say the following information must be included in all preneed contracts. If it's separate, it should be exactly like it is; if it's included, you don't need the heading. But it's just -- this is just what you all approved earlier as the language.

MS. DUNN: You know what? I was just copying as fast as I could get it, so I'm not quite sure.

MS. CLARKSTON: Becky, do you --

MS. EULER: We can add that to this and say, well, that each preneed contract shall include the following mandatory conditions.

MS. DUNN: Oh, accept changes?

MS. RUSSELL: Yeah. You just made those changes that we made on here.

MR. OTTO: Yeah. This is correct, most of the body of it.

MS. CLARKSTON: Yeah. But I'm saying

if he -- on the computer, if you accept all these changes, it drops all this out and you'll get a clean version.

MS. DUNN: Okay. That --

MS. CLARKSTON: That may help -- what he did.

MS. DUNN: Okay. I'll do that.

MS. BATTAGLER: Yeah. That's right. Because it's showing the -- (inaudible.)

MR. OTTO: Yeah. It's confusing because of all the editing changes.

MS. CLARKSTON: Does Tab have that over there?

CHAIRMAN: So, right this second, we're requesting that we get the clean.

MS. CLARKSTON: The clean.

CHAIRMAN: Okay.

MS. EULER: I'm going to check the formatting of this, too. Okay. What about the content?

CHAIRMAN: Are you talking about the mandatory?

MS. EULER: Yeah.

CHAIRMAN: What about it? What's the question?

MS. EULER: Are you ready to approve the content?

CHAIRMAN: I think what we have is the one with all of the --

MS. DUNN: It's hard for us to read.

CHAIRMAN: Yeah.

MS. DUNN: So, we're going to reprint it.

MS. EULER: Well, that's what I was just trying to do, but was not having much success. Becky, I just sent you an e-mail with the --

MS. HAYES: She's gone, Sharon.

MS. EULER: Oh. I sent it to Tab, too.

CHAIRMAN: This next page where it just says consumer-contract requirements, he just did this to be nice, I guess?

MS. BATTAGLER: Uh-huh.

MS. RUSSELL: I don't know where it came from.

CHAIRMAN: Because I don't have anything where we were -- we didn't work on it. I mean, it's not a rule.

MS. EULER: Are you talking about -- what are you talking about, Martin?

CHAIRMAN: Well, the top page says consumer-contract requirements, and then it's got -- what we have is all the deleteds and it's got Earl Kraus and all this all over it, but it's each of the -- it's got the #1 through #15 on it.

MS. EULER: No. That's deleted.

MS. BATTAGLER: Are you sure this isn't something he put together as part of the educational piece that you guys talked about?

MR. SPEAKS: Educational?

CHAIRMAN: I'm thinking --

MS. EULER: Well, no. What that was, was that was an original draft and we changed our minds how to do it. (Inaudible.)

CHAIRMAN: Well, but we had a big conversation this morning, not about making a rule, but what really is it the specifics that the contracts have to have. And I'm thinking that he's just given us this.

MS. EULER: Oh, I don't know. I know that in the original draft from the consumer disclosure, we had all of that, and then we discussed it and decided that that didn't really make sense for a consumer disclosure.

So, I suspect that what you have is what we took out.

CHAIRMAN: And when you're talking about the consumer disclosure, you're talking about the one that's the mandatory language?

MS. EULER: Uh-huh.

CHAIRMAN: Okay. So, he's just given us this for us to have?

MS. EULER: I don't know.

CHAIRMAN: Surely, he is. The only reason we would have it I can think of.

MS. EULER: Well, is it the second page of this?

MR. McCULLOCH: Page 2.

CHAIRMAN: What about it?

MS. EULER: Well, because originally we had this drafted so that the -- what the underlying things that the paragraphs underneath them is what we decided to use for the disclosures. Before that -- and it would have been on a second page -- we had something like what you are describing. So, what I'm thinking is that that was part of a previous draft.

CHAIRMAN: Okay. It's going to be

helpful. We were wondering if somebody was going to get around to putting all this just down for us like this, so thanks for your previous draft.

MS. EULER: Okay.

CHAIRMAN: On the next page following those two, do you see something that you have that says purchaser cancellation on it?

MS. EULER: No. That's all part of what was rejected.

CHAIRMAN: Oh, okay. So, it just goes with that then?

MS. EULER: Yeah.

CHAIRMAN: So, those are just FYIs for you all, I guess. So, really, what we're doing is then waiting on the printing of those other two documents?

MS. EULER: Yeah.

CHAIRMAN: Well, would you all like to go into a verse of --

MR. SPEAKS: Kumbaya.

MS. CLARKSTON: Well, since Sharon is on the line and we can catch Becky up, would you want to look at the one I have questions about?

CHAIRMAN: Is that this one?

MS. CLARKSTON: No.

CHAIRMAN: Which one?

MS. CLARKSTON: This is the provider includes funeral establishment that has agreed to undertake obligations of the preneed contract.

CHAIRMAN: Where is it at?

MS. CLARKSTON: It's -- I'll hand out a copy because it was in the first set.

CHAIRMAN: Oh, okay.

MS. CLARKSTON: And I hope I made enough copies to go around here. And, Sharon, this goes back to group one, and it was one of those that was approved that we're looking at filing. And it explains that a provider in a preneed contract includes, but is not limited to, a funeral establishment that has agreed to undertake the obligations. That's the purpose statement of the rule. When you look in section 1, section 1 says the providers of services under any preneed contract shall include any licensed funeral establishment. My only question was, I know that the purpose statement addresses, but is

not limited to, a funeral establishment, but the section of the rule does not. My concern came from earlier conversations, and I think it was the last time that we met, on the cemeterians, and would this be confusing or problematic for them. Can we clean that up a little bit to say but is not limited to any funeral establishment that has agreed to undertake?

MS. EULER: I'm looking for that.

MS. CLARKSTON: Do you want us to fax this to you?

MS. EULER: Tell me, again, what the rule is. What's the title of it?

MS. CLARKSTON: The title is provider to include funeral establishments engaged in preneed.

MS. EULER: Okay. Yes, I've got it.

MS. CLARKSTON: Okay.

MS. EULER: And what is your question?

MS. CLARKSTON: Within the purpose statement, it explains that a provider in a preneed contract includes, but is not limited to, a funeral establishment that has agreed to undertake the obligations. However, in

section 1, it leaves out the "but is not limited to" and it says shall include any licensed funeral establishment. And I'm wondering if we need to look at that a little closer, recognizing that not all providers will be a funeral establishment.

MS. EULER: You know, we talked about this, because I was confused by it, too. And is there a reason why we need to limit it to licensed funeral establishments, or can we just say any provider?

MS. CLARKSTON: I mean, from my perspective -- again, not being an attorney -- I don't know that you can limit it to any funeral establishment, but I think that your thought process on any provider seems appropriate.

MS. EULER: Well, I don't -- I remember discussing that and I remember raising that issue, but I don't remember what the rationale was. Does anybody else?

MS. RUSSELL: Do you remember?

MS. EULER: Why don't we change that to say include any licensed funeral establishment or any other provider -- or

other provider.

MS. DUNN: I think everyone appears to think that's okay, even though no one acknowledged that.

MS. EULER: They were all sending telepathic vibes?

MS. DUNN: Yes. Messages to me.

CHAIRMAN: Well, I think most of us are sitting here trying to remember when we --

MS. DUNN: Why we did it.

CHAIRMAN: Why we did it.

MS. BATTAGLER: Yeah.

MS. EULER: Yeah.

CHAIRMAN: And I remember all the cemeterian things.

MS. CLARKSTON: I think Section 2 is very clear. Section 1 has me a little confused.

MS. RUSSELL: Your purpose is clear. Your purpose is -- the purpose is clear.

MS. CLARKSTON: The purpose is clear, but then when you say -- if you read the sentence, the provider of any services under a preneed contract pursuant to sections shall include any funeral establishment or any other

provider.

MS. RUSSELL: All right. Yeah.

MS. CLARKSTON: And you're using provider twice. I don't know that that adds anything to the sentence, but I'm wondering if you don't go back to the purpose statement and say --

MS. RUSSELL: Yeah. Not limited.

MS. CLARKSTON: -- but is not limited to a funeral establishment.

MS. RUSSELL: Yeah. Because your purpose statement is correct.

MS. CLARKSTON: What do you think about that, Sharon?

MS. EULER: I think that would be fine. Do you want to write that up there?

MS. CLARKSTON: Yeah.

MS. EULER: Okay. Does the Board agree?

MR. FRAKER: Agree.

CHAIRMAN: Make a motion, somebody.

MR. FRAKER: I'll make a motion.

CHAIRMAN: Gary makes a motion.

MS. GERSTEIN: I'll second it.

CHAIRMAN: Joy seconds. John?

MR. McCULLOCH: I have to think. I don't know.

MS. EULER: Becky?

MS. DUNN: Yes.

MS. EULER: Did you provide the Board with copies of Josh Slocum's e-mail?

MS. DUNN: Which one?

MS. EULER: The one asking the Board to consider revising the proposed rule -- the second one.

MS. DUNN: When did I get it?

MS. EULER: I don't know.

MR. McCULLOCH: Oh, way back. We got that first meeting, maybe.

MS. DUNN: Oh, the first one?

MR. McCULLOCH: Yeah.

MS. DUNN: Yeah. We looked at that the first time.

MS. EULER: Uh-huh. And then we sent him a response and then he responded back asking that we clarify the rule so that it was clear.

MS. DUNN: Okay. I have it.

MS. EULER: -- that we weren't trying to stop --

MS. DUNN: Thank you and thanks to the Board for a timely answer. Those situations certainly make sense. In order to head off any potential confusion, I wonder if your Board would consider adding a clarification that this rule does not interfere with the rights of families and religious groups to care for their own dead without charge and without Board oversight.

MS. EULER: Yes, that's the one.

MS. DUNN: Yes.

CHAIRMAN: Okay. Hold that thought then. We have a motion and we have a second. I want to have a discussion for a second. Remind me of why we need this.

MS. CLARKSTON: I wasn't here through that, so I don't know.

CHAIRMAN: The rule that we were just working on, Sharon, do you know, why do we need this? What is the point here?

MS. EULER: I don't know. I asked that question the first time around.

CHAIRMAN: Okay. Well, we surely thought we did, so --

MR. SPEAKS: Well, so what if the

provider is a casket store?

MS. CLARKSTON: Okay.

MS. EULER: Then the provider -- and, Brad, I think that's what the Board was getting to, that if you are a casket-store provider, that does not mean you can do everything the funeral establishment can do just because you are a provider, that being a provider does not make you a funeral establishment.

MS. RUSSELL: You have to meet all the requirements to do that.

MS. BATTAGLER: Got you.

MR. SPEAKS: Right.

MS. BATTAGLER: Perfect.

CHAIRMAN: And that's -- this is what says that; correct?

MR. SPEAKS: Correct.

UNIDENTIFIED: Two?

MR. FRAKER: We can't understand it, but that's what it says.

MS. EULER: But if none of us can figure out why it's there, then I think the rule needs to be clarified because you shouldn't have to explain what a rule means.

MR. SPEAKS: I may not be at the next meeting.

CHAIRMAN: Well, I was under that some -- I was thinking cemeteries, but a casket store works just as good. The key here is the not limited to, obviously.

MS. RUSSELL: Yeah.

CHAIRMAN: So does the language that -- well, we just took care of that. I'm about to chase the same rabbit, so -- all right. So, that's -- everybody understand that thought?

MS. BATTAGLER: What?

CHAIRMAN: Board?

MR. MAHN: We need to fix it, though, don't we?

CHAIRMAN: Huh?

MR. MAHN: We need to fix it; right?

CHAIRMAN: Well, Connie and Sharon, what words did you just --

MS. CLARKSTON: I added in the first paragraph on the third line of section 1, include -- following that, I've added, but not limited to any licensed funeral establishment.

MR. McCULLOCH: But not limited to?

MS. CLARKSTON: But not limited to.

CHAIRMAN: Which, basically, almost goes back up to the purpose statement.

MS. CLARKSTON: Exactly.

CHAIRMAN: So --

MS. CLARKSTON: Which, when you see the rule, we may modify that purpose statement because, usually, you don't repeat the purpose statement in a section. The purpose is more generic and the section is more specific, but we can work on that internally.

CHAIRMAN: So, the motion and the second was to add that language of the limited to --

MS. CLARKSTON: Correct.

CHAIRMAN: -- any funeral establishment, and that's what you're voting on, to input that language in #1. So --

MR. McCULLOCH: Do you think we're going to keep it? Make that motion, really?

CHAIRMAN: Well, now, we've already got that, just a yes or a no.

MR. McCULLOCH: Okay. Okay.

CHAIRMAN: Yes. Joy?

MS. GERSTEIN: Yes.

CHAIRMAN: Okay. So, there you go. That takes care of that.

MS. CLARKSTON: Do you need to see that back?

CHAIRMAN: I don't think so.

MS. CLARKSTON: Okay. Okay.

CHAIRMAN: Now, I shouldn't say that. Everybody else in agreement with that?

MR. McCULLOCH: Fine.

CHAIRMAN: Okay.

MS. DUNN: And you're keeping it.

CHAIRMAN: We just amended the language.

MS. EULER: Okay. Does the Board want to make any changes to the statute reference to Josh Slocum?

MS. DUNN: I'm printing that off right now. Can we go to something else for a moment?

MS. EULER: Sure.

CHAIRMAN: Are these what we just got back?

MS. DUNN: Sharon, I just printed off everything that you had sent me in e-mail.

MS. EULER: Okay.

MS. DUNN: So, it just depends -- and

there might be some duplication because I was printing and so was Tab, so I apologize if there is duplication.

CHAIRMAN: Okay. So, I think the point that we're at, we already took care of the one that starts in the stapled section of requirement for preneed contracts; that's done. The emergency filing of annual reports is done. We're at the mandatory preneed-contract disclosure to consumers, and this is the cleaned-up version without the little bubbles at the side and all that.

MS. DUNN: Okay. So, did we incorporate all of Sharon's changes correctly in the emergency rule regarding filing of annual reports?

CHAIRMAN: Hang on. That was -- yes. That was -- hang on. I've got so many papers going on here.

MS. DUNN: This is the one where we were just discussing the consistencies and --

CHAIRMAN: This was the one for their last annual reports. Down in the 1, 2, and 3.

MS. RUSSELL: Yeah.

CHAIRMAN: And under the providers.

That's all you worked on, wasn't it, Sharon, just the provider thought at the bottom of that?

MS. EULER: And also added a sentence to the other one saying the report shall be accompanied by a fee set by the Board.

MS. DUNN: Okay. Then in one group, I don't have the change reflected, but in this one, it is. Okay. We were copying too fast back there.

MS. BATTAGLER: There's two of the same ones in this stapled group. The first one doesn't count.

MS. DUNN: The stapled version isn't right.

MR. WARREN: Are these gone?

MS. BATTAGLER: The second one --

MS. RUSSELL: Well, there's -- oh. She gave us another page, too, so, we've got those.

MS. DUNN: Okay. The one that's highlighted in yellow.

MS. RUSSELL: Okay. This is the right one. (Inaudible.)

MS. BATTAGLER: Oh, okay.

MS. CLARKSTON: There will a test after this one to conform to what you know about what piece of paper.

UNIDENTIFIED: Maybe a review session.

MS. CLARKSTON: A review session.

MS. DUNN: Don, are you going to include that in your class?

MR. OTTO: I'm working on it.

MS. CLARKSTON: Yeah. Open-note test. Yeah.

CHAIRMAN: Okay. Everybody got the yellow-highlighted sheet?

MS. RUSSELL: Yes. Uh-huh.

CHAIRMAN: All right.

MS. DUNN: Lori wanted to point out a typo.

MS. EULER: No.

MS. HAYES: Sharon, on 2 at the bottom where it says for providers, one, and it says from the date of the seller's last annual report. Shouldn't that be providers?

MS. EULER: Yes.

MS. HAYES: Okay.

MS. EULER: Will you fix that?

CHAIRMAN: So, the word "seller" is

dropped and made to providers.

MR. WARREN: Where is this, again, because the --

MS. DUNN: This is in your highlighted --

MR. WARREN: Two -- yeah. 2(a) --

MS. HAYES: One.

MS. DUNN: It's one, that should be provider.

MS. CLARKSTON: And then in 2(a)(3), it should be accompanied versus accompany.

MR. WARREN: Okay.

MS. CLARKSTON: Sorry, Sharon.

MS. EULER: That's all right.

MS. DUNN: In 2(a)(3), accompanied?

MS. CLARKSTON: Yes.

MS. DUNN: And then is the reference okay, Connie?

MS. CLARKSTON: I was going to go in and just put the rule -- the fee-rule number in there so that that was clear.

MS. DUNN: Okay. So, then for the public, we've got all the dates addressed so that if you were filing an annual report, you would know what to do?

MS. RUSSELL: Exactly.

MS. BATTAGLER: Yes.

MS. DUNN: Okay.

MS. CLARKSTON: And all the benefits of staggering those renewal -- or those annual-reporting periods --

MS. DUNN: And consistent with bookkeeping?

MS. CLARKSTON: -- consistent -- yes. Consistent with bookkeeping or prior to Senate Bill 1, banking reporting, et cetera, et cetera.

CHAIRMAN: Okay. So, make a motion that we accept this with those corrected changes.

MR. FRAKER: (Inaudible.)

CHAIRMAN: Gary makes the motion.

MR. MAHN: Second.

CHAIRMAN: Second, Todd. John?

MR. McCULLOCH: Okay.

CHAIRMAN: Joy?

MS. GERSTEIN: Yes.

CHAIRMAN: Okay. And that goes with final approval then for filing annual reports, and the Board makes the finding that there is

competent and substantial evidence that the record to support the need for this rule of the rewrite of the rule, so that is final approval.

MS. DUNN: We've had so many papers here, I want to make sure we address every rule that we're supposed to this afternoon.

CHAIRMAN: Okay. So, that takes care of that one. So, now, our next thought is the mandatory; is that where we're at? Yeah.

MS. DUNN: There was a statement that Sharon had put that we didn't include, if this is something you want to consider.

CHAIRMAN: In the mandatory disclosures?

MS. EULER: Yeah. I just put it in rule format with the title and purpose, and it's at subparagraph 1 that says each purchaser of a preneed contract shall be provided the following mandatory disclosures.

MS. RUSSELL: Sharon.

MS. EULER: Yeah.

MS. RUSSELL: This is Darlene. Earl was going to include in there that it could be either by having it in the contract or by

handing out the disclosure.

MS. EULER: That's why I did just shall be provided.

MS. RUSSELL: Shall be provided. Okay.

MS. BATTAGLER: In any way?

MS. EULER: Yeah. I didn't designate how.

MS. RUSSELL: Okay.

MS. GERSTEIN: Oh. I'm looking for a new one back there. Okay. Thanks.

MS. RUSSELL: Okay.

UNIDENTIFIED: Where are we at?

MS. DUNN: That covers the napkin.

MS. RUSSELL: The napkin.

MS. BATTAGLER: I'll say. It's very -- (inaudible.)

MS. DUNN: That's not a true and accurate statement.

MS. EULER: I'm going to add that they shall be provided the following written. They need to be in writing.

MR. OTTO: Yeah. I was doing semaphores.

MS. EULER: What?

MR. OTTO: I was going to do it by

semaphores.

MS. EULER: Fortune cookies.

CHAIRMAN: Does that language -- okay. Like, well, I'm -- the printout of the mandatory disclosures -- of course, we approved that being word for word and just exactly the way it was. Are you suggesting that in the old version it was the -- in parentheses up there at the top, to be provided to the -- at the initiation of every preneed contract, under that preneed mandatory statement. Are you thinking that that -- your addition there, are you thinking that needs to go up at the top of that document like that, or just on there somewhere?

MS. EULER: What I did was put it in the format of a rule.

CHAIRMAN: Oh, okay. So, it just becomes a rule as opposed to being a part of the disclosure, I guess?

MS. EULER: Right.

CHAIRMAN: All right.

MS. EULER: And so, if people want to photocopy that and attach it to their contracts, they can, or if they want to

incorporate it into their contracts, they can do it that way, too.

CHAIRMAN: Okay. All right.

MS. EULER: Just so long as it's provided to the consumer in writing. Do you want to put a time frame that the purchaser must receive this? Before signing, at the time of signing?

MR. McCULLOCH: At the time of, maybe?

CHAIRMAN: Well, it would --

MS. DUNN: I'd say at the time.

CHAIRMAN: If they include it in their contract, it will be automatic at the time of signing.

MS. BATTAGLER: Well, the problem is --

MS. EULER: Right. But we don't want -- we want them to have access to this before they sign it as opposed to the seller giving it to them two weeks after they've already signed it.

MS. BATTAGLER: Yeah. But the problem is, we're going to be using this as an addendum until we get contracts redone or whatever. And if we've already been selling contracts that we don't have any of these

disclosures necessarily in this wording on there.

MS. EULER: Right.

MS. BATTAGLER: So, we're going to have to use this temporarily as just something to send them by December 31st.

MS. EULER: Right.

MS. BATTAGLER: So, they're not going to sign it before they get the contract or whatever.

MS. EULER: And we've addressed that by a separate rule.

MS. RUSSELL: Yeah. Under -- (inaudible) -- right here. (Inaudible.)

MS. EULER: What about saying each purchaser of a preneed contract shall be provided the following written mandatory consumer disclosures at or before the time the consumer signs the contract unless otherwise provided.

MS. RUSSELL: By rule.

MS. EULER: By rule.

MS. RUSSELL: Perfect. Perfect.

MS. BATTAGLER: Yeah. That works.

MR. OTTO: Very good. Very good.

CHAIRMAN: Okay. Do we need to go through this -- the disclosures? Do we need to look at --

MS. DUNN: Yes.

CHAIRMAN: I mean, that's the new version.

MS. DUNN: Well, I mean, has everybody read that thoroughly?

CHAIRMAN: To make sure that everybody's happy.

MS. RUSSELL: I checked the changes.

MS. BATTAGLER: I can't find my old papers. (Inaudible.)

MS. RUSSELL: I've got my old papers right here. I checked the changes.

MS. DUNN: Because there were several changes in that, and since --

MS. RUSSELL: She's got them al in here -- or he does.

MS. BATTAGLER: I've got a good one.

MR. McCULLOCH: Were they going to take still out or was that -- did you all decide that was okay?

MS. BATTAGLER: What's that?

MR. McCULLOCH: You know, I thought

before, we had taken that out -- still. Does that change anything?

MS. BATTAGLER: No.

MR. McCULLOCH: (Inaudible.)

MS. BATTAGLER: I don't know that that's necessarily a big deal, but I think Don was the one that suggested that.

MR. OTTO: What?

MS. BATTAGLER: Still --

MR. McCULLOCH: Taking the still out of there. I don't know if it --

MS. BATTAGLER: Under public assistance, take out the still on the fourth line. Is that a big deal or --

MR. OTTO: No. No. That's okay.

(Several people talking simultaneously.)

MS. EULER: I have one suggestion. In the very last sentence where it says if your preneed contract is funded through an insurance policy, I would suggest we add you should consult your insurance policy, instead of it just saying consult your insurance policy. Is everybody okay with that? Is anyone listening?

CHAIRMAN: Yeah.

MS. DUNN: Yes.

CHAIRMAN: We should. You're right.

MR. McCULLOCH: Yeah. We're agreeing with you.

MS. EULER: Okay. I can't see your heads nodding, so --

CHAIRMAN: Okay. I went through it and I didn't -- I found all the corrections that so far. Did anybody pick up anything else that --

MS. RUSSELL: No.

MS. BATTAGLER: No.

CHAIRMAN: Okay. So, with the addition of you should in the last sentence on the back of the page, are we up for motion for final approval?

MS. DUNN: John made the motion.

CHAIRMAN: All right.

MR. FRAKER: Second.

CHAIRMAN: Actually, John beat you, Gary, so -- with a hand, but -- so, Gary will second then. Joy?

MS. GERSTEIN: Yes.

CHAIRMAN: Todd?

MR. MAHN: Yes.

CHAIRMAN: All right. So, you have final approval on the mandatory.

MS. EULER: Okay. And I'll send the final version to Becky and Tab.

CHAIRMAN: And the Board does make that the redraft has the findings that there is competent, substantial evidence in the record to support this rule.

MS. DUNN: And then Connie's turn.

MS. CLARKSTON: Well, because we don't have the rule, we just have the disclaimer, remember, we want to make sure that --

MS. DUNN: Oh, yes.

MS. CLARKSTON: -- so, let's wait on that until we look at that rule.

CHAIRMAN: Okay. Do we need to vote on the rule that you wrote, Sharon, about each purchaser shall -- because you put that in what you're calling rule form?

MS. EULER: Yeah. I just sent it to Becky, and I read to the Board what I added. If you want to look at it one last time and give it a final approval, you certainly can, but I don't think it's required.

MS. DUNN: Okay. Now, I haven't

received anything recently.

CHAIRMAN: There. Right there.

MS. EULER: Well, I just hit the send button, like, two seconds ago.

MS. DUNN: Oh, okay. It's going through the little man then.

MS. EULER: Yes. Little man in the closet is reading it. The Josh Slocum e-mail, what date is that, Becky, so I can find it in my e-mail?

MS. DUNN: Okay. I could send it to you right now.

MS. EULER: Okay.

MS. DUNN: And I'm going to give it out if you're ready.

MS. EULER: Ask the chairman.

CHAIRMAN: No. Hang on a second then.

MS. DUNN: Okay.

CHAIRMAN: All right. Under the rule for the mandatory consumer disclosures, what she typed on the back of that -- okay -- with the addition of the word "written," provide the written following mandatory consumer disclosure added into there --

MS. EULER: And I also added at or

before the time the consumer signs the contract unless otherwise provided by rule.

MS. DUNN: Oh. And you sent that to me?

MS. EULER: Yes.

MS. DUNN: Okay.

CHAIRMAN: Okay. Everybody heard that? Okay. So, with those additions into that, need a motion that we accept this. Gary motions.

MR. McCULLOCH: Second.

CHAIRMAN: John seconds. Joy? Todd?

MR. MAHN: Yes.

CHAIRMAN: All right. We can give final approval on -- that can be a final approval without having a reprint of it, can't it? Everybody happy with that?

UNIDENTIFIED: Yes.

CHAIRMAN: All right. So, final approval on that rule. And the Board does make the finding that there is competent, substantial evidence in the record to support the need for this rule. Okay. So, that takes care of that. Where are we at? I've got way too much paper.

MS. DUNN: You might ask Sharon if this is a pertinent time to discuss the -- (inaudible.) For some reason, she brought it up, because I think it pertains to a rule that we'll not be discussing.

CHAIRMAN: Okay. All right. Let's just go there.

MS. DUNN: Okay. I'm going to give out the e-mail transactions that we did with Josh, Sharon.

MS. EULER: Okay.

MS. DUNN: I don't know if I have enough, Don. I'll see. Last week, I believe, or maybe in the week before -- I can't remember -- Josh Slocum had sent us an e-mail and I distributed it. Then I drafted a response back to him, then he sent a response back to the Board.

MS. EULER: And does everybody know who Josh Slocum is? He's with the Funeral Consumer Alliance.

MS. RUSSELL: Yes.

MS. DUNN: Everyone says, yes, they do know who he is.

MS. EULER: Okay.

MS. DUNN: Especially Todd.

CHAIRMAN: And I thought your response back to him was great. Everybody read it?

MR. MAHN: Yeah.

CHAIRMAN: Everybody understands the response is to the rule that payment is not the determining factor of practice of funeral directing?

MR. MAHN: Yeah.

CHAIRMAN: Okay. So, would the Board consider adding clarification to this rule that it does not interfere with the rights of families and religious groups to care for their own dead without charge and without Board oversight?

MS. DUNN: And the only thing that I might add, for the record, is the Board is still currently under probation for ten years with regard to a rule that there was a concern about, so this would be clarifying what we were under probation for.

MS. CLARKSTON: And we will also make his concerns in the small-business statement. This e-mail -- we'll summarize this for the annual response.

MS. DUNN: Oh, okay.

CHAIRMAN: Okay. Sharon, are you typing the thought that goes with his possible thought or --

MS. EULER: No.

CHAIRMAN: Okay. Just making sure.

MS. EULER: No. I will.

CHAIRMAN: No, I'm just asking.

MS. EULER: If the Board wants to clarify it, I'm more than happy to do that.

MR. McCULLOCH: So, the bottom line, what you're saying is folks can go out and do their own stuff as long as they don't take money for it?

CHAIRMAN: Well, they can anyway. (Inaudible.)

MS. EULER: No. The Board's jurisdiction is limited to those who are in the business. And so, what this rule is saying is whether or not money is charged or payment is received is not the only -- is not the determining factor to determine whether somebody is in the business or not, that the Board would look at all the facts and the circumstances including things like, you know,

are you acting like a business, are you advertising, are you looking for --

MR. McCULLOCH: Is it limited to family, or can you do it for your neighbor?

MS. EULER: Well, that is unchartered territory. It is undefined. The -- our statute tells us that the Board can regulate those who are in the business.

MR. MAHN: Who are licensed.

MR. McCULLOCH: So, if I don't have a license, you can't regulate me?

MS. EULER: Well, but if you are not licensed and you are in the business, then you are engaging in unlicensed wrongful activities.

MR. MAHN: (Inaudible.)

CHAIRMAN: Isn't there something in -- I'm not sure what section or anything, but isn't there something about --

MR. McCULLOCH: In other words, you're cowing down to Josh Slocum. Okay. Got you.

CHAIRMAN: -- blood -- there has to be a blood tie, or a church, you know, a group or, you know, like the Amish or something like that that -- for that to apply?

MS. EULER: The Board has considered

proposed regulations on that very topic at various times over the last eight years.

MS. DUNN: Maybe six.

MS. EULER: But I don't believe anything has been finally passed because it's hard to draw a bright line.

CHAIRMAN: I thought -- and for some reason in my mind, I thought it had to be a family member that -- before you can just say you're going to go handle your own.

MS. EULER: No.

MR. McCULLOCH: (Inaudible.) Is that what you said?

UNIDENTIFIED: Yes. Yeah.

MR. McCULLOCH: Exactly.

UNIDENTIFIED: Exactly.

MR. McCULLOCH: He says take my license, I'm just going to do it anyway.

MS. BATTAGLER: So, I'm not a funeral director, but if my cousin calls me and says, here, will you do this for me, given my husband died or whatever, I can go do that without being a licensed funeral director and not getting any money for it, and I can go handle their deceased?

MS. EULER: If you aren't in the business, because the Board's statute says --

MS. BATTAGLER: Right.

MS. DUNN: The Board doesn't have jurisdiction over that.

MS. EULER: I'm looked at 333.251. Nothing in this chapter -- blah, blah, blah -- but shall apply only to persons engaged in the business of embalming or funeral directing.

MS. DUNN: So, if individuals call us, then we tell them it's not within our jurisdiction, you might check your city, county, or local authorities to see if there would be any restrictions with regard to that matter.

MR. WARREN: Okay. So, if somebody wanted to go bury a family member in a family graveyard on the family farm in a pine box, they could go dig a hole, technically, with their backhoe and bury them and --

MS. RUSSELL: Yeah.

MS. DUNN: Well, it wouldn't be under this Board's jurisdiction, so we would just tell them they needed to contact their city, county, or local authorities. And then they

have to zone that family burial ground.

MR. WARREN: Hey, Sharon?

MS. EULER: Yes.

MR. WARREN: There is some language in 287, and I can't remember where, that excludes religious groups from Workers' Comp.

MS. EULER: Yes.

MR. WARREN: That may or may not be helpful if you've got to go draft something on this, because it's got all the magic words about how they define it.

MS. EULER: Well, we have looked at that, and the problem is that the Board's statute is such that it's broader than just religious groups.

MR. WARREN: So, it may be safer for the Board just to leave it alone.

MS. EULER: Well, we have had some issues in the past with people who are acting in every way like a funeral home.

MR. WARREN: Yeah. Like the -- (inaudible.)

MS. EULER: They're advertising, they're providing services for people outside their religious community, outside their --

you know, people who they know. They are doing everything -- telling families, well, yeah, you get to go to the funeral home, but I can do it for you so much cheaper, but they don't send a bill. Instead, they ask for a donation of whatever you feel our services were worth. And so, what people have said, well, I'm not charging a fee; therefore, I'm not in the business, but they're getting paid.

MR. WARREN: Yeah. Well, I would think that would be defined more by actions than payment.

MS. EULER: Right. And that's what this statute is trying to -- what this rule is trying to put people on notice that whether you send a bill or not will not decide whether you are in the business. The Board will look at the totality of the circumstances to decide whether you are in the business. Because there are some professions, like cosmetology, that define you are in the business if you get paid. So, you know, at the next Board meeting, I could bring my sisters in and I could give everybody around the table a trim, and as long as I didn't get paid, I don't

need a hairdresser's license -- a cosmetology license. But if I charged a fee, then I would need a cosmetology license. And that's how they set their bright line. But for this Board, it's not quite that simple. It could be.

MR. WARREN: It would seem almost to be self-limiting that if it was a religious group, they're not going to, you know -- it would seem that they would stay within the confines of their religious group.

MR. OTTO: But they're not.

MR. WARREN: But they're not?

MR. OTTO: We've had a couple of ministers out there that have said, you know, again, I'm doing this for free as long as you make a $5,000 donation to my church.

MS. EULER: Right.

MR. OTTO: And we had casket stores doing the same thing. I'll do all the arrangements for free as long as you buy the casket from me.

MR. WARREN: How would you ever write a rule that covers every --

MR. OTTO: Well, I think they did

about as good a job as you can with the rule that we've got there.

MR. WARREN: Yeah. I tend to agree.

CHAIRMAN: So, Josh is wanting to know if we would consider adding a little more clarification to that rule that families and religious groups to care for their own without charge or without Board oversight, so --

MS. EULER: Well, and I think we would want -- if the Board does that, I think it would need to be broader than just families and/or religious groups, and say anyone may --

MR. OTTO: Don't you already have another regulation that spells that out?

MS. EULER: I don't think we do.

MR. OTTO: Wasn't that part of the FTC thing, changing that one -- (inaudible.)

MS. DUNN: Well, that was where anybody could make -- it was in our rule about we had only a funeral director could make arrangements, sell a casket. It wasn't what our intention of the rule was, but it appeared to others that that might be the intention of the rule.

CHAIRMAN: Okay. John?

MR. McCULLOCH: If people who understand this feel like it's a good rule, why do we need to even just say no? We're not going to add anything to it.

CHAIRMAN: Because the FTC may be here next week if we don't.

MR. McCULLOCH: Well, that's okay. Let them come on down. But we don't think so. I mean, we think it's very clear and no problems and --

MS. EULER: Well, my best legal advice to you is that I don't think it would hurt anything to add some clarifying language and it might save you from having to do some explaining in the future.

CHAIRMAN: Now, let me ask you something because why would you want to make it broader by saying -- I forgot the word you just used a while ago. His language is families and religious groups. Why open the door even wider by saying anyone or whatever with language that you just chose?

MS. EULER: Because your statute doesn't say religious and family groups.

CHAIRMAN: Yeah, but he did, and he's

replying to --

MS. EULER: Yeah, I know.

CHAIRMAN: That's where he's trying to supply -- why swing the gate even wider for having to deal with interpretation?

MS. RUSSELL: I think, like Becky just pointed out on your rule in 060 -- no -- on page 34 of your book, she just pointed out it says in there the Board shall not deem a person to be engaged in the practice of funeral directing or the operating of a funeral establishment if the person prepares, arrange, or carries out -- where am I -- yeah -- carries out the burial of a dead human body pursuant to the religious beliefs.

MS. EULER: No. We did do that rule.

MS. RUSSELL: Becky found that.

MS. DUNN: It was mandatory.

MR. McCULLOCH: So, they've already jumped --

MS. RUSSELL: Or practices of a religious group.

MR. McCULLOCH: The FTC has already jumped on you guys, you settled, you're under probation. What more do you have to do?

MS. EULER: Well, so maybe what we should do --

MR. McCULLOCH: Like, so that wasn't good enough?

MS. EULER: -- is to amend the rule, that's on page 34 and add a sub (c) to paragraph 28.

MS. RUSSELL: Okay.

MS. EULER: And make that sub (c) what the -- what #1 and #2 are.

CHAIRMAN: What #1 and #2 are? You lost me there.

MS. EULER: The rule -- the emergency rule that we have here.

CHAIRMAN: Uh-huh.

MS. EULER: Instead of making that a stand-alone rule --

MS. RUSSELL: Add them to that rule.

MS. EULER: -- add that to sub #28 of what's on page 34.

MS. RUSSELL: That makes sense.

MR. MAHN: Add what to it?

MS. EULER: What's in #1 and #2 of the proposed rule. So, make that a (c) and a (d). Do you have the law book in front of

you?

CHAIRMAN: Yeah.

MS. DUNN: We -- well, the chairman does now. And then we need to go back to -- what rule are you on?

MS. EULER: It's on page 34.

MS. DUNN: Oh, I know that one. Is there --

MS. EULER: Sub #28.

CHAIRMAN: It's the one in the business --

MS. EULER: It is rule --

CHAIRMAN: Where did I go with it?

MS. EULER: Just a minute. It is rule 20 C.S.R. 2120-2.060.

CHAIRMAN: That's just that.

MS. EULER: Or maybe we don't need this as the emergency rule, and we do this as part of our final rule -- for permanent rule-making.

MR. MAHN: Can we make a motion on that?

MS. EULER: Yeah.

MR. MAHN: Chairman.

CHAIRMAN: Well, let me think. Was

there any other areas that this is going to somehow affect if we do just put it in the regular-rule file?

MS. EULER: No. In fact, on my notes on the group-one rules, I have it to do a regular rule on and not an emergency rule because I don't think -- according to my notes, the Board did not approve it as an emergency rule.

CHAIRMAN: Okay.

MS. DUNN: So, then if the Board would consider that, we need a motion that we would --

CHAIRMAN: And that's where Todd is getting ready to go.

MS. DUNN: Okay.

CHAIRMAN: I just was wanting him to hold up a half a second. Go for it.

MR. MAHN: I make a motion that we not make this an emergency rule.

MR. McCULLOCH: Second.

CHAIRMAN: Okay. Gary?

MR. FRAKER: (Mr. Fraker signaled by a hand gesture.)

CHAIRMAN: Joy left, so --

MS. EULER: Okay.

MS. DUNN: And then, Todd, would this be considered then at the regular rule-making time, because I'm going to be responding to Mr. Slocum?

MR. MAHN: Personally, I -- do you want my personal opinion? I say we leave it like it is. I don't think we cater to Mr. Slocum's ideas.

MS. DUNN: Well, no. That's fine. I just need to know what the Board's going -- what the Board --

MR. MAHN: Well, do we want to tell him now we're not going to cater to him, or are we going to give him the bad news later? Is that what you're asking?

MS. DUNN: I'm just asking what the response of the Board will be to Mr. Slocum.

MR. McCULLOCH: Just say we're going to look at it at another time.

MS. DUNN: Okay.

MR. McCULLOCH: Yeah. We've taken it under advisement. We'll look at it at a later time.

MS. DUNN: Okay.

MR. McCULLOCH: I'm sure we'll get to it sometime in the near future, maybe by 2020, maybe not. No, I'd leave that last part off.

MR. MAHN: Okay. Are you still there, Sharon?

MS. EULER: I am.

MR. MAHN: Okay. Lori is about ready -- I thought you had left us.

MS. HAYES: I did.

CHAIRMAN: Okay. That takes care of Josh. Where in the world are we now?

MR. MAHN: Jeff City.

CHAIRMAN: Yeah, I know. Did we bring anything else back here that we printed and -- there's that. We haven't done this yet, have we? This printed in yellow?

MS. DUNN: Yeah. We have not done that.

CHAIRMAN: Okay. I'm looking at a second redraft of what is disposition -- #3, which is disposition of funds upon cancellation by the purchaser.

MS. CLARKSTON: With a 2:12 time on it?

CHAIRMAN: Uh-huh.

MS. DUNN: Yes.

MS. BATTAGLER: Yeah. It was approved, but now we're having to look at it again.

MS. DUNN: Okay. So, that was already approved?

(Numerous people agree.)

MS. DUNN: Okay.

MR. OTTO: Yeah. You did that one. That was the first one you did.

MS. DUNN: We were just trying to copy everything just in case there is any discrepancy.

CHAIRMAN: Okay. So, that's done then.

MS. DUNN: Okay. Now, Sharon, the things that Earl said he didn't get done, we did the disclosure sheet. Sharon?

MS. EULER: Yes.

MS. DUNN: We did the disclosure sheet; correct?

CHAIRMAN: This one?

MS. DUNN: Uh-huh. And then the other -- because he said what I didn't get done, but you got done, is the disclosure sheet and then he said I haven't gotten done the $36 fee.

MS. EULER: I don't know what that --

MS. BATTAGLER: What does he have to do on the $36 fee -- (inaudible.)

MS. EULER: Did you say that's the rule I sent you by an e-mail about public assistance?

MR. MAHN: I think the $36 fee was -- are you talking about Earl? That's where we were going to charge that to --

MS. DUNN: Oh. That's the one that Gary and Todd made the motion where the $36 fee where --

MR. MAHN: They just give you a policy.

MS. DUNN: Asset is assigned, but no preneed contract is created. So, I think Earl is going to have to draft that. And then, Sharon, we did talk about the public assistance, but did we vote it down?

CHAIRMAN: Is that what you're talking about, Sharon, is the 208 thing that you sent yesterday?

MS. EULER: Yes.

CHAIRMAN: Okay. And your question is what about it?

MS. EULER: Did the Board take that up or is that left to be done?

CHAIRMAN: Define that a little more. Did the Board take it up?

MS. EULER: Did the Board look at the language I prepared of the draft rule and approve or disapprove?

CHAIRMAN: Where is it?

MR. OTTO: You did and you rejected it.

CHAIRMAN: Yeah, but where is it at? The rule, that is -- the draft rule. Okay. Is that --

MS. EULER: I e-mailed it to Becky and to Earl last night.

MR. OTTO: It looks like this.

CHAIRMAN: Yeah.

MR. OTTO: It says at the top -- title, preneed contract, overages, and refunds for persons on public assistance.

CHAIRMAN: Okay.

MS. DUNN: That's it.

CHAIRMAN: All right. The conclusion was no rule.

MS. EULER: Okay.

CHAIRMAN: Okay. What else? We did all this; right? Annual reporting, that was just the other thing that --

MS. DUNN: Sharon, do you know of anything else that was pending? Is that the financial?

(Several people talking simultaneously.)

MS. DUNN: Sharon, were you still on the phone last night when we were talking about --

MS. RUSSELL: No.

MR. MAHN: She wasn't on the phone; that's why we postponed it till you got on the phone.

MS. DUNN: Okay. So, what I'll do is copy this, if everyone doesn't have a copy. It's the seller obligations regarding payments.

CHAIRMAN: Okay.

MS. EULER: Does everyone have a copy of that?

MS. DUNN: Does everybody need a copy? Okay. Sharon, do you have it?

MS. EULER: I don't --

MS. DUNN: I'll fax it to you real quick.

MS. EULER: I don't know. What does it look like?

MS. BATTAGLER: It's #12.

CHAIRMAN: It says #12 at the top of it, and it says title, seller obligations regarding payments.

MS. EULER: Okay. And that has not changed since yesterday?

MS. DUNN: No. It's in group three.

MS. EULER: Okay. Yes, I have that.

MS. DUNN: We tabled it.

MR. OTTO: We tabled paragraphs 1 and 2.

MS. RUSSELL: Yeah. Because 3 and 4 were okay.

MR. OTTO: Three and four were approved, five was tentatively approved with making sure it matched the language of 208.

CHAIRMAN: Did you get in on any of the discussion of this one yesterday, Sharon?

MS. EULER: Yes.

CHAIRMAN: Okay.

MS. EULER: And I had that you were going to break it out and that Earl was going to do that. And the part I did was sub 5, and I clarified that to make it clear that the seller had to pay any overage and not the insurance company, and clarified that if the

person was on public assistance and there was a refund, it got paid to the State of Missouri, and that's, apparently, the rule you rejected this morning.

MS. RUSSELL: No.

MS. BATTAGLER: No.

MS. RUSSELL: We haven't seen that one this morning.

MR. McCULLOCH: Three, four, and five, we approved them.

MS. RUSSELL: #12, but we don't -- I don't think we've seen that one.

MR. MAHN: Three and four, we did.

MR. McCULLOCH: Five, also. I thought we approved it.

MS. RUSSELL: Are you saying you redid this one, huh, Sharon -- redid #5?

MS. EULER: Yes. I redid that.

MS. RUSSELL: Oh, okay. I don't recall seeing it. Becky, do you?

MS. EULER: That's what I e-mailed to Becky last night.

MR. OTTO: That was the one that began preneed-contract coverages and refunds for persons on public assistance?

MS. EULER: Yes.

MS. DUNN: Yes.

MS. RUSSELL: Oh, okay.

MS. DUNN: We talked about it this morning.

MR. OTTO: Yeah. The Board did talk about that and rejected it for now for a number of reasons. The big problem, Sharon, was that the purchaser may not be the one who is on public -- you know, the purchaser and beneficiary aren't necessarily the same.

MS. EULER: Right.

MR. OTTO: So, the beneficiary could be on public assistance, the purchaser is going to still get all their money back because that money wasn't used as a spend down.

MS. EULER: Right.

MR. OTTO: So, the way this --

MS. EULER: I just mirrored the language in 208, but we can work on it again, or not.

MR. OTTO: Yeah. It was -- I think it was a decision to deal with that later.

MS. EULER: It's already in 208. I just thought it would be good to have a rule

because I have argued with funeral directors for the last seven years about it, so it's already in the law, so, that's fine.

CHAIRMAN: Okay. So, #5 -- we did go ahead and approve #3 and #4.

MS. RUSSELL: Yeah.

MR. MAHN: Correct.

CHAIRMAN: So, that's done. And so, #5 now is off the table. So, the only thing that would be left if there's discussion, I guess, is the #1 and #2 and, of course, the key line being all payments.

MS. BATTAGLER: And I'm going to suggest that you drop that part completely. The reason being is that in the definition -- and I don't have my book for the rules, but in the definition of a preneed-funeral contract, the contract or other arrangement which provides for the final disposition in Missouri of a dead human body, funeral or burial services or facilities, or funeral merchandise where such disposition, services, facilities, or merchandise are not immediately required. They include -- the contract includes, but is not limited to, agreements

for membership or any other fee for the purpose of furnishing the final disposition. The finance charge, first of all, is not for the purpose of furnishing the final disposition. But we can also make the argument, you know, based on the terminology of our contract that the statement of funeral goods and services, at the bottom of it we have a thing that says total funeral contract price. Anything after that is not part of the funeral contract even though we may collect payments on it and a finance charge, it's not a part of the funeral contract price, but not everybody can have the exact same terminology as we have on our contracts. So, I'm just saying, just take it out because it doesn't apply.

CHAIRMAN: Wasn't there something in the statute, though, that said all payments?

MS. BATTAGLER: It says all payments on a preneed-funeral contract.

CHAIRMAN: Okay.

MS. BATTAGLER: So, it goes strictly to the definition of a preneed contract.

CHAIRMAN: Okay.

MS. BATTAGLER: Anything that you receive for this purpose under your contract.

CHAIRMAN: Did you get that, Sharon?

MS. EULER: I understand.

MR. MAHN: Do you see any reason it needs to be left in there, Sharon?

MS. EULER: I expect that that's something that will end up being litigated, so it's a Board decision whether to include it or not.

CHAIRMAN: Yes, Mark?

MR. WARREN: Sharon, one comment on that. I didn't have time to do this yesterday or this morning. I was just going to take a look and see what -- if there was some definition of payment or what finance charges are, if that's, in some way, defined in the case law somewhere, or what the corpus of a contract is, you know. Rather than argue -- you know, because you may be absolutely right. It just depends on how the courts have interpreted it, you know. There may be cases out there that say an installment contract -- you know, the corpus is the amount of the contract includes the actual amount of the

contract, finance charges, and the interest, blah, blah, blah. I don't know. And I was going to look this morning before I came down here and I just didn't have any time. It may be worth looking at because we may be arguing -- and I don't know, Don, if you've had time to look or not, or -- we may be arguing over nothing because it may already be out there.

MS. EULER: Yeah. Well, the dictionary defines payment as any amount paid. That's not very helpful.

MR. WARREN: Yeah. I was going to look at "Black's" and I didn't have time, you know.

CHAIRMAN: A question that was asked to me last night from a -- actually, just a -- I guess it would be a preneed agent in today's world, in writing the contract, and it is all -- this was all about insurance and it's about the $36 fee. But he was asking me, can we still add the $36 fee in the nonguaranteed section like we used to do with the $2 fee and make it a part of the contract. Now, kind of going along with this all-payments thing, and I'll ask Darlene,

being -- as an insurance company, if they tack that on as part of the nonguaranteed contract and they make it a part of the contract and start sending them into the insurance companies, the philosophy that's going here at the moment says it's got to stay there. Now, I realize she put -- or there's some wording in some of this that allows that trust to sweep it later, but --

MS. BATTAGLER: Well, it's in a rule, yeah.

MS. RUSSELL: It's addressed -- on the insurance side, it's addressed in here because it allows for it to be, as authorized by Section 436, to collect that, because it says everything has to be sent to the insurance company and it gives that exception -- with the exception of what's in the statute allowed by the Board.

CHAIRMAN: Okay. So --

MS. RUSSELL: Put it in your report. So, insurance isn't the problem; it's covered in here. Somehow, it didn't get covered under the trust side of it.

CHAIRMAN: Well, actually, we did,

though, in the thought yesterday.

MS. RUSSELL: Yes. I mean, we do here, but --

CHAIRMAN: Where it can go in it and sweep it from the trust at that time --

MS. RUSSELL: Or the joint account. I don't think it has it in there.

MS. BATTAGLER: It didn't address the joint.

MS. RUSSELL: Yeah, didn't address it in the joint.

MS. BATTAGLER: And it only adjusted for if you put it in the trust.

CHAIRMAN: How is your company going -- I'm just curious. How is your -- are you guys adding it on to the contract? Put you on the spot.

MS. RUSSELL: Well, no. Our company is not going to collect the $36. The insurance company gets audited and that would cause an audit problem from the State standpoint. When they get an audit here, it says what's this $36. So, no, they are not going to take that $36.

MR. WARREN: Can't collect anything

other than what's been authorized by your filing with the State Board of Insurance.

MS. RUSSELL: Thank you, Mark. You said it much better than I.

CHAIRMAN: Okay.

MS. RUSSELL: I gave the correct answer.

MR. WARREN: If it's not in your set -- you know, in what you have filed, your file rates, then you can't collect it.

CHAIRMAN: So, that's interesting. The law here gives them the ability to do that, but you're saying that --

MS. DUNN: It can't conflict with insurance law.

CHAIRMAN: -- it can't conflict with that.

MS. RUSSELL: No. So, we cannot collect it. The insurance companies cannot collect that. But we're not the seller. We are not the seller.

MR. WARREN: Yeah. It's a funding mechanism.

MS. RUSSELL: Insurance -- yeah. We're the funding mechanism. We're like the

bank in that regard.

MR. WARREN: So, we don't really have a dog in the hunt anyway.

CHAIRMAN: But the guy that's out there just being the agent is trying to send it to you.

MR. McCULLOCH: But they're going to say no.

MS. RUSSELL: No. They're -- no. He's going to give it to the seller. I mean, there's got to be a seller of the preneed contract.

MR. McCULLOCH: They're trying to make it part of your contract is what he's saying, though.

CHAIRMAN: Yeah. He's wanting to write the $5,036 and just send it to --

MR. McCULLOCH: But, again, he's just the agent.

CHAIRMAN: I understand.

MR. McCULLOCH: The company is going to say that isn't happening. They're not going to allow that.

MS. BATTAGLER: No.

MR. McCULLOCH: It ain't going to

happen.

MR. WARREN: But they're still going to have to do an application for the insurance policy.

CHAIRMAN: Right.

MR. WARREN: And that's a free-standing document that's going to get sent into the company.

MS. RUSSELL: Yes.

MR. WARREN: And if it includes a premium payment, it'll include the initial -- or the initial premiums, it has to be -- (inaudible.)

CHAIRMAN: Okay. Oh, I thought that might affect that language a little bit or something.

MS. RUSSELL: But, see, our -- it's the seller that's writing the preneed contract, so the seller is going to be collecting the monies.

MR. OTTO: What we intend to do with the Missouri Funeral Trust, and I think the rule you passed yesterday allows this, is if somebody writes that $5,036 check, the $36 is never going to hit the trust. It's going to

be put in a separate account where it can be accounted for, and then at -- you know, once a year, that money is just written straight to the State of Missouri.

MS. RUSSELL: But that's not what #3 and #4 says you can do anymore.

MR. OTTO: No. Three and four says if the money is put into the trust, then you have to do it this way. We're not going to hit -- the money is not going to hit the trust.

MR. SPEAKS: It's never going into a trust.

MR. OTTO: It's going to be taken off before it hits the trust and put to a separate account, which, I think, is authorized under a paragraph of the Senate Bill 1 on page 30, or something like that.

MS. BATTAGLER: Just have a clearing account and then you split them up.

MR. OTTO: Yeah. That's right.

CHAIRMAN: Okay. Well, I just was wondering if that would affect some of that language because I thought that was interesting from the insurance side of it. Okay. So --

MR. MAHN: I have a question, Chairman.

CHAIRMAN: Okay. Todd?

MR. MAHN: If the insurance companies are going to do it that way and MFT is going to do it that way, is there anything that we want as a Board to keep things clean and everybody in the same -- marching in the same direction to where everybody has to, you know, collect the $36 that way and keep it in a separate account, sort of like an endowed-care account or something? Do we want anything like that where some of them are sending it to the trust and some of them aren't, and we've got to track this $36? Why don't we just say you have to collect it and you have to collect it separately, keep it somewhere separately, and pay the Board once a year, or whatever -- (inaudible.)

CHAIRMAN: So, would we -- where is the rule that talks about all -- or the -- hang on a minute.

MS. BATTAGLER: 436.430.

CHAIRMAN: Which is the one that talks -- where is the one that talks about the trusts and that you can sweep and --

MS. RUSSELL: Three and four.

MR. OTTO: Paragraph 4.

CHAIRMAN: Okay.

MS. RUSSELL: If the seller deposits these fees into the trust, the trustee shall distribute those fees to the seller in September or October of each year.

MR. OTTO: But that was worded carefully by Sharon on purpose, because it was making sure you don't have to put it into the trust.

MS. RUSSELL: Yeah.

MR. OTTO: But if you do, you're allowed to take it out.

MR. MAHN: But my question is, is do we want to word it to where it can't go into the trust, that it has to be kept separately from the trust to where we're not chasing this $36 to try to track -- you know.

MR. McCULLOCH: It's really not going to matter because the seller is responsible, so it doesn't matter if they put it in their right pocket, left pocket, in a can.

MR. MAHN: Got you.

MS. RUSSELL: (Inaudible.)

MS. BATTAGLER: (Inaudible.)

MR. McCULLOCH: They've got to come up with it at the end of the year. And, now, with all the extra reporting, they're going to have to match it up, so --

MR. MAHN: Okay.

MR. McCULLOCH: So, it will probably take care of itself.

CHAIRMAN: One thing in #3 through that does say, however, if a seller passes the fee along to the purchaser, this fee will be clearly noted on an invoice or statement provided to the consumer.

MS. RUSSELL: Yes. We plan to do that.

CHAIRMAN: So, they're going to be --

MR. MAHN: If there's an invoice for it --

CHAIRMAN: -- have an invoice over at the side, and there's -- for your $36.

MR. McCULLOCH: Somewhere.

MS. RUSSELL: Noted on an invoice or a statement.

CHAIRMAN: Yeah. Yes, sir.

MR. SPEAKS: Can I come back to #1 here? I think I maybe just figured this out.

All payments received by a seller or its agent must be promptly remitted to the appropriate payee. The appropriate payee of the finance charge would not be the preneed trust, it would not be the appropriate joint account, and it would not be the insurance company.

MS. BATTAGLER: It would be the seller.

MR. SPEAKS: It's the seller.

MS. EULER: What is your statutory authority for that?

MR. SPEAKS: I'm just going off the rule you wrote.

MS. EULER: Well, what is your statutory authority for the finance charges not being properly paid to the trust or other place?

MS. BATTAGLER: But the finance charges are not part of the preneed-funeral contract.

MR. SPEAKS: They're not part of the preneed contract.

MS. BATTAGLER: Total preneed-contract amount.

MR. SPEAKS: The preneed contract is go into trust; the finance charge is not part

of that. So, according to this rule that you wrote, the appropriate payee would actually be the seller.

MS. BATTAGLER: Yeah. For the finance charges.

MR. SPEAKS: For the finance charge.

MS. EULER: And what is your statutory authority to make that charge to the consumer?

MS. BATTAGLER: To make what charge?

MR. MAHN: The finance charge.

MS. EULER: To charge for preneed contracts?

MR. McCULLOCH: Where does it say you can't?

MR. SPEAKS: Yeah. There's federal --

MS. BATTAGLER: We are extending credit to a consumer saying that this is a security interest. The contract, I remember reading --

MS. EULER: And what is your secured interest?

MS. BATTAGLER: It's the guaranteed funds that they're placing under the contract.

MR. SPEAKS: The guaranteed.

MS. BATTAGLER: The guaranteed.

MS. EULER: What is the security? What's the collateral?

MS. BATTAGLER: The money that they're placing into the trust and the guarantee that we are not going to -- I mean, that we'll provide for the services as long as it's paid in full at the time, but we're never going to charge them more.

MS. EULER: So, if I'm a preneed seller, just hypothetically, and I don't like Senate Bill 1 at all. And so, I'm not going to be getting my interest payments along the way. NPS has quit sending me growth payments, so I'm going to sell a preneed contract for $10,000 and I'm going to decide the finance charges -- yeah, the finance charges are $10,000 --

MS. BATTAGLER: You can't do that by law.

MS. EULER: -- so I'm going to keep the $10,000.

MR. SPEAKS: That's illegal.

MS. EULER: The consumer puts $10,000 into the trust.

MR. McCULLOCH: Sharon, you've got to

listen.

MR. SPEAKS: You're not allowed to do that.

MS. BATTAGLER: Sharon, you've got to stop because there's a law that says how much you can charge in finance charges.

MR. McCULLOCH: There's limits on that.

MS. BATTAGLER: There's limits.

MS. EULER: But --

MR. McCULLOCH: No one is doing this, Sharon, to cheat or take advantage. It's just a way to make this work.

MS. EULER: Actually, there are people out there who are. I'm not saying that you all are, but I know that there are people who are.

MS. BATTAGLER: So, you're going to punish everybody again for one?

MS. EULER: Well, I am not punishing everybody. I'm not punishing anybody. I'm just going by what the statute says.

MR. SPEAKS: The answer to your question is --

MR. McCULLOCH: I'd like to know who it is.

MR. SPEAKS: -- the amount of finance charges is a legally mandated figure. You cannot exceed X amount.

MS. BATTAGLER: Right.

MS. EULER: Uh-huh.

MR. SPEAKS: And in your example, that's --

MS. EULER: But you're not required to charge a finance charge.

MS. BATTAGLER: No. But you have the right to.

MR. SPEAKS: You have the right to.

MR. McCULLOCH: Credit-card companies don't have to charge you, but they choose to. In fact, I'm not sure of any of them that do not. But they don't have to.

MR. SPEAKS: Chapter 436 does not address that, and it does not regulate that.

MS. EULER: Well, it's a Board decision. You can make whatever decision you want. My best legal advice to you is that the statute requires all payments to be deposited into the trust. What the Board does with that is a Board decision.

MS. BATTAGLER: One more statement I

want to make, Sharon, is that it doesn't cost any more or it doesn't -- I'm trying to word this correctly. If somebody were to put the $10,000 funeral, pay it in cash right then today, all that money is going into trust; right? They're going to start making -- earning interest off of that; okay?

MS. EULER: Uh-huh.

MS. BATTAGLER: We're saying that we're going to mail you statements every month. We're not going to make you pay all this money up front. We're going to go ahead and extend this to you without paying it up front and we're going to guarantee it, but you've got to make these monthly payments, but we're going to collect interest on that that we can use to mail you the monthly payments. But we're still saying we're going to guarantee it even though you don't have to pay it all up front. Now, I know your argument on that, but that's -- it's -- otherwise, we wouldn't even consider guaranteeing the contract unless they paid it all up front.

MR. McCULLOCH: Sharon, if the --

MS. EULER: But the downside, if they

don't pay it all, you're not required to provide all the goods and services. You're only required to give them credit for what they've paid. So, again, I ask you, what is the statutory authority for you to charge a finance charge and keep that as the seller when the statute says, one, all payments go into the trust, and, two, it says no fees that aren't otherwise authorized by law may be charged to the consumer.

MS. BATTAGLER: Tell me where it's not authorized or where it says you can't.

MS. EULER: So, like I said, again, we can sit here and we can discuss this for another four hours. You're not going to change my mind. So, I am telling you that my best legal advice to the Board is that finance charges should not be excluded as not being all payments. The Board can do with that legal advice what you want. You're not going to change my mind. If you have statutory authority, I'd be happy to look at it.

MR. OTTO: This is Don. Might I suggest that these #1 and #2 just be dropped without saying it one way or the other? And

then, obviously, if this becomes a problem, there will -- for one side or the other, there will be litigation --

MS. EULER: Right.

MR. OTTO: -- that will answer the problem.

MS. EULER: Right.

MR. OTTO: And then everyone will know.

MS. EULER: Right.

CHAIRMAN: Okay. Let me ask one question because that's -- I wasn't going quite that strong, but I was getting ready to -- the statute actually says all payments received by the seller or its agents must be promptly remitted to the trust or to the appropriate whatever or something.

MS. EULER: By the joint account or the insurance company.

CHAIRMAN: Okay. So, that says that. Does the statute reference if the seller charges finance or interest charges or other fees, or breaking it down into those different things, that those payments must be deposited into a trust and may not be retained by the seller? Does it reference that?

MS. EULER: It does not reference finance fees other than to say that no charges other than those specifically authorized may be charged to the consumer.

CHAIRMAN: Okay. So, my question then becomes: If this would be the position that we would take, why do we even need #2 because that's just us making up what possibilities are; am I correct in that? We're just coming up with what a list of fees could be when we set out the word "interest charges" or "finance charges" or "other fees." Since that's not in the language of the statute, we just came up with that language; correct?

MR. SPEAKS: Correct.

MS. EULER: It is -- the word "finance charge" is not in the statute.

MS. BATTAGLER: It says any state or federally authorized fees.

CHAIRMAN: Okay. So, my point just being -- okay. So, where -- we're chasing rabbits after specific things of #2, so if we would just completely delete #2, do we need to, following the line -- or to stay in line with the statute, just the #1, all payments

received by the seller and it's agents must properly be remitted, just the wording that's there, leave that alone? Now, if there's a challenge to that --

MR. OTTO: Well, I would say that's what the statute says. There is a question of definition as to payments on the contract that we've been fighting about. My suggestion would just be to drop #1 or #2 -- both #1 and #2, since if one side is right, it's already in the statute, if the other side is right, it's going to be decided in court, so why muddle it with another regulation on top of the statute?

MS. BATTAGLER: That could hurt one way or the other.

MR. OTTO: That could hurt one way or the other. Leave the statute stand as it is, and if somebody has got a problem with it, the court will tell you, I guess, what the right answer is.

CHAIRMAN: I guess I should have asked the question easier instead of chasing -- was just is there some reason an emergency rule could be helpful just in that language

anywhere? Okay.

MS. EULER: And that is a Board decision.

CHAIRMAN: Okay. Well, the Board is needing legal advice on -- and getting it, so --

MR. WARREN: Hey, Sharon. I've sent one of my long-suffering associates out to research this. I'll let you know if he finds anything.

MS. EULER: All right. I just sent you an e-mail, too, Mark.

MR. WARREN: Okay.

CHAIRMAN: Okay. So --

MR. McCULLOCH: So, why not leave it off? Later on when we do rules, if it needs to be -- once you find this out, it may fix it anyway.

MR. WARREN: Well, my point -- you know, another point, and Sharon said this earlier, is that anyone who has doubts is going to go out and get a legal opinion as to what they believe they could do, you know. Or somebody is going to file a declaratory-judgment action if it gets to be

an issue. Or the Board is going to audit someone and gig them for it and, you know, they'll litigate it. So --

CHAIRMAN: Okay.

MS. BATTAGLER: I think it's going to have to be do a rule on it. You're going to get some legal kickback.

MR. WARREN: If you don't do a rule, everybody takes their chances.

CHAIRMAN: We just need one more person. We're at the --

MR. McCULLOCH: So, need a motion; right?

CHAIRMAN: We do.

MR. McCULLOCH: I'd like to make a motion --

CHAIRMAN: And you know the one to do.

MR. McCULLOCH: -- that we drop this #1 and #2 -- I don't know what from, but we'll just drop #1 and #2 off of this rule.

CHAIRMAN: Seller obligations regarding payment.

MR. McCULLOCH: Uh-huh.

CHAIRMAN: Okay. So, I've got a motion to just completely drop #1 and #2 and

let it be settled out however later with courts or whatever. I need a second.

MR. FRAKER: I'll second that.

CHAIRMAN: All right. Joy?

MS. GERSTEIN: I abstain.

CHAIRMAN: Okay. So, I guess that brings it back to me, so I'll vote yes. So, that's --

MS. DUNN: Is #5 approved?

CHAIRMAN: Huh?

MS. DUNN: Was part #5 approved?

CHAIRMAN: We dropped it. It's gone.

MS. DUNN: Okay. So, only #3 and #4 are approved.

CHAIRMAN: Three and #4 are approved, #1 and #2 are gone.

MR. McCULLOCH: And, what, #5 is going to have some changes?

CHAIRMAN: No. Five is gone.

MR. McCULLOCH: Is it gone now?

CHAIRMAN: We made it not a rule.

MR. McCULLOCH: Okay.

CHAIRMAN: So, that takes care of that. Now, where are we, because I think --

MS. DUNN: Did you have to do anything

on that, Connie?

CHAIRMAN: Did you have to do things?

MS. CLARKSTON: I don't think so.

MS. DUNN: Do you want to make the statement?

CHAIRMAN: Oh. Okay. So, in regard to we're dropping #1 and #2 and there was no -- and it was voted on no rule on #5, on #12, seller obligations regarding payment, and we have already approved #3 and #4, and the Board makes the finding that there is competent, substantial evidence in the record to support the need for that part of the rule. Okay. Has anybody got -- I think we've covered them all.

MS. DUNN: Sharon, did you have any more?

MS. EULER: No. I have nothing more.

CHAIRMAN: Do we need to do something quickly with that, just an FYI?

MS. DUNN: That was an FYI for everybody's --

CHAIRMAN: Okay. Just the Board?

MS. DUNN: Uh-huh.

CHAIRMAN: Okay.

MS. DUNN: It's on our Web site.

CHAIRMAN: All right. Just FYI. (Inaudible) -- sent the one thing about the test pilot of the updates positions and whatever, and it's there and it's on the Web site, and if you want more reading, feel free.

MS. DUNN: And then the only other thing, for the record, I gave out the notice-of-intent form to the public that are present today, and asked for any feedback they may have because, apparently, the form we have distributed thus far has caused some confusion. And before we do the mail-out to the profession, I would like any suggestions on that back in the next couple of days so that we can make those modifications and maybe cause less confusion.

CHAIRMAN: Okay. Anybody got anything else because I'm ready to go for a motion to --

MS. RUSSELL: Do you have any idea if you'll be going -- having another open meeting sometime in September? Are you anticipating that, after the -- like, all the emergency rules are filed or --

MS. DUNN: Well --

CHAIRMAN: He said there was more stuff to do, but --

MS. DUNN: Yeah. Earl said, you know, we have to do all the regular rules. So, we will be meeting, but, right now, we don't anticipate meeting next week.

MS. RUSSELL: Good. That's all I wanted to hear.

MS. BATTAGLER: Yea. Yea.

MS. DUNN: Unless Sharon or Earl tell me otherwise.

MS. RUSSELL: Okay.

MS. DUNN: But, right now, we don't plan to have an open meeting next week.

MS. RUSSELL: Okay.

MR. WARREN: Will you be posting, like, on the Web site, copies of what's been approved, what's going to be filed so there will be, like, a complete list of what we went over today at some point?

MS. CLARKSTON: If I may, what I kind of anticipated offering to Becky and the Board was, once we had everything drafted and it was a draft waiting on approval, once we've done our magic to it with fiscal notes and small

business, all that fun stuff --

MR. WARREN: Right.

MS. CLARKSTON: -- would be to provide a package. It'll have the rule number that will appear in the Missouri Register and so forth. And then once the rule appears, then we'll provide Becky with a link that, I think, she's wanting to provide on the Web site --

MS. DUNN: Yes.

MS. CLARKSTON: -- so that there's posting. And then we're going to try to run a table, because there's so many emergency rules and different filings of when the effective dates are and kind of a schedule out, which may be of some assistance to you. It may cause more confusion, but we can certainly provide that, as well.

MS. DUNN: And, Mark, based on your question yesterday, what I'm doing is posting out there any rule -- emergency rule we filed, but not final.

MR. WARREN: Okay.

MS. DUNN: So, that's only one so far.

MR. WARREN: Okay.

(Numerous people agree.)

CHAIRMAN: Brad?

MR. SPEAKS: On the -- getting back to the notice of intent, a number of funeral homes have already filed us or sent it in, faxed, delivered, hand delivered, in some cases, and the instructions that came with that said when you have done this, that will serve as your temporary permit to do business; is that correct? Preneeds sold yesterday, the day before.

MS. DUNN: Sharon?

CHAIRMAN: Read point #1 under that.

MR. SPEAKS: Pardon?

CHAIRMAN: Read point #1 on the front of that.

MR. SPEAKS: This notice shall serve as temporary permit, so that is the Board's position?

CHAIRMAN: I --

MS. DUNN: Based on emergency rule.

CHAIRMAN: As an emergency rule.

MR. SPEAKS: It's just not in effect yet.

MR. CHAIRMAN: It's just not in effect yet.

MR. SPEAKS: So, for preneeds that were sold the day before yesterday in Joplin, Missouri, are those funeral homes out of compliance or in compliance?

MS. RUSSELL: They need to consult their legal counsel.

CHAIRMAN: There you go.

MR. SPEAKS: Well, I'm just asking for clarification. It's unfortunate that in the first week of the new law, if every funeral home in the state are now felons.

MS. BATTAGLER: Uh-huh. That's why I wanted a copy of the transcript.

CHAIRMAN: One of the possibilities, at the risk of saying something that I probably shouldn't, we probably should have just shut this industry down for two weeks and said nothing because it chaotic.

MR. SPEAKS: I'm just looking for clarification --

CHAIRMAN: No, I know.

MR. SPEAK: -- because I get the question. What are we supposed to do?

MR. OTTO: Well, I mean, for what it's worth, I don't intend, unless there is some

emergency for Missouri Funeral Trust to execute any contracts until after that notice-of-intent rule is in effect because I have control of that because it's not a contract until I sign it.

MR. SPEAKS: Right. And that's been our position. We have written a preneed since this happened.

MR. OTTO: It's a nice, easy way to solve the problem for me, perhaps not for everybody.

CHAIRMAN: It's just the safe route.

MR. OTTO: Yeah.

MR. SPEAKS: It's safe. Yeah.

CHAIRMAN: It's the safe route.

MR. SPEAKS: The trick will come when there's a family that has to qualify for assistance and today is the day when they need an executed contract. I mean, you've got to do what you've got to do.

MR. MAHN: Keep our eye on Independence. Don't worry.

MR. SPEAKS: Thank you, Mr. Chairman.

CHAIRMAN: Any time. All right. I guess, motion to go into closed is the

appropriate step.

MS. DUNN: Yes.

CHAIRMAN: Motion to go into closed?

MR. MAHN: First.

MR. McCULLOCH: Do we have to first go out of open?

CHAIRMAN: Got it. Got it. Gary?

MR. FRAKER: (No audible response.)

CHAIRMAN: Joy?

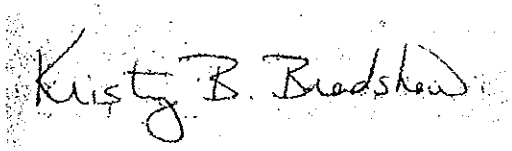
MS. GERSTEIN: Yes.

CHAIRMAN: All right. Take a break. Thank you all for coming.

(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 September 3, 2009; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 3rd day of November, 2009.



KRISTY B. BRADSHAW, CCR

Additional Handouts – September 2, 2009

#12

Title: Seller obligations regarding payments

Purpose: This rule clarifies seller obligations regarding payments received

(1) All payments received by a seller or its agents, must be promptly remitted to the appropriate payee – the preneed trust, the appropriate joint account, or forwarded to the insurance company.
(2) If the seller charges any finance or interest charges or any other fees as part of the preneed contract, those payments must be deposited into the trust and may not be retained by the seller.
(3) Any per contract fee assessed by the Board is an obligation to be paid by the preneed seller and not by the purchaser. However, if a seller passes this fee along to the purchaser, this fee shall be clearly noted on an invoice or statement provided to the consumer the amount charged and the purpose of this charge.
(4) If the seller collects the per contract fee assessed by the Board, the seller should maintain records of this collection and be able to provide to the State Board an accounting of these funds. If the seller deposits these fees into the trust, the Trustee shall distribute those fees to the seller in September or October of each year so that the seller will have the funds available to pay those fees to the State Board.
(5) In a preneed seller receives payment from insurance, a joint account, or a trust, and the payment exceeds the cost of the goods and services provided under the contract, the seller shall distribute the overage to the estate of the preneed beneficiary or, if the beneficiary received public assistance, the overage shall be paid to the State of Missouri.

Authority: 333.340, 436.415, 36.430, 436.450, 436.455, 436.460, 436.465

[revised following comments of 09/02/09 and research by Sharon E.]

Title: Preneed Contract overages and refunds for persons on public assistance

Purpose: This rule clarifies how overages and refunds are handled when a preneed contract beneficiary has received public assistance

(1) If a preneed seller receives payment from insurance, a joint account, or a trust, and the payment exceeds the cost of the goods and services provided under a non-guaranteed contract, the seller shall distribute the overage to the estate of the preneed beneficiary or, if the beneficiary received public assistance, the overage shall be paid to the State of Missouri.

(2) If a beneficiary of a preneed contract has received public assistance pursuant to the provisions of Chapter 208, RSMo, and the purchaser or his or her successors cancel or becomes entitled to refund, such refund shall be paid to the State of Missouri up to the amount of public assistance benefits provided as provided in Chapter 208, RSMo.

[redraft after comments on 09/02/09]

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) When a purchaser notifies the seller that a new provider has been selected, the seller shall have the option of continuing in the contract with the new provider or terminating his or her obligations under the contract.
(2) The seller shall have the right to terminate his or her duties upon a change of provider on a contract by contract basis.
(3) When the seller elects to continue his or her duties, the seller shall pay the new provider pursuant to the terms of the contract with the original provider. If the seller does not have a contract with the new provider, then the original preneed contract shall be cancelled upon the execution of a new preneed contract with the new provider.
(4) When the seller elects to terminate his or her duties, for trust and joint account funded contracts, the old seller shall direct that the transfer of funds be made by wire transfer or other secure bank to bank transfer to the new seller's trust. At no time shall those funds be in the control of the purchaser. For insurance funded contracts, the policy shall be reassigned to the new seller in accordance with the terms of the policy or relevant insurance law.
(5) In the event a new preneed contract is executed, the new seller shall not be entitled to an origination fee or any additional payments that the original seller may have been entitled to under Section 436.430.3 or .4.
(6) For trust funded contracts, all property held in the trust, principal and income, shall be transferred to the new trust.

Authority: 333.340 and 436.458

[redraft after comments on 09/02/09]

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 Chapter 333 and sections 436.400 to 436.520, RSMo.

(1) For annual reports due on October 31, 2009, 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 all 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 in its report due on October 31, 2008 through August 27, 2009. This annual report shall be accompanied by a fee of $2 per preneed contract sold for the reporting period.

(2) 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 the annual report through August 31 of the reporting year.

(3) For the reporting year ending October 31, 2009, providers shall file an annual report as provided by Section 333.315.3(4), RSMo (Cum. Supp. 2009). No annual fee shall be required for this reporting period.

Authority: 333.340 and 436.460

[redraft after comments on 09/02/09]

#2
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) A purchaser may change providers pursuant to Section 436.458 even if the contract has been made irrevocable. However, if the contract has been made irrevocable, the purchaser shall not receive any refund of any funds paid on the contract; rather if the contract is trust or joint account funded and the new provider requires a new trust or joint account to hold the preneed funds, that transfer of funds shall be by wire transfer or other secure bank to bank transfer and at no time shall the funds be in the control of the purchaser. If the contract is insurance funded, the insurance policy shall be reassigned in the manner described in the policy or pursuant to relevant insurance law.

(2) If a contract has been made irrevocable and a purchaser desires to change to a provider that has no contract with the seller, then the original preneed contract shall be cancelled upon the execution of a new preneed contract with the new seller. For trust and joint account funded contracts, the old seller shall direct that the transfer of funds be made by wire transfer or other secure bank to bank transfer to the new seller's trust. At no time shall those funds be in the control of the purchaser. For insurance funded contracts, the insurance policy shall be reassigned in the manner described in the policy or pursuant to relevant insurance law.

Authority: 333.340 and 436.456, 436.458

[redraft after comments on 09/02/09]

#3

Rule re: Disposition of funds upon cancellation by the purchaser

Title: Disposition of funds in a trust-funded contract upon cancellation by the purchaser

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 to the seller within 15 days of notice:
   a. The principal of the trust, including all payments received; plus
   b. The amount of funds distributed from the trust to the seller pursuant to § 436.430.4, RSMo.

(2) The trustee shall not distribute the origination fee distributed to the seller pursuant to § 436.430.3, RSMo.

(3) The seller shall within 30 days distribute the funds described in (1) above to the purchaser of the contract.

Authority: 333.340 and 436.456

NOTE: § 436.456 requires trustee to pay the purchaser

APPROVED

(see highlighted edits below following 09/03/09 comments)

Emergency Rule re: Requirements of Preneed Contracts

Title: Preneed Contract Requirements

Purpose: This rule details the requirements of preneed contracts

(1) All preneed contracts shall be in Times New Roman or a comparable easily read font and at least 8-point type;
(2) A preened 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, a purchaser may then exercise his or hr 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 to 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 effective and valid on and after August 28, 2009; and
(7) Preneed contracts executed on or after August 28, 2009 shall comply with all requirements of Chapter 333 and Sections 436.400 to 436.520, RSMo. However, preneed contracts that were valid under the relevant portions of Chapter 436 on August 27, 2009 may be used to enter into valid preneed contracts on or after August 28, 2009 so long as any additional requirements in Sections 436.400 to 436.520, RSMo are provided to purchasers no later than December 31, 2009 by supplement addendum to the preneed contract.

Authority: 333.340, 436.412, 436.415, 436.420 and 436.425

[second redraft after comments on 09/03/09]

#3

Rule re: Disposition of funds upon cancellation by the purchaser

Title: Disposition of funds in a trust-funded contract upon cancellation by the purchaser

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:
   a) the trustee shall distribute to the purchaser within 15 days of notice the principal of the trust including any funds not yet distributed from the trust pursuant to § 436.430.4, RSMo, but not including any origination fee not yet distributed to the seller pursuant to § 436.430.3, RSMo; and
   b) the seller shall within 30 days of the notice distribute to the purchaser any funds distributed to the seller by the trustee pursuant to § 436.430.4, RSMo.

Authority: 333.340 and 436.456

[second redraft after comments on 09/03/09]

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 Chapter 333 and sections 436.400 to 436.520, RSMo.

(1) For sellers:
   a) For the annual report due on October 31, 2009, 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 all 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 in its report due on October 31, 2008 through August 27, 2009. This annual report shall be accompanied by a fee of $2 per preneed contract sold for the reporting period.
   b) For the annual report due on October 31, 2010, sellers shall report all contracts executed from August 28, 2009 through August 31, 2010. Thereafter, the annual report shall report all contracts sold between September 1 of the year preceding the annual report through August 31 of the reporting year.

(2) For providers:
   a) For the annual report due as set out below, providers shall file an annual report as provided by Section 333.315.3(4), RSMo (Cum. Supp. 2009) covering the reporting period as set out below.
      i. For report due October 31, 2009, reporting period shall be October 31, 2008 though August 27, 2009. No annual fee shall be required for this reporting period.
      ii. For report due October 31, 2010, reporting period shall be August 28, 2009 through August 31, 2010. (fee?)
      iii. For reports due successive years, reporting period shall be September 1 through August 31. (fee?)

Authority: 333.340 and 436.460

Mandatory Preneed Contract Disclosures to Consumer

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This Contract is a Legally Binding Document

Comment [L1]: Always provider by the seller? Also agent? What about provider? Does it matter so long as the purchaser gets it?

Before you sign this contract, you should read it and make sure you understand all terms and conditions. You may wish to consult with your legal counsel before you sign this contract.

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Right to Receive a Copy of this Contract

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You have a right to receive a copy of this contract and any accompanying documents related to this contract such as any life insurance policies or evidence of a joint account.

Right to Change Providers

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The law gives you the right to change the provider named in this contract. The provider is the funeral home or other service provider who will provide the goods and services at the time of your death. If you want to change providers, you must provide both the seller and provider named in this contract with written notice that you wish to change providers and you must include the name and address of who you want to be your new provider. You may NOT be billed for any additional fees or charges to change providers. A change in providers requires the agreement of the new provider and may require a new preneed contract. Your seller and provider can help you determine whether a new contract is required or not.

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Qualifying for Public Assistance

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If you decide to seek qualification to receive Medicaid or other public assistance, you may sign an agreement to make this contract irrevocable at any time. Even if you have agreed to make this irrevocable as part of your qualification for public assistance, you still may change providers at any time and make changes to the goods and services at any time. However, you cannot cancel this contract and cannot receive any refund.

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Your Right to Cancel this Contract

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You have a right to cancel this contract at any time before your death. If you cancel this contract, you may not be entitled to receive all funds paid on this contract. If you want to cancel this contract, you must give the seller named in this contract written notice that you wish to cancel this contract.

If your contract is funded with a joint account, you must also provide written notice to the financial institution where your account is held. The financial institution must give you

the principal in the account within 15 days of your request. Interest will be distributed as provided in this contract.

If your contract is funded with an insurance policy, canceling the contract will NOT cancel the insurance policy. You must follow the policies of the insurance companies to cancel the insurance policy. If you cancel the insurance policy, you will receive only the cash surrender value of the policy which may be less than what you have paid into the policy.

If your contract is funded with a trust, you must also provide written notice to the trustee. The trustee shall then distribute all funds held on your behalf in the trust within 15 days.

Seller's Right to Cancel This Contract

The seller may cancel this contract if you fail to make any installment payment within 60 days of when it is due. Before the seller can cancel the contract, the seller must provide you with written notice of the intent to cancel the contract and you may bring your account current within 30 days of notice. If you don't pay the balance within 30 days, then the seller can provide the funds to the provider at the time of death to be credited towards your funeral services or the seller can cancel the contract and will refund you 85 percent of your contract payments made.

What Happens if I Die Before My Contract is Paid in Full?

If you die before the contract is paid in full, your survivors have the option in trust funded or joint account funded contracts to pay the balance due on the contract and receive all goods and services that have been price guaranteed. If the balance is not paid, the amount paid on your contract will be applied to the price of your funeral based on the provider's current prices.

If your preneed contract is funded through an insurance policy, consult your insurance policy.

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Consumer contract requirements¶
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Consumer contract requirements

All preneed contracts shall be in writing. Each party to the contract has the right to read the contract and have it reviewed by their own attorney if they choose. Each party has a right to either an original or a copy of the contract and any other documents entered into between the parties necessary to effectuate the contract.

All preneed contracts shall be sequentially numbered and in writing in a font type that is Times New Roman or similar font type and of a font size that is easily read but

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8 point font (8 point font), and shall clearly and conspicuously:

(1) Include the name, address and phone number of the purchaser, beneficiary, provider,

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seller, and if applicable, the seller's agent;
(2) Identify the name, address, phone and license number of the provider,

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seller, and if applicable, the seller's agent;
(3) Set out in detail the disposition, funeral and burial services and facilities, and merchandise requested;
(4) Identify whether the contract is trust funded, insurance funded, or joint account funded;
(5) Include notice that the cancellation of the contract shall not cancel any life insurance funding the contract, and that insurance cancellation is required to be made in writing to the insurer;
(6) Include notice that the purchaser will only receive the cash surrender value of any insurance policy funding the contract if cancelled after a designated time, which may be less than the amount paid into the policy;
(7) Include notice that the board provides by rule that the purchaser has the right to transfer the provider designation to another provider;
(8) Prominently identify whether the contract is revocable or irrevocable;
(9) Set forth the terms for cancellation by the purchaser or by the seller;
(10) Identify any preneed trust or joint account into which contract payments shall be deposited, including the name and address of the corresponding trustee or financial institution;

(11) Include the name, address and phone number of any insurance company issuing an insurance policy used to fund the preneed contract;
(12) Include the printed name and signature of the purchaser, the provider or its authorized representative, the preneed agent responsible for the sale of the contract, and the seller or its authorized representative;
(13) Prominently identify whether the contract, or any part thereof, is a guaranteed or nonguaranteed contract;
(14) Include any applicable consumer disclosures required by the board by rule;

Page 2: [5] Deleted KRAUSE 9/3/2009 8:02:00 AM

(15) Include a disclosure on all guaranteed installment payment contracts informing the purchaser what will take place in the event the beneficiary dies before all installments have been paid, including an explanation of what will be owed by the purchaser for the funeral services in such an event; and

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(16) Comply with the provisions of sections 436.400 to 436.520, RSMo, and

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any rule promulgated thereunder[LI].

A preneed contract shall be voidable and unenforceable at the option of the purchaser, or the purchaser's legal representative, if it is determined in a court of competent jurisdiction that the contract is not in compliance with section 436.425, RSMo, or not issued by a seller licensed under C

Page 2: [8] Deleted KRAUSE 9/3/2009 8:02:00 AM

hapter 333, RSMo, or if the provider has not consented to serve as provider at the time the contract was executed. Upon exercising the option by written notice to the seller and provider, all payments made under such contract shall be recoverable by the purchaser, or the purchaser's legal representative, from the contract seller, trustee, or other payee thereof.

A beneficiary who seeks to become eligible to receive public assistance under chapter 208, RSMo, or any other applicable state or federal law may irrevocably waive their rights to receive any refund or payment of any monies from the funds or insurance used to fund their preneed contract. Such irrevocable waiver may be executed at any time and shall be in writing, signed and dated by the beneficiary and shall be delivered to the seller and any applicable trustee, financial institution or insurance company.

All purchasers shall have the right as provided in this chapter to cancel or rescind a revocable preneed contract and transfer any preneed contract with or without cause.

A preneed contract

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shall not be changed from a trust-funded, insurance-funded, or joint account-funded preneed contract without the written consent of the purchaser.

See § 436.425, RSMo

Purchaser Cancellation

At any time before final disposition, or before the funeral or burial services, facilities, or merchandise described in a preneed contract are furnished, the purchaser may cancel the contract, if designated as revocable, without cause. In order to cancel the contract the purchaser shall:

In the case of a joint account-funded preneed contract, deliver written notice of the cancellation to the seller and the financial institution. Within fifteen days of receipt of notice of the cancellation, the financial institution shall distribute all deposited funds to the purchaser. Interest shall be distributed as provided in the agreement with the seller and purchaser;

In the case of an insurance-funded preneed contract, deliver written notice of the cancellation to the seller. Within fifteen days of receipt of notice of the cancellation, the seller shall notify the purchaser that the cancellation of the contract shall not cancel any life insurance funding the contract and that insurance cancellation is required to be made in writing to the insurer;

In the case of a trust-funded preneed contract, deliver written notice of the cancellation to the seller and trustee. Within fifteen days of receipt of notice of the cancellation, the trustee shall distribute one hundred percent of the trust property including any percentage of the total payments received on the trust-funded contract that have been withdrawn from the account under section 436.430.4, RSMo, but excluding the income, to the purchaser of the contract;

In the case of a guaranteed installment payment contract where the beneficiary dies before all installments have been paid, the purchaser shall pay the seller the amount remaining due under the contract in order to receive the goods and services set out in the contract, otherwise the purchaser or their estate will receive full credit for all payments the purchaser has made towards the cost of the beneficiary's funeral at the provider current prices.

See § 436.456, RSMo

Seller cancellation

A seller shall have the right to cancel a trust-funded or joint-account funded preneed contract if the purchaser is in default of any installment payment for over sixty days.

Prior to cancelling the contract, the seller shall notify the purchaser and provider in writing that the contract shall be cancelled if payment is not received within thirty days of the postmarked date of the notice. The notice shall include the amount of payments due, the date the payment is due, and the date of cancellation.

If the purchaser fails to remit the payments due within thirty days of the postmarked date of the notice, then the seller, at its option, may either cancel the contract or may continue the contract as a nonguaranteed contract where the purchaser will receive full credit for all payments the purchaser has made into the trust towards the cost of the beneficiary's funeral service or merchandise from the provider.

Upon cancellation by the seller under section 436.457, RSMo, eighty-five percent of the contract payments shall be refunded to the purchaser. All remaining funds shall be distributed to the seller.

Cancellation of an insurance-funded contract must be handled through the insurer and the insurance policy.

See § 436.457, RSMo

Column Break

Purchaser change of provider

A purchaser may select an alternative provider as the designated provider under the original contract if the purchaser notifies the seller and original provider in writing of the purchaser's intent, stating the name of the alternative provider and the alternative provider consents to the new designation. Purchasers shall not be penalized or assessed any additional fee or cost for such transfer of the provider designation.

The seller shall pay the newly designated provider all payments owed to the original provider under the contract. The newly designated provider shall assume all rights, duties, obligations, and liabilities as the original provider under the contract. Interest shall continue to be allocated to the seller as provided under the contract.

In the case of a trust funded contract and upon written notice to the seller of the purchaser's intent to select an alternative provider under subsection 1 of section 436.458, RSMo, the seller shall either continue the trust with the new provider in place of, and to receive all payment owed to, the original provider under the original agreement, or pay to the new trust all of the trust property, including principal and income.

See § 436.458, RSMo

Preneed Contract Disclosures to Consumer
(to be provided at the initiation of every preneed contract)

This Contract is a Legally Binding Document

Before you sign this contract, you should read it and make sure you understand all terms and conditions. You may wish to consult with your legal counsel before you sign this contract.

Right to Receive a Copy of this Contract

You have a right to receive a copy of this contract and any accompanying documents related to this contract such as any life insurance policies or evidence of a joint account.

Right to Change Providers

The law gives you the right to change the provider named in this contract. The provider is the funeral home or other service provider who will provide the goods and services at the time of your death. If you want to change providers, you must provide both the seller and provider named in this contract with written notice that you wish to change providers and you must include the name and address of who you want to be your new provider. You may NOT be billed for any additional fees or charges to change providers. A change in providers may require a new preneed contract. Your seller and provider can help you determine whether a new contract is required or not.

Qualifying for Public Assistance

If you decide to seek qualification to receive Medicaid or other public assistance, you may sign an agreement to make this contract irrevocable at any time. Even if you have agreed to make this irrevocable as part of your qualification for public assistance, you still may change providers at any time. However, you cannot cancel this contract and receive any refund.

Your Right to Cancel this Contract

You have a right to cancel this contract at any time before your death. If you cancel this contract, you may not be entitled to receive all funds paid on this contract. If you want to cancel this contract, you must give the seller named in this contract written notice that you wish to cancel this contract.

If your contract is funded with a joint account, you must also provide written notice to the financial institution where your account is held. The financial institution must give you

the funds in the account, minus any interest, within 15 days of your request. Interest will be distributed as provided in this contract.

If your contract is funded with an insurance policy, canceling the contract will NOT cancel the insurance policy. You must follow the policies of the insurance companies to cancel the insurance policy. If you cancel the insurance policy, you will receive only the cash surrender value of the policy which may be less than what you have paid into the policy.

If your contract is funded with a trust, you must provide written notice to the seller and to the trustee. The trustee shall then distribute all funds held on your behalf in the trust within 15 days.

Seller's Right to Cancel This Contract

The seller may cancel this contract if you fail to make any installment payment within 60 days of when it is due. Before the seller can cancel the contract, the seller must provide you with written notice of the intent to cancel the contract and you may bring your account current within 30 days. If you don't pay the balance within 30 days, then the seller can provide the funds to the provider at the time of death to be credited towards your funeral services or the seller can cancel the contract and will refund you 85 percent of your contract payments made.

What Happens if I Die Before My Contract is Paid in Full?

If you die before the contract is paid in full, your survivors have the option to pay the balance due on the contract and receive all goods and services that have been price guaranteed. If the balance is not paid, the amount paid on your contract will be applied to the price of your funeral based on the provider's current prices.

APPROVED

(see highlighted edits below following 09/03/09 comments)

Emergency Rule re: Requirements of Preneed Contracts

Title: Preneed Contract Requirements

Purpose: This rule details the requirements of preneed contracts

(1) All preneed contracts shall be in Times New Roman or a comparable easily read font and at least 8-point type;
(2) A preened 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, a purchaser may then exercise his or hr 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 to 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 effective and valid on and after August 28, 2009; and
(7) Preneed contracts executed on or after August 28, 2009 shall comply with all requirements of Chapter 333 and Sections 436.400 to 436.520, RSMo, and all regulations enacted thereunder. However, preneed contracts that were valid under the relevant portions of Chapter 436 on August 27, 2009 may be used to enter into valid preneed contracts on or after August 28, 2009 so long as any additional requirements in Sections 436.400 to 436.520, RSMo, are provided to purchasers no later than December 31, 2009 by supplement addendum to the preneed contract.

Authority: 333.340, 436.412, 436.415, 436.420 and 436.425

Good Morning,
Ivra Cross has asked that I forward the following statement concerning the electronic death registration system to you. For those of you who are funeral directors feel free to print as many copies as you would like in order to distribute to physicians when you go to get certificates signed. If you have any questions, please feel free to contact either myself or Ivra directly.

<< File: Web system volunteer document.docx >>

Update Added:
It appears that we may need to pilot the death component in October instead of mid-September. Piloting the death component in October gives us the opportunity to finalize the birth component and get that pilot started and tested. Our in-house staff has started to test the functionality of the death component workflow and report back to the vendor the issues we've encountered. I'm working on instructions (such as access, logon, test records, etc.) for the pilot and plan to get that information out to you by mid-September so that we'll be all set to go. We have a good number of funeral directors around the state and in Illinois that have committed to pilot as well as some physicians and medical examiners. I met with members of the Missouri Hospital Association on Wednesday 8/26 to enlist their support. Their membership is excited to get started since their primary focus would be registration of the birth certificates. However, they also recognize their responsibility for deaths that occur in their facilities. I explained the need for birth and death matching to address security concerns. The membership has committed to enlist support from their physicians that complete infant deaths. The Osteopathic Physicians and Surgeons Association has committed to posting the attached article on their website and in their newsletter due out on September 15. The Missouri State Medical Association will also include the article in their newsletter for September. A request was sent to the Board of Healing Arts to be included on their agenda for October 26 to discuss the electronic system. The State Board of Embalmers and Funeral Directors Association posted the article on their website as of yesterday 8/27. As we continue to move forward, I will keep you updated.

Ivra J. Cross, State Registrar
Bureau of Vital Records

Marcia Davis
Administrative Office Support Assistant
Bureau of Vital Records
Missouri Department of Health and Senior Services
930 Wildwood, P.O. Box 570
Jefferson City, MO 65102-0570
573-526-0348 (Telephone)
573-526-3846 (Fax)
Marcia.Davis@dhss.mo.gov

Missouri Department of Health and Senior Services
P.O. Box 570, Jefferson City, MO 65102-0570 Phone: 573-751-6400 FAX: 573-751-6010
RELAY MISSOURI for Hearing and Speech Impaired 1-800-735-2966 VOICE 1-800-735-2466
Margaret T. Donnelly
Director

Jeremiah W. (Jay) Nixon
Governor

Volunteers sought to test new vital records system

Physicians are needed to help test Missouri's new electronic vital records system. The Missouri Department of Health and Senior Services Bureau of Vital Records, is asking for assistance from physicians to test the state's re-engineered death registration system this fall.

A pilot project testing the death registration component with several funeral homes throughout the state is planned for late September or early October. The Bureau of Vital Records is enlisting support from physicians that complete manner and cause of death information on the Certificate of Death to participate in the project with funeral directors.

In 2004, legislation was passed in Missouri that required the Bureau of Vital Records to develop and maintain an electronic system to register births and deaths. The deadline for the implementation of the electronic system is December 31, 2009.

According to the new law, a re-engineered vital records system should effectively address existing problems associated with a manual registration process. The electronic system will respond to multiple challenges. The system will register vital events more timely, improve quality of data, eliminate unnecessary corrections to records, provide a more complete and accurate legal document, and provide a more secure environment to strengthen security to prevent fraud. The system also will address emerging vital records issues such as integration with electronic health records, rapid response to bio-terrorism and pandemic health events.

The Bureau of Vital Records appreciates the assistance doctors can offer to help modernize the state's vital records system.

For more information about participating in the pilot project, contact:
Ivra J. Cross, State registrar
Missouri Department of Health and Senior Services
Bureau of Vital Records
P.O. Box 570, Jefferson City, MO 65102-0570
573-526-0348
ivra.cross@dhss.mo.gov

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER: Services provided on a nondiscriminatory basis.

Dunn, Becky

From: Don Otto [donottojr@yahoo.com]
Sent: Friday, August 28, 2009 3:54 PM
To: Dunn, Becky
Subject: Agenda Item

If possible, it would be good to add to the agenda a discussion of how to handle insurance assignments under Chapter 436 especially where it needs to be irrevocable for public assistance. I discussed this matter with Sharon and she agreed it would be a good thing to discuss.

Don Otto

PREVIOUSLY APPROVED

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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 requirement 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

SUGGESTED CHANGES NOT YET APPROVED

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Revised 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.

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

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(5) For all contracts entered into prior to August 28, 2009, preneed sellers and providers 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;

(6) Beginning August 28, 2009, the reporting period for seller and provider annual reports shall run from August 28, 2009 through August 31, 2010 and then September 1 through August 31 of successive years.

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Authority: 333.340 and 436.460

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: 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

Group 3 Rules

#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

The Board rejected this rule.

#2
Rule re: What is irrevocable in an irrevocable contract

Title: Irrevocable contracts

(1) A purchaser may change providers pursuant to Section 436.458 even if the contract has been made irrevocable. However, if the contract has been made irrevocable, the purchaser shall not receive any refund of any funds paid on the contract, rather if the new provider requires a new trust to hold the preneed funds, that transfer of funds shall be by wire transfer or other secure bank to bank transfer and at no time shall the funds be in the control of the purchaser.

(2) If a contract has been made irrevocable and a purchaser desires to change to a provider that has no contract with the seller, then the original preneed contract shall be cancelled upon the execution of a new preneed contract with the new seller and the old seller shall direct that the transfer of funds be made by wire transfer or other secure bank to bank transfer to the new seller's trust. At no time shall those funds be in the control of the purchaser.

Authority: 333.340 and 436.456, 436.458

#3

Rule re: Disposition of funds upon cancellation by the purchaser

Title: Disposition of funds in a trust-funded contract upon cancellation by the purchaser

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; plus
   b. The amount of funds distributed from the trust to the seller pursuant to § 436.430.4, RSMo.
   c. If the income of the trust is not sufficient to cover the amount of funds distributed to the seller pursuant to Section 436.430.4, RSMo, the trustee may make demand upon the seller to recover these fees.

(2) The trustee shall not distribute the origination fee distributed to the seller pursuant to § 436.430.3, RSMo.

Authority: 333.340 and 436.456

#4

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) An insurance funded preneed contract may be cancelled by the seller if the seller receives notification that the insurance policy funding the contract has been cancelled.

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) When a purchaser notifies the seller that a new provider has been selected, the seller shall pay to the new provider pursuant to the terms of the contract with the original provider. If the seller does not have a contract with the new provider, then then the original preneed contract shall be cancelled upon the execution of a new preneed contract with the new seller and the old seller shall direct that the transfer of funds be made by wire transfer or other secure bank to bank transfer to the new seller's trust. At no time shall those funds be in the control of the purchaser.

(2) In the event a new preneed contract is executed, the new seller shall not be entitled to an origination fee or any additional payments that the original seller may have been entitled to under Section 436.430.3 or .4.

(3) All property held in the trust, principal and income, shall be transferred to the new trust.

Authority: 333.340 and 436.458

#5

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 provided 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 be signed by an officer, director or manager in charge and the signer shall certify, under oath, that the annual report is complete and accurate and the annual report shall be notarized.

(4) If a seller fails to file its annual report on or before October 31 of each year, then the seller's license shall be suspended as of November 1 and shall remain suspended until the seller has filed its annual report, its annual renewal form and paid all fees due.

(5) Any seller who continues to engage in any activities of a preneed seller during the time that its license is suspended may be subject to all authorities and powers of the State Board, the Office of the Attorney General and the seller's local prosecutors.

Authority: 333.340 and 436.460

#6

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

#7

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 will 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 and provided to the State Board upon request either immediately or within 3 business days or as otherwise requested by the Board.
(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 for such removal that includes a means to ensure that the records remain available for inspection within the State of Missouri and written approval is provided by the Board.

Authority: 333.340 and 436.465

#8

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

#9

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 ensure service of all existing contracts.

(2) If a seller is unable to find any new sellers to service 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 each provider, seller's agent, purchaser, and to the Board that despite good faith efforts replacement sellers could not be found;

b. In the case of trust-funded contracts, provide written notice to each trustee 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 each insurance company 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 each financial institution that the seller is winding up his business and no replacement seller was found.

(3) As part of its cease doing business report, the seller shall file with the Board a final annual report for a reporting period from September 1 of the previous year to the date of the seller's cease of business. This report shall be made as an attachment to the cease doing business report and shall be made on the form provided by the Board for annual reports and shall comply with all requirements of the seller's annual report.

(4) The seller shall provide the Board with a written statement showing how it will comply with the seller's contractual, fiduciary and other obligations as set forth in § 436.500.

(5) Any person with unfulfilled preneed contracts who was registered with the Board as a seller on August 27, 2009 and had not filed cease doing business forms with the Board before August 28, 2009, shall be required to file a cease doing business report in compliance with Section 436.500 and this

and any other rules if they do not seek application for a Seller's license by October 31, 2009. This cease doing business report shall be due by close of business on October 31, 2009.

(6) Authority: 333.340 and 436.500

Additional Handouts – September 3, 2009

Hess, Sherry

From: Dunn, Becky
Sent: Tuesday, August 25, 2009 1:08 PM
To: Hess, Sherry
Subject: FW: MO Funeral Board Rulemaking

Can you print 30 copies for me

From: Josh [mailto:josh@funerals.org]
Sent: Tuesday, August 25, 2009 1:06 PM
To: Dunn, Becky
Cc: bevmcg9@aol.com; Pam Thomas; grunth@sbcglobal.net; mollybean@mac.com; thomas.bailey@att.net; Nancy Petersen; smnicely@sunflower.com; swlkj@gmail.com; jim.fitzpatrick06@gmail.com; laura.rainey@crossroadshospice.com; Clark Neily
Subject: MO Funeral Board Rulemaking

August 25, 2009

Dear Becky,

I hope your summer's been going well, though I'm sure it's been busy with the passage of SB1. Could you please forward this to your Board, and consider it a formal request for clarification on rulemaking?

I just receive a .pdf document from staff member Tabatha Lenzi titled "Rules for Group 1." This indicated that the Board or a working group - it's not clear which - has approved a new rule:

'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)"

I'm concerned about this and hoping the Board can clarify its intent. As you may recall, FCA expressed concern about a similar re-write of the rules in 2006. We objected to the wording, since it could be interpreted to mean the Board believed it had the legal right to regulate the activities of private families or religious communities who bury their own dead free of charge. By claiming that a person may be practicing funeral service whether or not that person is paid to do so, such a rule could restrict the rights of private citizens to conduct their own funerals free of interference by the state or the commercial sector.

In addition, the document from Ms. Lenzi states that the rule change is "Authorized by: 333.340 and 333.011(8)" - sections of the Missouri statutes that give the Board its legal authority. While those sections do give the Board authority to set rules, they do not give the Board unfettered authority. A plain reading of the statutes indicates the Board has authority
only over the *business* of funeral directing:

'333.011 (8) "Practice of funeral directing", engaging by an individual in the BUSINESS of preparing, otherwise than

by embalming, for the burial, disposal or transportation out of this state of, and the directing and supervising of the burial
or disposal of, dead human bodies or engaging in the general control, supervision or management of the operations of a funeral establishment;"

333.340. 1. The board shall adopt and enforce rules for the
transaction of its business and for standards of service and practice to be followed in the PROFESSIONS of embalming and funeral directing . . . "

I've added emphasis in capital letters. Clearly, a business or profession involves the payment of money. It does not include the voluntary, private activities of families or religious communities. How, then, do the drafters of this regulation justify giving themselves the authority to determine that
a person is "practicing funeral service" even if money is not involved? That seems to me to exceed the Board's statutory authority (and the Legislature's intent), just as a similar proposal did in 2006.

The Board's job under the law is regulate the commercial practice of funeral service to protect the *buying public.* I've been glad to work with the Board during the recent push for tighter preneed regulations as part of that consumer protection goal. I am worried, however, about this proposal, and I hope the Board is not returning to the types of overreaching practices that earned it a complaint from the Federal Trade Commission in 2008.

In summary, I have the following questions:

1. Where, specifically, does the Board believe MO statute empowers it to regulate any funeral-related activities that aren't part of the commercial sphere?

2. What is the purpose of this approved addition to the rules?

3. Which parties, and under what circumstances, does the Board believe would fall under this rule?

I hope to hear I've just misinterpreted this rule, but given the
difficulties posed by the former MO Board in the recent past, I hope you'll understand my concern.

Sincerely,

Joshua Slocum
Executive Director
Funeral Consumers Alliance
802-865-8300

cc: FCA of Greater Kansas City
Clark Neily, Institute for Justice

October 01

Board Meeting Addendum Working Documents

Date
Public Comments
Date
Don Otto Comments

Don Otto/MFDEA/MFT Comments

I am not sure what comments to make other than those that were in the original email (and I have no problem with the original email being distributed to everyone).

I don't really have a good solution to the banking problem with joint accounts. I can think of some things we COULD have done with the legislation last year had the Banks told us they had a problem with the 436 requirements. At best, I would urge that banking people be invited to discuss the situation to see if the banks that have talked to me are off base or not. Also we can urge funeral homes to check with their local bank to make sure the bank is "ok" with the requirments as soon as possilbe if they use joint accounts. I would not want to see people waiting until Oct., 2010 to find out their bank will not sign the annual report or that they are somehow out of compliance.

On the Family Services problem, I would ask that the Board use its good offices to try and set up a meeting with whomever can answer the question of when is a contract required and what must it consist of to meet their statutes and rules and why do we have inconsitancies thoughout the state on the issue.

On the items I mentioned that could use a rule, I do not think any are emergency situations, so maybe a group can get together to work on a few proposed rules to submit to the board at a later date.

Thank you very much for taking my thoughts and issues under consideration.

Don Otto

From: Don Otto
Subject: Some 436 Isssues

Dear Becky and Sharon:

As we discussed, here are some issues that I have thought of with 436 that may need to be addressed in some way. Some are just questions that I don't have an answer for off the top of my head. Some may require more rules at some point. Some may be issues we cannot solve, but thought we should discuss at some point.

-Can Preneed Agents apply yet to take the law exam? If not yet then when? As it can take several weeks or longer to actually get though the process and schedule to take the test, will there be enough time for everyone that needs to to take the test before the end of the year? This could especially be a problem if a lot of people all apply and seek appointments at the same time. In all do you think the end of the year deadline for everything is enough?

-What happens if a Funeral Director signs up as a preneed agent but then lets his/her

funeral directors license lapse?

-Going forward, I think it would be good to have separate applications for providers, sellers and agents even if one entity might have to fill out several sheets with mostly the same information. Putting all of them on one Notice of Intent form was, I thought, a good idea, but it does not seem to be working well with everyone as it causes unanticipated confusion.

-Would be nice to make it clear in a rule that a funeral director does not have to take the state law exam to sell preneed even though they do need to register as a preneed agent. I do think this is covered by the statutory exemption, but a flat-out rule that says that would be comforting to the funeral directors that got their license before you had to take the test.

-Does the exemption (and more importantly fee structure) for funeral director-preneed agents apply to limited funeral directors?

-The seller's annual report for insurance funded contracts under the statute does not really cover situations where all that is taking place is the assignment of a pre-existing insurance policy. A rule that spells out it is acceptable to put "N.A." if appropriated for those types of contracts on the report but then have, by rule, different reporting requirements covering the assignment might be a good idea. As was discussed at the board meetings, an assignment in and of itself may not trigger 436, but I am concerned about where DFS requires a contract. In that case the seller's report as set out in the statute does not really cover that as there is no insurance policy being "sold" and no money collected and no insurance company that has just sold a policy that could sign the report. I think all of this can be solved with some rules.

-While on DFS, I think it is vital that somebody gets some kind of answer on when a 436 preneed contract is going to be required or not. It seems clear that there is not uniform treatment of this situation throughout the state and that in and of itself causes problems. I realize that this is not something the Board controls, but it directly affects both licensees and the consumers the board protects so I think it is reasonable for the Board to try to get answers to these issues.

-The big issue I have been dealing with the last two weeks has been banks and joint accounts. Interestingly, almost all of the problems I am hearing have nothing to do with Senate Bill 1, they are problems with the parts of the law that have been the same for 27 years, but its just now that the banks apparently are aware of the situation. The upshot of the conversations is that the banks that I have talked with say they are required by law to follow the banking rules on who can make withdrawls and when and they cannot follow the provisions of 436. They say they must follow such laws as the Patriot Act, the Uniform Commercial Code and federal and state banking regulations and that 436 cannot override those provisions.

Here are paraphrases of actual conversations I have had with bank officials. All deal with deposit accounts and not trusts.

* If the deposit account requires two signatures to make a withdraw, the bank cannot be bound by the provision that says the bank must send the consumer the funds when it receives a written notice of cancellation. Two signatures is two signatures. If there are two signatures required on the account (consumer and funeral establishment), then even if the consumer sends in a notice of cancellation, both signatures will be required by the bank to get the money out.

* Likewise I have been told that the provision that the funeral establishment gets the funds by presenting the certificate of completion will not work. If two signatures are required on the deposit account, the funeral home cannot get the money just by presenting a certificate of performance even though 436 says the bank MUST give the money within a certain time if the certificate is presented. The funeral home would have to go through the normal procedures to to withdraw whenever one person on a joint-account has died (for example, death certificates, etc).

*Conversely, the bank cannot (it was said to me) require a certificate of performance before giving out the money if the funeral establishment is, under the normal deposit account withdraw rules, entitled to the money. Here was the situation we talked about with this example: A joint account with right of survivorship is set up under names of Jane Doe and Smith Funeral Home. Jane Doe dies. Smith FH brings in death certificate and wants the money. Bank, I was told by banker, is required to give the funeral home the money even though the funeral home has not presented a certificate of performance per chapter 436. This of course is a big issue if, in my example, Smith FH didn't do the funeral even though Jane Doe died.

* The alternative that a lot of funeral homes use "Jane Doe p.o.d. to Smith funeral home" won't work under the law as you cannot set up an account like that that would require BOTH Jane Doe's and Smith funeral home's signature as required by 436 because, in such a p.o.d account Smith funeral home would have no signatory rights whatsoever until after Jane Doe died.

*The bank cannot and will not be bound by any "irrevocability" clause put down in any contract or other piece of paper. On a deposit account, whoever is on the signature card gets the money plain and simple. Despite the fact that the consumer has made the preneed contract irrevocable, if they are entitled to the money under the banking law on deposit accounts, they will be given the money. This will cause a huge problem with DFS I expect on excluding assets under chapter 208. Requiring both the funeral home and consumer to sign for any withdrawls may help some, but the consumer could still get the money if the funeral home agrees to sign or if there is a legal action to partition the joint account and that may be enough to make the joint account unworkable for DFS and 208 since the consumer still may be deemed to "own" the funds.

*I actually had one bank VP say something to me that I have been saying for 5 years: "how in the [heck] is some 19 year old bank teller supposed to know that somebody should or shouldn't get the money based on 436 when that is different than

the banking rules?"

*After discussing the matter at length with one banker and going over the joint account requirements of 436, he said "the only way to do all of that is to set up a trust."

Interestingly NONE of the above issues were caused by SB1 -- they were there with the prior law but the banks had not read it I guess so they didn't care. They are apparently reading it now and they have problems.

One issue that IS new because of the new 436 law is the 436 requirement that the bank sign under oath part of the the seller's report. I have had two banks say they will not do this. They will be happy to give a detailed transaction printout for the account but they will not be certifying under oath as to what is required under the new 436 sellers report for joint accounts. What is a seller to do under 436 if the bank (or trust or insurance company for that matter) refuses to sign that part of the seller's report as set out by new 436?

What concerns me is that that we had no indication from the banking lobbyists or finance that these were problems even though they had been there throughout the whole process of coming up with the SB1. While we could do nothing with the Patriot Act and the UCC, we might have been able to come up with some new funding alternatives if the banks had spoken up earlier. Frankly, if the banks are correct and can stick to these positions, I'm not sure that Joint Accounts are a viable option for preneed and that was one of the things everyone was trying to preserve as it is used by so many small funeral homes.

Provisions of the Patriot Act that may require things like the consumer going into the bank to set up the account and have drivers licenses or other alternative approved IDs make this situation with joint accounts even worse, especially for elderly consumers that are in nursing homes or are shut-ins.

I know it was everyones' intentions to preserve joint accounts as a preneed option but I have serious concerns whether this is possible from what I am hearing from the banks and some funeral homes. I have been told that some banks are saying they may not do any more joint accounts with funeral homes and consumers since they don't want to get drawn into any dispute.

Now it could be that the bankers I talked with are wrong and that 436 CAN require them to do all of these things, but since at least part of this is tied up with federal law, I'm not so sure.

I don't know what the answer here is, but needs to be thought about.

One thing that would be helpful is to have a meeting with Finance, DFS, a banking representative (not just a lobbyist, a real banker) and others to discuss these issues. If there is anything I can do to help in this regard, please let me know.

Don Otto