

OPEN AGENDA
Missouri State Board of Embalmers
and Funeral Directors

June 14-16, 2010
Division of Professional Registration
3605 Missouri Blvd.
Jefferson City, Missouri

Monday, June 14, 2010 – 6:00 p.m. – 6:31 p.m.

Call to Order
Roll Call

1. Approval of Agenda

Closed Meeting. The Board will move into closed session pursuant to Section 610.021 Subsection (14) and 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.

Tuesday, June 15, 2010 – 9:30 a.m. – 12:00 p.m. – OPEN MEETING

Tuesday, June 15, 2010 – 1:00 p.m. – 5:00 p.m. – OPEN MEETING

Call to Order
Roll Call

- 2. Approval of Minutes**
- 3. Financial Overview**
- 4. SB 1 Implementation Update**
- 5. Legislative Proposals**
- 6. Regulations**

7. Funeral Establishment/Preneed Seller/Provider/Funeral Director Agent/Agent - Licensure and Registration update (Lori Hayes)
8. Funeral Director/Embalmer Renewals (Tabatha Lenzini)
9. Preneed Seller Self Reporting Document
10. Preneed Seller/Provider Annual Reporting Renewal Document
11. Open Discussion – Dialogue with General Public Attending Open Session Continuation and/or Completion of any Unfinished Open Session Business

Wednesday, June 16, 2010 (9:00am if needed) – OPEN MEETING

Call to Order
Roll Call

Closed Meeting. The Board will move into closed session pursuant to Section 610.021 Subsection (14) and 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.

Adjournment

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

March 30-April 1, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Monday, March 30, 2009 – 12:00-12:01 p.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by James Reinhard, Chairman, at 12:14 p.m. on Monday, March 30, 2009, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

James Reinhard, Chairman
Martin Vernon, Vice-Chairman
Gary Fraker, Secretary
Todd Mahn, Member
John McCulloch, Member
Joy Gerstein, Public Member – joined at 12:30 p.m.

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Pam Schnieders, Administrative Assistant (Absent March 30, 2009)
Tabatha Lenzini, Licensure Technician
Earl Kraus, Senior Legal Counsel – joined at 12:40 p.m.
Sharon Euler, Assistant Attorney General

Public Present

Don Eggen, Central Investigations Unit
Kevan Lager, Central Investigations Unit
Doug Ommen, Director, Consumer Protection of the Attorney General's Office
Patricia Churchill, Director, Constituent Services of the Attorney General's Office

Closed Meeting

Motion was made by Gary Fraker and seconded by Martin Vernon 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 Martin Vernon, 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.

Wednesday, April 1, 2009

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by James Reinhard, Chairman, at 9:10 a.m. on Wednesday, April 1, 2009, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

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

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Pam Schnieders, Administrative Assistant
Tabatha Lenzini, Licensure Technician
Sharon Euler, Assistant Attorney General

Public Present

John Huff, Department Director
Doug Ommen, Director, Consumer Protection of the Attorney General's Office
Patricia Churchill, Director, Constituent Services of the Attorney General's Office
Connie Clarkston, Director, Legislation and Budget
Melissa Palmer, DIFP – Legislative Coordinator
Chuck Renn, Missouri Insurance Guaranty Association
Carol Fischer, Deputy Secretary of State for Business Services
Don Eggen, Central Investigations Unit
Kevan Lager, Central Investigations Unit
Sharon Ayers, DHSS
Ivra Cross, DHSS-BVR
Lexi Hall, DHSS-BVR

Willie Stone, DHSS-BVR
Rebecca Blake, Homesteader's Life
Bill Bennett, MFDEA
Don Otto, MFDEA
DJ Gross, Duncan Funeral Home
Darlene Russell, CFL Preneed
Bill Staltor, Staltor Legal
Bill Stuart, Cater Funeral Home
Dave Hill, MFAS
Ann Warren, Preneed Insurance Coalition
Don Lakin
Janet Carder, Real Estate Commission
Pam Groose, Board of Private Investigator Examiners
Loree Kessler, Board of Massage Therapy
Emily Carroll, Board of Cosmetology and Barber Examiners
Tom Reichard, Office of Endowed Care Cemeteries
Pamela Ives Hill, Board of Accountancy
Brad Speaks
Michael Meierhoffer, Meierhoffer Funeral Home & Crematory
Todd Carlson, Funeral Directors Life Insurance
Paul Lovelace, FDLIC
Scott Lindley

Approval of Agenda

Motion was made by Gary Fraker and seconded by John McCulloch to approve the open agenda. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

Approval of Minutes

April 7-9, 2008 Open Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the April 7-9, 2008 Open Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

April 10, 2008 Open Conference Call Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the April 10, 2008 Open Conference Call Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

April 14, 2008 Open Conference Call Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the April 14, 2008 Open Conference Call Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

April 22, 2008 Open Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the April 22, 2008 Open Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

April 28, 2008 Open Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the April 28, 2008 Open Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

May 7, 2008 Open Conference Call Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the May 7, 2008 Open Conference Call Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

May 15, 2008 Open Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the May 15, 2008 Open Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

June 12, 2008 Open Conference Call Meeting Minutes

Motion was made by Joy Gerstein and seconded by Todd Mahn to approve the June 12, 2008 Open Conference Call Meeting Minutes as submitted. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

August 18-20, 2008 Open Meeting Minutes – INCOMPLETE

August 18-20, 2008 Open Meeting Minutes were not completed for approval at this meeting.

October 28, 2008 Open Mail Ballot Meeting Minutes – INCOMPLETE

October 28, 2008 Open Mail Ballot Meeting Minutes were not completed for approval at this meeting.

October 31, 2008 Open Mail Ballot Meeting Minutes – INCOMPLETE

October 31, 2008 Open Mail Ballot Meeting Minutes were not completed for approval at this meeting.

December 2-4, 2008 Open Meeting Minutes – INCOMPLETE

December 2-4, 2008 Open Meeting Minutes were not completed for approval at this meeting.

December 8, 2008 Open Meeting Minutes – INCOMPLETE

December 8, 2008 Open Meeting Minutes were not completed for approval at this meeting.

December 11, 2008 Open Conference Call Meeting Minutes – INCOMPLETE

December 11, 2008 Open Meeting Minutes were not completed for approval at this meeting.

December 16, 2008 Open Meeting Minutes – INCOMPLETE

December 16, 2008 Open Meeting Minutes were not completed for approval at this meeting.

December 23, 2008 Open Mail Ballot Meeting Minutes – INCOMPLETE

December 23, 2008 Open Mail Ballot Meeting Minutes were not completed for approval at this meeting.

January 28, 2009 Open Mail Ballot Meeting Minutes – INCOMPLETE

January 28, 2009 Open Mail Ballot Meeting Minutes were not completed for approval at this meeting.

February 18, 2009 Open Mail Ballot Meeting Minutes – INCOMPLETE

February 18, 2009 Open Mail Ballot Meeting Minutes were not completed for approval at this meeting.

Executive Director’s Report

Becky Dunn reported on the FY2009 Financial Statement as of January 31, 2009

	Year-To-Date	Projected	Remaining
FY 2009 Beginning Fund Balance	1,499,792.36		
Revenue	100,069.99	158,712.00	58,642.01
Expense and Equipment	89,270.09	145,393.00	56,122.91
Total Transfers	246,889.79	564,237.31	317,347.52
Ending Fund Balance	1,263,702.47		

FY 2009 OA Cost Allocation

Board Cost:

OA Expenditures	Auditor Expenditures	Governor Expenditures	Lt. Governor Expenditures	Sec. of State Expenditures
\$585.00	\$0.00	\$130.00	\$25.00	\$567.00

Atty General Expenditures	Gen Assembly Expenditures	Capitol Police	DOR Receipts	Total
\$0.00	\$1,804.00	\$81.00	\$654.00	\$3,846.00

Division Cost:

OA Expenditures	Auditor Expenditures	Governor Expenditures	Lt. Governor Expenditures	Sec. of State Expenditures
\$88.19	\$0.00	\$19.63	\$3.84	\$85.48

Atty General Expenditures	Gen Assembly Expenditures	Capitol Police	DOR Receipts	Total
\$0.00	\$272.13	\$12.24	\$0.00	\$481.51

FY2009 Total Cost:

\$4,327.51

Introduction of Division Director, Jane Rackers

Jane Rackers, Division Director, was introduced to the Board by Connie Clarkston. Governor Jeremiah (Jay) Nixon appointed Jane Rackers the Director of the Division of Professional Registration beginning January 2009, replacing David Broeker who resigned that position. Members of the Board welcomed Jane Rackers as the new Division Director.

Introduction of Division's Senior Legal Counsel, Earl Kraus

Earl Kraus is the Division's Senior Legal Counsel as of January 2009. Members of the Board welcomed Earl Kraus as the new Senior Legal Counsel.

Missouri Ethics Commission Report

All members of the board are required to file a Personal Financial Disclosure Statement with the Missouri Ethics Commission and should have received their blank statement. The completed statement must be submitted directly to the Missouri Ethics Commission after January 1, 2009 and no later than 5:00 p.m. May 1, 2009.

Rules – Approve

The Board reviewed the following rules: Areas in brackets will be deleted.

20 CSR 2120-2.010 Embalmer's Registration and Apprenticeship

(8) Effective July 30, 2004 the Missouri State Board embalmers' examination shall consist of the National Board Funeral Service Arts section, the National Board Funeral Service Science Section, and Missouri Law section. Application, payment, scheduling and administration for the national board examinations will be made directly through the International Conference of Funeral Service Examining Boards, Inc., or other designee of the Board. An applicant shall be exempt from the requirement of successful completion of the Missouri Law section if the applicant has successfully completed the Missouri Law section for another license and that license is in active status. *[within twelve (12) months of the date that the Board receives the new application.]* In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination results will be accepted, or the Board may accept successful completion of an examination administered by another state, territory or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination.

20 CSR 2120-2.040 Licensure by Reciprocity

(F) The reciprocity applicant will be required to successfully complete the reciprocity examination with a score of seventy five percent (75%) or better within twenty-four (24) months after the Board's receipt of the reciprocity application. If an applicant by reciprocity has received either an embalmer or funeral director license from the Board *[within twelve (12) months prior to applying for a license]* for which the reciprocity examination is required, that applicant will be exempt from taking the reciprocity examination for the second license if the first license remains in active status;

(D) The reciprocity applicant will be required to successfully complete the reciprocity examination with a score of seventy five percent (75%) or better within twenty-four (24) months after the Board's receipt of the reciprocity application. If an applicant by reciprocity has received either an embalmer or funeral director license from the Board *[within twelve (12) months prior to applying for a license]* for which the reciprocity examination is required, that applicant will be exempt from taking the reciprocity examination for the second license if the original license remains in active status;

20 CSR 2120-2.060 Funeral Directing

(13) An applicant shall be exempt from the requirement of successful completion of the Missouri Law examination if the applicant has successfully completed the Missouri Law examination for another

license if that license remains in active status. *[within twelve (12) months of the date that the Board receives the new application.]*

This is what it says under Definitions:

20 CSR 2120-1.040 Definitions

Consisting of the following:

- (A) National Board Funeral Service Arts Section developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the Board;
- (B) In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the Board may accept successful completion of an examination administered by another state, territory or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination;
- (C) National Board Funeral Service Science Section developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the Board; and
- (D) Missouri Law Section

A motion was made by Todd Mahn and seconded by Martin Vernon to approve the rules as drafted and proceed with filing. Motion carried with Martin Vernon, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

Legislation – Connie Clarkston – Director Legislation and Budget

Connie Clarkston provided the Board an overview of pending legislation that pertains to the Board. It was mentioned by Darlene Russell that there will be a hearing the next day at 9:00 a.m. in Hearing Room 4.

HB111 sponsored by Representative David Day allows unclaimed remains of veterans to be collected by a veterans' service organization for the purpose of internment in a veterans' cemetery under certain circumstances.

HB174 sponsored by Representative Stanley Cox requires the Governor to disclose certain specified information regarding tax credits and state contracts.

HB 243 sponsored by Representative Chris Molendorp expands the membership of the State Board of Embalmers and Funeral Directors by adding five consumer advocates.

HB316 sponsored by Representative Timothy Jones changes the laws regarding the Open Meetings and Records Law, commonly known as the Sunshine Law.

HB340 sponsored by Representative Mike Cunningham requires state agencies, public schools and colleges, and political subdivisions to use the traditional names of holidays.

HB607 sponsored by Representative Doug Ervin establishes the Missouri Patient Privacy Act which limits the disclosure of patient medical information.

HB699 sponsored by Representative Jake Zimmerman revises the definition of "public governmental body" as it relates to the Open Meetings and Records Law, commonly known as the Sunshine Law, to include certain public officials and state employees.

HB769 sponsored by Representative Jason Grill requires any business to take all reasonable measures to protect against identity theft when disposing certain information.

HB770 sponsored by Representative Jason Grill establishes provisions for the prevention of and protection from security breaches.

HB841 sponsored by Representative Jay Wasson transfers the duties for the regulation of certain professions from the Division of Professional Registration to the specific governing body for the profession.

HB850 sponsored by Representative Chris Molendorp requires licensed embalmers and funeral directors renewing their licenses to complete a certain number of hours of continuing education.

HB852 sponsored by Representative Jay Wasson specifies that certain information collected from health maintenance and community-based health maintenance organizations that do not contain identifiable information will be public information.

HB853 sponsored by Representative Jay Wasson establishes licensing and contract requirements for preneed funeral contract sellers, providers, and seller agents and establishes the Missouri Preneed Funeral Contract Act.

HB866 sponsored by Representative Don Wells allows certain unsubstantiated complaints made against licensed social workers and physicians by certain sexually violent predators to be removed from the regulating entity's records.

HB876 sponsored by Representative Bill Deeken prohibits an employer from requiring a nonexempt state employee to take time off during any week the employee works more than an eight-hour workday or his or her regularly assigned hours of work.

HB945 sponsored by Representative Don Wells changes the laws regarding endowed care cemeteries.

HB983 sponsored by Representative Margo McNeil requires racial and gender equity in the membership of boards, commissions, committees, and councils.

HB1044 sponsored by Representative Scott Largent requires county coroners and deputy coroners to complete required training within six months of election or appointment.

HB1055 sponsored by Representative Bryan Pratt establishes the Uniform Prudent Management of Institutional Funds Act.

HB1058 sponsored by Representative Jason Smith repeals various expired provisions of law as contained in the January 2009 Annual Report of the Joint Committee on Legislative Research on Laws Which Expire, Sunset, Terminate, or Become Ineffective.

HB1083 sponsored by Representative Therese Sander penalizes state entities who knowingly and purposely disclose Social Security Numbers of living persons unless such disclosure is permitted by law or otherwise.

HJR23 sponsored by Representative Allen Ictet proposes a constitutional amendment prohibiting appropriations in any fiscal year from exceeding certain limits.

SB1 sponsored by Senator Scott Wasson establishes licensing and contract requirements for preneed funeral contract sellers, providers, and seller agents.

SB245 sponsored by Senator Kurt Schaefer creates consumer notification requirements for data security breaches.

SB416 sponsored by Senator Tom Dempsey modifies provisions related to cemeteries.

SB472 sponsored by Senator Luann Ridgeway requires the governor and political subdivisions to disclose information regarding the distribution of public funds.

SB495 sponsored by Senator John Griesheimer modifies various provisions relating to employment security.

SB560 sponsored by Timothy P. Green removes the requirement that commissioners of the Administrative Hearing Commission be attorneys.

MFDEA Update, Legislative Proposals (Don Otto)

The Missouri Funeral Directors and Embalmers Association will hold its Annual Convention the last week of May 2009. There will be a seminar including an overview of the new law if it passes.

Chuck Renn – Missouri Insurance Guaranty Association

Chuck Renn, Missouri Insurance Guaranty Association, provided the Board with an overview of their current status in regards to paying claims.

As of April 1, 2009, the Missouri Life and Health Insurance Guaranty has funded 1724 claims in the aggregate amount of \$6,868,982. Further, the Special Deputy Receiver (“SDR”) has processed an additional 757 claims that are at various points in the approval process. These pending claims total an additional \$2,848,128. All claims are currently being processed within a 60 day time frame. The only exceptions to this statement are those claims that require additional information or documentation from the funeral homes.

The process for handling claims involves four major steps. They are:

- 1) The initial review by the SDR includes the coordination of the preneed contract with all associated insurance policies issued by Lincoln Memorial.
- 2) The next step is for the guaranty association auditors to review the claims for compliance to the governing statutes, the court approved liquidation plan, and general audit tests.
- 3) The audited claims are then subject to the SDR issuing the appropriate assignment and release forms to the funeral homes for their signature.
- 4) The final step is taken when the funeral homes return the signed assignment and release forms. At a point where there is a sufficient number of returned forms, but no longer than every two weeks, the SDR requests funds to enable the issuing of checks to pay the pending claims.

Protocols and procedures are being developed to guide the evaluation of orphan contracts.

Electronic Filing of Death Certificates (Ivra Cross and Sharon Ayers, General Counsel)

Ivra updated the Board on the web registration system to file death certificates. She explained that Department of Homeland Security has encouraged the states to develop electronic vital records systems to assist in deterring fraud and to provide a more timely and secure environment for collecting and sharing information. It was explained the Bureau of Vital Records (BVR) wrote an RFP for a base system and has now selected a vendor. The selected vendor is ManTech. They have served the vital records community for 20 plus years and were also awarded bids for the States of Kansas, Arkansas and Oklahoma for their electronic systems. Ivra explained that the system would pretty much mirror the Oklahoma system since our laws were similar so there would be minimal customization. The State of Kansas BVR has indicated that 30 plus Missouri funeral directors are using their electronic system and appear to like it. Missouri has identified at least 21 states that have implemented electronic systems and several are already reengineering to update in today’s environment. BVR’s vision for this system would be in two parts, the fact of death portion that showed the personal history information, then the medical certification part of the certificate the certifier would complete. The laws requiring the funeral director to collect the personal data, submit

to the certifier, and register the record with the registrar would not change in their responsibility.

Once the funeral director entered the fact of death information, they would no longer have to notify the local registrar, the system would provide notification. The system would also provide notification to SSA when the fact of death information is entered that included the SSN. BVR would also like to have the fact of death portion to issue even if the certification portion has not been completed. This process would be useful when the cause of death portion is not needed. An example would be to provide proof of death when conducting financial matters at the bank.

Implementation would be in phases. Not every facility would implement at the same time. To be in compliance with the statutory implementation date the pilot facilities would go live January 1, 2010. All other facilities would be phased onto the system gradually. Rural areas would be phased in last. Training would be conducted across the state by BVR field representatives starting sometime in September.

Concern was expressed by some funeral directors for physicians not certifying in a timely manner. System would have time sensitive dates and would prompt provider after so many days. If no response by data provider, state may have to assist funeral directors in notifying the Chief Medical Officer of the facility in getting the certificates completed and returned to funeral directors so that it could be registered. This is a current process that would also not require a change to the law. A sample of the 2003 revised Missouri Certificate of Death was shared. It was explained that the revision was designed using the recommendations and guidelines by the National Center for Health Statistics. The electronic certificate would be edited by the system for completeness and accuracy. If all edits were approved, the certificate would register and filter back through the system and made available to the local registrars for issuance within hours. This electronic system would allow more timely registrations. With the editing process, there would less likely be errors, certificates and/or certified copies would not have to be replaced as in a manual process. The system would not allow registration until the deficiencies were corrected and resubmitted. In some instances there would still be a paper process. BVR will need to have some discussions with State Board and MFDEA to resolve the issues of funeral directors and embalmer's signatures. However, Missouri is looking towards a totally paperless electronic system for the future.

Ivra shared that BVR has enlisted several physicians and funeral directors that are very receptive towards piloting and looking forward to going live.

Carol Fischer, Deputy Secretary of State for Business Services – Entity/Fictitious Name

Carol Fischer, Deputy Secretary of State for Business Services, provided the Board information regarding Missouri Revised Statutes, Chapter 417.210.

Due to a change in Missouri law, fictitious name registrations now expire five years from the date they were filed. If you filed a fictitious name registration on or before August 28, 2004, your business must renew their registration with the Secretary of State's office no later than August 28, 2009 or the registration will expire. The Secretary of State office mailed all businesses that filed a fictitious name registration within this timeframe a notice. Beginning March 2009, a fictitious name registration may be renewed online, or print a fictitious renewal form for mailing. Businesses must renew their fictitious name registration by the due date in order to continue to legally do business in Missouri. If the business is no longer in existence

or if you wish to let your fictitious name registration expire, no action is required. Once expired, that registration cannot be reinstated or renewed; those wishing to continue their business will need to file new fictitious name registration and will be issued a new charter number. Attached is a brochure from the Secretary of State, Corporations Division that was distributed during the meeting.

Missouri Sales Tax Reporting Requirement

The Board reviewed the new Missouri Sales Tax Reporting Requirement. Effective January 1, 2009, Missouri state law requires that any licensed business selling retail products or equipment to verify compliance with section 144.083.4 RSMo and the Missouri Department of Revenue by providing a "no sales tax due" statement to the State Board of Embalmers and Funeral Directors prior to the issuance of all renewals and/or new establishment licenses.

Election of Officers

Chairman:

A motion was made by John McCulloch and seconded by Joy Gerstein to nominate and vote in by acclamation Martin Vernon as Chairman of the State Board of Embalmers and Funeral Directors. Motion carried with James Reinhard, Gary Fraker, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

Vice-Chairman:

A motion was made by John McCulloch and seconded by Joy Gerstein to nominate and vote in by acclamation Gary Fraker as Vice-Chairman of the State Board of Embalmers and Funeral Directors. Motion carried with James Reinhard, Martin Vernon, Todd Mahn, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

Secretary:

A motion was made by John McCulloch and seconded by Joy Gerstein to nominate and vote in by acclamation Todd Mahn as Secretary of the State Board of Embalmers and Funeral Directors. Motion carried with James Reinhard, Martin Vernon, Gary Fraker, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition.

Future Meeting Dates

The Board reviewed a 2009 calendar in order to plan for future meeting dates. The Board asked the Executive Director to check into board meeting room availability for August 2009 in Jefferson City/Lake of the Ozarks, Missouri.

Open Discussion – Dialogue with General Public Attending Open Session Continuation and/or Completion of any Unfinished Open Session Business

Saponi Nation of Missouri, Mahenips Band

Earl Kraus, Senior Legal Counsel, advised the Board regarding the Saponi Nation of Missouri and the letter they sent relative to compliance with state laws as they conduct their own burials. The Board's concern is relative to the location of the embalming. The Board directed a letter be written to John Trullinger, Tribal Chairman, ensuring that the Arkansas embalmer is in compliance with Missouri laws if the embalming is being performed in Missouri.

Closed Meeting

A motion was made by Gary Fraker and seconded by Martin Vernon to move into closed session 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 Martin Vernon, 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.

Adjournment

A motion was made by John McCulloch and seconded by Joy Gerstein to adjourn. Motion carried with Martin Vernon, Gary Fraker, John McCulloch, and Joy Gerstein voting in favor with no votes in opposition. The meeting adjourned at 12:40 p.m. on Wednesday, April 1, 2009. James Reinhard and Todd Mahn were absent from this portion of the meeting.

Executive Director: _____

Approved by the Board on: _____

SECRETARY OF STATE
ROBIN CARNAHAN
CORPORATIONS DIVISION
PO BOX 2050
JEFFERSON CITY MO 65102

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 STATE OF MISSOURI

JAMES C. KIRKPATRICK
 STATE INFORMATION CENTER
 (573) 751-4936

CORPORATIONS
 (573) 751-4153

Dear Business Owner:

As your Secretary of State, I am focused on helping Missouri businesses grow by providing the best service possible. Making sure you are informed about changes in our operations is a big part of providing good customer service.

It is a priority in my office to make it as easy and efficient as possible for you to complete all of your business filings. Due to a change in state law, you are now required to update your business's fictitious name registration.

Specifically, Missouri law now requires fictitious name registrations to renew every five years. Currently, your renewal is due by **August 28, 2009**. Please note that you must renew your fictitious name registration by the due date in order to continue to legally do business in Missouri. So please use the online filing system, print off a renewal form, or contact my office if you need assistance filing your fictitious name renewal before the deadline.

With our online filing system, you can file your renewal quickly from your home or office. Simply visit www.sos.mo.gov to file online or you can print a form for mailing. As part of the filing, you will need to enter your charter number (begins with the letter X) located on the mailing label of this notice.

However, if you wish to let your fictitious name registration expire, or the business is no longer in existence, no action is required on your part.

The Missouri Business Portal helps Missouri businesses navigate state government. It is Missouri's one stop shop that connects business owners with state government resources based on their needs. As a small business owner myself, I know how valuable it is in helping business owners access the resources they need from state government. Join over 500,000 users accessing the business portal at www.business.mo.gov.

Sincerely,

Robin Carnahan
 Missouri Secretary of State

**YOUR BUSINESS'S
 FICTITIOUS NAME RENEWAL
 IS DUE AUGUST 28th**

600 West Main Street, PO Box 2050, Jefferson City, MO 65102
 Telephone (866) 223-6535
www.sos.mo.gov

DON'T DELAY— FILE TODAY

Online filing is quick and easy:

- Go to www.sos.mo.gov
- Under "Featured Items," select the option of "**RENEW FICTITIOUS NAME ONLINE**"

Benefits of filing online:

- Available 24 hours a day, 7 days a week
- Major credit cards accepted: MC, Visa, American Express or Discover

OR

PRINT RENEWAL FORM FOR FILING

- Go to www.sos.mo.gov
- Or request a paper form by calling 1-866-223-6535
- Fee for filing is \$7.00

No action is required if:

- The business is no longer active, or
- You want the registration to expire

**IF YOU HAVE QUESTIONS,
 COMMENTS OR NEED ASSISTANCE
 PLEASE CALL US TOLL FREE AT
 1.866.223.6535**

Since January 2005,
 reduced fees for
 online corporate reports
 saved Missouri businesses
 more than \$9.5 million!

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

August 4-5, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Tuesday, August 4, 2009 – 12:00 p.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by Martin Vernon, Chairman, at 12:00 p.m. on Tuesday, August 4, 2009, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

BOARD MEMBERS PRESENT:

Martin Vernon, Chairman
Todd Mahn, Secretary
John McCulloch, Member

BOARD MEMBERS ABSENT:

James Reinhard, Member
Gary Fraker, Vice-Chairman
Joy Gerstein, Public Member

STAFF PRESENT:

Becky Dunn, Executive Director
Lori Hayes, Inspector
Don Eggen, Chief Investigator

CLOSED SESSION

Motion was made by John McCulloch 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 Martin Vernon, Todd Mahn and John McCulloch voting in favor with no votes in opposition. James Reinhard was absent for this portion of the meeting. Gary Fraker and Joy Gerstein were absent from the meeting in its entirety.

Wednesday, August 5, 2009 – 9:23 a.m.

The Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 9:23 a.m. on Wednesday, August 5, 2009. The meeting was called to order by Martin Vernon, Chairman, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

BOARD MEMBERS PRESENT:

Martin Vernon, Chairman
Todd Mahn, Secretary
James Reinhard, Member
John McCulloch, Member

BOARD MEMBERS ABSENT:

Gary Fraker, Vice-Chairman
Joy Gerstein, Public Member

STAFF PRESENT:

Becky Dunn, Executive Director
Lori Hayes, Inspector
Tabatha Lenzini, Licensure Technician
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General
Connie Clarkston, Director of Budget and Legislation
Darcie Rehagen, Office Support Assistant
Don Eggen, Chief Investigator

GUESTS PRESENT:

Mark Warren, English & Monaco/Missouri Preneed Coalition
Bill Stalter, Stalter Legal Services
Chris Moody, SCI
Jim Moody, SCI
Representative Tim Meadows, self
Don Otto, MFDEA
Brad Speaks, Speaks Funeral Home

APPROVAL OF THE AGENDA

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

EXECUTIVE DIRECTOR REPORT

Becky Dunn, Executive Director, gave an overview of the rules for the meeting and informed the audience that any comments for upcoming meetings need to be submitted in writing to the Board office by the Friday prior to the next meeting date. Ms. Dunn also informed the Board that the website has been updated with SB1 comments from the public and legal counsel.

ASSISTANT ATTORNEY GENERAL REPORT

Sharon Euler, Assistant Attorney General, reported that the NPS claim packets have been mailed out and it appears as though some people who do not have NPS contracts are receiving the packets. Ms. Euler spoke with Chris Fuller, attorney with the Special Deputy Receiver's (SDR) office, who indicated that everyone in the company's database was mailed a packet and any questions should be directed to the SDR's office.

FUTURE MEETING DATES

Ms. Dunn informed the audience of the Board's upcoming meeting dates, which are as follows:

- August 11, 2009, 9:00 a.m.
- August 19, 2009, 9:00 a.m.
- August 25, 2009, 9:00 a.m.
- September 2, 2009, 9:00 a.m.

MID-AMERICA TRANSPLANT SERVICES

The Board reviewed a letter from Mid-America Transplant Services regarding some of its new harvesting procedures. This was provided for informational purposes only. Chairman Vernon advised that it is his belief this mailing was sent to all funeral homes by Mid-America Transplant Services.

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.

It was the decision of the Board to draft rules for the following sections for clarity for review at a subsequent meeting:

- 333.011
- 333.091
- 333.315

- 333.320
- 333.325
- 333.330
- 333.335
- 333.340

CLOSED SESSION

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

RECONVENE

The Board reconvened in open session at approximately 1:30 p.m.

SENATE BILL 1 IMPLEMENTATION PROCESS - CONTINUED

The Board continued its review of 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.

ADJOURNMENT

A motion was made by Todd Mahn and seconded by John McCulloch to adjourn. Motion carried with Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. The meeting adjourned at 2:53 p.m. on Wednesday, August 5, 2009. Gary Fraker and Joy Gerstein were absent from the meeting in its entirety.

Executive Director: _____

Approved by the Board on: _____

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

August 11, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Tuesday, August 11, 2009 – 7:30 a.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 Tuesday, August 11, 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
James Reinhard, Member

Board Members Absent

Todd Mahn, Secretary
John McCulloch, Member
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Sharon Euler, Assistant Attorney General
Don Eggen, Chief Investigator

Closed Meeting

Motion was made by Gary Fraker and seconded by Jim Reinhard 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 Martin Vernon, Gary Fraker and Jim Reinhard voting in favor with no votes in opposition. John McCulloch was absent for this portion of meeting. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Tuesday, August 11, 2009 - 9:00 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 9:09 a.m. on Tuesday, August 11, 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
John McCulloch, Member
James Reinhard, Member

Board Members Absent

Todd Mahn, Secretary
Joy Gerstein, Public Member

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General
Connie Clarkston, Director of Budget and Legislation
Don Eggen, Chief Investigator
Mark Stahlhuth, Division of Finance, joined at 1:00p.m.

Public Present

Stephen Zell, ACM
Dale Westby, ACM
Matt Whaley, SCI
John Moore, Moore Funeral Home
Representative Tim Meadows, State Legislature
Darlene Russell, CFL Preneed
Esther Bateman, Stewart Enterprise

Chris Moody, Moody & Associates and SCI
Jim Moody, Moody & Associates and SCI
Mark Warren, English & Monaco
Bill Stalter, Stalter Legal Services
Don Otto, MFDEA
Brad Speaks, Speaks Funeral Home
Ann Warren, English & Monaco

Approval of Agenda

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

Approval of Minutes

No minutes were available for review.

Executive Director's Report

Becky Dunn had nothing to report at this meeting

Future Meeting Dates

Future meeting dates are scheduled as follows:

- August 19, 2009, 9:00 a.m.
- August 25, 2009, 9:00 a.m.
- September 2, 2009, 9:00 a.m.

Financials/Projections

Nothing to report at this meeting.

Brad Speaks/Scott Lindley Appearance (Robert Cowherd by Phone)

Brad Speaks addressed the board pursuant to an email request relating to the claim process and timely payout from National Prearranged Services, Inc (NPS). Mr. Speaks stated he had filed claims from NPS for 35 funerals and hasn't been paid for any of them. He is asking the State Board to make a formal request of the Attorney General to enforce the law. Mr. Speaks further requested that the State Board hire Robert Cowherd as the board's attorney so that he can work on this ongoing issue for the consumers of Missouri and the funeral providers who have been harmed.

Attorney General Update

Sharon Euler, Assistant Attorney General, provided the Board an update regarding National Prearranged Services Inc. (NPS). The Attorney General's website has a Consumer Alert regarding the NPS claim packets. The Special Deputy Receiver has filed a lawsuit to begin asset recovery process in the NPS liquidation action. Ms. Euler also advised that Randy Sutton was indicted on NPS related charges. This was provided for informational purposes only.

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.

It was the decision of the Board to draft rules for the following sections for clarity for review at a subsequent meeting:

- 436.405 (2) Definition of Guaranteed Contract
- 436.405 (7) Definition of Preneed Contract
- 436.412 Grandfather Clause - clarify who gets paid what
- 436.415.1 Provider/Seller obligations
- 436.415 Provider/Seller obligations – clarify obligations
- 436.420.3 Provider/Seller contract
- 436.425.1 Consumer contract requirements
- 436.425.1(5) Consumer contract requirements
- 436.425.1(12) Consumer contract requirements
- 436.425.1(13) Consumer contract requirements
- 436.425.1(14) Consumer contract requirements
- 436.425.1(15) Consumer contract requirements
- 436.425.3 Consumer contract requirements
- 436.425.4 Consumer contract requirements
- 436.435.6 Trustee duties

12:00 p.m. – 1:05 p.m. – Closed Meeting

Motion was made by Gary Fraker and seconded by Jim Reinhard 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 Martin Vernon, Gary Fraker, John McCulloch and Jim Reinhard voting in favor with no votes in opposition. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Reconvene

The State Board of Embalmers and Funeral Directors reconvened in open session at approximately 1:05 p.m.

Senate Bill 1 Implementation Process - Continued

The Board continued its review of 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.

Open Discussion – Dialogue with General Public Attending Open Session Continuation and/or Completion of any Unfinished Open Session Business

Nothing further to report.

Adjournment

A motion was made by Jim Reinhard and seconded by Gary Fraker to adjourn. Motion carried with Gary Fraker, John McCulloch and James Reinhard voting in favor with no votes in opposition. The meeting adjourned at 4:32 p.m. on Tuesday, August 11, 2009. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Executive Director: _____

Approved by the Board on: _____

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

August 19, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Wednesday, August 19, 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, August 19, 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
James Reinhard, Member

Board Members Absent

Joy Gerstein, Public Member
John McCulloch, Member

Staff Present

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

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, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

Wednesday, August 19, 2009 9:15 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 9:15 a.m. on Wednesday, August 19, 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

James Reinhard, Member

Todd Mahn, Secretary

Joy Gerstein, Public Member (Was on conference call and left the call at 9:45 a.m.)

Board Members Absent

John McCulloch, Member

Staff Present

Becky Dunn, Executive Director

Lori Hayes, Inspector

Earl Kraus, Senior Legal Counsel

Sharon Euler, Assistant Attorney General

Public Present

Barb Neumann, Representative Timothy Meadows

Kalene Summerville, MFDEA/Summerville Funeral Home

Darlene Russell, CFL Preneed

Brad Speaks, Self/Speaks Family Legacy Chapels

Mark Warren, English & Monaco

Richard Brownlee, Assurant

Chris Moody, SCI

Bill Stalter, Stalter Legal Services

Don Otto, MFDEA/MFT

Doug Farrow, Stewart Enterprises

Approval of Agenda

Motion was made by Gary Fraker and seconded James Reinhard by to approve the open agenda. Motion carried with Gary Fraker, Todd Mahn, James Reinhard and Joy Gerstein

voting in favor with no votes in opposition. John McCulloch was absent from the meeting in its entirety.

Approval of Minutes

No minutes were available for approval.

Executive Director's Report

Becky Dunn had nothing to report at this meeting.

Future Meeting Dates

Future meeting dates are scheduled as follows:

- August 25, 2009, 9:00 a.m.
- August 26, 2009, 9:00 a.m. if needed
- September 2, 2009, 9:00 a.m.

Financials/Projections

Nothing was reported at this meeting.

Attorney General Update

Sharon Euler, Assistant Attorney General, stated she contacted Mark Gutchen, Counsel with the Division of Legal Services in regards to the Medicaid provision discussed last week for individuals qualifying for assistance, he was going to speak with his group and will get back in touch with Ms. Euler next week.

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.

It was the decision of the Board to draft rules for the following sections for clarity for review at a subsequent meeting:

- | | |
|-----------|--|
| 436.455 | Purchaser cancellation |
| 436.456 | Seller cancellation |
| 436.457 | Purchaser change of provider |
| 436.458 | Seller annual reports |
| 436.465 | Record retention |
| 436.470 | Complaints/Inspections/Subpoenas/AG |
| 436.480 | Purchaser's death/incapacity |
| 436.485 | Criminal penalties/Ch. 407 violation |
| 436.490 | Provider cease business |
| 436.500 | Seller cease business |
| 436.505 | Credit life |
| 436.510 | Provider may demand payment from trustee |
| 436.520 | Rulemaking authority |
| Section 1 | Closed records |

The board voted if a contract is cancelled then all interest goes back to consumer. Jim Reinhard and Gary Fraker voted no and Todd Mahn voted yes. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

The board voted a refund less the origination fee would be returned on a cancelled contract. Gary Fraker and Todd Mahn voted yes, Jim Reinhard voted no. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

The board voted for further clarification on 436.457.4 regarding the amount that is returned to the consumer. Todd Mahn, Jim Reinhard and Gary Fraker voted in favor. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

12:10 p.m. – 1:30 p.m. – Closed Meeting

Motion was made by Gary Fraker and seconded by Jim Reinhard 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 Martin Vernon, Gary Fraker, John McCulloch and Jim Reinhard voting in favor with no votes in opposition. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Reconvene

The State Board of Embalmers and Funeral Directors reconvened in open session at approximately 1:30 p.m.

Senate Bill 1 Implementation Process - Continued

The Board continued its review of 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.

Notice of Intent

The board reviewed the draft of the Notice of Intent. A motion was made by Gary Fraker and seconded by Todd Mahn to approve the Notice of Intent as drafted with the changes of adding the boards email address to the top of the form and add the fax number. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety. There is a finding of confident and substantial evidence to support the need for this rule.

It was the directive of the board to appoint a sub committee to approve the Applications for Preneed Provider/Seller and Preneed Agent.

The board was in agreement that the dates on the Proposed Emergency Rule Handout (5) should be changed to October 31, 2009. There is a finding of confident and substantial evidence to support the need for this rule.

Emergency Rules Following 8-5-09 handout:

- **Emergency rule: Corporation must be represented by an attorney:**
Motion was made by Gary Fraker and seconded by Todd Mahn to approve 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, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Payment is not determining factor of “practice of funeral directing”**
Motion was made by Gary Fraker and seconded by Todd Mahn to approve 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, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Pre-need seller and agent must be licensed in Missouri**
Motion was made by Gary Fraker and seconded by Todd Mahn is approve this rule with the change from license to register 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, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: “Final Disposition” as defined in Chapter 193**
Motion was made by Gary Fraker and seconded by Jim Reinhard to approve 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, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency Rule: “Provider” includes funeral establishment that has agreed to undertake obligations of pre-need contracts pursuant to Chapter 436:**
 Motion was made by Todd Mahn and seconded by Jim Reinhard to approve with the changes in (2) to “any provider” and need to specify new 436 with new numbers 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, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Display of License:**
 Motion was made by Todd Mahn and seconded by Gary Fraker to approve 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, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Corporate ownership of a corporate licensee**
 Motion was made by Gary Fraker and seconded by Jim Reinhard to approve 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, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Licensee must file application for new license if change in ownership:**
 Motion was made by Todd Mahn and seconded by Jim Reinhard to approve 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, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Failure to renew a license within 2 years requires completion of application process:**
 Motion was made by Jim Reinhard to approve this rule, this motion was withdrawn. Motion was made by Gary Fraker and seconded by Todd Mahn to withdraw this emergency rule that there is not a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Licensed funeral director must report each seller for whom he or she is an agent:**
 Motion was made by Gary Fraker and seconded by Todd Mahn to approve 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, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
- **Emergency rule: Pre-need agents must take Missouri law exam.**
 Motion was made by Todd Mahn and seconded by Gary Fraker to approve 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, and James Reinhard voting in favor

with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: Normal market fluctuation resulting in a shortage in a pre-need trust is not a basis for injunctive relief:**

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

- **Emergency rule: Financial welfare cause for injunction:**

Motion was made by Gary Fraker and seconded by Todd Mahn to approve 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, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

Open Discussion – Dialogue with General Public Attending Open Session Continuation and/or Completion of any Unfinished Open Session Business

Nothing further to report.

Adjournment

A motion was made by Gary Fraker and seconded by Todd Mahn to adjourn. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety. The meeting adjourned at 3:45 p.m. on Wednesday, August 19, 2009.

Executive Director: _____

Approved by the Board on: _____

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

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

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

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

Roll Call

Board Members Present

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

Board Members Absent

Joy Gerstein, Public Member

Staff Present

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

Closed Meeting

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

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

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

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

Roll Call

Board Members Present

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

Board Members Absent

Joy Gerstein, Public Member

Staff Present

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

Public Present

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

Approval of Agenda

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

Executive Director's Report

Becky Dunn had nothing to report at this meeting.

Future Meeting Dates

Future meeting dates are scheduled as follows:

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

Financials/Projections

Sherry Hess, Division of Professional Registration, appeared to present the board a financial summary of the board's appropriation and fund balance.

Connie Clarkston, Director of Budget and Legislation, gave an overview of the legislative and rulemaking process. Ms. Clarkston also provided an overview of the fiscal note relating to SB1.

Senate Bill 1 Implementation Process

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

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

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

Motion was made by Gary Fraker and seconded by John McCulloch

Preneed Provider NonEstablishment - \$100.00

Preneed Provider that holds a Funeral Establishment License - \$10.00

Preneed Seller - \$200.00

Preneed Agent - \$50.00

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

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

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

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

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

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

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

APPROVED

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

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

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

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

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

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

APPROVED

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

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

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

- (1) For purposes of Chapters 333 and 436, RSMo, final disposition shall be defined in accordance with the definition contained in Section 193.015(3), RSMo.
- (2) Use of the term final disposition in Chapters 333 and 436 shall be consistent with its use in Chapter 193, RSMo.

Authorized by: 333.340 and 333.011(10)

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

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

APPROVED

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

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

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

- (1) As defined by Section 333.011(10), the provider of services under any preneed contract pursuant to Sections 436.400 to 436.520, RSMo shall include any licensed funeral establishment that has agreed to undertake the obligations of a pre-need contract pursuant to Sections 436.400 to 436.520, RSMo.
- (2) Any provider who is a licensed funeral establishment who has agreed to undertake the obligations of a pre-need contract pursuant to Sections 436.400 to 436.520, RSMo, must meet all requirements of both a licensed funeral establishment and a pre-need provider pursuant to Chapter 333 and Sections 436.400 to 436.520, RSMo.

Authorized by 333.340 and 333.011(10), RSMo

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

APPROVED

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

Title: Funeral Director agent registration

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

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

prescribed by the Board.

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

Authority: Section 333.340 and 333.325.4

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

APPROVED

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

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

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

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

Authority: 333.340 and 333.325.5

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

APPROVED

Page 7 - Emergency rule: Financial welfare cause for injunction

Title: Danger to financial welfare is cause for injunction.

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

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

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

Authority: Section 333.340 and 333.335.

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

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

Page 8 - Emergency rule: Corporate ownership of a corporate licensee

Title: Corporate ownership of a corporation holding a pre-need provider license.

Purpose: This rule prescribes the requirements regarding corporate ownership of a corporation that holds a pre-need provider or seller's license.

- (1) If the applicant for a pre-need provider or seller's license pursuant to Section 333.315, RSMo is a corporation or other legal entity, referred to as "applicant corporation" and it is owned by a corporation, referred to as "owner corporation":

- (a) each officer, director, manager or controlling shareholder of the applicant corporation shall be eligible for licensure as if they were applying for licensure as an individual; and

Authority: 333.340 and 333.315

After discussion was held on this emergency rule, Sharon Euler, Assistant Attorney General did the following rewrite for board approval.

REVISED – Page 8 - Emergency rule: Corporate ownership of a corporate licensee

Title: Corporate ownership of a corporation holding a pre-need provider license.

Purpose: This rule prescribes the requirements regarding corporation application for a pre-need provider or seller's license.

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

Authority: 333.340 333.320, 333.315 and 436.456

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

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

Page 9 - Emergency rule: Licensees must file application for new license if change in ownership.

Title: New license required for change of ownership

Purpose: This rule states that a new license is required for a change in ownership of a pre-need provider or seller.

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

- (A) If a change of ownership is caused by the elimination of one (1) or more owners, for whatever reason (death, sale of interest, divorce, etc.) without the addition of any new owner(s), it is not necessary to obtain a new pre-need seller license. However, a new application for a pre-need seller license form shall be filed as an amended application within thirty (30) days after the change of ownership. This form shall be filled out completely with correct, current information.
- (B) A corporation is considered by law to be a separate person. If a corporation holds a Missouri pre-need seller's license, it is not necessary to obtain a new pre-need seller license or to file an amended application for a pre-need seller license if the owners of a minority interest in the stock change. However, as a separate person, if the corporation begins ownership of an entity which holds a Missouri pre-need seller license or ceases ownership of an entity which holds a Missouri pre-need seller license, a new pre-need seller license shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

Authority: 333.340 and 333.320

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

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

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

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

- (1) Providers, sellers, and seller's agents shall keep the Board notified of their current address, telephone number, facsimile number, and e-mail address, as applicable, at all times.
- (2) Providers, sellers, and seller's agents shall notify the Board within ten (10) business days of any such change by submitting written notice with the new information. The written notice shall comply with the Board's rules regarding written notice.

Authority: 333.340 and 333.320

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

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

Page 10 - Emergency rule: Display of License

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

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

- (1) All licenses or registrations, and any and all duplicate copies thereof, issued by the Missouri State Board of Embalmers and Funeral Directors shall be prominently displayed at all times in a conspicuous location or manner easily accessible to the public for each office or place of business of the licensee or registrant.
- (2) All licenses or registrations shall be available at all times for inspection by any duly authorized agent of the Missouri State Board of Embalmers and Funeral Directors.
- (3) The Missouri State Board of Embalmers and Funeral Directors may cause a complaint to be filed with the Administrative Hearing Commission pursuant to Section 333.330, RSMo, for the failure of a

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

Authorized by 333.340, 333.091 and 333.330

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

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

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

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

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

Authority: Section 333.340 and 333.330

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

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

The Board reviewed **Group 2 rules.**

Page #1 Rule re: single premium annuity contracts

Title: Replacement single premium annuity contracts

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

- (1) An insurance-funded preneed contract may be funded by an insurance policy or a single premium annuity contract.
- (2) An insurance-funded preneed contract may not be funded by an annuity other than a single premium annuity contract.
- (3) If a purchaser funds an insurance-funded preneed contract with a single premium annuity contract, the purchaser may replace the single premium annuity contract with another single premium annuity contract at any time in the duration of the preneed contract.

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

Authority: 333.340 and 436.405

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

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

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

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

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

- (1) Sale of funeral merchandise where the purchaser takes immediate possession of the funeral merchandise;
- (2) The preplanning of funeral arrangements with where there is no exchange of payment or anything of value for the future services; and
- (3) Naming a funeral establishment as the beneficiary to a life insurance policy outside a preneed contract as defined by Section 436.405.1(7).

Authority: 333.340 and 436.405

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

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

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

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

- (1) Preneed contracts shall only be funded by:
 - (a) A preneed trust as defined by 436.405.1(8);
 - (b) An insurance policy or single premium annuity contract as defined by § 436.405.1(3); or
 - (c) A joint account as defined by § 436.405.1(4).
- (2) Preneed contracts funded by any other mechanism shall be non-compliant with the requirements of Sections 436.400 to 436.520, RSMo. All non-compliant preneed contracts shall still be subject to regulation by the Board under Sections 436.400 to 436.520, RSMo.

Authority: 333.340 and 436.405

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

Page #4 Rule re: meaning of final disposition

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

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

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

Authority: 193.015, 333.340 and 436.405

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

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

#5 Rule re: Cemetery exception

Title: Endowed care cemetery exception.

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

- (1) The provisions of sections 436.400 to 436.520 shall not apply to contracts or other arrangements sold by a cemetery operator for which payments received by or on behalf of the purchaser are required to be placed in an endowed care fund, as defined by Chapter 214, or for which a deposit into a segregated account is required under Chapter 214.
- (2) The provisions of Sections 436.400 to 436.520, RSMo shall apply to the contract sold by the operator as described in (1) above if the contract or arrangement includes services that may only be provided by a licensed funeral director;
- (3) This exception to the requirements of Sections 436.400 to 436.520,

RSMo shall be contract specific.

Authority: 333.340 and 436.410

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

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

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

- 1) The cemetery has a current and valid license issued pursuant to RSMo. Section 214.275;
- 2) All sales of merchandise made by the cemetery that would otherwise be defined as a preneed contract for funeral merchandise are made pursuant to a contract whereby such merchandise is either i) purchased in conjunction with an interment right or grave space subject to RSMo. Section 214.320, or ii) is to be delivered to an interment right or grave subject to RSMo Section 214.320 that is owned by the purchaser and identified in the contract;

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

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

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

#6 Rule re: seller obligations

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

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

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

- (1) The seller shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract;
- (2) Alternatively, the preneed contract may permit the purchaser to make payment directly to the trustee or insurance company named in the contract in lieu of making payment to the trustee;
- (3) All sellers of preneed contracts in the State of Missouri shall designate an individual manager in charge within the seller's business at a Missouri address who will accept notice regarding any actions of the Board on behalf of the seller. The designation shall be made in writing and provided to the Board. If the designee changes, the seller shall make the Board aware of the change in writing five (5) business days prior to the change in designee becoming effective, or if the seller does not have notice five (5) days prior, then within three (3) business days of the change in designee.

Authority: 333.340 and 436.415

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

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

- (1) The seller shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract;
- (2) A purchaser may make payment on any preneed contract by making the payment directly to the trustee, the insurance company, or the financial institution where the joint account is held, as applicable, in lieu of paying the seller.
- (3) All sellers shall designate an individual to serve as manager in charge of the seller's business. This individual shall either reside or work within the state of Missouri. The seller shall designate the manager in charge in it initial application for licensure. If the manager in charge changes, the seller shall provide written notice to the Board within 30 days of the change.

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

The board reviewed the following.

Emergency Rule Regarding Filing of Annual Reports

Title: Filing of Annual Reports

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

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

Authority: 333.340 and 436.460

Emergency Rule Regarding Filing of Annual Reports

Title: Filing of Annual Reports

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

- (1) For reporting year ending October 31, 2009, preneed sellers who were registered with the Board prior to August 28, 2009, may file an annual report as set forth in Section 436.021.2(3), RSMo (2000) to meet the annual report requirements of Section 436.460, RSMo, Supp. 2009.
- (2) For all contracts entered into prior to August 28, 2009, preneed sellers who were registered with the Board shall, in addition to their annual report, pay the required fee for the annual report pursuant to 436.069, RSMo;
- (3) Beginning August 28, 2009, the reporting period for seller annual reports shall run from August 28 through August 27 of successive years.

Authority: 333.340 and 436.460

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

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

Title: Grandfather clause

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

- (1) Violations of Chapters 333 and 436 occurring prior to August 28, 2009 shall be governed by the law as it existed at the time of the violation;
- (2) Violations of Chapter 333 and Sections 436.400 to 436.520 occurring after August 28, 2009 related to a contract that existed prior to August 28, 2009 shall be governed by the law as it existed on August 28, 2009;
- (3) Violations of Chapter 333 and Sections 436.400 to 436.520 occurring after August 28, 2009 related to a contract executed on or after August 28, 2009 shall be governed by the law as it existed on August 28, 2009;
- (3) All preneed contracts executed on or after August 28, 2009 must meet all requirements contained in Chapter 333 and Sections 436.400 to 436.520 as the law existed on August 28, 2009.
- (4) Preneed contracts entered into prior to August 28, 2009 remain valid after August 28, 2009 to the extent they were valid under Sections 436.005 to 436.071 prior to August 28, 2009.

Authority 333.340, 436.412 and 436.415

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

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

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

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

Title: Requirements for notice by provider under preneed contract

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

- (1) A provider shall notify the Board within 15 days of authorizing or agreeing to allow a seller to designate himself or herself as the provider under a preneed contract. Such notice shall be in writing and shall include:
 - (a) Name and address of the seller;
 - (b) Name and address of the provider;
 - (c) License number of the seller;
 - (d) License number of the provider;
 - (e) Effective date of the authorization or agreement;
 - (f) Signature of the seller, provider, purchaser, and, if applicable, the seller's agent;
 - (g) Notice with the Board may be filed electronically but the original document shall be provided to the Board by mail following the electronic filing.
- (2) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the last signature on the agreement;
- (3) The contract must be signed by the purchaser, provider and seller or seller's agent of the preneed contract;
- (4) If an agent of the seller signs the contract, the seller must also sign the contract but need not be present at the time it is signed with the purchaser;
- (5) The purchaser of the preneed contract shall receive either a copy or original of the contract and upon request a copy of any agreements or contracts between the seller and provider regarding the purchaser's contract.
- (6) If the provider and seller are the same legal person, the provider must still provide notice as required by this Rule to the Board that he or she is the provider for the seller. However, a contract between the seller and provider, if the seller and provider is the same legal person, is not required.
- (7) If the provider and seller are the same legal person, the preneed contract and any other contracts or agreements necessary to the preneed contract must contain:
 - a. One signature line indicating that signature belongs both to the seller and provider; or
 - b. Separate signature lines for the seller and provider.

Authority: 333.3.40 and 436.420

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

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

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

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

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

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

- (2) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the last signature on the agreement;
- (3) The contract must be signed by the purchaser, provider and seller or seller's agent of the preneed contract;
- (4) If an agent of the seller signs the contract, the seller must also sign the contract but need not be present at the time it is signed with the purchaser;
- (5) The purchaser of the preneed contract shall receive either a copy or original of the contract and upon request a copy of any agreements or contracts between the seller and provider regarding the purchaser's contract.
- (6) If the provider and seller are the same legal person, the provider must still provide notice as required by this Rule to the Board that he or she is the provider for the seller. However, a contract between the seller and provider, if the seller and provider is the same legal person, is not required.
- (7) If the provider and seller are the same legal person, the preneed contract and any other contracts or agreements necessary to the preneed contract must contain:
 - a. One signature line indicating that signature belongs both to the seller and provider; or
 - b. Separate signature lines for the seller and provider.

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

#9 Rule re: Contract requirements

Title: Consumer contract requirements

Purpose: This rule identifies requirements of all preneed contracts.

- (1) All preneed contracts and any agreements necessary to the preneed contract shall be in writing in Times New Roman or similar font in at least 8-point font size;
- (2) A preneed contract can contain both guaranteed and non-guaranteed items. Any preneed contract containing both guaranteed and nonguaranteed items shall clearly identify in writing in the contract that the contract contains both guaranteed and non-guaranteed items;
- (3) A preneed contract is voidable by order of a court of competent jurisdiction. Upon order of the court, the contract is voidable. Notice of the voidable contract must be provided to the seller and provider. The purchaser, upon notice, may then exercise the right to void the contract. Upon a valid court order and notice, a preneed contract is void.
- (4) All money under the preneed contract, including but not limited to payments, interest payments, and fees, is recoverable by the purchaser only if the purchaser elects to void the contract following receipt of a valid court order and notice to the seller and provider;

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

DISCLOSURE SHEET AND REQUIREMENTS

Authority: 333.340 and 436.425

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

#7 & 9

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

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

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

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

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

#10 Rule re: trust funded contract requirements

Title: Requirements for deposit of and verification of payments

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

- (1) The seller of a preneed contract funded by a trust shall deposit all payments received pursuant to the terms of the preneed contract into the trust within sixty days of receipt of the funds by the seller, his agent or designee.
- (2) Within 30 days of request by the purchaser, the seller shall provide to the purchaser under a preneed contract, a written statement of all deposits made to the trust. The written statement shall include a detailed description of all deposits made by type of deposit and date of deposit. The written statement shall also include the principal and interest paid to date for the trust. The written statement shall be signed by the seller.

Authority: 333.340 and 436.430

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

#11 Rule re: Trustee investment restrictions

Title: Trustee investment restrictions under a trust funded preneed contract

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

- (1) A trustee shall not make decisions to invest any trust fund under a preneed contract with those individuals or entities contained in §§ 436.445(1) through (4), who are, or may be, related to the parties to that preneed contract or trust;
- (2) The trustee investment restrictions contained in §§ 436.445(1) through (4) shall not apply to those individuals or entities related to the parties to other preneed contracts or trusts.

Authority: 333.340 and 436.445

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

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

Title: Independent financial advisor is an agent of the trustee

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

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

Authority: 333.340 and 436.440.6

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

#12 Rule re: Insurance funded contracts

Title: Insurance funded contracts

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

- (1) Payments collected by or on behalf of the seller which must be promptly remitted to the insurer or the insurer's designee do not include administrative or other fees built into the preneed contract;
- (2) The purchaser of an insurance funded preneed contract, may, upon agreement with the seller and provider, submit payments directly to the insurer or insurer's designee;
- (3) For any overages under the preneed contract that exceed the costs under the contract, the overages shall be distributed:
 - a. To the estate of the beneficiary named in the insurance policy; or
 - b. If the policy holder received public assistance to the State of Missouri if the State of Missouri was named as beneficiary or to the estate of the beneficiary if the State of Missouri was not named.

Authority: 333.340 and 436.450

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

Group 3 Rules – Page 1

Rule re: Requirements for Written Notice

Title: Requirements for Written Notification to the Board

Purpose: This rule details the requirements for written notification to the Board.

All written notice as required by Chapter 333, Sections 436.400 to 436.520 or any rule properly promulgated pursuant to Chapter 333 and Sections 436.400 to 436.520 shall include:

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

Authority: 333.340, 436.456

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

Group 3 Rules – Page 8

Rule re: Fees

Title: Fees pursuant to Chapter 333 and Sections 436.400 to 436.520

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

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

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

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

(2) All fees are nonrefundable.

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

Authority: 333.340

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

Adjournment

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

Executive Director: _____

Approved by the Board on: _____

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, 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

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 preneed contract may contain both guaranteed and non-guaranteed items, but the preneed contract shall clearly identify those items which are guaranteed and which are not;
- (3) A preneed contract is voidable by order of court of competent jurisdiction. Upon final judgment finding a preneed contract is voidable, a purchaser may then exercise his or her right to void the contract by providing written notice to the seller and the provider. The purchaser must exercise his or her right to void the contract within 30 days of final judgment;
- (4) The purchaser must be provided a fully executed original or copy of the preneed contract within 30 days of the effective date of the contract;
- (5) Preneed contracts may be either cancelled or rescinded pursuant to the provisions of Sections 436.400 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 accompanied 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 ~~accompanied~~**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: _____

Approved by the Board on: _____

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

October 20, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Tuesday, October 20, 2009 8:25a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by Martin Vernon, Chairman, at 8:25 a.m. on Tuesday, October 20, 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
James Reinhard, Member
John McCulloch, Member
Joy Gerstein, Public Member

Staff Present

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

Approval of Agenda

Motion was made by Gary Fraker and seconded by Todd Mahn to approve the open agenda. Motion carried with Gary Fraker, Todd Mahn, James Reinhard, John McCulloch and Joy Gerstein voting in favor with no votes in opposition.

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 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 620.010.14 Subsection (5) 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, James Reinhard, John McCulloch and Joy Gerstein voting in favor with no votes in opposition.

Tuesday, October 20, 2009 11:00 a.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 11:00 a.m. on Tuesday, October 20, 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
James Reinhard, Member
John McCulloch, Member
Joy Gerstein, Public Member

Staff Present

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

Public Present

Darlene Russell, CFL Preneed
Chris Moody, Lobbyist on behalf of SCI
Farrell Gernswan, self
Barbara Germann, self and Representative Timothy Meadows
Leesa Wimberley, self
Gerry DeLong, self
Don Lakin, Lakin Funeral Home
Kristin Underwood, Consumer Protection of the Attorney General's Office

Darla Fox, self
Joe Schlotzhaver, Consumer Protection of the Attorney General's Office
Margaret Landwehr, AG Office
Greg Bruce, self
Brad Speak, Speaks Funeral Home and CFA
Amy Battagler, Stewart Enterprise

**Buescher Memorial Home & Barbara Buescher Disciplinary Hearing –
11:00 a.m.**

Note: John McCulloch abstained from discussion, deliberation and votes on this portion of the closed meeting.

The Board held a Disciplinary Hearing at 11:00 a.m. for Buescher Memorial Home and Barbara Buescher. Barbara Buescher was not present and no one appeared on her behalf. Margaret Landwehr, Assistant Attorney General represented the State of Missouri and Earl Kraus, Senior Legal Counsel, served as the Board's legal advisor. Testifying as witnesses on behalf of the Board were; Becky Dunn, Barbara Vossen Bruce German, Gregory William Bruce, Leesa Gayle Dooley Wimberley and Lori Hayes. Board members present were Martin Vernon, Gary Fraker, Todd Mahn, James Reinhard, and Joy Gerstein. John McCulloch abstained from the discussion and vote. At the conclusion of the Disciplinary Hearing the Board held its deliberation in 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 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 620.010.14 Subsection (5) 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, James Reinhard, John McCulloch and Joy Gerstein voting in favor with no votes in opposition.

Recess

The Board recessed for lunch at 12:00 p.m. and returned to go into Open Session at 1:00 p.m.

Tuesday, October 20, 2009 1:15 p.m.

Roll Call

Board Members Present

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

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Pam Schnieders, Administrative Assistant
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General
Connie Clarkston, Director of Budget & Legislation
Don Eggen, Chief Investigator

Public Present

Bill Statler, Preneed Resource Company
Amy Battagler, Stewart Enterprise
Don Lakin, Lakin Funeral Home
Darlene Russell, CFL Preneed
Chris Moody, Lobbyist on behalf of SCI
Don Otto, MFDEA/MFT
Mark Warren, MPNC
Bob Baker, MFDEA/MFT
Brad Speaks, Speaks Funeral Home/CFA
Rep. Timothy Meadows, Missouri House of Representatives
Kevin O'Sullivan, O'Sullivan Muckle
Ellen O'Sullivan, O'Sullivan Muckle
Willie Stone, DHSS-BUR
Ivra Cross, DHSS-BUR
J. Scott Lindley, CFA/Lindley Funeral Home

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.

Future Meeting Dates

The December 8-9, 2009 meeting scheduled to be held in Kansas City at the Intercontinental, with open session tentatively scheduled to be held on December 9th.

Senate Bill 1 Implementation Process

A motion was made by John McCulloch and seconded by Gary Fraker to have Emergency Rule titled "Filing of Notice of Intent to Apply" amended and refiled, allowing preneed agents who had filed a Notice of Intent Application, until March 31, 2010 to pass the Missouri law examination. 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 draft a rule allowing preneed contract sellers to collect \$36.00 on insurance-funded as well as all other applicable preneed contracts. Motion carried with Gary Fraker, John McCulloch, James Reinhard and Joy Gerstein voting in favor with Todd Mahn voting in opposition. Motion carried.

Electronic Death Certificate - Update

Ivra Cross addressed the Board and updated them on the electronic filing of death certificates. She stated she is preparing instructions to send to participants in her pilot program, at which time training will begin.

Ivra Cross also addressed concerns with cremations and the filing of a completed death certificate, filing of a written confirmation authorizing the cremation to a funeral director/crematory.

Special Duty Receiver – Update

Don Otto states he has been to a meeting in Texas with Special Duty Receiver and orphan contracts are still in question. Everything is running well.

MFDEA/Don Otto – Update

The consensus of the Board was for the attorneys to get together including Sharon Euler, Assistant Attorney General and Earl Kraus, Senior Legal Counsel with a list of issues the Board is interested in discussing and bring back to the Board for open discussion during open session.

Robert Cowherd Letter/Consumer Funeral Assurance (CFA)

The board reviewed a letter addressed to the Missouri Attorney General's Office relating to issues that Consumer Funeral Assurance (CFA) requested be addressed by the Board.

1. Timely Payment of Claims by National Prearranged Services (NPS).
2. Orphan contracts.
3. Ongoing Consumer Payments on Contracts.
4. Missouri Trust Companies.
5. Access to Telephone Conferences with SDR.
6. Claim Forms from SDR.

Consumer Funeral Assurance is requesting the Board to ask the Attorney General's Office to do something about these issues. Sharon Euler stated issues should be addressed to the SDR and Missouri Guarantee Association as the Attorney General does not have the authority to address these questions.

A motion was made by John McCulloch to take these concerns to the Attorney General's office. No second to the motion was made. Motion failed.

Open Discussion – Dialogue with General Public Attending Open Session Continuation and/or Completion of any Unfinished Open Session Business

A motion was made by James Reinhard to have a series of meetings to discuss ways to solve legal issues, interpretation of statutes, possible development of proposed rules and finance issues. No second to the motion was made. Motion failed.

Discussion was held relating to the development of a list of issues to get this started from attorneys. Bring the issues back to the full board in Open Meeting.

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 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 620.010.14 Subsection (5) 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, James Reinhard, John McCulloch and Joy Gerstein voting in favor with no votes in opposition.

Executive Session

The board went into executive session at 5:00 p.m.

Adjournment

A motion was made by Todd Mahn and seconded by Gary Fraker to adjourn. Motion carried with Gary Fraker, Todd Mahn, James Reinhard, John McCulloch and Joy Gerstein voting in favor with no votes in opposition. The meeting adjourned at 5:45 p.m. on Tuesday, October 20, 2009.

Executive Director: _____

Approved by the Board on: _____

OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors
Conference Call

November 5, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Thursday, November 5, 2009 2:00 p.m.

The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order by Martin Vernon, Chairman, at 2:20 p.m. on Thursday, November 5, 2009, via conference call at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Roll Call

Board Members Present

Martin Vernon, Chairman via conference call
Gary Fraker, Vice-Chairman via conference call
Todd Mahn, Secretary via conference call
James Reinhard, Member via conference call
John McCulloch, Member via conference call
Joy Gerstein, Public Member via conference call

Staff Present

Becky Dunn, Executive Director
Lori Hayes, Inspector
Pam Schnieders, Administrative Assistant
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General via conference call
Kristen Underwood, Assistant Attorney General via conference call

Closed Meeting

Motion was made by John McCulloch 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 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 620.010.14 Subsection (5) RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, and James Reinhard, and Joy Gerstein voting in favor with no votes in opposition.

Adjournment

A motion was made by Gary Fraker and seconded by John McCulloch to adjourn the meeting. Motion carried with Gary Fraker, Todd Mahn, John McCulloch, James Reinhard, and Joy Gerstein voting in favor with no votes in opposition. The meeting adjourned at 2:25 p.m.

Executive Director: _____

Approved by the Board on: _____

No Document for this Agenda Item

No Document for this Agenda Item

**JOINT ACCOUNTS FOR FUNERAL HOMES WITH 50 OR LESS JOINT
CONTRACTS PER YEAR**

Upon the inspectors inspection of the funeral home the Funeral Director would furnish a copy of all joint account preneeds he/she has sold since the previous visit of the inspector.

This should include the name of the beneficiary of the preneed, the Certificate of Deposit account number, the amount of the contract, and the amount that has been paid in to the Certificate.

With this information and the Funeral Director's permission it could be readily checked by the inspector upon going to the local bank where the CD's are held or if the designated auditor selected by the Board could get written permission from the Funeral Director to contact the bank to inspect the CD records to see that they matched what records the Funeral Director had reported.

This would be less expense on the State Board of Embalmers and Funeral Directors and serve the same purpose to see that the funds were properly deposited in a CD.

This would simplify the fee structure by telling you every year how many contracts you should collect on.

Thank you for considering my input and I will be glad to discuss further at the upcoming meeting on June 15th.

Donavon C. Lakin
Lakin Funeral Home
Pierce City, Mo 65723
417-476-2626

Schnieders, Pam

From: Dunn, Becky
Sent: Monday, June 14, 2010 7:13 AM
To: Schnieders, Pam
Cc: Hayes, Lori; 'H. A. & Suzanne'
Subject: please include in open on Tuesday

From: H. A. & Suzanne [mailto:hasr@grm.net]
Sent: Tuesday, April 06, 2010 2:36 PM
To: Dunn, Becky
Subject: insurance policy ownership

Lets talk about state board members that believe that a funeral home or funeral directors cannot be owners of apolicy for a pre need plan. Thank You

H. A. Roberson

Becky Dunn, Executive Director
State Board of Embalmers & Funeral Directors
State Board of Podiatric Medicine
3605 Missouri Blvd.
Jefferson City, Missouri 65109
Phone: 573/751-0813 Fax: 573/751-1155
Email: becky.dunn@pr.mo.gov

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Missouri Revised Statutes

Chapter 333 Embalmers and Funeral Directors

August 28, 2009

Definitions.

333.011. 1. As used in this chapter, unless the context requires otherwise, the following terms have the meanings indicated:

- (1) "Board", the state board of embalmers and funeral directors created by this chapter;
- (2) "Embalmer", any individual licensed to engage in the practice of embalming;
- (3) "Funeral director", any individual licensed to engage in the practice of funeral directing;
- (4) "Funeral establishment", a building, place, crematory, or premises devoted to or used in the care and preparation for burial or transportation of the human dead and includes every building, place or premises maintained for that purpose or held out to the public by advertising or otherwise to be used for that purpose;
- (5) "Funeral merchandise", caskets, grave vaults, receptacles, and other personal property incidental to the final disposition of a dead human body, including grave markers, monuments, tombstones, and urns;
- (6) "Person", any individual, partnership, corporation, cooperative, association, or other entity;
- (7) "Practice of embalming", the work of preserving, disinfecting and preparing by arterial embalming, including the chemical preparation of a dead human body for disposition. Practice of embalming includes all activities leading up to and including arterial and cavity embalming, including but not limited to raising of vessels and suturing of incisions of dead human bodies for funeral services, transportation, burial or cremation, or the holding of oneself out as being engaged in such work;
- (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;
- (9) "Preneed agent", any person authorized to sell a preneed contract for or on behalf of a seller;
- (10) "Provider", the person designated or obligated to provide the final disposition, funeral, or burial services or facilities, or funeral merchandise described in a preneed contract;
- (11) "Seller", the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

2. All terms defined in sections 436.400 to 436.520, RSMo, shall be deemed to have the same meaning when used in this chapter.

(L. 1965 p. 522 § 1, A.L. 2007 S.B. 272, A.L. 2008 S.B. 788, A.L. 2009 S.B. 1)

Definitions.

333.011. 1. As used in this chapter, unless the context requires otherwise, the following terms have the meanings indicated:

...

(11) "Seller", the person who executes a preneed contract with a purchaser **[and who is obligated under such preneed contract to remit payment to the provider]**.

...

Unlicensed person not to engage in practice of embalming or funeral directing.

333.021. 1. No person shall engage in the practice of embalming in this state unless he has a license as required by this chapter.

2. No person shall engage in the practice of funeral directing unless he has a license issued under this chapter nor shall any person use in connection with his name or business any of the words "undertaker", "mortician", "funeral home", "funeral parlor", "funeral chapel", "funeral consultant", "funeral director" or other title implying that he is in the business defined as funeral directing herein, unless he or the individual having control, supervision or management of his business is duly licensed to practice funeral directing in this state.

(L. 1965 p. 522 § 2, A.L. 1981 S.B. 16)

Application for license--fees--examination.

333.031. Each application for a license to practice either embalming or funeral directing shall be in writing, addressed to the board, on forms prescribed, verified and shall contain such information as is required by the board. The application shall include a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing same, subject to the penalties of making a false affidavit or declaration. Each application shall be accompanied by an embalming fee or funeral directing fee. Any applicant for both a license to practice embalming and to practice funeral directing shall pay both fees. If any applicant for a license to practice embalming or funeral directing fails to pass the examination given by the board, he may be given other examinations upon payment of a reexamination fee.

(L. 1965 p. 522 § 3, A.L. 1981 S.B. 16)

Qualifications of applicants--examinations--licenses--board may waive requirements in certain cases.

333.041. 1. Each applicant for a license to practice funeral directing shall furnish evidence to establish to the satisfaction of the board that he or she is:

(1) At least eighteen years of age, and possesses a high school diploma or equivalent thereof;

(2) Either a citizen or a bona fide resident of the state of Missouri or entitled to a license pursuant to section 333.051, or a resident in a county contiguous and adjacent to the state of Missouri who is employed by a funeral establishment located within the state of Missouri, to practice funeral directing upon the grant of a license to do so; and

(3) A person of good moral character.

2. Every person desiring to enter the profession of embalming dead human bodies within the state of Missouri and who is enrolled in an accredited institution of mortuary science education shall register with the board as a practicum student upon the form provided by the board. After such registration, a student may assist, under the direct supervision of Missouri licensed embalmers and funeral directors, in Missouri licensed funeral establishments, while serving his or her practicum for the accredited institution of mortuary science education. The form for registration as a practicum student shall be accompanied by a fee in an amount established by the board.

3. Each applicant for a license to practice embalming shall furnish evidence to establish to the satisfaction of the board that he or she:

(1) Is at least eighteen years of age, and possesses a high school diploma or equivalent thereof;

(2) Is either a citizen or bona fide resident of the state of Missouri or entitled to a license pursuant to section 333.051, or a resident in a county contiguous and adjacent to the state of Missouri who is employed by a funeral establishment located within the state of Missouri, to practice embalming upon the grant of a license to do so;

(3) Is a person of good moral character;

(4) Has graduated from an institute of mortuary science education accredited by the American Board of Funeral Service Education, or any successor organization recognized by the United States Department of Education, for funeral service education. If an applicant does not appear for the final examination before the board within five years from the date of his or her graduation from an accredited institution of mortuary science education, his or her registration as a student embalmer shall be automatically canceled;

(5) Upon due examination administered by the board, is possessed of a knowledge of the subjects of embalming, anatomy, pathology, bacteriology, mortuary administration, chemistry, restorative art, together with statutes, rules and regulations governing the care, custody, shelter and disposition of dead human bodies and the transportation thereof or has passed the national board examination of the Conference of Funeral Service Examining Boards. If any applicant fails to pass the state examination, he or she may retake the examination at the next regular examination meeting. The applicant shall notify the board office of his or her desire to retake the examination at least thirty days prior to the date of the examination. Each time the examination is retaken, the applicant shall pay a new examination fee in an amount established by the board;

(6) Has been employed full time in funeral service in a licensed funeral establishment and has personally embalmed at least twenty-five dead human bodies under the personal supervision of an embalmer who holds a current and valid Missouri embalmer's license or an embalmer who holds a current and valid embalmer's license in a state with which the Missouri board has entered into a reciprocity agreement during an apprenticeship of not less than twelve consecutive months. "Personal supervision" means that the licensed embalmer shall be physically present during the entire embalming process in the first six months of the apprenticeship period and physically present at the beginning of the embalming process and available for consultation and personal inspection within a period of not more than one hour in the remaining six months of the apprenticeship period. All transcripts and other records filed with the board shall become a part of the board files.

4. If the applicant does not appear for oral examination within the five years after his or her graduation from an accredited institution of mortuary science education, then he or she must file a new application and no fees paid previously shall apply toward the license fee.

5. Examinations required by this section and section 333.042 shall be held at least twice a year at times and places fixed by the board. The board shall by rule and regulation prescribe the standard for successful completion of the examinations.

6. Upon establishment of his or her qualifications as specified by this section or section 333.042, the board shall issue to the applicant a license to practice funeral directing or embalming, as the case may require, and shall register the applicant as a duly licensed funeral director or a duly licensed embalmer. Any person having the qualifications required by this section and section 333.042 may be granted both a license to practice funeral directing and to practice embalming.

7. The board shall, upon request, waive any requirement of this chapter and issue a temporary funeral director's license, valid for six months, to the surviving spouse or next of kin or the personal representative of a licensed funeral director, or to the spouse, next of kin, employee or conservator of a licensed funeral director disabled because of sickness, mental incapacity or injury.

333.041. 1. Each applicant for a license to practice funeral directing shall furnish evidence to establish to the satisfaction of the board that he or she is:

(1) At least eighteen years of age, and possesses a high school diploma or equivalent thereof;

(3) A person of good moral character.

2. Every person desiring to enter the profession of embalming dead human bodies within the state of Missouri and who is enrolled in an accredited institution of mortuary science education shall register with the board as a practicum student upon the form provided by the board. After such registration, a student may assist, under the direct supervision of Missouri licensed embalmers and funeral directors, in Missouri licensed funeral establishments, while serving his or her practicum for the accredited institution of mortuary science education. The form for registration as a practicum student shall be accompanied by a fee in an amount established by the board.

3. Each applicant for a license to practice embalming shall furnish evidence to establish to the satisfaction of the board that he or she:

(1) Is at least eighteen years of age, and possesses a high school diploma or equivalent thereof;

[(2) Is either a citizen or bona fide resident of the state of Missouri or entitled to a license pursuant to section 333.051, or a resident in a county contiguous and adjacent to the state of Missouri who is employed by a funeral establishment located within the state of Missouri, to practice embalming upon the grant of a license to do so;]

(3) Is a person of good moral character;

(4) Has graduated from an institute of mortuary science education accredited by the American Board of Funeral Service Education, or any successor organization recognized by the United States Department of Education, for funeral service education. If an applicant does not appear for the final examination before the board within five years from the date of his or her graduation from an accredited institution of mortuary science education, his or her registration as a student embalmer shall be automatically canceled;

(5) Upon due examination administered by the board, is possessed of a knowledge of the subjects of embalming, anatomy, pathology, bacteriology, mortuary administration, chemistry, restorative art, together with statutes, rules and regulations governing the care, custody, shelter and disposition of dead human bodies and the transportation thereof or has passed the national board examination of the Conference of Funeral Service Examining Boards. If any

applicant fails to pass the state examination, he or she may retake the examination at the next regular examination meeting. The applicant shall notify the board office of his or her desire to retake the examination at least thirty days prior to the date of the examination. Each time the examination is retaken, the applicant shall pay a new examination fee in an amount established by the board;

(6) Has been employed full time in funeral service in a licensed funeral establishment and has personally embalmed at least twenty-five dead human bodies under the personal supervision of an embalmer who holds a current and valid Missouri embalmer's license or an embalmer who holds a current and valid embalmer's license in a state with which the Missouri board has entered into a reciprocity agreement during an apprenticeship of not less than twelve consecutive months. "Personal supervision" means that the licensed embalmer shall be physically present during the entire embalming process in the first six months of the apprenticeship period and physically present at the beginning of the embalming process and available for consultation and personal inspection within a period of not more than one hour in the remaining six months of the apprenticeship period. All transcripts and other records filed with the board shall become a part of the board files.

4. If the applicant does not appear for oral examination within the five years after his or her graduation from an accredited institution of mortuary science education, then he or she must file a new application and no fees paid previously shall apply toward the license fee.

5. Examinations required by this section and section 333.042 shall be held at least twice a year at times and places fixed by the board. The board shall by rule and regulation prescribe the standard for successful completion of the examinations.

6. Upon establishment of his or her qualifications as specified by this section or section 333.042, the board shall issue to the applicant a license to practice funeral directing or embalming, as the case may require, and shall register the applicant as a duly licensed funeral director or a duly licensed embalmer. Any person having the qualifications required by this section and section 333.042 may be granted both a license to practice funeral directing and to practice embalming.

7. The board shall, upon request, waive any requirement of this chapter and issue a temporary funeral director's license, valid for six months, to the surviving spouse or next of kin or the personal representative of a licensed funeral director, or to the spouse, next of kin, employee or conservator of a licensed funeral director disabled because of sickness, mental incapacity or injury.

Qualifications of applicants--examinations--licenses--board may waive requirements in certain cases.

333.041.

4. If the applicant does not **[appear for oral examination] complete the application process** within **[the]** five years after his or her graduation from an accredited institution of mortuary science education, then he or she must file a new application and no fees paid previously shall apply toward the license fee.

(L. 1965 p. 522 § 4, A.L. 1969 H.B. 56, A.L. 1977 S.B. 6, A.L. 1981 S.B. 16, A.L. 1983 S.B. 44 & 45, A.L. 1993 S.B. 27, A.L. 1998 S.B. 854, A.L. 2001 H.B. 48)

Application and examination fees for persons wanting to be funeral directors, apprenticeship requirements--examination content for applicants--apprenticeship duties--appearance before board--limited license only for cremation--exemptions from apprenticeship.

333.042. 1. Every person desiring to enter the profession of funeral directing in this state shall make application with the state board of embalmers and funeral directors and pay the current application and examination fees. Applicants not entitled to a license pursuant to section 333.051 shall serve an apprenticeship for at least twelve months in a funeral establishment licensed for the care and preparation for burial and transportation of the human dead in this state or in another state which has established standards for admission to practice funeral directing equal to, or more stringent than, the requirements for admission to practice funeral directing in this state. The applicant shall devote at least fifteen hours per week to his or her duties as an apprentice under the supervision of a Missouri licensed funeral director. Such applicant shall submit proof to the board, on forms provided by the board, that the applicant has arranged and conducted ten funeral services during the applicant's apprenticeship under the supervision of a Missouri licensed funeral director. Upon completion of the apprenticeship, the applicant shall appear before the board to be tested on the applicant's legal and practical knowledge of funeral directing, funeral home licensing, preneed funeral contracts and the care, custody, shelter, disposition and transportation of dead human bodies. Upon acceptance of the application and fees by the board, an applicant shall have twenty-four months to successfully complete the requirements for licensure found in this section or the application for licensure shall be canceled.

2. If a person applies for a limited license to work only in a funeral establishment which is licensed only for cremation, including transportation of dead human bodies to and from the funeral establishment, he or she shall make application, pay the current application and examination fee and successfully complete the Missouri law examination. He or she shall be exempt from the twelve-month apprenticeship and the practical examination before the board. If a person has a limited license issued pursuant to this subsection, he or she may obtain a full funeral director's license if he or she fulfills the apprenticeship and successfully completes the funeral director practical examination.

3. If an individual is a Missouri licensed embalmer or has graduated from an institute of mortuary science education accredited by the American Board of Funeral Service Education or any successor organization recognized by the United States Department of Education for funeral service education, or has successfully completed a course of study in funeral directing offered by a college accredited by a recognized national, regional or state accrediting body and approved by the state board of embalmers and funeral directors, and desires to enter the profession of funeral directing in this state, the individual shall comply with all the requirements for licensure as a funeral director pursuant to subsection 1 of section 333.041 and subsection 1 of this section; however, the individual is exempt from the twelve-month apprenticeship required by subsection 1 of this section.

(L. 1993 S.B. 27, A.L. 1998 S.B. 854, A.L. 2001 H.B. 48)

Licenses for nonresidents--recognition of persons licensed in other states--fees.

333.051. 1. Any nonresident individual holding a valid, unrevoked and unexpired license as a funeral director or embalmer in the state of his residence may be granted a license to practice funeral directing or embalming in this state on application to the board and on providing the board with such evidence as to his qualifications as is required by the board. No license shall be granted to a nonresident applicant except one who resides in a county contiguous and adjacent to the state of Missouri and who is regularly engaged in the practice of funeral directing or embalming, as defined by this chapter, at funeral establishments within this state or in an establishment located in a county contiguous and adjacent to the state of Missouri, unless the law of the state of the applicant's residence authorizes the granting of licenses to practice funeral directing in such state to persons licensed as

Application and examination fees for persons wanting to be funeral directors, apprenticeship requirements--examination content for applicants--apprenticeship duties--appearance before board--limited license only for cremation--exemptions from apprenticeship.

333.042. 1. Every person desiring to enter the profession of funeral directing in this state shall make application with the state board of embalmers and funeral directors and pay the current application and examination fees. Applicants not entitled to a license pursuant to section 333.051 shall serve an apprenticeship for at least twelve **consecutive** months in a funeral establishment licensed for the care and preparation for burial and transportation of the human dead in this state or in another state which has established standards for admission to practice funeral directing equal to, or more stringent than, the requirements for admission to practice funeral directing in this state. The applicant shall devote at least fifteen hours per week to his or her duties as an apprentice under the supervision of a Missouri licensed funeral director. Such applicant shall submit proof to the board, on forms provided by the board, that the applicant has arranged and conducted ten funeral services during the applicant's apprenticeship under the supervision of a Missouri licensed funeral director. Upon completion of the apprenticeship, the applicant shall appear before the board to be tested on the applicant's legal and practical knowledge of funeral directing, funeral home licensing, preneed funeral contracts and the care, custody, shelter, disposition and transportation of dead human bodies. Upon acceptance of the application and fees by the board, an applicant shall have twenty-four months to successfully complete the requirements for licensure found in this section or the application for licensure shall be canceled.

2. If a person applies for a limited license to work only in a funeral establishment which is licensed only for cremation, including transportation of dead human bodies to and from the funeral establishment, he or she shall make application, pay the current application and examination fee and successfully complete the Missouri law examination. He or she shall be exempt from the twelve **consecutive** month apprenticeship and the practical examination before the board. If a person has a limited license issued pursuant to this subsection, he or she may obtain a full funeral director's license if he or she fulfills the apprenticeship and successfully completes the funeral director practical examination.

3. If an individual is a Missouri licensed embalmer or has graduated from an institute of mortuary science education accredited by the American Board of Funeral Service Education or any successor organization recognized by the United States Department of Education for funeral service education, or has successfully completed a course of study in funeral directing offered by a college accredited by a recognized national, regional or state accrediting body and approved by the state board of embalmers and funeral directors, and desires to enter the profession of funeral directing in this state, the individual shall comply with all the requirements for licensure as a funeral director pursuant to subsection 1 of section 333.041 and subsection 1 of this section; however, the individual is exempt from the twelve **consecutive** month apprenticeship required by subsection 1 of this section.

funeral directors under the law of the state of Missouri.

2. Any individual holding a valid, unrevoked and unexpired license as an embalmer or funeral director in another state having requirements substantially similar to those existing in this state who is or intends to become a resident of this state may apply for a license to practice in this state by filing with the board a certified statement from the examining board of the state or territory in which the applicant holds his license showing the grade rating upon which his license was granted, together with a recommendation, and the board shall grant the applicant a license upon his successful completion of an examination over Missouri laws as required in section 333.041 or section 333.042 if the board finds that the applicant's qualifications meet the requirements for funeral directors or embalmers in this state at the time the applicant was originally licensed in the other state.

3. A person holding a valid, unrevoked and unexpired license to practice funeral directing or embalming in another state or territory with requirements less than those of this state may, after five consecutive years of active experience as a licensed funeral director or embalmer in that state, apply for a license to practice in this state after passing a test to prove his proficiency, including but not limited to a knowledge of the laws and regulations of this state as to funeral directing and embalming.

(L. 1965 p. 522 § 5, A.L. 1981 S.B. 16, A.L. 1998 S.B. 854)

No funeral establishment to be operated by unlicensed person--license requirements, application procedure--license may be suspended or revoked or not renewed.

333.061. 1. No funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

(1) That the establishment is under the general management and the supervision of a duly licensed funeral director;

(2) That all embalming performed therein is performed by or under the direct supervision of a duly licensed embalmer;

(3) That any place in the funeral establishment where embalming is conducted contains a preparation room with a sanitary floor, walls and ceiling, and adequate sanitary drainage and disposal facilities including running water, and complies with the sanitary standard prescribed by the department of health and senior services for the prevention of the spread of contagious, infectious or communicable diseases;

(4) Each funeral establishment shall have available in the preparation or embalming room a register book or log which shall be available at all times in full view for the board's inspector and the name of each body embalmed, place, if other than at the establishment, the date and time that the embalming took place, the name and signature of the embalmer and the embalmer's license number shall be noted in the book; and

(5) The establishment complies with all applicable state, county or municipal zoning ordinances and regulations.

3. The board shall grant or deny each application for a license pursuant to this section within thirty days after it is filed. The applicant may request in writing up to two thirty-day extensions of the application, provided the request for an extension is received by the board prior to the expiration of the thirty-day application or extension period.

4. Licenses shall be issued pursuant to this section upon application and the payment of a funeral establishment fee and shall be renewed at the end of the licensing period on the establishment's renewal date.

333.051. 1. Any nonresident individual holding a valid, unrevoked and unexpired license as a funeral director or embalmer in the state of his residence may be granted a license to practice funeral directing or embalming in this state on application to the board and on providing the board with such evidence as to his qualifications as is required by the board. No license shall be granted to a nonresident applicant [except one who resides in a county contiguous and adjacent to the state of Missouri and who is regularly engaged in the practice of funeral directing or embalming, as defined by this chapter, at funeral establishments within this state or in an establishment located in a county contiguous and adjacent to the state of Missouri] unless the law of the state of the applicant's residence authorizes the granting of licenses to practice funeral directing or embalming in such state to persons licensed as funeral directors under the law of the state of Missouri.

No funeral establishment to be operated by unlicensed person--license requirements, application procedure--license may be suspended or revoked or not renewed.

333.061. 1. No funeral establishment shall be operated in this state unless the owner or operator thereof has a license issued by the board.

2. A license for the operation of a funeral establishment shall be issued by the board, if the board finds:

(1) That the establishment is under the general management and the supervision of a duly licensed funeral director;

(2) That all embalming performed therein is performed by or under the direct supervision of a duly licensed embalmer;

(3) That any place in the funeral establishment where embalming is conducted contains a preparation room with a sanitary floor, walls and ceiling, and adequate sanitary drainage and disposal facilities including running water, and complies with the sanitary standard prescribed by the department of health and senior services for the prevention of the spread of contagious, infectious or communicable diseases;

(4) Each funeral establishment shall have available **[in the preparation or embalming room]** a register book or log which shall be available at all times in full view for the board's inspector and the name of each body embalmed, place, if other than at the establishment, the date and time that the embalming took place, the name and signature of the embalmer and the embalmer's license number shall be noted in the book; and

(5) The establishment complies with all applicable state, county or municipal zoning ordinances and regulations.

3. The board shall grant or deny each application for a license pursuant to this section within thirty days after it is filed. The applicant may request in writing up to two thirty-day extensions of the application, provided the request for an extension is received by the board prior to the expiration of the thirty-day application or extension period.

4. Licenses shall be issued pursuant to this section upon application and the payment of a funeral establishment fee and shall be renewed at the end of the licensing period on the establishment's renewal date.

5. The board may refuse to renew or may suspend or revoke any license issued pursuant to this section if it finds, after hearing, that the funeral establishment does not meet any of the requirements set forth in this section as conditions for the issuance of a license, or for the violation by the owner of the funeral establishment of any of the provisions of section 333.121. No new license shall be issued to the owner of a funeral establishment or to any corporation controlled by such owner for three years after the revocation of the license of the owner or of a corporation controlled by the owner. Before any action is taken pursuant to this subsection the procedure for notice and hearing as prescribed by section 333.121 shall be followed.

5. The board may refuse to renew or may suspend or revoke any license issued pursuant to this section if it finds, after hearing, that the funeral establishment does not meet any of the requirements set forth in this section as conditions for the issuance of a license, or for the violation by the owner of the funeral establishment of any of the provisions of section 333.121. No new license shall be issued to the owner of a funeral establishment or to any corporation controlled by such owner for three years after the revocation of the license of the owner or of a corporation controlled by the owner. Before any action is taken pursuant to this subsection the procedure for notice and hearing as prescribed by section 333.121 shall be followed.

(L. 1965 p. 522 § 6, A.L. 1981 S.B. 16, A.L. 2001 H.B. 48)

Business to be conducted where.

333.071. The business or profession of an individual licensed to practice embalming or funeral directing shall be conducted and engaged in at a funeral establishment. This section does not prevent a licensed funeral director owning or employed by a licensed funeral establishment from conducting an individual funeral from another and different funeral establishment or at a church, a residence, public hall, or lodge room.

(L. 1965 p. 522 § 7, A.L. 1981 S.B. 16)

License renewal, fee--failure to renew, effect--business address required.

333.081. 1. Each license issued to a funeral director or embalmer pursuant to this chapter shall expire unless renewed on or before the renewal date. The board may, however, provide for the renewal of licenses held by individuals who are not actively engaged in practice and who are over sixty-five years of age without fee. The board shall renew any such license upon due application for renewal and upon the payment of the renewal fee, except that no license shall expire during the period when the holder thereof is actively engaged in the military service of the United States. Any licensee exempted from the renewal of his or her license because of military service shall, before beginning practice in this state after leaving military service, apply for and pay the renewal fee for the current licensing period.

2. When renewing a funeral director's or embalmer's license the licensee shall specify the address of the funeral establishment at which he or she is practicing or proposes to practice and shall notify the board of any termination of his or her connection therewith. The licensee shall notify the board of any new employment or connection with a funeral establishment of a permanent nature. If the licensee is not employed at or connected with a funeral establishment he shall notify the board of his or her permanent address.

3. The holder of an expired license shall be issued a new license by the board within two years of the renewal date after he or she has paid delinquent renewal fees. Any license not renewed within two years shall be void.

4. Failure of the licensee to receive the renewal notice shall not relieve the licensee of the duty to pay the renewal fee and renew his or her license.

(L. 1965 p. 522 § 8, A.L. 1981 S.B. 16, A.L. 2001 H.B. 48)

License to be recorded, displayed.

333.091. Each establishment, funeral director or embalmer receiving a license under this chapter shall have recorded in the office of the local registrar of vital statistics of the registration district in which the licensee practices. All licenses or registrations, or duplicates thereof, issued pursuant to this chapter shall be displayed at each place of business.

333.091. Each establishment, funeral director or embalmer receiving a
2 license under this chapter shall have **[the]** recorded in the office of the local
3 registrar of vital statistics of the registration district in which the licensee
4 practices. **[The licenses or duplicates shall be displayed in the office(s) or place(s)**
5 of business.] All licenses or registrations, or duplicates thereof, issued
6 pursuant to this chapter shall be displayed at each place of business.

333.101. The board or any member thereof or any agent duly authorized
2 by it may enter the office, premises, establishment or place of business of any

3 [funeral service licensee in this state] [licensee or registrant,] or any office,

4 premises, establishment or place where the practice of funeral directing **[or],**

5 embalming, preneed selling or providing is carried on, or where such practice

[License to be recorded, displayed.

333.091. Each establishment, funeral director or embalmer receiving a license under this chapter shall have recorded in the office of the local registrar of vital statistics of the registration district in which the licensee practices. All licenses or registrations, or duplicates thereof, issued pursuant to this chapter shall be displayed at each place of business.]

(L. 1965 p. 522 § 9, A.L. 1981 S.B. 16, A.L. 2009 S.B. 1)

Places of business may be inspected.

333.101. The board or any member thereof or any agent duly authorized by it may enter the office, premises, establishment or place of business of any licensee or registrant, or any office, premises, establishment or place where the practice of funeral directing, embalming, preneed selling or providing is carried on, or where such practice is advertised as being carried on for the purpose of inspecting said office, premises or establishment and for the purpose of inspecting the license and registration of any licensee or registrant and the manner and scope of training given by the licensee or registrant to the apprentice operating therein.

(L. 1965 p. 522 § 10, A.L. 1981 S.B. 16, A.L. 2009 S.B. 1)

Rules and regulations of board, procedure--fees, how set.

333.111. 1. The board shall adopt and enforce rules and regulations for the transaction of its business and for standards of service and practice to be followed in the professions of embalming and funeral directing deemed by it necessary for the public good and consistent with the laws of this state. The board may also prescribe a standard of proficiency as to the qualifications and fitness of those engaging in the practice of embalming or funeral directing.

2. The board shall set the amount of the fees which this chapter authorizes and requires by rules and regulations promulgated pursuant to section 536.021, RSMo. The fees shall be set at a level to produce revenue which shall not substantially exceed the cost and expense of administering this chapter.

3. No rule or portion of a rule promulgated under the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

(L. 1965 p. 522 § 11, A.L. 1981 S.B. 16, A.L. 1993 S.B. 52, A.L. 1995 S.B. 3)

Written statement of charges, required when, content--merchandise prices to be indicated.

333.145. 1. Every funeral firm in this state or the funeral service licensee thereof shall give or cause to be given to the person or persons making funeral arrangements or arranging for the disposition of a dead human body, at the time such arrangements are completed and prior to the time of rendering the service or providing the merchandise, a written statement signed by the purchaser or purchasers or their legal representatives, and a representative of the funeral establishment, showing to the extent then known:

- (1) The price of the service that the person or persons have selected and what is included therein;
- (2) The price of each of the supplemental items of service or merchandise requested;
- (3) The amount involved for each of the items for which the firm will advance moneys as an accommodation to the family;
- (4) The method of payment.

2. A funeral establishment shall not bill or cause to be billed any item that is referred to as a "cash advance" item unless the net amount paid for such item or items by the funeral establishment is the same as is billed by the

funeral establishment.

3. All merchandise displayed in or by funeral establishments in this state shall have the price of the merchandise and included services, if any, clearly marked or indicated on the merchandise at all times.

(L. 1981 S.B. 16)

Board members--qualifications--terms--vacancies.

333.151. 1. The state board of embalmers and funeral directors shall consist of ten members, including one voting public member appointed by the governor with the advice and consent of the senate. Each member, other than the public member, appointed shall possess either a license to practice embalming or a license to practice funeral directing in this state or both said licenses and shall have been actively engaged in the practice of embalming or funeral directing for a period of five years next before his or her appointment. Each member shall be a United States citizen, a resident of this state for a period of at least one year, a qualified voter of this state and shall be of good moral character. Not more than five members of the board shall be of the same political party. The nonpublic members shall be appointed by the governor, with the advice and consent of the senate, one from each of the state's congressional districts be of good moral character and submit an audited financial statement of their funeral establishment by an independent auditor for the previous five years. This audited financial statement must include all at-need and preneed business.

2. Each member of the board shall serve for a term of five years. Any vacancy on the board shall be filled by the governor and the person appointed to fill the vacancy shall possess the qualifications required by this chapter and shall serve until the end of the unexpired term of his or her predecessor, if any.

3. The public member shall be at the time of his or her appointment a person who is not and never was a member of any profession licensed or regulated pursuant to this chapter or the spouse of such person; and a person who does not have and never has had a material, financial interest in either the providing of the professional services regulated by this chapter, or an activity or organization directly related to any profession licensed or regulated pursuant to this chapter. All members, including public members, shall be chosen from lists submitted by the director of the division of professional registration. The duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements or of the technical competence or technical judgment of a licensee or a candidate for licensure.

(L. 1965 p. 522 § 15, A.L. 1981 S.B. 16, A.L. 1999 H.B. 343, A.L. 2009 S.B. 1)

Board members to take oath.

333.161. Each member of the board shall be duly commissioned by the governor and shall take and subscribe an oath to support the Constitution of the United States and the state of Missouri and to demean himself faithfully in office. A copy of the oath shall be endorsed on the commission.

(L. 1965 p. 522 § 16)

Board meetings--notice--quorum--seal.

333.171. The board shall hold at least two regular meetings each year for the purpose of administering examinations at times and places fixed by the board. Other meetings shall be held at the times fixed by regulations of the board or on the call of the chairman of the board. Notice of the time and place of each regular or special meeting shall be mailed by the executive secretary to each member of the board at least five days

Board members--qualifications--terms--vacancies.

333.151. 1. The state board of embalmers and funeral directors shall consist of ten members, including one voting public member appointed by the governor with the advice and consent of the senate. Each member, other than the public member, appointed shall possess either a license to sell preneed, a license to practice embalming or a license to practice funeral directing in this state or [both] any said licenses and shall have been actively engaged in the practice of preneed selling, embalming or funeral directing for a period of five years next before his or her appointment. Each member shall be a United States citizen, a resident of this state for a period of at least one year, a qualified voter of this state and shall be of good moral character. Not more than five members of the board shall be of the same political party. The nonpublic members shall be appointed by the governor, with the advice and consent of the senate, one from each of the state's congressional districts be of good moral character and submit [an audited] financial statements of the [ir] funeral establishment or preneed seller set out on their license. Said financial statements must be [by an independent auditor] for the previous five years^s. This audited financial statement must] and include all at-need and preneed business.

333.151

1. The state board of embalmers and funeral directors shall consist of **[10] six** members, including one voting public member appointed by the governor with the advice and consent of the senate.

Not more than **three [five]** members of the board shall be of the same political party.

The non-public member **[s]** shall be appointed by the Governor, with the advice and consent of the senate. **[, one from each of the state's congressional districts be of good moral character and submit an audited financial statement of their funeral establishment by an independent auditor for the previous five years. The audited financial statement must include all at-need and preneed business.]**

Board members--qualifications--terms--vacancies.

333.151. 1. The state board of embalmers and funeral directors shall consist of ten members, including one voting public member appointed by the governor with the advice and consent of the senate. Each member, other than the public member, appointed shall possess either a license to practice embalming or a license to practice funeral directing in this state or both said licenses and shall have been actively engaged in the practice of embalming or funeral directing for a period of five years next before his or her appointment, **except that one member may be a registered preneed agent registered for a period of 5 years before his or her appointment.** Each member shall be a United States citizen, a resident of this state for a period of at least one year, a qualified voter of this state and shall be of good moral character. Not more than five members of the board shall be of the same political party. The nonpublic members shall be appointed by the governor, with the advice and consent of the senate, one from each of the state's congressional districts be of good moral character and submit an audited financial statement **[of their funeral establishment by an independent auditor for the previous five years. This audited financial statement must include all at-need and preneed business].**

2. Each member of the board shall serve for a term of five years. Any vacancy on the board shall be filled by the governor and the person appointed to fill the vacancy shall possess the qualifications required by this chapter and shall serve until the end of the unexpired term of his or her predecessor, if any.

3. The public member shall be at the time of his or her appointment a person who is not and never was a member of any profession licensed or regulated pursuant to this chapter or the spouse of such person; and a person who does not have and never has had a material, financial interest in either the providing of the professional services regulated by this chapter, or an activity or organization directly related to any profession licensed or regulated pursuant to this chapter. All members, including public members, shall be chosen from lists submitted by the director of the division of professional registration. The duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements or of the technical competence or technical judgment of a licensee or a candidate for licensure.

Board members--qualifications--terms--vacancies.

333.151. 1. The state board of embalmers and funeral directors shall consist of ~~[ten]~~ **six** members, including ~~[one]~~ **two** voting public members appointed by the governor with the advice and consent of the senate. Each member, other than the public members, appointed shall possess either a license to practice embalming or a license to practice funeral directing in this state or both said licenses and shall have been actively engaged in the practice of embalming or funeral directing for a period of five years next before his or her appointment. Each member shall be a United States citizen, a resident of this state for a period of at least one year, a qualified voter of this state and shall be of good moral character. Not more than ~~[five]~~ **three** members of the board shall be of the same political party. The nonpublic members shall be appointed by the governor, with the advice and consent of the senate, one from each of the state's congressional districts be of good moral character and submit an audited financial statement of their funeral establishment by an independent auditor for the previous five years. This audited financial statement must include all at-need and preneed business.

2. Each member of the board shall serve for a term of five years. Any vacancy on the board shall be filled by the governor and the person appointed to fill the vacancy shall possess the qualifications required by this chapter and shall serve until the end of the unexpired term of his or her predecessor, if any.

3. The public members shall be at the time of his or her appointment a person who is not and never was a member of any profession licensed or regulated pursuant to this chapter or the spouse of such person; and a person who does not have and never has had a material, financial interest in either the providing of the professional services regulated by this chapter, or an activity or organization directly related to any profession licensed or regulated pursuant to this chapter. All members, including public members, shall be chosen from lists submitted by the director of the division of professional registration. The duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements or of the technical competence or technical judgment of a licensee or a candidate for licensure.

before the date of the meeting. At all meetings of the board three members constitute a quorum. The board may adopt and use a common seal.

(L. 1965 p. 522 § 17, A.L. 1981 S.B. 16)

Officers of board.

333.181. At one of its regular meetings, the board shall elect a chairman, vice chairman and secretary from the members of the board. Each such officer shall serve as such for a term fixed by regulation of the board and shall perform such duties as are required by the regulations of the board and by law.

(L. 1965 p. 522 § 18)

Examinations, notice, published, when.

333.201. The board shall publish notice of each examination held by the board at least thirty days before any examination is to be held, advising the time and place of the examination.

(L. 1965 p. 522 § 20, A.L. 1980 H.B. 1266, A.L. 1981 S.B. 16)

Compensation of board members--board may employ personnel.

333.221. 1. Each member of the board shall receive as compensation an amount set by the board not to exceed fifty dollars for each day devoted to the affairs of the board, and shall be entitled to reimbursement of his expenses necessarily incurred in the discharge of his official duties.

2. The board may employ such board personnel, as defined in subdivision (4) of subsection 11 of section 324.001, RSMo, including legal counsel, as is necessary for the administration of this chapter.

(L. 1965 p. 522 § 22, A.L. 1980 H.B. 1266, A.L. 1981 S.B. 16, A.L. 2008 S.B. 788, A.L. 2009 S.B. 1)

Fund created, use, funds transferred to general revenue, when.

333.231. 1. All fees payable under this chapter shall be collected by the division of professional registration and transmitted to the department of revenue for deposit in the state treasury to the credit of the fund to be known as the "Board of Embalmers and Funeral Directors' Fund".

2. All compensation of board members and employees and all expenses incident to the administration of this chapter shall be paid out of the board of embalmers and funeral directors' fund. No expense of this board shall ever be paid out of any other fund of the state, either by deficiency bill or otherwise.

3. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of general revenue until the amount in the fund at the end of the biennium exceeds two times the amount of the appropriation from the board's funds for the preceding fiscal year or, if the board requires by rule permit renewal less frequently than yearly, then three times the appropriation from the board's funds for the preceding fiscal year. The amount, if any, in the fund which shall lapse is that amount in the fund which exceeds the appropriate multiple of the appropriations from the board's funds for the preceding fiscal year.

examination, or audit of the provider's books and records which contain information concerning preneed contracts sold for or on behalf of a seller or in which the applicant is named as a provider; and

(6) If the applicant is a corporation, each officer, director, manager, or controlling shareholder shall be eligible for licensure if they were applying for licensure as an individual.

3. Each preneed provider shall apply to renew his or her license on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section 324.001, RSMo. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

(1) File an application for renewal on a form established by the board by rule;

(2) Pay a renewal fee in an amount established by the board by rule, however no renewal fee shall be required for any funeral establishment whose Missouri license is current and active;

(3) Be authorized and registered with the Missouri secretary of state to conduct business in Missouri;

(4) File an annual report with the state board which shall contain:

(a) The name and address of a custodian of records responsible for maintaining the books and records of the provider relating to preneed contracts;

(b) The business name or names used by the provider and all addresses from which it engages in the practice of its business;

(c) The name and address of each seller with whom it has entered into a written agreement since last filing an annual report with the board authorizing the seller to designate or obligate the licensee as the provider in a preneed contract; and

(d) Any information required by any other applicable statute or regulation enacted pursuant to state or federal law.

4. A license which has not been renewed as provided by this section shall expire. A licensee who fails to apply for renewal may apply for reinstatement within two years of the renewal date by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board by rule.

(L. 2009 S.B. 1)

Seller license required--application procedure--renewal of licensure--expiration of license.

333.320. 1. No person shall sell, perform, or agree to perform the seller's obligations under, or be designated as the seller of, any preneed contract unless, at the time of the sale, performance, agreement, or designation, such person is licensed by the board as a seller and authorized and registered with the Missouri secretary of state to conduct business in Missouri.

2. An applicant for a preneed seller license shall:

(1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule;

(2) Be an individual resident of Missouri who is eighteen years of age or older, or a business entity registered with the Missouri secretary of state to transact business in Missouri;

(L. 1965 p. 522 § 23, A.L. 1980 H.B. 1266, A.L. 1981 S.B. 16, A.L. 1985 S.B. 99)

Application of law.

333.251. Nothing in this chapter shall apply to nor in any manner interfere with the duties of any officer of local or state institutions, nor shall this chapter apply to any person engaged simply in the furnishing of burial receptacles for the dead at the time of need.

(L. 1965 p. 522 § 25, A.L. 2009 S.B. 1)

Violations are misdemeanors.

333.261. Any person who violates any provision of this chapter is guilty of a class A misdemeanor.

(L. 1965 p. 522 § 26, A.L. 1981 S.B. 16)

Applicability of law.

333.310. The provisions of sections 333.310 to 333.340 shall not apply to a cemetery operator who sells contracts or arrangements for services for which payments received by, or on behalf of, the purchaser are required to be placed in an endowed care fund or for which a deposit into a segregated account is required under chapter 214, RSMo; provided that a cemetery operator shall comply with sections 333.310 to 333.340 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer.

(L. 2009 S.B. 1)

Provider license required--application procedure--renewal of licensure--expiration of license.

333.315. 1. No person shall be designated as a provider or agree to perform the obligations of a provider under a preneed contract unless, at the time of such agreement or designation, such person is licensed as a preneed provider by the board. Nothing in this section shall exempt any person from meeting the licensure requirements for a funeral establishment as provided in this chapter.

2. An applicant for a preneed provider license shall:

- (1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule;
- (2) Be authorized and registered with the Missouri secretary of state to conduct business in Missouri;
- (3) Identify the name and address of a custodian of records responsible for maintaining the books and records of the provider relating to preneed contracts;
- (4) Identify the name and address of each seller authorized by the provider to sell preneed contracts in which the provider is designated or obligated as the provider;
- (5) File with the state board a written consent authorizing the state board to inspect or order an investigation,

Applicability of law.

333.310. The provisions of sections 333.310 to 333.340 shall not apply to a cemetery operator licensed pursuant to R.S.Mo. Section 214.275 who sells contracts or arrangements for funeral merchandise or services for which payments received by, or on behalf of, the purchaser are deposited either to an escrow account, or a preneed trust, governed by an agreement approved by the Office of Endowed Care Cemeteries [required to be placed in an endowed care fund or for which a deposit into a segregated account is required under chapter 214, RSMo];l provided that a cemetery operator shall comply with sections 333.310 to 333.340 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer.

Registration as a preneed agent required--application procedure--renewal of registration--expiration of registration.

- (3) If the applicant is a corporation, each officer, director, manager, or controlling shareholder, shall be eligible for licensure if they were applying for licensure as an individual;
- (4) Meet all requirements for licensure;
- (5) Identify the name and address of a custodian of records responsible for maintaining the books and records of the seller relating to preneed contracts;
- (6) Identify the name and address of each licensed provider that has authorized the seller to designate such person as a provider under a preneed contract;
- (7) Have established, as grantor, a preneed trust or an agreement to utilize a preneed trust with terms consistent with sections 436.400 to 436.520, RSMo. A trust shall not be required if the applicant certifies to the board that the seller will only sell insurance-funded or joint account-funded preneed contracts;
- (8) Identify the name and address of a trustee or, if applicable, the financial institution where any preneed trust or joint accounts will be maintained; and
- (9) File with the board a written consent authorizing the state board to inspect or order an investigation, examination, or audit of the seller's books and records which contain information concerning preneed contracts sold by or on behalf of the seller.
3. Each seller shall apply to renew his or her license on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section 324.001, RSMo. A license which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:

- (1) File an application for renewal on a form established by the board by rule;
- (2) Pay a renewal fee in an amount established by the board by rule; and
- (3) File annually with the board a signed and notarized annual report as required by section 436.460, RSMo.

4. Any license which has not been renewed as provided by this section shall expire. A licensee who fails to apply for renewal within two years of the renewal date may apply for reinstatement by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board by rule.

(L. 2009 S.B. 1)

Registration as a preneed agent required--application procedure--renewal of registration--expiration of registration.

333.325. 1. No person shall sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of, a seller unless registered with the board as a preneed agent except for individuals who are licensed as funeral directors under this chapter. The board shall maintain a registry of all preneed agents registered with the board. The registry shall be deemed an open record and made available on the board's web site.

2. An applicant for a preneed agent registration shall be an individual who shall:

- (1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license;
- (2) Be eighteen years of age or older;

333.315 (6) page 5 333.320 2.(3) page 7

Background checks conducted by the Board shall include.

New language

Fingerprints upon initial application with the Board

Title: All applicants for licensure or registration with the Board shall provide proof of submitting fingerprints to the Missouri State Highway Patrol.

Purpose: This language describes the requirement of all applicants for licensure or registration with the Board to provide proof of submitting his or her fingerprints to the Missouri State Highway Patrol or the Missouri State Highway Patrol's approved vendor for both a Missouri State Highway Patrol and a Federal Bureau of Investigation fingerprint background check.

(1) All applicants for licensure or registration with the Missouri Board of Embalmers and Funeral Directors shall, upon application with the Board after **(DATE)**, provide proof of having submitted fingerprints to the Missouri State Highway Patrol's approved vendor for both a Missouri State Highway Patrol and a Federal Bureau of Investigation fingerprint background check.

(2) Any fees due to fingerprint background checks shall be paid by the applicant directly to the Missouri State Highway Patrol or its approved vendor.

(3) Applicants seeking renewal of a license or registration with the Board shall be exempt from this requirement.

Authority: 333.031, 333.041, 333.042, 333.051, 333.061, 333.111, 333.315, 333.320, 333.325, 333.340, and 436.520.

- (3) Be otherwise eligible for registration under section 333.330;
 - (4) Have successfully passed the Missouri law examination as designated by the board;
 - (5) Provide the name and address of each seller for whom the applicant is authorized to sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of.
3. Each preneed agent shall apply to renew his or her registration on or before October thirty-first of each year or a date established by the division of professional registration pursuant to section 324.001, RSMo. A registration which has not been renewed prior to the renewal date shall expire. Applicants for renewal shall:
- (1) File an application for renewal on a form established by the board by rule;
 - (2) Pay a renewal fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license renewal; and
 - (3) Provide the name and address of each seller for whom the preneed agent is authorized to sell, negotiate, or solicit the sale of preneed contracts for or on behalf of.
4. Any funeral director acting as a preneed agent shall be required to report the name and address of each preneed seller for whom the funeral director is authorized to sell, negotiate, or solicit the sale of preneed contracts as part of their biennial renewal form. Each funeral director preneed agent shall be included on the board's registry.
5. Any registration which has not been renewed as provided by this section shall expire and the registrant shall be immediately removed from the preneed agent registry by the board. A registrant who fails to apply for renewal may apply for reinstatement within two years of the renewal date by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board.

(L. 2009 S.B. 1)

Refusal of registration, when--complaint procedure--injunctive relief authorized, when--reapplication after revocation, when.

- 333.330. 1. The board may refuse to issue any certificate of registration or authority, permit, or license required under this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.
2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit, or license required by this chapter, or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit, or license for any one or any combination of the following causes:
- (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;
 - (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions, or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty, or an act of violence;
 - (3) Use of fraud, deception, misrepresentation, or bribery in securing any certificate of registration or authority,

333.325. 1. No person shall sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of, a seller unless registered with the board as a preneed agent except for individuals who are licensed as funeral directors under this chapter. The board shall maintain a registry of all preneed agents registered with the board. The registry shall be deemed an open record and made available on the board's web site.

2. An applicant for a preneed agent registration shall be an individual who shall:

(1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license;

(2) Be eighteen years of age or older;

(3) Be otherwise eligible for registration under section 333.330;

(4) Have successfully passed those portions of the Missouri law examination [as] designated by the board by regulation or rule;

(5) Provide the name and address of each seller for whom the applicant is authorized to sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of [.]; and

(6) Successfully completed any internship or training that the board may require through regulations or rules.

Registration as a preneed agent required--application procedure--renewal of registration--expiration of registration.

333.325. 1. No person shall sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of, a seller unless registered with the board as a preneed agent except for individuals who are licensed as funeral directors under this chapter. The board shall maintain a registry of all preneed agents registered with the board. The registry shall be deemed an open record and made available on the board's web site.

2. An applicant for a preneed agent registration shall be an individual who shall:

(1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license;

(2) Be eighteen years of age or older;

(3) Be otherwise eligible for registration under section 333.330;

(4) Have successfully passed the Missouri law examination as designated by the board **which shall include the following percentage of each subject:**

a) 75% preneed laws and regulations

b) 15% funeral directing and embalming laws and regulations

c) 5 % cemetery laws and regulations

d) 5% Federal Trade Commission regulations;

(5) Provide the name and address of each seller for whom the applicant is authorized to sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of.

Hayes, Lori

From: John McCulloch [johnmcculloch@earthlink.net]

Sent: May 21, 2010 3:51 PM

To: PR.Embalm

Subject: Re:

Please consider giving preneed agents the same apprenticeship period as funeral directors.

I have submitted language for a rule change: however, I realize that it may not be approved so we may have to change the law.

Preneed Agent Apprentice -an individual who is being trained as an agent under the supervision of a Missouri licensed preneed seller. Preneed agent apprenticeship is valid for a period of twelve 12 consecutive months of the twenty four (24) consecutive month application. Preneed agent application is valid for a period of twenty four (24) consecutive months.

The apprenticeship ends after the twelve (12) consecutive months of apprenticeship of the 12 month application.

The application becomes null and void after twelve (12) months.

To serve as an apprentice preneed agent, the applicant shall file with the Board a completed preneed agent application on the form prescribed by the board and pay all applicable fees.

Application forms and a list of fees can be obtained from the Board office or on the Board's website at

<http://pr.mo.gov/embalmers.asp>.

Upon registration and payment in full of all applicable fees, the board shall issue the apprentice agent applicant a preneed agent registration. This registration authorizes the apprentice preneed agent to engage in the practice of preneed agent under the supervision of a Missouri licensed preneed seller for a period of twelve (12) consecutive months. The preneed agent registration, or a copy thereof, shall be displayed, at all times, in a conspicuous location accessible to the public at each licensed preneed seller location where the apprentice is working. An applicant shall have twenty four (24) months to successfully complete the requirements for registration or the application for licensure shall be null and void. A new application and applicable fees will be required.

The preneed agent apprentice registration authorizes the registrant to engage in the practice of preneed agent only during the twelve (12) consecutive month period of apprenticeship.

5/24/2010

Once the requirements of the apprenticeship is completed, the preneed agent apprentice registration shall become null and void. Any Missouri licensed seller Who allows a preneed agent apprentice who has completed his/her apprenticeship to practice before that apprentice is fully registered shall be subject to discipline of misconduct under section 333.330.

Each registered preneed agent apprentice shall provide to the Board, on the application prescribed by the board, the name(s), location(s), and license numbers(s) of each preneed seller where they are serving as an apprentice. The preneed agent apprenticeship shall be served under the supervision of a Missouri licensed preneed seller. If the preneed agent apprentice changes preneed sellers during the course of the apprenticeship, the apprentice shall notify the board, on the form prescribed by the board, of the name(s), location(s) and preneed seller (s) license number of the new apprenticeship location within 10 days after the change has been made.

Successful completion of the preneed agent apprenticeship shall consist of the following:

a) completed service as an preneed agent apprentice for a period consisting of twelve (12) consecutive months, or completion of the Missouri Law examination as designated by the Board, whichever comes first, at a Missouri licensed preneed seller location that is not under disciplinary probation by the Board; and b) Filing with the board a notarized affidavit(s) signed by the apprentice agent and his/her supervisor(s) that he/she has worked for under the supervision of a Missouri licensed preneed seller.

The preneed agent application will remain in active status for twenty four (24) months and the apprentice agent will not be allowed to practice after the 6 month apprenticeship period, or has successfully completed the Missouri Law examination as designated by the Board, whatever comes first.

After the successful completion of these requirements, a preneed agent registration shall be issued to the preneed agent registrant.

Becky Dunn, Executive Director
State Board of Embalmers & Funeral Directors
State Board of Podiatric Medicine
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Jefferson City, Missouri 65109
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Registration as a preneed agent required--application procedure--renewal of registration-expiration of registration.

333.325. 1. No person shall sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of, a seller unless registered with the board as a preneed agent except for individuals who are licensed as funeral directors under this chapter. The board shall maintain a registry of all preneed agents registered with the board. The registry shall be deemed an open record and made available on the board's web site.

2. An applicant for a preneed agent registration shall be an individual who shall:

- (1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license;
- (2) Be eighteen years of age or older; **and possesses a high school diploma or equivalent thereof;**
- (3) Be otherwise eligible for registration under section 333.330;
- (4) Have successfully passed the Missouri law examination as designated by the board;
- (5) Provide the name and address of each seller for whom the applicant is authorized to sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of.

permit, or license issued under this chapter or in obtaining permission to take any examination given or required under this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition, or other compensation by fraud, deception, or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation, or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit, or license or allowing any person to use his or her certificate of registration or authority, permit, license, or diploma from any school;

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency, or country upon grounds for which revocation or suspension is authorized in this state;

(9) A person is finally adjudged mentally incompetent by a court of competent jurisdiction;

(10) Misappropriation or theft of preneed funds;

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by this chapter regulating preneed who is not licensed or registered and currently eligible to practice thereunder;

(12) Issuance of a certificate of registration or authority, permit, or license based upon a material mistake of fact;

(13) Failure to display a valid certificate or license if so required by this chapter regulating preneed or any rule established thereunder;

(14) Violation of any professional trust or confidence;

(15) Making or filing any report required by sections 436.400 to 436.520, RSMo, regulating preneed which the licensee knows to be false or knowingly failing to make or file a report required by such sections;

(16) Use of any advertisement or solicitation which is false, misleading, or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed; or

(17) Willfully and through undue influence selling a funeral;

(18) Willfully and through undue influence selling a preneed contract;

(19) Violation of any of the provisions of chapter 193, 194, 407, or 436, RSMo;

(20) Presigning a death certificate or signing a death certificate on a body not yet embalmed by, or under the personal supervision of, the licensee;

(21) Failure to execute and sign the death certificate on a body embalmed by, or under the personal supervision of, a licensee;

(22) Failure to refuse to properly guard against contagious, infectious, or communicable diseases or the spread thereof;

(23) Refusing to surrender a dead human body upon request by the next of kin, legal representative, or other person entitled to the custody and control of the body.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke any certificate of registration or authority, permit, or license issued under this chapter.

4. In addition to all other powers and authority granted by the board, the board may seek an injunction, restraining order or other order from the circuit court of Cole County to enjoin any seller from engaging in preneed sales upon a showing by the board that the seller has failed to make deposits into the preneed trust, has obtained funds out of the trust to which the seller is not entitled or has exercised influence or control over the trustee or has engaged in any other act that has resulted in a shortage in any preneed trust or joint account which exceeds twenty percent of the total amount required to be held or deposited into the trust or joint account under the provisions of sections 436.400 to 436.520, RSMo. In addition to the power to enjoin for this conduct, the circuit court of Cole County shall also be entitled to suspend or revoke the preneed seller's license and any other license issued pursuant to this chapter, held by the seller.

5. An individual whose certificate of registration or authority, permit, or license has been revoked shall wait three years from the date of revocation to apply for any certificate of registration or authority, permit, or license under this chapter, either as an individual or as a manager, director, shareholder, or partner of any business entity. Any certificate of registration or authority, permit, or license shall be issued at the discretion of the board after compliance with all the requirements of this chapter relative to the licensing or registration of the applicant for the first time.

6. Use of the procedures set out in this section shall not preclude the application of the provisions of subsection 2 of section 333.335.

(L. 2009 S.B. 1)

Injunctive relief authorized, when.

333.335. 1. Upon application by the board and the necessary burden having been met, a court of competent jurisdiction may grant an injunction, restraining order, or other order as may be appropriate to enjoin a person from:

(1) Offering to engage or engaging in the performance of any acts or practices for which a registration or authority, permit, or license is required by sections 333.310 to 333.340, upon a showing that such acts or practices were performed or offered to be performed without the required registration or authority, permit, or license; or

(2) Engaging in any practice or business authorized by a registration or authority, permit, or license issued under this chapter that is in violation of this chapter or sections 436.400 to 436.520, RSMo, or upon a showing that the holder presents a substantial probability of serious danger to the health, safety, or welfare of any resident of this state or client or customer of the licensee or registrant; or

(3) Engaging in any practice or business that presents a substantial probability of serious danger to the solvency of any seller.

2. Any such action shall be commenced in the county in which such conduct occurred or in the county in which the defendant resides or, in the case of a firm or corporation, where the firm or corporation maintains its principal

office or in Cole County.

3. Any action brought under this section shall be in addition to and not in lieu of any authority provided by this chapter, and may be brought concurrently with other actions to enforce this chapter or sections 436.400 to 436.520, RSMo.

(L. 2009 S.B. 1)

Rulemaking authority--fees.

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 deemed by it necessary for the public good and consistent with the laws of this state. The board may also prescribe a standard of proficiency as to the qualifications and fitness of those engaging in the practice of embalming or funeral directing.

2. The board shall set the amount of the fees which this chapter authorizes and requires by rules promulgated under section 536.021, RSMo. The fees shall be set at a level to produce revenue which shall not substantially exceed the cost and expense of administering this chapter.

3. The board shall promulgate and enforce rules for the transaction of its business and for standards of service and practice to be followed for the licensing and registration of providers, sellers, and preneed agents deemed necessary for the public good and consistent with the laws of this state.

4. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2009, shall be invalid and void.

(L. 2009 S.B. 1)

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Definitions.

436.150. As used in sections 436.150 to 436.163, the following terms mean:

- (1) "Copyright owner", the owner of a copyright of a nondramatic musical work other than a motion picture or other audio visual works recognized and enforceable under the copyright laws of the United States pursuant to Title 17 of the United States Code;
- (2) "Performing rights society", an association or corporation that licenses the public performance of nondramatic musical works on behalf of copyright owners, such as the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.;
- (3) "Proprietor", the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility, not-for-profit organization, or any other similar place of business or professional office located in this state in which the public may assemble and in which nondramatic musical works may be performed, broadcast, or otherwise transmitted for the enjoyment of the members of the public there assembled;
- (4) "Royalty" or "royalties", the fees payable by a proprietor to a performing rights society for the public performance of nondramatic musical.

(L. 1995 S.B. 355 § 1 subsec. 1)

Proprietor entering into contract to be furnished certain information in writing--time limitation.

436.153. No performing rights society shall enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at the time of the offer, or any time thereafter, but no later than seventy-two hours prior to the execution of that contract, it provides to the proprietor, in writing, the following:

- (1) A schedule of the rates and terms of royalties under the contract, including any sliding scale, discounts, or reductions in fees on any basis for which the proprietor may be eligible, and any scheduled increases or decreases in fees during the term of the contract;
- (2) Upon request of the proprietor, the opportunity to review the most currently available list of the copyright owners' licenses by the performing rights society at the premises of the proprietor;
- (3) Notification of the method that must be used by the proprietor to obtain a listing of the copyrighted works licensed by the performing rights society contract, including the location of such listing of works licensed by the performing arts society and the toll-free number required by sections 436.150 to 436.163.

(L. 1995 S.B. 355 § 1 subsec. 2)

Performing rights society duties--list of music to be on file with attorney general.

436.155. The performing rights society shall establish and maintain a toll-free telephone number which the proprietor may use to inquire regarding specific musical works and copyright owners represented by that performing rights society. The performing rights society shall file a printed listing of works licensed by the society with the attorney general, and provide or make available, upon request, a listing on suitable electronic media to bona fide trade associations representing groups of proprietors. A list shall be provided the proprietor by

Citation of law--applicability.

436.400. The provisions of sections 436.400 to 436.520 shall be referenced as the "Missouri Preneed Funeral Contract Act" and shall apply only to preneed contracts entered into, and accounts created on or after, August 28, 2009, unless otherwise specified.

(L. 2009 S.B. 1)

Definitions.

436.405. 1. As used in sections 436.400 to 436.520, unless the context otherwise requires, the following terms shall mean:

- (1) "Beneficiary", the individual who is to be the subject of the disposition or who will receive funeral services, facilities, or merchandise described in a preneed contract;
- (2) "Guaranteed contract", a preneed contract in which the seller promises, assures, or guarantees to the purchaser that all or any portion of the costs for the disposition, services, facilities, or merchandise identified in a preneed contract will be no greater than the amount designated in the contract upon the preneed beneficiary's death or that such costs will be otherwise limited or restricted;
- (3) "Insurance-funded preneed contract", a preneed contract which is designated to be funded by payments or proceeds from an insurance policy or single premium annuity contract;
- (4) "Joint account-funded preneed contract", a preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account in the names of the purchaser and seller, as provided in this chapter;
- (5) "Market value", a fair market value:
 - (a) As to cash, the amount thereof;
 - (b) As to a security as of any date, the price for the security as of that date obtained from a generally recognized source, or to the extent no generally recognized source exists, the price to sell the security in an orderly transaction between unrelated market participants at the measurement date; and
 - (c) As to any other asset, the price to sell the asset in an orderly transaction between unrelated market participants at the measurement date consistent with statements of financial accounting standards;
- (6) "Nonguaranteed contract", a preneed contract in which the seller does not promise, assure, or guarantee that all or any portion of the costs for the disposition, facilities, service, or merchandise identified in a preneed contract will be limited to the amount designated in the contract upon the preneed beneficiary's death or that such costs will be otherwise limited or restricted;
- (7) "Preneed contract", any 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. 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, or funeral merchandise at a discount or at a future date;
- (8) "Preneed trust", a trust to receive deposits of, administer, and disburse payments received under preneed contracts, together with income thereon;

(9) "Purchaser", the person who is obligated to pay under a preneed contract;

(10) "Trustee", the trustee of a preneed trust, including successor trustees;

(11) "Trust-funded preneed contract", a preneed contract which provides that payments for the preneed contract shall be deposited and maintained in trust.

2. All terms defined in chapter 333, RSMo, shall be deemed to have the same meaning when used in sections 436.400 to 436.520.

(L. 2009 S.B. 1)

Applicability exceptions.

436.410. The provisions of sections 436.400 to 436.520 shall not apply to any contract or other arrangement sold by a cemetery operator for which payments received by or on behalf of the purchaser are required to be placed in an endowed care fund or for which a deposit into a segregated account is required under chapter 214, RSMo; provided that a cemetery operator shall comply with sections 436.400 to 436.520 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer.

(L. 2009 S.B. 1)

Violations, disciplinary actions authorized--governing law for contracts.

436.412. Each preneed contract made before August 28, 2009, and all payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071 within the applicable statute of limitations. In addition, the provisions of section 436.031, as it existed on August 27, 2009, shall continue to govern disbursements to the seller from the trust and payment of trust expenses. Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.

(L. 2009 S.B. 1)

Provision of certain services required by provider--seller's duties.

436.415. 1. Except as otherwise provided in sections 436.400 to 436.520, the provider designated in a preneed contract shall be obligated to provide final disposition, funeral or burial services and facilities, and funeral merchandise as described in the preneed contract.

2. The seller designated in a preneed contract shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract and ensure that is statutorily and contractual duties are met, in compliance with sections 436.400 to 436.520.

(L. 2009 S.B. 1)

Written contract required, contents--notification to board of provider authorization--seller to

Definitions.

436.405. 1. As used in sections 436.400 to 436.520, unless the context otherwise requires, the following terms shall mean:

(3) "Insurance-funded preneed contract", a preneed contract which is designated to be funded by payments or proceeds from an insurance policy or [single annuity] annuity contract that is purchased within one year of the issuance of the contract;

(4) "Joint account-funded preneed contract", a preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account in the names of the purchaser and seller, or in the name of the seller but for the benefit of the purchaser, as provided in this chapter;

Definitions.

436.405. 1. As used in sections 436.400 to 436.520, unless the context otherwise requires, the following terms shall mean:

...

(2) "Guaranteed contract", a preneed contract in which the seller [**promises, assures, or guarantees to the purchaser that all or any portion of the costs for the disposition, services, facilities, or merchandise identified in a preneed contract will be no greater than the amount designated in the contract upon the preneed beneficiary's death or that such costs will be otherwise limited or restricted**] agrees to provide, upon the death of the funeral recipient, services, facilities, or merchandise which are specifically identified on a preneed contract as guaranteed in exchange for the funds available in the trust account, insurance policy, annuity or joint account, as long as the buyer has fully funded the trust account, insurance policy, annuity or joint account, so there will be no additional cost to the funeral recipient's family or estate for the cost of those services, facilities, or merchandise except those items listed as non-guaranteed cash advance items;

(3) "Insurance-funded preneed contract", a preneed contract which is designated to be funded by payments or proceeds from an insurance policy or [**single premium**] annuity contract;

...

(6) "Nonguaranteed contract", a preneed contract in which the seller [**does not promise, assure, or guarantee that all or any portion of the costs for the disposition, facilities, service, or merchandise identified in a preneed contract will be limited to the amount designated in the contract upon the preneed beneficiary's death or that such costs will be otherwise limited or restricted**] agrees to apply the funds available in the trust account, insurance policy, annuity or joint account, to the total funeral price at the time the funeral is provided. If the total funeral price, at the time the funeral is provided, is greater than the funds available, the funeral recipient's family or estate is responsible for paying the difference;

436.405

(3) 'Insurance-funded preneed contract", a preneed contract which designated to be funded by payments or proceeds from an insurance policy or **[single] flexible** premium annuity contract;

5. Laws regulating insurance shall not apply to preneed contracts, but shall apply to any insurance or multiple premium annuity

436.410. The provisions of sections 436.400 to 436.520 shall not apply to any contract or other arrangement sold by a cemetery operator licensed pursuant to R.S.Mo. Section 214.275 for which payments received by or on behalf of the purchaser are deposited either to an escrow account, or a preneed trust, governed by an agreement approved by the Office of Endowed Care Cemeteries required to be placed in an endowed care fund or for which a deposit into a segregated account is required under chapter 214, RSMo; provided that a cemetery operator shall comply with sections 436.400 to 436.520 if the contract or arrangement sold by the operator includes services that may only be provided by a licensed funeral director or embalmer.

Violations, disciplinary actions authorized--governing law for contracts.

436.412. Each preneed contract made before August 28, 2009, and all **reporting requirements**, payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071 within the applicable statute of limitations. In addition, the provisions of section 436.031, as it existed on August 27, 2009, shall continue to govern disbursements to the seller from the trust and payment of trust expenses. Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.

(L. 2009 S.B. 1)

Provision of certain services required by provider--seller's duties.

436.415. 1. Except as otherwise provided in sections 436.400 to 436.520, the provider designated in a preneed contract shall be obligated to provide final disposition, funeral or burial services and facilities, and funeral merchandise as described in the preneed contract.

2. The seller designated in a preneed contract shall be obligated to collect and properly deposit and disburse all **trust and joint account** payments made by, or on behalf of, a purchaser of a preneed contract and ensure that its statutory and contractual duties are met, in compliance with sections 436.400 to 436.520. **In an insurance funded preneed contract, all premium payments shall be paid directly to the life insurance company from the purchaser and all disbursements from the insurance policy shall be made by the insurance company.**

Provision of certain services required by provider--seller's duties.

436.415. 1. Except as otherwise provided in sections 436.400 to 436.520, the provider designated in a preneed contract shall be obligated to provide final disposition, funeral or burial services and facilities, and funeral merchandise as described in the preneed contract. **In the case of a funeral establishment with multiple licensed facilities under common ownership, the funeral establishment shall designate which of its licensed facilities shall be the designated provider on each of its preneed contracts that will be obligated under this section and shall maintain a provider's license for that that designated licensed facility and maintain all required records at that facility regardless of where the actual final disposition it to take place pursuant to the contract.**

2. The seller designated in a preneed contract shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract and ensure that its statutory and contractual duties are met, in compliance with sections 436.400 to 436.520. **Any person or entity that executed preneed contracts as a seller prior to August 28, 2009, but who is not entering into contracts as a seller after August 28, 2009, need not become licensed as seller under this chapter, however, such person or entity must continue to file annual reports as required by this chapter, be subject to the audit and enforcement provisions of this chapter and be otherwise governed by this chapter as the chapter existed at the time the contract was made.**

(L. 2009 S.B. 1)

provide copy of contract to board upon request.

436.420. 1. No person shall be designated as a provider in a preneed contract unless the provider has a written contractual agreement with the seller. Any seller who designates a person as a provider in a preneed contract without a contractual relationship with such person is in violation of the provisions of sections 436.400 to 436.520. No contract is required if the seller and provider are the same legal entity.

2. The written agreement required by this section shall include:

(1) Written consent from the provider authorizing the seller to designate or obligate the provider under a preneed contract;

(2) Procedures for tracking preneed contract funds or payments received by the provider and for remitting such funds or payments to the seller, including the time period authorized by the seller for the remittance of funds and payments; and

(3) The signatures of the seller and the provider or their authorized representatives and the date such signatures were* obtained.

3. A provider shall notify the board within fifteen days of authorizing or otherwise agreeing to allow a seller to designate himself or herself as the provider under any preneed contract.

4. Upon request of the board, a seller, provider, or preneed agent shall provide a copy of any preneed contract or any contract or agreement with a seller or provider to the board.

(L. 2009 S.B. 1)

*Words "signature was" appear in original rolls.

Contract form, requirements--voidability of contract--waiver of contract benefits for public assistance recipients.

436.425. 1. All preneed contracts shall be sequentially numbered and in writing and in a font type and size that are easily read, and shall clearly and conspicuously:

(1) Include the name, address and phone number of the purchaser, beneficiary, provider and seller;

(2) Identify the name, address, phone and license number of the provider and the seller;

(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;

Written contract required, contents--notification to board of provider authorization--seller to provide copy of contract to board upon request.

436.420. 1. No person shall be designated as a provider in a preneed contract unless the provider has a written contractual agreement with the seller. Any seller who designates a person as a provider in a preneed contract without a contractual relationship with such person is in violation of the provisions of sections 436.400 to 436.520. No contract is required if the seller and provider are the same legal entity.

2. The written agreement required by this section shall include:

(1) Written consent from the provider authorizing the seller to designate or obligate the provider under a preneed contract;

(2) Procedures for tracking **trust or joint account** preneed contract funds or payments received by the provider and for remitting such **trust or joint account** funds or payments to the seller, including the time period authorized by the seller for the remittance of **trust and joint account** funds and payments; and

- (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 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 is a guaranteed or nonguaranteed contract;
- (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 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;
- (16) Comply with the provisions of sections 436.400 to 436.520 or any rule promulgated thereunder.

2. 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 this section or not issued by a seller licensed under chapter 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.
3. 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 moneys 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.
4. 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.
5. A preneed contract, shall not be changed from a trust-funded, insurance-funded, or joint account-funded preneed contract without the written consent of the purchaser.

(L. 2009 S.B. 1)

Trust-funded preneed contract requirements.

- 436.430. 1. A trust-funded guaranteed preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.
2. A seller must deposit all payments received on a preneed contract into the designated preneed trust within sixty days of receipt of the funds by the seller, the preneed sales agent or designee. A seller may not require the consumer to pay any fees or other charges except as authorized by the provisions of chapter 333, RSMo, and this chapter or other state or federal law.
 3. A seller may request the trustee to distribute to the seller an amount up to the first five percent of the total

Contract form, requirements--voidability of contract--waiver of contract benefits for public assistance recipients.

436.425. 1. All preneed contracts shall be sequentially numbered and in writing and in a font type and size that are easily read, and shall clearly and conspicuously:

(14) Include [any applicable] consumer disclosures required by the board by rule that are applicable to the seller's preneed contract form; and

2. 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 material compliance with this section or not issued by a seller licensed under chapter 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.

Contract form, requirements--voidability of contract--waiver of contract benefits for public assistance recipients.

436.425. 1. All preneed contracts shall be **[sequentially]** numbered and in writing and in a font type and size that are easily read, and shall clearly and conspicuously:

- (1) Include the name, address and phone number of the purchaser, beneficiary, provider and seller;
- (2) Identify the **[name, address, phone and]** license number of the provider and the seller;

amount of any preneed contract as an origination fee. The seller may make this request at any time after five percent of the total amount of the preneed contract has been deposited into the trust. The trustee shall make this distribution to the seller within fifteen days of the receipt of the request.

4. In addition to the origination fee, the trustee may distribute to the seller an amount up to ten percent of the face value of the contract on a preneed contract at any time after the consumer payment has been deposited into the trust. The seller may make written request for this distribution and the trustee shall make this distribution to the seller within fifteen days of the receipt of the request or as may be provided in any written agreement between the seller and the trustee.

5. The trustee of a preneed trust shall be a state- or federally-chartered financial institution authorized to exercise trust powers in Missouri. The trustee shall accept all deposits made to it for a preneed contract and shall hold, administer, and distribute such deposits, in trust, as trust principal, under sections 436.400 to 436.520.

6. The financial institution referenced herein may neither control, be controlled by, nor be under common control with the seller or preneed agent. The terms "control", "controlled by" and "under common control with" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent or more of the voting securities. This presumption may be rebutted by a showing to the board that control does not in fact exist.

7. Payments regarding two or more preneed contracts may be deposited into and commingled in the same preneed trust, so long as the trustee maintains adequate records that individually and separately identify the payments, earnings, and distributions for each preneed contract.

8. Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee shall review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, other circumstances of the trust, and all other requirements of sections 436.400 to 436.520.

9. All expenses of establishing and administering a preneed trust, including trustee's fees, legal and accounting fees, investment expenses, and taxes may be paid from income generated from the investment of the trust assets. Principal of the trust shall not be used to pay the costs of administration. If the income of the trust is insufficient to pay the costs of administration, those costs shall be paid as per the written agreements between the seller, provider and the trustee.

10. The seller and provider of a trust-funded guaranteed preneed contract shall be entitled to all income, including, but not limited to, interest, dividends, capital gains, and losses generated by the investment of preneed trust property regarding such contract as stipulated in the contract between the seller and provider. Income of the trust, excluding expenses allowed under this subsection, shall accrue through the life of the trust, except in instances when a contract is cancelled. The trustee of the trust may distribute market value of all income, net of losses, to the seller upon, but not before, the final disposition of the beneficiary and provision of the funeral and burial services and facilities, and merchandise to, or for, the benefit of the beneficiary. This subsection shall apply to trusts established on or after August 28, 2009.

11. Providers shall request payment by submitting a certificate of performance to the seller certifying that the provider has rendered services under the contract or as requested. The certificate shall be signed by both the provider and the person authorized to make arrangements on behalf of the beneficiary. If there is no written contract between the seller and provider, the provider shall be entitled to the market value of all trust* assets allocable to the preneed contract. Sellers shall remit payment to the provider within sixty days of receiving the certificate of performance.

12. If a seller fails to make timely payment of an amount due a provider under sections 436.400 to 436.520, the

provider shall have the right, in addition to other rights and remedies against such seller, to make demand upon the trustee of the preneed trust for the contract to distribute to the provider from the trust all amounts to which the seller would be entitled to receive for the preneed contract.

13. The trustee of a preneed trust, including trusts established before August 28, 2009, shall maintain adequate books and records of all transactions administered over the life of the trust and pertaining to the trust generally. The trustee shall assist the seller who established the trust or its successor in interest in the preparation of the annual report described in section 436.460. The seller shall furnish to each contract purchaser, within thirty days after receipt of the purchaser's written request, a written statement of all deposits made to such trust regarding such purchaser's contract including the principal and interest paid to date.

14. A preneed trust, including trusts established before August 28, 2009, shall terminate when the trust principal no longer includes any payments made under any preneed contract, and upon such termination the trustee shall distribute all trust property, including principal and undistributed income, to the seller which established the trust.

(L. 2009 S.B. 1)

*Word "trusts" appears in original rolls.

Compliance of contracts entered into prior to effective date--investment of trust property and assets--loans against assets prohibited.

436.435. 1. To the extent that any provisions in this chapter which come into effect on August 28, 2009, apply to trusts governed under this chapter which are in existence on August 28, 2009, such trusts shall be in compliance with this chapter no later than July 1, 2010.

2. All property held in a preneed trust, including principal and undistributed income, shall be invested and reinvested by the trustee thereof and shall only be invested and reinvested in investments which have reasonable potential for growth or producing income. Funds in, or belonging to, a preneed trust shall not be invested in any term life insurance product.

3. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise when investing and managing trust assets.

4. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purpose of the trust is better served without diversification.

5. In investing and managing trust assets, a trustee shall consider the following as are relevant to the trust:

- (1) General economic conditions;
- (2) The possible effect of inflation or deflation;
- (3) The expected tax consequences of investment decisions or strategies;
- (4) The role that each investment or course of action plays within the overall trust portfolio;
- (5) The expected total return from income and the appreciation of capital;
- (6) Needs for liquidity, regularity of income, and preservation or appreciation of capital.

Trust-funded preneed contract requirements.

436.430. 1. A trust-funded guaranteed preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. A seller must deposit all payments received on a preneed contract into the designated preneed trust within sixty days of receipt of the funds by the seller, the preneed sales agent or designee. A seller may not require the consumer to pay any fees or other charges **[except as authorized]** prohibited by the provisions of chapter 333, RSMo, and this chapter and regulations promulgated thereunder, or **[other state or]** federal law.

3. A seller may request the trustee to distribute to the seller an amount up to the first five percent of the total amount of any preneed contract as an origination fee. The seller may make this request at any time after **[five percent of the total amount of the preneed contract has]** such funds have been deposited into the trust. The trustee shall make this distribution to the seller within fifteen days of the receipt of the request.

4. In addition to the origination fee, the trustee may distribute to the seller an amount up to ten percent of the face value of the good and services guaranteed **[contract]** on a preneed contract at any time after the consumer payment has been deposited into the trust. The seller may make written request for this distribution and the trustee shall make this distribution to the seller within fifteen days of the receipt of the request or as may be provided in any written agreement between the seller and the trustee.

5. The trustee of a preneed trust shall be a state- or federally-chartered financial institution authorized to exercise trust powers in Missouri, or other financial institution having the power to provide trust services that has been approved by the Board. The trustee shall accept all deposits made to it for a preneed contract and shall hold, administer, and distribute such deposits, in trust, as trust principal, under sections 436.400 to 436.520.

10. The seller and provider of a trust-funded guaranteed preneed contract shall be entitled to all income, including, but not limited to, interest, dividends, capital gains, and losses generated by the investment of preneed trust property regarding such contract as stipulated in the contract between the seller and provider, upon performance of the contract. Income of the trust, excluding expenses allowed under this subsection, shall accrue through the life of the trust, except in instances when a contract is cancelled. The trustee of the trust may distribute market value of all income, net of losses, to the seller upon, but not before, the final disposition of the beneficiary and provision of the funeral and burial services and facilities, and merchandise to, or for, the benefit of the beneficiary. This subsection shall apply to trusts established on or after August 28, 2009.

436.430

My intent is to change any statutory reference to 100%, with no 5% origination fee or 10% retention fee. I strongly believe this is a consumer protection matter.

3. [A seller may request the trustee to distribute to the seller an amount up to the first five percent of the total amount of any preneed contract as an origination fee. The seller may make this request at any time after five percent of the total amount of the preneed contract has been deposited into the trust. The trustee shall make this distribution to the seller within 15 days of the receipt of the request.]

4. [In addition to the original fee,] T[t]he trustee may distribute to the seller, one-hundred 100 [an amount up to ten] percent of the face value of the contract on a preneed contract at any time after the consumer payment has been deposited into the trust. The seller may make written request for this distribution and the trustee shall make this distribution to the seller within fifteen days of the receipt of the request or as may be provided in any written agreement between the seller and the trustee.

6. No seller, provider, or preneed agent shall procure or accept a loan against any investment or asset of or belonging to a preneed trust. As of August 29, 2009, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

(L. 2009 S.B. 1)

Provisions applicable to all preneed trusts.

436.440. 1. The provisions of this section shall apply to all preneed trusts, including trusts established before August 28, 2009.

2. A preneed trustee may delegate to an agent duties and powers that a prudent trustee of comparable skills would reasonably delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

(1) Selecting an agent;

(2) Establishing the scope and terms of the agency, consistent with the purposes and terms of the trust; and

(3) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the agency.

3. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the agency.

4. By accepting a delegation of powers or duties from the trustee of a preneed trust, an agent submits to the jurisdiction of the courts of this state.

5. Delegation of duties and powers to an agent shall not relieve the trustee of any duty or responsibility imposed on the trustee by sections 436.400 to 436.520 or the trust agreement.

6. For trusts in existence as of August 28, 2009, it shall be permissible for those trusts to continue to utilize the services of an independent financial advisor, if said advisor was in place pursuant to section 436.031 as of August 28, 2009.

(L. 2009 S.B. 1)

Trustee not to make decisions, when.

436.445. A trustee of any preneed trust, including trusts established before August 28, 2009, shall not after August 28, 2009, make any decisions to invest any trust fund with:

(1) The spouse of the trustee;

(2) The descendants, siblings, parents, or spouses of a seller or an officer, manager, director or employee of a seller, provider, or preneed agent;

(3) Agents or attorneys of a trustee, seller, or provider; or

(4) A corporation or other person or enterprise in which the trustee, seller, or provider owns a controlling interest or has an interest that might affect the trustee's judgment.

Compliance of contracts entered into prior to effective date--investment of trust property and assets--loans against assets prohibited.

436.435. 1. To the extent that any provisions in this chapter which come into effect on August 28, 2009, apply to trusts governed under this chapter which are in existence on August 28, 2009, such trusts shall be in compliance with this chapter no later than July 1, 2010.

4. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purpose of the trust is better served without diversification. The trustee shall set out such determination in writing, to be included in the books and records that are made available to the Board and its agents and designees.

Compliance of contracts entered into prior to effective date--investment of trust property and assets--loans against assets prohibited.

436.435. 1. To the extent that any provisions in this chapter which come into effect on August 28, 2009, apply to trusts governed under this chapter which are in existence on August 28, 2009, such trusts shall be in compliance with this chapter no later than July 1, 2010.

2. All property held in a preneed trust, including principal and undistributed income, shall be invested and reinvested by the trustee thereof and shall only be invested and reinvested in investments which have reasonable potential for growth or producing income. Funds in, or belonging to, a preneed trust shall not be invested in any term life insurance product.

3. A trustee shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee shall exercise reasonable care, skill, and caution. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise when investing and managing trust assets.

4. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purpose of the trust is better served without diversification.

5. In investing and managing trust assets, a trustee shall consider the following as are relevant to the trust:

- (1) General economic conditions;
- (2) The possible effect of inflation or deflation;
- (3) The expected tax consequences of investment decisions or strategies;
- (4) The role that each investment or course of action plays within the overall trust portfolio;
- (5) The expected total return from income and the appreciation of capital;
- (6) Needs for liquidity, regularity of income, and preservation or appreciation of capital.

6. No seller, provider, or preneed agent shall procure or accept a loan against any investment or asset of or belonging to a preneed trust. As of **[August 29, 2009] August 28, 2009**, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

Trustee not to make decisions, when.

436.445. A trustee of any preneed trust, including trusts established before August 28, 2009, shall not after August 28, 2009, **[make any decisions to invest any trust fund]** that contracts with any of the following to serve as an investment advisor for the trust shall make a written disclosure in a format as prescribed by the Board:

- (1) The spouse of the trust~~ee~~ officer assigned to the trust;
- (2) The descendants, siblings, parents, or spouses of a seller or an officer, manager, director or employee of a seller, provider, or preneed agent;
- (3) Agents or attorneys of a trustee, seller, or provider; or
- (4) A corporation or other person or enterprise in which the trustee, seller, or provider owns a controlling interest or has an interest that might affect the trustee's judgment.

(L. 2009 S.B. 1)

Insurance-funded preneed contract requirements.

436.450. 1. An insurance-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. A seller, provider, or any preneed agent shall not receive or collect from the purchaser of an insurance-funded preneed contract any amount in excess of what is required to pay the premiums on the insurance policy as assessed or required by the insurer as premium payments for the insurance policy except for any amount required or authorized by this chapter or by rule. A seller shall not receive or collect any administrative or other fee from the purchaser for or in connection with an insurance-funded preneed contract, other than those fees or amounts assessed by the insurer. As of August 29, 2009, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan for any purpose other than as authorized by this chapter.

3. Payments collected by or on behalf of a seller for an insurance-funded preneed contract shall be promptly remitted to the insurer or the insurer's designee as required by the insurer; provided that payments shall not be retained or held by the seller or preneed agent for more than thirty days from the date of receipt.

4. It is unlawful for a seller, provider, or preneed agent to procure or accept a loan against any insurance contract used to fund a preneed contract.

5. Laws regulating insurance shall not apply to preneed contracts, but shall apply to any insurance or single premium annuity sold with a preneed contract; provided, however, the provisions of this act* shall not apply to single premium annuities or insurance policies regulated by chapters 374, 375, and 376, RSMo, used to fund preneed funeral agreements, contracts, or programs.

6. This section shall apply to all preneed contracts including those entered into before August 28, 2009.

7. For any insurance-funded preneed contract sold after August 28, 2009, the following shall apply:

(1) The purchaser or beneficiary shall be the owner of the insurance policy purchased to fund a preneed contract; and

(2) An insurance-funded preneed contract shall be valid and enforceable only if the seller or provider is named as the beneficiary or assignee of the life insurance policy funding the contract.

8. If the proceeds of the life insurance policy exceed the actual cost of the goods and services provided pursuant to the nonguaranteed preneed contract, any overage shall be paid to the estate of the beneficiary, or, if the beneficiary received public assistance, to the state of Missouri.

(L. 2009 S.B. 1)

*"This act" (S.B. 1, 2009) contained numerous sections. Consult Disposition of Sections table for a definitive listing.

Joint account-funded preneed contract requirements.

436.455. 1. A joint account-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

Human Services is required to examine all life insurance policies and annuities to make sure this designation has taken place and if it has not the Department of Human Services is required to provide notice to the applicant or recipient of the requirement to make the Estate Recovery Unit the beneficiary of the life insurance policy or annuity.

b. This section shall:

- 1. Be effective January 1, 2011 for all life insurance policies and annuities issued on or after January 1, 2011; and**
- 2. Be effective on the renewal date of qualification for all life insurance policies and annuities issued before January 1, 2011, as they are reviewed annually; and**

c. Failure of the Medicaid recipient or applicant to name the Estate Recovery Unit as the beneficiary of any such life insurance policy or annuity shall disqualify the life insurance policy or annuity as an exempt asset of the recipient or applicant unless the recipient or applicant can show compliance within 20 days.

Insurance-funded preneed contract requirements.

436.450. 1. An insurance-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. A seller, provider, or any preneed agent shall not receive or collect from the purchaser of an insurance-funded preneed contract any amount in excess of what is required to pay the **initial premium[s]** on the insurance policy as assessed or required by the insurer as **the initial premium payment[s]** for the insurance policy except for any amount required or authorized by this chapter or by rule. A seller shall not receive or collect any administrative or other fee from the purchaser for or in connection with an insurance-funded preneed contract, other than those fees or amounts assessed by the insurer. As of August 29, 2009, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan for any purpose other than as authorized by this chapter.

...

5. Laws regulating insurance shall not apply to preneed contracts, but shall apply to any insurance or **[single premium]** annuity sold with a preneed contract; provided, however, the provisions of this act* shall not apply to **[single premium]** annuities or insurance policies regulated by chapters 374, 375, and 376, RSMo, used to fund preneed funeral agreements, contracts, or programs.

...

7. For any insurance-funded preneed contract sold after August 28, 2009, the following shall apply:

(1) The purchaser or beneficiary shall be the owner of the insurance policy purchased to fund a preneed contract; and

(2) An insurance-funded preneed contract shall be valid and enforceable only if the seller or provider is named as the **[beneficiary or]** assignee of the life insurance policy funding the contract.

8. If the proceeds of the life insurance policy exceed the actual cost of the goods and services provided pursuant to the nonguaranteed preneed contract, any overage shall be paid **[to the estate of the beneficiary, or, if the beneficiary received public assistance, to the state of Missouri] to the beneficiary named in the life insurance policy. SEE NEW SECTION FOR HANDLING OF PUBLIC ASSISTANCE CASES.**

NEW SECTION: Assignment Requirements for Insurance and Annuities Funding Irrevocable Preneed Contracts.

a. On all life insurance policies or annuity contracts used to fund formal burial arrangements as described in sections 436.405 et. al., for individuals who are Medicaid recipients or applicants, the life insurance policy or annuity must have the Estate Recovery Unit designated as the beneficiary of the life insurance policy or annuity. The Department of

Insurance-funded preneed contract requirements.

436.450. 1. An insurance-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. A seller, provider, or any preneed agent shall not receive or collect from the purchaser of an insurance-funded preneed contract any amount in excess of what is required to pay the premiums on the insurance policy as assessed or required by the insurer as premium payments for the insurance policy except for any amount required or authorized by this chapter or by rule. A seller shall not receive or collect any administrative or other fee from the purchaser for or in connection with an insurance-funded preneed contract, other than those fees or amounts assessed by the insurer. As of August 29, 2009, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan for any purpose other than as authorized by this chapter.

3. Payments collected by or on behalf of a seller for an insurance-funded preneed contract shall be promptly remitted to the insurer or the insurer's designee as required by the insurer; provided that payments shall not be retained or held by the seller or preneed agent for more than thirty days from the date of receipt.

4. It is unlawful for a seller, provider, or preneed agent to procure or accept a loan against any insurance contract used to fund a preneed contract.

5. Laws regulating insurance shall not apply to preneed contracts, but shall apply to any insurance or single premium annuity sold with a preneed contract; provided, however, the provisions of this act* shall not apply to single premium annuities or insurance policies regulated by chapters 374, 375, and 376, RSMo, used to fund preneed funeral agreements, contracts, or programs.

6. This section shall apply to all preneed contracts including those entered into before August 28, 2009.

7. For any insurance-funded preneed contract sold after August 28, 2009, the following shall apply:

(1) The purchaser or beneficiary shall be the owner of the insurance policy purchased to fund a preneed contract; and

(2) An insurance-funded preneed contract shall be valid and enforceable only if the seller or provider is named as the beneficiary or assignee of the life insurance policy funding the contract.

8. If the proceeds of the life insurance policy exceed the actual cost of the goods and services provided pursuant to the nonguaranteed preneed contract, any overage shall be paid to **the purchaser [the estate of the beneficiary]**, or, **if the contract was irrevocable [beneficiary received public assistance]**, to the state of Missouri.

(L. 2009 S.B. 1)

*"This act" (S.B. 1, 2009) contained numerous sections. Consult Disposition of Sections table for a definitive listing.

436.450. 1. An insurance-funded preneed contract shall comply
2 with sections 436.400 to 436.520 and the specific requirements of this
3 section.

4 2. A seller, provider, or any preneed agent shall not receive or
5 collect from the purchaser of an insurance-funded preneed contract,
6 any amount in excess of what is required to pay the premiums on the
7 insurance policy as assessed or required by the insurer as premium
8 payments for the insurance policy except for any amount required or
9 authorized by this chapter or by rule. A seller shall not receive or
10 collect any administrative or other fee from the purchaser for or in
11 connection with an insurance-funded preneed contract, other than
12 those fees or amounts assessed by the insurer. As of August 29, 2009,
13 no preneed seller, provider, or agent shall use any existing preneed
14 contract as collateral or security pledged for a loan or take preneed
15 funds of any existing preneed contract as a loan for any purpose other
16 than as authorized by this chapter.

17 3. Payments collected by or on behalf of a seller for an
18 insurance-funded preneed contract shall be promptly remitted to the
19 insurer or the insurer's designee as required by the insurer; provided
20 that payments shall not be retained or held by the seller or preneed
21 agent for more than thirty days from the date of receipt.

22 4. It is unlawful for a seller, provider, or preneed agent to
23 procure or accept a loan against any insurance contract used to fund
24 a preneed contract.

25 5. Laws regulating insurance shall not apply to preneed
26 contracts, but shall apply to any insurance **[or]** single premium **or flexible pay**
27 **annuity** sold with a preneed contract; provided, however, the provisions of this
28 act shall not apply to single premium **or flexible pay annuities** or insurance policies
29 regulated by chapters 374, 375, and 376, RSMo, used to fund preneed
30 funeral agreements, contracts, or programs.

31 6. This section shall apply to all preneed contracts including
32 those entered into before August 28, 2009.

33 7. For any insurance-funded preneed contract sold after August
34 28, 2009, the following shall apply:

35 (1) The purchaser **[or beneficiary]** shall be the owner of the
36 insurance policy purchased to fund a preneed contract; and

37 (2) An insurance-funded preneed contract shall be valid and
38 enforceable only if the seller or provider is named as the beneficiary
39 or assignee of the life insurance policy funding the contract.

40 8. If the proceeds of the life insurance policy exceed the actual
41 cost of the goods and services provided pursuant to the nonguaranteed
42 preneed contract, any overage shall be paid to the estate of the
43 beneficiary, or, if the beneficiary received public assistance, to the
44 state of Missouri.

(3) 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 subsection 4 of section 436.430 but excluding the income, to the purchaser of the contract;

(4) 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.

(L. 2009 S.B. 1)

Seller's right to cancel, when, procedure.

436.457. 1. 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.

2. 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.

3. 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.

4. Upon cancellation by the seller under this section, eighty-five percent of the contract payments shall be refunded to the purchaser. All remaining funds shall be distributed to the seller.

(L. 2009 S.B. 1)

Alternative provider permitted, when.

436.458. 1. 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.

2. 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.

3. 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 this section, 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.

(L. 2009 S.B. 1)

Seller's right to cancel, when, procedure.

436.457. 1. 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.

2. 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.

3. 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.

4. Upon cancellation by the seller under this section, **one hundred [eighty-five] percent** of the contract payments shall be refunded to the purchaser. All remaining funds shall be distributed to the seller.

Joint account-funded preneed contract requirements.

436.455. 1. A joint account-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. In lieu of a trust-funded or insurance-funded preneed contract, the seller and the purchaser may agree in writing that all funds paid by the purchaser or beneficiary for the preneed contract shall be deposited with a financial institution chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the seller and purchaser, beneficiary or party holding power of attorney over the beneficiary's estate. If the establishment of a joint account pursuant to this section is found to violate the policies of the financial institution, the seller may establish a depository account for the benefit of purchaser, with the seller as owner of the account. There shall be a separate [joint] account established for each preneed contract sold or arranged under this section. Funds shall only be withdrawn or paid from the account upon the signatures of both the seller and the purchaser or under a pay-on-death designation or as required to pay reasonable expenses of administering the account.

3. All consideration paid by the purchaser under a [joint] depository account-funded contract shall be deposited into a joint account as authorized by this section within ten days of receipt of payment by the seller.

Joint account-funded preneed contract requirements.

436.455. 1. A joint account-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. In lieu of a trust-funded or insurance-funded preneed contract, the seller and the purchaser may agree in writing that all funds paid by the purchaser or beneficiary for the preneed contract shall be deposited with a financial institution chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the seller and purchaser, beneficiary or party holding power of attorney over the beneficiary's estate. There shall be a separate joint account established for each preneed contract sold or arranged under this section. Funds shall only be withdrawn **[or paid]** from the account **in accordance with the provisions of this chapter. [upon the signatures of both the seller and the purchaser or under a pay-on-death designation or as required to pay reasonable expenses of administering the account.]**

3. All consideration paid by the purchaser under a joint account-funded contract shall be deposited into a joint account as authorized by this section within ten days of receipt of payment by the seller.

4. The financial institution shall hold, invest, and reinvest funds deposited under this section in other accounts offered to depositors by the financial institutions as provided in the written agreement of the purchaser and the seller, provided the financial institution shall not invest or reinvest any funds deposited under this section in term life insurance or any investment that does not reasonably have the potential to gain income or increase in value.

5. Income generated by preneed funds deposited under this section shall be used to pay the reasonable expenses of administering the account as charged by the financial institution and the balance of the income shall be distributed or reinvested upon fulfillment of the contract, cancellation or transfer pursuant to the provisions of this chapter.

6. Within **[fifteen] sixty** days after a provider and **[a witness] and the person authorized to make arrangements for the beneficiary** certify* **[to the financial institution]** in writing that the provider has furnished the final disposition, funeral, and burial services and facilities, and merchandise as required by the preneed contract, or has provided alternative funeral benefits for the beneficiary under special arrangements made with the purchaser, the **seller shall pay to the provider all sums called for under the contract. [financial institution shall distribute the deposited funds to the seller if the certification has been approved by the purchaser. The seller shall pay the provider within ten days of receipt of funds.] After receiving such certification, seller is authorized to withdraw all funds from the joint account.**

7. Any seller, provider, or preneed agent shall not procure or accept a loan against any investment, or asset of, or belonging to a joint account. As of August 28, 2009, it shall be prohibited to use any existing preneed contract as collateral or security pledged for a loan, or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

(L. 2009 S.B. 1)

*Word "certifies" appears in original rolls.

436.455. 1. A joint account-funded preneed contract shall comply
2 with sections 436.400 to 436.520 and the specific requirements of this
3 section.

4 2. In lieu of a trust-funded or insurance-funded preneed contract,
5 the seller and the purchaser may agree in writing that all funds paid
6 by the purchaser or beneficiary for the preneed contract shall be
7 deposited with a financial institution chartered and regulated by the
8 federal or state government authorized to do business in Missouri in an
9 account in the **[joint] of and** names **[and] of and** under the **[joint]** control of **[the
seller and]**
10 purchaser, **with a payable on death to the seller as beneficiary clause.[beneficiary
or party holding power of attorney over the
11 beneficiary's estate.]** There shall be a separate **[joint]** account established
12 for each preneed contract sold or arranged under this section. Funds
13 shall only be withdrawn or paid from the account upon the signature**[s]**
14 of **[both the seller] [and]** the purchaser or under a pay-on-death
15 designation or as required to pay reasonable expenses of administering
16 the account.

17 3. All consideration paid by the purchaser under a **[joint]** account
18 funded contract shall be deposited into **[a joint] an** account as authorized
19 by this section within ten days of receipt of payment by the seller.

20 4. The financial institution shall hold, invest, and reinvest funds
21 deposited under this section in other accounts offered to depositors by
22 the financial institutions as provided in the written agreement of the
23 purchaser and the seller, provided the financial institution shall not
24 invest or reinvest any funds deposited under this section in term life
25 insurance or any investment that does not reasonably have the
26 potential to gain income or increase in value.

27 5. Income generated by preneed funds deposited under this
28 section shall be used to pay **[the] taxes and** reasonable expenses of administering
29 the account as charged by the financial institution and the balance of
30 the income shall be distributed or reinvested upon fulfillment of the
31 contract, cancellation or transfer pursuant to the provisions of this
32 chapter.

33 6. Within fifteen days after a provider and a witness certifies to
34 the financial institution in writing that the provider has furnished the
35 final disposition, funeral, and burial services and facilities, and
36 merchandise as required by the preneed contract, or has provided
37 alternative funeral benefits for the beneficiary under special
38 arrangements made with the purchaser, the financial institution shall
39 distribute the deposited funds to the seller **as beneficiary of the payable on death
clause. [if the certification has been
40 approved by the purchaser.]** The seller shall pay the provider within
41 ten days of receipt of funds.

42 7. Any seller, provider, or preneed agent shall not procure or
43 accept a loan against any investment, or asset of, or belonging to a joint
44 account. As of August 28, 2009, it shall be prohibited to use any
45 existing preneed contract as collateral or security pledged for a loan,
46 or take preneed funds of any existing preneed contract as a loan or for
47 any purpose other than as authorized by this chapter.



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FAX COVER SHEET

DATE: May 21, 2010

TO: Becky Dunn

COMPANY: MO State Board of Embalmers & Funeral Directors

FROM: Kimberley Buxton

FAX: 573-751-1155

OFFICE: 573-751-0813

TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET) 12
*IF YOU DO NOT RECEIVE ALL THE PAGES PLEASE CALL US AS SOON AS
POSSIBLE*

Please find attached the information for Payable On Death Accounts.

It is my suggestion that we change the name of joint accounts to Payable On Death
Accounts (POD). Please see attachment.

Thank you.

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PAYABLE ON DEATH ACCOUNTS

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PREARRANGED SERVICES*General Concepts*

The purpose of a payable on death ("POD") account is to designate the recipient of funds in an account or certificate of deposit after the death of the account owner.⁷ As long as the original owner or owners are alive, the POD beneficiary has no rights in the funds in the account. The account owner has full ownership, benefit and control of the account as long as the account owner is alive. Only after the death of the account owner does the POD beneficiary have rights to the money in the account. A pay on death account may be used for joint accounts as well as individual accounts. The money will not be payable to the death beneficiary until the death of all of the original joint owners.

A POD account is not available for corporations, trusts, partnerships or other entities because such entities do not die; however, entities may be designated as POD beneficiaries.

A POD designation takes priority over a will or trust of the customer. Money in a POD account is paid to the designated death beneficiary, without regard to the terms of the customer's trust or will.

If a conservator takes over management of an account with a POD designation, and if the incapacitated person dies, the money goes to the POD beneficiaries and the conservator has no further power over the money in the account.

There are two separate Missouri laws permitting establishment of POD bank accounts. The first, which is very simple and easy to understand, is Section 362.471. The second set of laws is in Chapter 461 of the Missouri statutes and these provisions are extremely long and complicated. The discussion of POD accounts in this chapter is limited to the simplified provisions in Section 362.471. Any bank that desires to use the more complicated provisions of Chapter 461 should confer with its attorney to determine what is necessary to comply with that law and establish operating procedures accordingly. In order to assure that POD accounts are governed by the more simple law, it is recommended that the bank's account agreement, or POD form, specify that the accounts are subject to Section 362.471. Savings and loans have a similar law in Section 369.186.

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⁷ The term transfer on death ("TOD") is also sometimes used. In this booklet the term POD is used for any transfer on death designation. Pay on death or transfer on death provisions are also possible for automobiles, stocks, bonds, real estate and most other property. The customer's attorney can help the customer use POD or TOD designations for such other types of property.

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Comparison with other Accounts or Death Transfer Methods

There are various methods of passing funds at death, and they are not necessarily interchangeable. Each has its own benefits and drawbacks. The following is a comparison of POD accounts with other available methods of passing funds on death.

Joint Tenancy with Right of Survivorship: The only common characteristic of a joint tenancy with rights of survivorship and a POD account is that the money passes on death to the joint owner or the POD beneficiary. The major difference is that during the lifetime of the original owner the POD beneficiary does not have the right to withdraw money from the account while a joint tenant will have the right to withdraw funds. Also, in a joint tenancy the creditors of any joint tenant may be able to make a claim against the account for debts of that joint owner, and in a POD account the creditors of the POD beneficiary have no claim on the account as long as the account owner is alive.

The following examples illustrate these differences. Assume Tony has an account in First Friendly Bank. Tony would like the money to go to Joan when Tony dies, but Tony does not want Joan to have any rights in the money while Tony is alive. Tony could put the money into a joint tenancy with right of survivorship with Joan being the other joint tenant. Or Tony could name Joan as POD beneficiary of his individual account. Under either choice, Joan gets the money when Tony dies. But, if a joint tenancy with right of survivorship account is used, the following could also happen:

1. While both Tony and Joan are alive, creditors of Joan file a garnishment against the joint account because Joan is the joint owner. If Joan did not put any money into the account, the creditors will probably lose on the garnishment and get nothing from the account. But, Tony may incur substantial attorney fees in defending Tony's money from Joan's creditors. This would not happen with a POD account. The POD account would be carried only in the name of Tony and, therefore, there would be no question that the funds are not subject to the claims of Joan's creditors.
2. ~~Joan withdraws all of the money from the joint account and spends it. This could not happen in a POD account because the POD beneficiary has no access to the money while the account owner is alive.~~
3. Tony dies and Joan claims the money in the account as the surviving joint owner. The law permits Tony's heirs to contest Joan's rights to the money. The most usual claim by heirs is that Joan was put on the account only as an accommodation to help Tony manage Tony's money, but with no intention that Joan actually get the money after death. Joan may have to prove in court that Tony actually intended Joan to have the money on Tony's death, again with the likelihood of significant attorney fees. POD accounts avoid this problem; it is absolutely clear that upon the death of the owner, the funds pass to the designated death beneficiary.

The benefits of using a POD account over a joint account when the original owner only intends the other person to have rights in the money after the death of the original owner include the following:

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1. The other party (the death beneficiary) does not have any rights to take the money out of the account during the life of the original owner as may be the case with a joint account.
2. A POD account can be used much more easily to pass money to a minor than can a joint account. As will be discussed below, a POD designation can appoint a custodian to manage the funds if the death beneficiary is still a minor when the owner dies. If a minor is named as a joint tenant with right of survivorship, it may be necessary to go to court to have a conservator appointed. This will cost the customer money for attorneys, and may result in family discord if various family members argue about who should be the conservator.

Trusts and Wills: A will, a trust and a POD account permit money to pass on the death of the owner. However, a will or a trust is much more expensive to create since an attorney usually must be hired to write the trust document. And, if the customer decides to change the death beneficiary under a will or trust, it will be necessary to hire a lawyer again to change the will or trust. With a POD account the customer can easily change the death beneficiary by notifying the bank to make the change. Of course, there may be times when a will or trust is necessary, such as to do a full estate plan or where there are complicated beneficiary designations. But when the customer is primarily interested in passing money in a single account, and there are a limited number of beneficiaries, a POD account may be superior to a will or trust in terms of the time and money necessary to set up the structure. Special consideration should be given to survivorship rights in selecting the proper structure. In the absence of an LDPS designation (see "Death of Beneficiary Before Owner" below) the money in the POD account goes to the named death beneficiaries, or whichever of them survive the account owner. Therefore, if there are three death beneficiaries, and one dies before the account owner, the money will go to the remaining two. If the customer wants the heirs of a deceased POD beneficiary to get the interests of the deceased POD beneficiary, then a will or trust is probably a better structure for the customer unless the bank is willing to take on the responsibilities for managing an LDPS designation. A POD account designation will take precedence over a will or trust of the customer and money in a POD account will go to the beneficiaries named in the POD account regardless of the terms of the will or trust so the customer should not assume that the heirs will be taken care of through the will or trust. Using the will or trust eliminates the need for the account owner to remember to change the POD designation if one of the death payees dies before the account owner.

"In Trust For" Accounts: An "in trust for" account is the same thing as a POD account. The "trustee" has all rights in the funds until the "trustee's" death at which time the "beneficiary" gets the money. Since the law on POD accounts is more clear than "in trust for" accounts, customers should be encouraged to use the POD designation when they want to open an account with a death beneficiary.

* Requiring multiple signatures for withdrawals from a joint account will not solve the potential problem of the "death beneficiary owner" taking money out of the account. Joint signatures means that the "death beneficiary owner" would also have to approve withdrawals by the true owner that probably would not be acceptable to the true owner.

Uniform Transfers to Minors: Sometimes a parent or grandparent will open a Uniform Transfers to Minors account with every intention that the child should get the money. But, something may come up and the parent or grandparent may need the money back. Under a Uniform Transfers to Minors account the transfer of funds is irrevocable and the person who provided the funds has no right to take them back. If a customer wants a child to have money, but only after the death of the customer (that is, the customer wants the right to use the money for himself or herself), then a POD account with a Uniform Transfers to Minors Law custodian designation should be used rather than a Uniform Transfers to Minors account (see "Minor Death Beneficiaries" below).

Taxpayer Identification Number

Use the taxpayer identification number of the account owner since the death beneficiaries of the account have no interest in the funds until the death of the owner. Use the number of the first named owner if a joint tenancy account.

Creating the Account

~~A POD account is created by designating in writing to whom the funds in the account will be paid upon the death of the account owner.~~ The designation may be made at the time the account is opened or after opening the account. For joint accounts, all joint owners should agree to the POD designation and all joint owners should agree to the change or termination of the POD designation which assures that each joint owner is always in agreement with the designation of POD beneficiaries.

There is no maximum number of beneficiaries who may be designated for a POD account. However, for ease of administration a bank may wish to impose its own limits on the number of beneficiaries that the bank will permit to be designated on a POD account.

Pay on death instructions may be made on the account card as follows:

1. ~~John, POD Henry~~
2. John and Mary, POD Henry
3. John and Mary tenants by the entireties, POD Fred, George and Henry

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In the first example, whatever funds remain in John's account at John's death are payable to Henry. In the second example, upon the last to die of John and Mary, whatever funds remain are paid to Henry. In the third example, whatever funds remain upon the last to die of John and Mary are divided equally (absent instructions to the contrary) between Fred, George and Henry, or whichever of them survives. However, as long as the original owner or owners are alive, the POD beneficiaries have no claim to the account prior to the owner's death.

Even though a POD designation may be made on the account card, a separate POD agreement form may be better for both the bank and the customer. A sample form is provided at the end of this chapter. The use of a form permits the bank to have more information necessary to identify a POD beneficiary. It also makes it easier to change or terminate a designation; a new form merely replaces a prior one or the termination section of an existing form is signed. The form also permits incorporating a Uniform Transfers to Minors account into the POD designation in case a minor is the POD beneficiary (this is discussed further below in "*Minor Death Beneficiaries*"). When there is a POD agreement, the account signature card, certificate of deposit or other instrument should show the ownership of the account as follows:

1. John, subject to POD instructions
2. John or Mary, JTWR0S, subject to POD instructions
3. Peter or Nancy, TEN by ENT, subject to POD instructions

The designation of death beneficiary may be changed any time by the account owner executing a new POD designation form or by executing a new signature card.

The beneficiary does not have to sign any documents, and does not even have to know that he or she has been designated as a beneficiary. Consent from the death beneficiary is not required to change a payee designation or to terminate the POD provisions of the account.

An attorney-in-fact appointed under a power of attorney is *not* authorized to make or change POD beneficiary designations for the principal's account unless that power (or the general power to change survivorship rights in the principal's assets) is specifically granted in the power of attorney. Even if the power to change survivorship rights is granted in the power of attorney, the attorney-in-fact should not name himself or herself as a POD beneficiary unless the power of attorney specifically authorizes the attorney-in-fact to name himself or herself as beneficiary. See "*POWER OF ATTORNEY*" for a more detailed discussion of limitations on the powers of an attorney-in-fact.

Minor Death Beneficiaries

If the customer wants to name a minor as the death beneficiary, the customer should consider what will happen to the money if the customer dies while the beneficiary is still a minor. If the child is very young it may be necessary to have a conservator appointed to manage any funds that pass to the minor at the death of the account owner. A parent of the child is not automatically the conservator of the child's money and the bank cannot just pay the money to a parent. If there is enough money at stake there may be a serious legal fight among various people trying to take control of the money by being named conservator.⁹

⁹ This discussion is not intended to suggest that it is an absolute necessity to have a conservator appointed before money can be paid out for a minor POD beneficiary. Banks need to make their own determination of how much money must be involved and other factors in deciding whether to pay the money to a parent without the need for a formal conservatorship

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If a customer names a child as a POD beneficiary, the customer should take steps to assure that a person acceptable to the customer is appointed to administer the money if the customer dies while the child is still a minor. This can be done very easily in a POD designation form such as the one at the end of this chapter. By combining a POD designation with a Uniform Transfers to Minors designation the customer can provide for the administration of the money after death of the owner. As long as the customer is alive the customer has full power over the account. After death, the person named by the customer as custodian under the Uniform Transfers to Minors designation will automatically take over control of the money. In this way there will be no confusion and no money wasted on legal proceedings. And, the customer's wishes will be followed with respect to who is authorized to manage the money.

The fact that the deceased customer had a will or trust will not help the problem of a minor POD beneficiary. A POD designation supersedes a will or a trust. Therefore, the funds in the account cannot be handled under the will or trust. There will have to be either a conservator appointed or a custodian designation in the POD designation form.

If a customer sets up a POD account a banker should inquire about the age of the beneficiary. If the beneficiary is a minor, the banker should discuss with the customer designating a custodian in the event the customer dies before the beneficiary becomes an adult.

Death of Beneficiary Before Owner

Under a standard POD, money in an account only goes to POD beneficiaries who survive the account owner. If a POD beneficiary dies before the owner, in the absence of an LDPS designation, the money does not pass on to the heirs of the deceased POD beneficiary.

Some POD forms, or some bank policies, permit a "lineal descendants per stirpes" or "LDPS" provision as part of a POD designation. LDPS means that funds in a POD account pass not only to the named death beneficiaries, but also to the heirs of a death beneficiary who dies before the account owner. Under a normal POD designation, if the death beneficiary dies before the account owner, none of the heirs of the deceased death beneficiary has any rights to funds on the death of the original owner. If there is an LDPS designation, then the heirs of a deceased POD beneficiary are entitled to the deceased death beneficiary's share of the money when the original owner dies. An example would be an account titled: "John POD Sue, LDPS". If Sue dies before John, Sue's heirs, whoever they might be, get the money. If there is an LDPS designation, and if the original POD beneficiary dies before the account owner, the bank will have to assure that all of the descendants of the deceased death beneficiary have been identified before the bank can distribute the funds in the account. This can be a time consuming and potentially expensive process. It is likely that the bank will have to pay its attorney to assist in the identification of POD beneficiaries.

proceeding. If the amount is small, and if the person to whom the money is paid is a parent, there is probably little likelihood of legal disputes and, therefore, a bank may make the decision to pay the money to a parent of the child for the child's benefit. But, if the amount of money is large, then requiring a court appointed conservator would be the best policy.

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Banks should consider whether they wish to permit LDPS POD designations -- especially for smaller accounts where the cost of determining the proper death payees may easily exceed what the bank earns on the account. A customer who wants such a complicated plan for distribution of assets may be better served by a will or a trust since the executor or trustee will be better able to identify who are the proper beneficiaries of the customer's assets.

Control of the Account; Payments on Death

The account owner (or owners if it is a joint account) has full control of the account during the owner's life. The death beneficiary cannot withdraw any money as long as any account owner is still alive. If the account is a joint account with two or more owners, the POD beneficiary is entitled to the money only after the death of the last account owner to survive. The death beneficiary does not receive statements with respect to the account and is not entitled to any information about the account from the bank. The account owners (but not the death beneficiaries) can pledge the POD account. *

When a bank permits a POD designation on an account, the bank assumes the responsibility of making sure that the death beneficiaries get the money in the account at the death of the original owner. The POD designation supersedes a will or trust and, therefore, the original owner's executor or trustee will have no authority or right to distribute the funds. The bank may distribute the funds upon receipt of a certified copy of the death certificate of the account owner or the last surviving joint account owner.

Because the bank must identify the death payees who are entitled to the money, it is recommended that the bank get basic information about the death beneficiaries at the time the account is opened, particularly the address of each beneficiary. The address of the beneficiary will permit the bank to notify the death beneficiary that he or she is entitled to money and to help assure that the person who is claiming the funds is the true named beneficiary. Use of a POD designation form, such as the one provided at the end of this chapter, will give the bank this basic information.

After the death of the account owner (or of the last surviving account owner if it is a joint tenancy account) all of the money in the account becomes the property of the death beneficiaries. The bank may distribute the funds in the account to the POD beneficiaries after the bank gets a death certificate for the account owner or the last surviving joint account owner. If there are multiple death beneficiaries, then each death payee has a separate interest in his/her share of the funds as tenants in common as to the other POD beneficiaries and it is not necessary to have approval of all death beneficiaries to distribute the money to the POD beneficiaries. This means that the bank can make payments to individual death beneficiaries at any time. A distribution check should not be written to all of the death beneficiaries jointly, nor is it necessary to get approval of all of the death beneficiaries before making distributions to any one or more of them. It also means that if a death beneficiary dies before the bank distributes the money (but after the death of the account owner), the bank must distribute the deceased beneficiary's share to the estate of the deceased beneficiary since the money became the property of the deceased beneficiary as tenant in common immediately upon the death of the owner. The other death beneficiaries do not get the share of the deceased beneficiary.

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In the absence of special arrangements, each death beneficiary gets an equal share of the money in the account when the owner dies. The owner can provide for different death beneficiaries to receive different proportions of the money. In order to do this, a separate agreement form is required. The POD designation form at the end of this chapter permits different percentage shares to different death beneficiaries. Banks are cautioned not to draft their own agreements for unequal distributions unless they consult their attorney since it is necessary to provide in that agreement how to reallocate the funds if one of the death beneficiaries dies before the account owner. When distribution is in equal shares, no reallocation is necessary if a death beneficiary dies first since the remaining death beneficiaries will divide the money into equal shares.

If there is no surviving death beneficiary, then the bank needs to wait for a probate court order, or small estate affidavit, before distributing the funds to the estate of the owner.

A POD designation takes precedence over the provisions of a customer's will or trust. Therefore, even if the customer has a will, the money in a POD account will go to the POD beneficiary, not to the will or trust beneficiaries.

If the death beneficiary is a minor, see "*Minor Death Beneficiaries*", above in this chapter.

Creditors

*
~~Creditors of the account owner(s) may execute against the account for debts of the account owners to the same extent as if the account did not have the POD designation. Creditors of the death beneficiaries have no right in the funds while an original owner is still alive. The bank should not freeze the funds in an account if there is a garnishment or IRS levy against the death beneficiary.~~

Since the money in the account passes to the POD beneficiaries immediately on the death of the account owner, the question arises as to whether the bank has the right to offset these funds to pay any loans or other obligations of the deceased owner that are outstanding at the time of death. In order to assure that the bank does not lose any of its rights in the money, the original owner should agree that the bank's rights to the funds take priority over the rights of the death beneficiaries. The POD designation form at the end of this chapter gives the bank such priority rights. NOTE: THIS FORM HAS BEEN UPDATED SINCE THE LAST EDITION OF THIS MANUAL WITH RESPECT TO PRESERVING THE BANK'S RIGHTS TO THE FUNDS. BANKS USING THE FORM SHOULD UPDATE THEIR FORMS ACCORDINGLY.

Required Documentation

Pay on death instructions may be designated either on a signature card or on a separate Pay on Death Designation form. Otherwise, the underlying account is documented as appropriate for that particular type of account. Starting on the next page is a sample Pay on Death Designation form.

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(Sample Form)

PAY ON DEATH DESIGNATION

The undersigned hereby direct(s) _____ (the "Bank"), to pay or transfer upon my/our death all of the funds represented by the following instrument or account:

Type of Account
or Instrument

Identifying Number

to the following beneficiary(s):

Name of Payee: _____ %
Taxpayer Identification Number: _____
Address of Payee: _____

Name of Payee: _____ %
Taxpayer Identification Number: _____
Address of Payee: _____

Name of Payee: _____ %
Taxpayer Identification Number: _____
Address of Payee: _____

or whichever of them shall survive. If no specific percentage designation is provided, each surviving beneficiary will share equally in the available funds. If specific percentage allocations are made, then if any beneficiary dies before the account owner, the deceased beneficiary's share shall be allocated to the remaining beneficiaries pro rata in accordance with their specific percentage allocation (in making such allocation, the percentage interests of each surviving beneficiary shall be added together, and the specific percentage interest of a surviving beneficiary shall be divided by the total).

If any beneficiary is under 18¹⁰ years of age at the time any amounts are payable hereunder to such minor payee, all amounts payable to such minor payee shall be payable to the following person as custodian under the Missouri Transfers to Minors Law for such minor payee until such minor payee reaches 18 years of age. If the designated custodian is unable or unwilling to serve then the designated substitute custodian shall serve. If there is no custodian able or willing to serve, then the Bank shall be entitled to retain the funds otherwise payable to the minor payee until a conservator is appointed for the minor payee, or until the minor payee reaches 18 years of age.

¹⁰ The form in the last edition of this booklet had the age 21.

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PAY ON DEATH DESIGNATION (continued)

Custodian's Name: _____
Custodian's Address: _____
Substitute Custodian's Name: _____
Substitute Custodian's Address: _____

Upon receipt of a certified copy of a death certificate of the undersigned, the Bank shall be authorized to pay or transfer such instrument or account to the beneficiary(s). If the account or instrument is held as joint tenants with rights of survivorship or tenants by the entireties, such instrument or account shall be paid to the beneficiary(s) only upon the death of the remaining survivor of the undersigned.

This designation is subject to the provisions of Missouri law (Section 362.471) regarding POD designations and to all existing and future rules of the Bank regarding POD designations.

This designation may be changed or revoked only by written instructions to the Bank from each owner of the Account. This designation will take precedence over, and may not be revoked by, any will or trust of the undersigned. This Pay on Death Designation shall be deemed to terminate automatically if all of the beneficiaries predecease the undersigned.

THIS PAY ON DEATH DESIGNATION TERMINATES, SUPERSEDES AND REPLACES ANY PRIOR PAY ON DEATH DESIGNATION WITH RESPECT TO THE ACCOUNT OR INSTRUMENT DESCRIBED ABOVE.

The rights of the designated payee of the instrument or account are subordinate to any rights of the Bank or any other creditor to whom such instrument or account has been pledged or who may otherwise have a lien interest or right of setoff in such instrument or account. No amounts will be payable to any designated payee until any indebtedness of the owner(s) of the account to the Bank have been paid in full.¹¹ The Bank shall be entitled to be reimbursed from the funds in the instrument or account for any costs incurred by the Bank, including legal fees, as a result of the Bank paying or refusing to pay any amounts hereunder, unless such costs are incurred as a result of the Bank's intentional wrongful refusal to make payments as required hereunder.

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¹¹ This language has been changed from the last booklet. The prior claims of the bank have been extended to all debt, not just debts for which the account was pledged.

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PAY ON DEATH DESIGNATION (continued)

THE UNDERSIGNED ACKNOWLEDGE THAT THEY HAVE OBTAINED WHATEVER ADVICE THEY DEEM APPROPRIATE FROM THEIR ATTORNEY OR FINANCIAL ADVISOR PRIOR TO SIGNING THIS DESIGNATION. THE BANK HAS MADE NO REPRESENTATIONS AS TO THE APPROPRIATENESS OF THIS PAY ON DEATH DESIGNATION. THE BANK SHALL HAVE NO LIABILITY TO THE UNDERSIGNED, OR THEIR HEIRS, REPRESENTATIVES OR ASSIGNS, OR TO ANY OTHER PERSON, FOR PAYING THE ACCOUNT OR INSTRUMENT TO THE PERSONS DESIGNATED HEREIN OR FOR ANY ERRONEOUS PAYMENTS UNLESS MADE BY THE BANK WITH ACTUAL KNOWLEDGE THAT THE PERSON TO WHOM PAYMENT WAS MADE WAS NOT THE PAYEE DESIGNATED HEREIN.

Dated: _____

Print Name: _____

Print Name: _____

TERMINATION OF DESIGNATION

The undersigned, being each of the persons who executed the foregoing Pay on Death Designation, or being the survivor if the other is deceased, hereby terminates the foregoing Pay on Death Designation effective immediately.

Dated: _____

Print Name: _____

Print Name: _____

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2. In lieu of a trust-funded or insurance-funded preneed contract, the seller and the purchaser may agree in writing that all funds paid by the purchaser or beneficiary for the preneed contract shall be deposited with a financial institution chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the seller and purchaser, beneficiary or party holding power of attorney over the beneficiary's estate. There shall be a separate joint account established for each preneed contract sold or arranged under this section. Funds shall only be withdrawn or paid from the account upon the signatures of both the seller and the purchaser or under a pay-on-death designation or as required to pay reasonable expenses of administering the account.
3. All consideration paid by the purchaser under a joint account-funded contract shall be deposited into a joint account as authorized by this section within ten days of receipt of payment by the seller.
4. The financial institution shall hold, invest, and reinvest funds deposited under this section in other accounts offered to depositors by the financial institutions as provided in the written agreement of the purchaser and the seller, provided the financial institution shall not invest or reinvest any funds deposited under this section in term life insurance or any investment that does not reasonably have the potential to gain income or increase in value.
5. Income generated by preneed funds deposited under this section shall be used to pay the reasonable expenses of administering the account as charged by the financial institution and the balance of the income shall be distributed or reinvested upon fulfillment of the contract, cancellation or transfer pursuant to the provisions of this chapter.
6. Within fifteen days after a provider and a witness certify* to the financial institution in writing that the provider has furnished the final disposition, funeral, and burial services and facilities, and merchandise as required by the preneed contract, or has provided alternative funeral benefits for the beneficiary under special arrangements made with the purchaser, the financial institution shall distribute the deposited funds to the seller if the certification has been approved by the purchaser. The seller shall pay the provider within ten days of receipt of funds.
7. Any seller, provider, or preneed agent shall not procure or accept a loan against any investment, or asset of, or belonging to a joint account. As of August 28, 2009, it shall be prohibited to use any existing preneed contract as collateral or security pledged for a loan, or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

(L. 2009 S.B. 1)

*Word "certifies" appears in original rolls.

Cancellation of contract, when, procedure.

436.456. 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:

- (1) 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;
- (2) 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;

Cancellation of contract, when, procedure.

436.456. 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:

(3) 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 income earned by the trust that would be required to fund the percentage of the total payments received on the trust-funded contract that have been withdrawn from the account under subsection 4 of section 436.430 but excluding the income, to the purchaser of the contract;

(4) 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.

Cancellation of contract, when, procedure.

436.456. 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:

(1) In the case of a joint account-funded preneed contract, deliver written notice of the cancellation to the **provider**, seller and the financial institution. Within fifteen days of receipt of notice of the cancellation, **the provider and seller shall take such steps as are necessary in order to allow the** financial institution **[shall] to** distribute all deposited funds to the purchaser. Interest shall be distributed as provided in the agreement with the seller and purchaser;

(2) In the case of an insurance-funded preneed contract, deliver written notice of the cancellation to the **provider and** 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;

(3) In the case of a trust-funded preneed contract, deliver written notice of the cancellation to the **provider**, 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 subsection 4 of section 436.430 but excluding the income, to the purchaser of the contract;

(4) 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.

(L. 2009 S.B. 1)

Alternative provider permitted, when.

436.458. 1. 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.

3. 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 this section, 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. If the alternative provider does not transfer the contract's trust property to a new trust, the alternative provider shall be deemed to have agreed to the terms of the trust agreement governing the contract.

Alternative provider permitted, when.

436.458. 1. 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.

2. 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.

3. 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 this section, 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.

4. In the case of an insurance-funded contract and annuity funded contract the policy owner shall re-assign the death benefits to the newly designated provider by notifying the insurance company and completing the paperwork required of that insurance company.

Alternative provider permitted, when.

436.458. 1. 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.

2. 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.

3. 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 this section, 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.

4. In any case where an alternate provider is designated, the original seller can require, prior to the new designation becoming effective, that a new seller accept the contract and all funds associated with the contract and, upon written verification of said acceptance by the new seller, the original seller is relieved of all obligations under this chapter regarding said contract other than to include notice of the transfer in its annual report.

(L. 2009 S.B. 1)

Seller report to board required, contents--fee--filing of reports.

436.460. 1. Each seller shall file an annual report with the board which shall contain the following information:

- (1) The contract number of each preneed* contract sold since the filing of the last report with an indication of, and whether it is funded by a trust, insurance or joint account;
- (2) The total number and total face value of preneed contracts sold since the filing of the last report;
- (3) The contract amount of each preneed contract sold since the filing of the last report, identified by contract;
- (4) The name, address, and license number of all preneed agents authorized to sell preneed contracts on behalf of the seller;
- (5) The date the report is submitted and the date of the last report;
- (6) The list including the name, address, contract number and whether it is funded by a trust, insurance or joint account of all Missouri preneed contracts fulfilled, cancelled or transferred by the seller during the preceding calendar year;
- (7) The name and address of each provider with whom it is under contract;
- (8) The name and address of the person designated by the seller as custodian of the seller's books and records relating to the sale of preneed contracts;
- (9) Written consent authorizing the board to order an investigation, examination and, if necessary, an audit of any joint or trust account established under sections 436.400 to 436.520, designated by depository or account number;
- (10) Written consent authorizing the board to order an investigation, examination and if necessary an audit of its books and records relating to the sale of preneed contracts; and
- (11) Certification under oath that the report is complete and correct attested to by an officer of the seller. The seller or officer shall be subject to the penalty of making a false affidavit or declaration.

2. A seller that sells or has sold trust-funded preneed contracts shall also include in the annual report required by subsection 1** of this section:

- (1) The name and address of the financial institution in which it maintains a preneed trust account and the account numbers of such trust accounts;
- (2) The trust fund balance as reported in the previous year's report;
- (3) The current face value of the trust fund;
- (4) Principal contributions received by the trustee since the previous report;
- (5) Total trust earnings and total distributions to the seller since the previous report;
- (6) Authorization of the board to request from the trustee a copy of any trust statement, as part of an investigation, examination or audit of the preneed seller;
- (7) Total expenses, excluding distributions to the seller, since the previous report; and
- (8) Certification under oath that the information required by subdivisions (1) to (7) of this subsection is complete

and correct and attested to by a corporate officer of the trustee. The trustee shall be subject to the penalty of making a false affidavit or declaration.

3. A seller that sells or who has sold joint account-funded preneed contracts shall also include in the annual report required by subsection 1 of this section:

- (1) The name and address of the financial institution in Missouri in which it maintains the joint account and the account numbers for each joint account;
- (2) The amount on deposit in each joint account;
- (3) The joint account balance as reported in the previous year's report;
- (4) Principal contributions placed into each joint account since the filing of the previous report;
- (5) Total earnings since the previous report;
- (6) Total distributions to the seller from each joint account since the previous report;
- (7) Total expenses deducted from the joint account, excluding distributions to the seller, since the previous report; and
- (8) Certification under oath that the information required by subdivisions (1) to (7) of this subsection is complete and correct and attested to by an authorized representative of the financial institution. The affiant shall be subject to the penalty of making a false affidavit or declaration.

4. A seller that sells or who has sold any insurance-funded preneed contracts shall also include in the annual report required by subsection 1 of this section:

- (1) The name and address of each insurance company issuing insurance to fund a preneed contract sold by the seller during the preceding year;
- (2) The status and total face value of each policy;
- (3) The amount of funds the seller directly received on each contract and the date the amount was forwarded to any insurance company; and
- (4) Certification under oath that the information required by subsections 1 to 3 of this section is complete and correct attested to by an authorized representative of the insurer. The affiant shall be subject to the penalty of making a false affidavit or declaration.

5. Each seller shall remit an annual reporting fee in an amount established by the board by rule for each preneed contract sold in the year since the date the seller filed its last annual report with the board. This 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 436.400 to 436.520.

6. All reports required by this section shall be filed by the thirty-first day of October of each year or by the date established by the board by rule. Annual reports filed after the date provided herein shall be subject to a late fee in an amount established by rule of the board.

7. If a seller fails to file the annual report on or before its due date, his or her preneed seller license shall automatically be suspended until such time as the annual report is filed and all applicable fees have been paid.

8. This section shall apply to contracts entered into before August 28, 2009.

(L. 2009 S.B. 1)

*Word "preened" appears in original rolls.

**Words "section 1" appear in original rolls.

Record-keeping requirements of seller.

436.465. A seller shall maintain:

(1) Adequate records of all preened contracts and related agreements with providers, trustees of a preened trust, and financial institutions holding a joint account established under sections 436.400 to 436.520;

(2) Records of preened contracts, including financial institution statements and death certificates, shall be maintained by the seller for the duration of the contract and for no less than five years after the performance or cancellation of the contract.

(L. 2009 S.B. 1)

Complaint procedure--violation, attorney general may file court action.

436.470. 1. Any person may file a complaint with the board to notify the board of an alleged violation of this chapter. The board shall investigate each such complaint.

2. The board shall have authority to conduct inspections and investigations of providers, sellers, and preened agents and conduct financial examinations of the books and records of providers, sellers, and preened agents and any trust or joint account to determine compliance with sections 436.400 to 436.520, or to determine whether grounds exist for disciplining a person licensed or registered under sections 333.310 to 333.340, RSMo, at the discretion of the board and with or without cause. The board shall conduct a financial examination of the books and records of each seller as authorized by this section at least once every five years, subject to available funding.

3. Upon determining that an inspection, investigation, examination, or audit shall be conducted, the board shall issue a notice authorizing an employee or other person appointed by the board to perform such inspection, investigation, examination, or audit. The notice shall instruct the person appointed by the board as to the scope of the inspection, investigation, examination or audit.

4. The board shall not appoint or authorize any person to conduct an inspection, investigation, examination, or audit under this section if the individual has a conflict of interest or is affiliated with the management of, or owns a pecuniary interest in, any person subject to inspection, investigation, examination, or audit under chapter 333, RSMo, or sections 436.400 to 436.520.

5. The board may request that the director of the division of professional registration, the director of the department of insurance, financial institutions and professional registration, or the office of the attorney general designate one or more investigators or financial examiners to assist in any investigation, examination, or audit, and such assistance shall not be unreasonably withheld.

6. The person conducting the inspection, investigation, or audit may enter the office, premises, establishment, or place of business of any seller or licensed provider of preened contracts, or any office, premises, establishment, or place where the practice of selling or providing preened funerals is conducted, or where such practice is advertised as being conducted for the purpose of conducting the inspection, investigation, examination, or audit.

Seller report to board required, contents--fee--filing of reports.

436.460. 1. Each seller shall file an annual report with the board which shall contain the following information:

...

4. A seller that sells or who has sold any insurance-funded preneed contracts shall also include in the annual report required by subsection 1 of this section:

(1) The name and address of each insurance company issuing insurance to fund a preneed contract sold by the seller during the preceding year;

(2) The status and total face value of each policy;

[(3) The amount of funds the seller directly received on each contract and the date the amount was forwarded to any insurance company]; and

[(4)] (3) Certification under oath that the information required by subsections 1 to 3 of this section is complete and correct **[attested to by an authorized representative of the insurer. The affiant shall be subject to the penalty of making a false affidavit or declaration].**

Seller report to board required, contents--fee--filing of reports.

436.460. 1. Each seller shall file an annual report with the board. **For contracts sold prior to August 28, 2009, the seller shall file reports as required under the provisions of the chapter as they existed at the time the contract was entered into. Such annual report shall be required even if the seller ceases at any time to be a licensed seller pursuant to the terms of this chapter. For all contracts sold after August 28, 2009 the seller shall file an annual report** which shall contain the following information:

- (1) The contract number of each preneed* contract sold since the filing of the last report with an indication of, and whether it is funded by a trust, insurance or joint account;
- (2) The total number and total face value of preneed contracts sold since the filing of the last report;
- (3) The contract amount of each preneed contract sold since the filing of the last report, identified by contract;
- (4) The name, address, and license number of all preneed agents authorized to sell preneed contracts on behalf of the seller;
- (5) The date the report is submitted and the date of the last report;
- (6) The list including the name, address, contract number and whether it is funded by a trust, insurance or joint account of all Missouri preneed contracts fulfilled, cancelled or transferred by the seller during the preceding calendar year;
- (7) The name and address of each provider with whom it is under contract;
- (8) The name and address of the person designated by the seller as custodian of the seller's books and records relating to the sale of preneed contracts;
- (9) Written consent authorizing the board to order an investigation, examination and, if necessary, an audit of any joint or trust account established under sections 436.400 to 436.520, designated by depository or account number;
- (10) Written consent authorizing the board to order an investigation, examination and if necessary an audit of its books and records relating to the sale of preneed contracts; and
- (11) Certification under oath that the report is complete and correct attested to by an officer of the seller. The seller or officer shall be subject to the penalty of making a false affidavit or declaration.

2. A seller that sells or has sold trust-funded preneed contracts shall also include in the annual report required by subsection 1** of this section:

- (1) The name and address of the financial institution in which it maintains a preneed trust account and the account numbers of such trust accounts;
- (2) The trust fund balance as reported in the previous year's report;
- (3) The current face value of the trust fund;
- (4) Principal contributions received by the trustee since the previous report;
- (5) Total trust earnings and total distributions to the seller since the previous report;
- (6) Authorization of the board to request from the trustee a copy of any trust statement, as part of an investigation, examination or audit of the preneed seller;
- (7) Total expenses, excluding distributions to the seller, since the previous report; and
- (8) Certification under oath that the information required by subdivisions (1) to (7) of this subsection is complete and correct and attested to by a corporate officer of the trustee. The trustee shall be subject to the penalty of making a false affidavit or declaration.

3. A seller that sells or who has sold joint account-funded preneed contracts

shall also include in the annual report required by subsection 1 of this section:

- (1) The name and address of the financial institution in Missouri in which it maintains the joint account and the account numbers for each joint account;
- (2) The amount on deposit in each joint account;
- (3) The joint account balance as reported in the previous year's report;
- (4) Principal contributions placed into each joint account since the filing of the previous report;
- (5) Total earnings since the previous report;
- (6) Total distributions to the seller from each joint account since the previous report;
- (7) Total expenses deducted from the joint account, excluding distributions to the seller, since the previous report; and
- (8) Certification under oath that the information required by subdivisions (1) to (7) of this subsection is complete and correct and attested to by an authorized representative of the financial institution. The affiant shall be subject to the penalty of making a false affidavit or declaration.

4. A seller that sells or who has sold any insurance-funded preneed contracts shall also include in the annual report required by subsection 1 of this section:

- (1) The name and address of each insurance company issuing insurance to fund a preneed contract sold by the seller during the preceding year;
- (2) The status and total face value of each policy;
- (3) The amount of funds the seller directly received on each contract and the date the amount was forwarded to any insurance company; and
- (4) Certification under oath that the information required by subsections 1 to 3 of this section is complete and correct attested to by an authorized representative of the insurer. The affiant shall be subject to the penalty of making a false affidavit or declaration.

(5)The above reporting provisions do not apply in the case of an insurance policy that was not purchased in conjunction with the preneed contract and where the funeral home is being made the beneficiary or assignee in order to qualify for benefits pursuant to Chapter 208 RSMo. In that event, the seller shall report the name and address of the insurance company and the face value of said policy and the preneed contract number that it is associated with.

5. Each seller shall remit an annual reporting fee in an amount established by the board by rule for each preneed contract sold in the year since the date the seller filed its last annual report with the board. This 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 436.400 to 436.520.

6. All reports required by this section shall be filed by the thirty-first day of October of each year or by the date established by the board by rule. Annual reports filed after the date provided herein shall be subject to a late fee in an amount established by rule of the board.

7. If a seller fails to file the annual report on or before its due date, his or her preneed seller license shall automatically be suspended until such time as the annual report is filed and all applicable fees have been paid.

8. This section shall apply to contracts entered into before August 28, 2009.

(L. 2009 S.B. 1)

*Word "preened" appears in original rolls.

**Words "section 1" appear in original rolls.

7. Upon request by the board, a licensee or registrant shall make the books and records of the licensee or registrant available to the board for inspection and copying at any reasonable time, including, any insurance, trust, joint account, or financial institution records deemed necessary by the board to determine compliance with sections 436.400 to 436.520.

8. The board shall have the power to issue subpoenas to compel the production of records and papers by any licensee, trustee or registrant of the board. Subpoenas issued under this section shall be served in the same manner as subpoenas in a criminal case.

9. All sellers, providers, preneed agents, and trustees shall cooperate with the board or its designee, the division of finance, the department of insurance, financial institutions and professional registration, and the office of the attorney general in any inspection, investigation, examination, or audit brought under this section.

10. This section shall not be construed to limit the board's authority to file a complaint with the administrative hearing commission charging a licensee or registrant with any actionable conduct or violation, regardless of whether such complaint exceeds the scope of acts charged in a preliminary public complaint filed with the board and whether any public complaint has been filed with the board.

11. The board, the division of finance, the department of insurance, financial institutions and professional registration, and the office of the attorney general may share information relating to any preneed inspection, investigation, examination, or audit.

12. If an inspection, investigation, examination, or audit reveals a violation of sections 436.400 to 436.520, the office of the attorney general may initiate a judicial proceeding to:

- (1) Declare rights;
- (2) Approve a nonjudicial settlement;
- (3) Interpret or construe the terms of the trust;
- (4) Determine the validity of a trust or of any of its terms;
- (5) Compel a trustee to report or account;
- (6) Enjoin a seller, provider, or preneed agent from performing a particular act;
- (7) Enjoin a trustee from performing a particular act or grant to a trustee any necessary or desirable power;
- (8) Review the actions of a trustee, including the exercise of a discretionary power;
- (9) Appoint or remove a trustee;
- (10) Determine trustee liability and grant any available remedy for a breach of trust;
- (11) Approve employment and compensation of preneed agents;
- (12) Determine the propriety of investments;
- (13) Determine the timing and quantity of distributions and dispositions of assets; or
- (14) Utilize any other power or authority vested in the attorney general by law.

(L. 2009 S.B. 1)

Death or incapacity of purchaser, transfer of rights and remedies, to whom.

436.480. Upon the death or legal incapacity of a purchaser, all rights and remedies granted to the purchaser under sections 436.400 to 436.520 shall be enforceable by and accrue to the benefit of the purchaser's legal representative or his or her estate, and all payments otherwise payable to the purchaser shall be paid to that person.

(L. 2009 S.B. 1)

Violations, penalties.

436.485. 1. Any person, including the officers, directors, partners, agents, or employees of such person, who shall knowingly and willfully violate or assist or enable any person to violate any provision of sections 436.400 to 436.520 by incompetence, misconduct, gross negligence, fraud, misrepresentation, or dishonesty is guilty of a class C felony. Each violation of any provision of sections 436.400 to 436.520 constitutes a separate offense and may be prosecuted individually. The attorney general shall have concurrent jurisdiction with any local prosecutor to prosecute under this section.

2. Any violation of the provisions of sections 436.400 to 436.520 shall constitute a violation of the provisions of section 407.020, RSMo. In any proceeding brought by the attorney general for a violation of the provisions of sections 436.400 to 436.520, the court may order all relief and penalties authorized under chapter 407, RSMo, and, in addition to imposing the penalties provided for in sections 436.400 to 436.520, order the revocation or suspension of the license or registration of a defendant seller, provider, or preneed agent.

(L. 2009 S.B. 1)

Sale of business assets of provider--report to board required, contents.

436.490. 1. A provider that intends to sell or otherwise dispose of all or a majority of its business assets, or its stock if a corporation, shall notify the board at least sixty days prior to selling or otherwise disposing of its business assets or stock, or ceasing to do business as a provider, and shall file a notification report on a form established by the board.

2. The report required by this section shall include:

(1) The name, phone number, and address of the purchasers of any outstanding preneed contract for which the licensee is the designated provider;

(2) The name and license numbers of all sellers authorized to designate the licensee as a provider in a preneed contract;

(3) The name, address, and license number of the provider assuming or agreeing to assume the licensee's obligations as a provider under a preneed contract, if any;

(4) The name, address, and phone number of a custodian who will maintain the books and records of the provider containing information about preneed contracts in which the licensee is or was formerly designated as provider;

(5) A final annual report containing the information required by section 436.460;

Violations, penalties.

436.485. 1. Any person, including the officers, directors, partners, agents, or employees of such person, who shall knowingly and willfully violate or assist or enable any person to violate any provision of sections 436.400 to 436.520 by incompetence, misconduct, gross negligence, fraud, misrepresentation, or dishonesty is guilty of a class C felony. Each violation of any provision of sections 436.400 to 436.520 constitutes a separate offense and may be prosecuted individually. The attorney general shall have concurrent jurisdiction with any local prosecutor to prosecute under this section.

2. Any violation of the provisions of sections 436.400 to 436.520 shall constitute a violation of the provisions of section 407.020, RSMo. In any proceeding brought by the attorney general for a violation of the provisions of sections 436.400 to 436.520, the court may order all relief and penalties authorized under chapter 407, RSMo, and, in addition to imposing the penalties provided for in sections 436.400 to 436.520, order the revocation or suspension of the license or registration of a defendant seller, provider, or preneed agent, and the recovery of all expense of any audit or examination conducted of the funding of seller's preneed contracts.

(6) The date the provider intends to sell or otherwise dispose of its business assets or stock, or cease doing business; and

(7) Any other information required by any other applicable statute or regulation enacted pursuant to state or federal law.

3. Within three days after the provider sells or disposes of its assets or stock or ceases doing business, the former provider shall notify each seller in writing that the former provider has sold or disposed of its assets or stock or has ceased doing business.

(L. 2009 S.B. 1)

Sale of business assets by seller, report to board required, contents.

436.500. 1. A seller that intends to sell or otherwise dispose of all or a majority of its business assets or its stock shall notify the board at least sixty days prior to selling or otherwise disposing of its assets or stock, or ceasing to do business as a seller, and shall file a notification report on a form established by the board.

2. The report required by this section shall include:

(1) A notarized and signed statement from the person assuming or agreeing to assume the obligations of the seller indicating that the assuming seller has been provided with a copy of the seller's final annual report and has consented to assuming the outstanding obligations of the seller;

(2) In lieu of the notarized statement required by subdivision (1) of this subsection, the seller may file a plan detailing how the assets of the seller will be set aside and used to service all outstanding preneed contracts sold by the seller; and

(3) Any other information required by any other applicable statute or regulation enacted pursuant to state or federal law.

3. Within thirty days after assuming the obligations of a seller under this section, the assuming seller shall:

(1) Notify each provider in writing that the former seller has sold or disposed of its assets or stock or has ceased doing business; and

(2) Provide written notification to the purchasers of each preneed contract assumed by the seller indicating that the former seller has transferred ownership or has ceased doing business.

4. Nothing in this section shall be construed to require the board to audit, inspect, investigate, examine, or edit the books and records of a seller subject to the provisions of this section nor shall this section be construed to amend, rescind, or supersede any duty imposed on, or due diligence required of, an entity assuming the obligations of the seller.

5. The office of the attorney general shall have the authority to initiate legal action to compel or otherwise ensure compliance with this section by a former provider licensee.

(L. 2009 S.B. 1)

Credit life insurance may be offered to purchaser.

436.505. A preneed contract may offer the purchaser the option to acquire and maintain credit life insurance on the life of the purchaser. Such insurance shall provide for the payment of death benefits to the seller in an amount equal to the total of all contract payments unpaid as of the date of such purchaser's death, and shall be used solely to make those unpaid payments. Any such credit life insurance shall be provided by a duly authorized insurance company and the preneed contract shall clearly identify the name of the insurer and the amount of payment allocated to the premium payment for the credit life. No seller or provider may provide any form of self insured credit life.

(L. 2009 S.B. 1)

Seller's failure to make timely payment, effect of--rights of purchaser.

436.510. If a seller shall fail to make timely payment of an amount due a purchaser or a provider under the provisions of sections 436.400 to 436.520, the purchaser or provider, as appropriate, shall have the right, in addition to other rights and remedies against such seller, to make demand upon the trustee of the preneed trust for the contract to distribute to the purchaser or provider from the trust, as damages, an amount equal to all deposits made into the trust for the contract.

(L. 2009 S.B. 1)

Rulemaking authority.

436.520. 1. The board shall promulgate and enforce rules for administration and enforcement of sections 436.400 to 436.520 including the establishment of the amount of any fees authorized thereunder for the transaction of its business and for standards of service and practice to be followed for the licensing and registration of providers, sellers, and preneed agents deemed necessary for the public good and consistent with the laws of this state. Such fees shall be set at a level to produce revenue which does not substantially exceed the cost and expense of administering this chapter.

2. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly under chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2009, shall be invalid and void.

(L. 2009 S.B. 1)

Board to maintain certain personal information about purchaser--confidentiality of information.

436.525. The board shall maintain as a closed and confidential record, not subject to discovery unless the person provides written consent for disclosure, all personal information about any individual preneed purchaser or beneficiary, including but not limited to name, address, Social Security number, financial institution account numbers, and any health information disclosed in the preneed contract or any document prepared in conjunction with the preneed contract; provided, however, that the board may disclose such confidential information without the consent of the person involved in the course of voluntary interstate exchange of information; or in the course of any litigation concerning that person or the provider, seller, or sales agent involved with the preneed contract; or pursuant to a lawful request or to other administrative or law enforcement agencies acting within the scope of

their statutory authority. In any such litigation, the board and its attorneys shall take reasonable precautions to ensure the protection of such information from disclosure to the public.

(L. 2009 S.B. 1 § 1)

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MFDEA Justification for Proposed Changes

436.415.1 Clarifies intent of SB 1 that the "Provider" is the entity that is legally obligated to provide the funeral goods or services. There was never any intent or any need to have every funeral establishment be a provider when there were multiple licensed locations under common ownership. It is far better (and the intent, it is submitted, of SB1) to only require one funeral establishment have the provider's license even if there are multiple locations all owned by the same common owner. This way all record keeping is centralized making reporting and auditing easier. While MFDEA believes that the current language in 436 already provides for this, there is obviously some confusion on the issue and this change clears that up.

436.415.2 A seller under "old" 436 already has a continuing obligation to maintain and report as provided in the law. There is no reason that an entity that is not selling preneed under new 436 to obtain a seller's license, but that is what the State Board has required. MFDEA does not believe that 436 requires a seller's license for those not currently selling preneed, but that is not the interpretation of the State Board. so this language rectifies the situation.

436.450.8 Corrects two mistakes from SB1. First, when money is returned, it should go to the purchaser (or purchaser's estate) and not the beneficiary since it might not have been the beneficiary's money. Secondly, the correct phrase should be "irrevocable" since the seller might not know if public assistance was received or not, and this would now match up with the language of 208

436.455.2 Helps correct some of the problems with joint-accounts. This and later changes are to avoid any appearance of telling a bank what they can or cannot do on deposit accounts governed by other state and federal laws.

436.455.6 Changed to 60 days to be same as with trusts. Makes the certificate of performance for joint-accounts match that which is required of all preneeds earlier in the chapter. As rewritten, once the certificate of performance is completed, then the seller is authorized to withdraw the funds. Of course it would then need to meet whatever requirements were set up for the account at the time it was opened up.

436.456.1 Adds provider to notification since they also need to know if the contract is canceled. Since the bank is bound by federal deposit laws on who and how money is paid out, the change puts the burden on the provider and seller to do whatever is necessary to facilitate the money going to the purchaser instead of trying to tell the bank what they must do.

436.456 (2) and (3) adds provider to the notification.

436.458.4 (new) This is needed otherwise you can have one funeral home (that is both seller and provider) in a situation of maintaining preneed funds for a competitor with obligations remaining as the seller even though it no longer will be the funeral home handling the contract. This also makes sense of the reporting provision that says a seller must report contracts that are transferred.

436.460.1 The SB1 reporting requirements did not take into account that much of the newly required information may not be available for contracts prior to August 28. This provision makes it clear that for pre-August 28 contracts the "old" report will be acceptable and that these new requirements are for contracts after the new law went into effect.

436.460.4 (5) (new) This provision is needed for insurance assignments/spend-downs. There is no way that Prudential or another insurance company is going to sign the 436 report on a pre-existing insurance policy when a funeral home has been made the beneficiary. Likewise the insurance company may not tell the funeral home the current value or status. A seller might also have to, unless changed, have dozens of different insurance companies to sign the 436 report. This was not the intent of the insurance reporting provisions. This was supposed to deal with when an insurance policy was sold in conjunction with a preneed contract but the current language needs to be changed to make this clear and give realistic reporting requirements in this situation.

333.151.1 This takes out the "their funeral home" language that will be impossible for most appointees to meet. Also makes one preneed agent eligible for the board.

Board members--qualifications 333.151. 1.

The first proposed addition would be to provide preneed sellers representation on the board. The second change would clarify the member need not be an establishment owner. The third change would eliminate the burden of audited financials.

Cemetery Exemption 333.310

Licensed cemeteries that sell preneed will be subject to regulation by the Office of Endowed Care Cemeteries, and therefore should be exempt from Chapter 333 licensing. The proposal would not exempt a cemetery that is not regulated by the OECC.

Preneed Agent Licensing 333.325

These inserts are intended to provide the board more flexibility in structuring the Missouri law test and establishing internships for preneed agents.

Definitions – Insurance-funded preneed contract 436.405.1.(3)

Restricting insurance funding to single premium annuities provides little protection or benefit to the consumer, and unnecessarily restricts the funeral home.

Definitions – Joint account-funded preneed contract 436.405.1.(4)

Banks are responding to the Patriot Act by imposing greater restrictions on the use of the joint account. To preserve a depository account funding method for the smaller operators, the revision would allow for depository accounts set up in the funeral home's name, that are for the benefit of the purchaser.

Cemetery Exemption 436.410

The Chapter 436 cemetery exemption will need to mirror the Chapter 333 provision.

Contract Form Requirements 436.425.1.(14)

The proposal provides flexibility to operators to include only those disclosures applicable to their contract form.

Contract Form Requirements 436.425.2

The inserted language will avoid strict liability to a seller when a contract has a technical violation of the law.

Trust-funded preneed contract requirements

436.430.2 – Sellers should be permitted to charge fees that are not otherwise prohibited by law (or by Board regulation). Obtaining Board approval of any issue not specifically authorized by statute has been impossible to obtain in the past.

436.430.3 – Deferring distribution of the 5% origination fee until the entire amount has been received creates an administrative burden. As with the 10% fee, the law should permit the seller to request the origination fee as it is received.

436.430.4 – The 10% fee has been discussed as compensation to the seller for guarantying the price of goods and services. Some operators are confused by the current language, and assert the 10% can also be claimed on amounts received for cash advance funds and non-guaranteed contracts.

436.430.5 – The qualification requirements of Missouri’s foreign fiduciary statute are strenuous for the entity that only accepts preneed trust funds. The proposed language is intended to provide the Board the authority to set standards for foreign fiduciaries.

436.430.10 – For some operators, this provision is too similar to the prior law (which allowed the withdrawal of current income). The revision is meant to clarify that income can only be withdrawn upon the performance of the contract.

Compliance of contracts entered into prior to effective date 436.435.4

The revision would require the fiduciary to provide an explanation for the decision to not diversify a preneed trust.

Trustee not to make decisions 436.445

The Uniform Trust Act establishes a presumption of conflict for personal trustees. That standard was ‘borrowed’ and applied to corporate trustees. This language creates a burdensome restriction on fiduciaries that permit the use of independent investment advisors. Certain relationships merit disclosure and supervision, but they should not be strictly prohibited. The code provisions from which this language was borrowed does not impose a strict prohibition.

Joint account-funded preneed contract requirements 436.455

The revision would provide small operators the authority to establish depository accounts ‘for the benefit’ of the purchaser when a bank’s policies preclude the joint account structure contemplated by the current law.

Cancellation of contract 436.456

This revision would clarify that the trustee can only refund a cancellation from the assets of that contract's trust assets.

Alternative provider permitted 436.458

If the alternative provider does not have a trust, the revision would clarify that the alternative provider will be subject to the terms of the existing trust instrument.

Violations, penalties 436.485

The burden of pursuing non-compliant sellers should be shifted from the state fee to the seller when a showing of material non-compliance has been established in an administrative proceeding. If the state fee is driven high by costly litigation, the industry should not be forced to bear that burden.

Renumbering has not been completed. This is a Board draft for consideration.

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General Rule

- All licenses and registrations issued to any practicum, apprentice, registrant and/or licensee shall be displaced, at all times, in a conspicuous location accessible to the public at each funeral establishment where the person is working.
- Each Missouri licensed apprentice, registrant and licensee shall comply with all applicable state, county or municipal zoning ordinances and regulations.
- The licensee's failure to receive the renewal notice shall not relieve the licensee of the duty to pay the renewal fee and renew his/her license.
- The Missouri Law exam covers knowledge of Chapter 333, RSMo, and the rules governing the practice of embalming, funeral directing, and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition, and transportation of dead human bodies. The Missouri Law section also contains questions regarding Chapter 436, RSMo, relating to pre-need statutes and Chapters 193 and 194, RSMo, relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations requirements as they apply to Missouri licensees.

**Title 20—DEPARTMENT OF
INSURANCE, FINANCIAL
INSTITUTIONS AND
PROFESSIONAL REGISTRATION
Division 2120—State Board of
Embalmers and Funeral Directors
Chapter 1—Organization and
Description of Board**

20 CSR 2120-1.010 General Organization

PURPOSE: This rule describes the board's operation and the methods and procedures where the public may obtain information and make submissions or requests.

- (1) Whenever used in this division, the word board means the State Board of Embalmers and Funeral Directors.
- (2) The board is a unit of the Division of Professional Registration.
- (3) The board is authorized by section 333.111.1, RSMo to adopt rules necessary for the transaction of its business and for the standards of service and practice to be followed in the professions of embalming and funeral directing.
- (4) The board has at least two (2) regularly scheduled business meetings each year and such other meetings as determined by the board. The time and location for all board meetings may be obtained by contacting the board office at PO Box 423, Jefferson City, MO 65102-0423.
- (5) The meetings of the board shall be conducted in accordance with *Robert's Rules of Order*, Newly Revised, 10th Edition, so far as it is compatible with the laws of Missouri governing this board or the board's own resolutions as to its conduct.
- (6) All board meetings will be open to the public except as provided by law.
- (7) Members of the public may obtain information from the board, or make submissions to the board, by writing the board at PO Box 423, Jefferson City, MO 65102-0423 or consulting the board's website. [by visiting <http://pr.mo.gov/embalmers.asp>.]
- (8) Examinations. After verification and approval by the board, application, scheduling, administration and payment for any examination required for licensure from the board shall be made to the board's testing service, currently the International Conference of Funeral Service Examining Boards, Inc. ,or its designee. The testing service shall approve applications upon the board's verification and approval.
 - (A) Notification of intent to take an examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination, unless otherwise stated in a specific regulation. At its discretion, the board may waive such notice requirement for examination candidates for good cause, provided that no waiver can be provided by the board that may

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violate the rules of the testing service. If a reexamination is required or requested, there is a mandatory thirty (30)-day waiting period between each Missouri reexamination date. (B) All Missouri examinations may be provided in a computer-based testing format. [, except oral examination. Oral examinations will be held at the location designated by the board.]? Other examinations shall be held at the locations designated by the testing service. A complete listing of the conference's examination sites is at [theconferenceonline.org \[http://www.cfseb.org\]](http://www.cfseb.org) or is available at the board's [office] website. (9) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.111 and 333.151.1, RSMo 2000 and 536.023.3, RSMo Supp. 2006. This rule originally filed as 4 CSR 120-1.010. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. Emergency rule filed Nov. 9, 1978, effective Nov. 20, 1978, expired Feb. 11, 1979. Rescinded and readopted: Filed Nov. 8, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Jan. 13, 1982, effective April 11, 1982. Amended: Filed June 9, 1982, effective Sept. 12, 1982. Amended: Filed Nov. 1, 2001, effective April 30, 2002. Amended: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-1.010, effective Aug. 28, 2006. Amended: Filed Jan. 30, 2007, effective July 30, 2007.*

**Original authority: 333.111, RSMo 1965, amended 1981, 1993, 1995; 333.151, RSMo 1965, amended 1981, 1999; and 536.023, RSMo 1975, amended 1976, 1997, 2004.*

20 CSR 2120-1.020 Board Member Compensation

PURPOSE: This rule fixes the compensation for the members of the State Board of Embalmers and Funeral Directors in compliance with the mandates of section 333.221.1, RSMo.

(1) Each member of the State Board of Embalmers and Funeral Directors shall

receive the sum of fifty dollars (\$50) as compensation for each day that member devotes to the affairs of the board.

(2) In addition to the compensation fixed in this rule, each member is entitled to reimbursement of his/her expenses necessarily incurred in the discharge of his/her official duties.

(3) No request for compensation provided in this rule shall be processed for payment unless sufficient funds are available for that purpose within the appropriations for this board.

(4) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.111 and 333.221, RSMo 2000. This rule originally filed as 4 CSR 120-1.020. Emergency rule filed Sept. 17, 1981, effective Sept. 28, 1981, expired Dec. 28, 1981. Original rule filed Sept. 17, 1981, effective Feb. 11, 1982. Amended: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-1.020, effective Aug. 28, 2006*

**Original authority: 333.111, RSMo 1965, amended 1981, 1993 and 333.221, RSMo 1965, amended 1980, 1981.*

20 CSR 2120-1.030 Election and Removal of Officers

PURPOSE: This rule sets out the term of office and outlines the duties of the officers of the board and establishes a procedure for removal of a board member from serving as an officer of the board.

(1) Prior to April 1 of each year at a regularly scheduled meeting, the board shall elect a chairman, vice-chairman and secretary to serve as its officers.

(2) Any board member duly nominated and receiving a majority vote of the members serving on the board shall be considered elected as an officer.

(3) The terms of the officers elected shall commence on April 1 and expire on March 31 of the succeeding year.

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(4) The officers elected by the board shall have the following duties:

(A) Chairman—shall chair the board meetings; advise the board’s staff on the handling of complaints; call special board meetings; appoint committees of the board; may order, as s/he deems necessary, investigation of any complaint; may act on matters requiring immediate and necessary attention; make board member assignments; and any other duty which from time-to-time may be delegated by consent of the board;

(B) Vice-chairman—shall serve as chairman in the absence of the chairman; review all licensees’ compliance with the terms of any disciplinary order or agreement; and any other duty which may from time-to-time be delegated by consent of the board; and

(C) Secretary—shall perform any duties that may from time-to-time be delegated by consent of the board.

(5) Any officer may be removed from office at any time upon a vote of a majority of the members of the board.

(6) The board, in its discretion, may have a special election to fill any office which for any reason becomes vacant.

(7) Each board member, whether or not an officer of the board, may participate in any vote relating to the election or removal of officers.

*AUTHORITY: sections 333.111.1, RSMo Supp. 1999 and 333.181, RSMo 1994. * This rule originally filed as 4 CSR 120-1.030.*

Original rule filed Dec. 2, 1993, effective July 30, 1994. Amended: Filed March 10, 2000, effective Sept. 30, 2000. Moved to 20 CSR 2120-1.030, effective Aug. 28, 2006.

**Original authority: 333.111.1., RSMo 1965, amended*

1981, 1993, 1995 and 333.181, RSMo 1965.

20 CSR 2120-1.040 Definitions

PURPOSE: This rule defines terms used throughout the board’s regulations consistent with the practice act.

(1) Apprentice embalmer—an individual who is being trained as an embalmer under the immediate direction and personal supervision of a Missouri licensed embalmer for the “practice of embalming,” the work of preserving, disinfecting, and preparing by arterial embalming, or otherwise, of dead human bodies or the holding of oneself out as being engaged in such work and has met the requirements for registration pursuant to sections

333.041 and 333.042, RSMo, and 20 CSR 2120-2.010.

(2) Apprentice funeral director—an individual who is being trained as a funeral director in a Missouri licensed funeral establishment under the supervision of a Missouri licensed funeral director in the “practice of funeral directing,” 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 Missouri licensed funeral establishment and has met the requirements for registration pursuant to 20 CSR 2120-2.060.

(3) Board—Missouri State Board of Embalmers and Funeral Directors created by the provisions of Chapter 333, RSMo.

(4) Corporation—a business entity incorporated under the laws of Missouri or any other state with authority to do business in the state of Missouri.

(5) Cremation log—a written record or log kept in the cremation area available at all times in full view for a board inspector, which shall include the following:

(A) The name of the deceased to be cremated;

(B) The name of the Missouri licensed establishment where the body is cremated;

(C) The date and time the body arrived at the crematory;

(D) The date and time the cremation took place;

(E) The name and signature of the Missouri licensed funeral director or Missouri licensed embalmer supervising the cremation;

(F) The supervising Missouri licensed funeral director’s license number or the supervising Missouri licensed embalmer’s license number; and

(G) The name of the Missouri licensed funeral establishment, or other that was in charge of making the arrangements if from a different location.

- Cremated remains—the bone fragments which remain after the cremation process is completed.

- Cremation—the technical heating process which reduces remains to bone fragments through heat and evaporation; a final disposition of dead human remains.

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- Cremation box—a container into which cremated remains are placed for transportation or short-term storage.

- Cremation chamber—the total functioning mechanical unit for the actual cremation process.

- Cremation container—the case in which the human remains are delivered to the crematory area for cremation.

- Crematory area—the building or portion of a building which houses the cremation chamber and the holding facility.

- Crematory Holding facility—the area within the crematory area in which dead bodies are placed while awaiting cremation.

- Cremation Urn—the receptacle into which the cremated remains are placed for other than transportation or short-term storage.

(6) Disinterment—removal of dead human remains from the ground, grave, or tomb.

(7) Embalmer—an individual holding an embalmer's license issued by the State Board of Embalmers and Funeral Directors.

(8) Embalmer examination—an examination consisting of the following:

(A) National Board Funeral Service Arts Section developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board;

(B) In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the board may accept successful completion of an examination administered by another state, territory, or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination;

(C) National Board Funeral Service Science Section developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board; and

(D) Missouri Law Section.

(E) Oral Section (if not removed).

(9) Executive director—executive secretary of the board.

(10) Function—the purpose for which a physical location may be used.

(11) Funeral ceremony—a religious service or other rite or memorial ceremony for a decedent.

(12) Funeral director—an individual holding a funeral director license issued by the State Board of Embalmers and Funeral Directors.

(13) Funeral director examination—an examination

consisting of the following:

(A) Missouri Law Examination; and

(B) Missouri Funeral Service Arts Examination developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board; or

(C) National Board Funeral Service Arts Examination developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board.

(14) Funeral director-in-charge—an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

(15) Funeral establishment—a building, place, or premises licensed by the Missouri State Board of Embalmers and Funeral Directors devoted to or used in the care and preparation for burial, cremation, or transportation of the human dead and includes every building, place, or premises maintained for that purpose or held out to the public by advertising or otherwise to be used for that purpose.

(16) Funeral service—any service performed in connection with the care of a dead human body from the time of death until final disposition

including, but not limited to:

(A) Removal;

(B) Entering into contractual agreements for the provision of funeral services;

(C) Arranging, planning, conducting, and/or supervising visitations and funeral ceremonies;

(D) Interment;

(E) Cremation;

(F) Disinterment;

(G) Burial; and

(H) Entombment.

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(17) Interment—burial in the ground or entombment of dead human remains.

(18) Limited license—allows a person to work only in a funeral establishment which is licensed for only cremation including transportation of dead human bodies to and from the funeral establishment.

(19) Preparation room—refers to the room in a Missouri licensed funeral establishment where dead human bodies are embalmed, bathed, and/or prepared for final disposition.

(20) Reciprocity examination—shall consist of the Missouri Law Examination.

(21) Register log—a written record or log **must be maintained** [kept in the preparation/embalming room of] **in all** Missouri licensed funeral establishment available at all times in full view for a boardinspector, which shall include the following:

(A) The name of the deceased;

(B) The date and time the dead human body arrived at the funeral establishment;

(C) The date and time the embalming took place, if applicable;

(D) The name and signature of the Missouri licensed embalmer, if applicable;

(E) The name and signature of the Missouri registered apprentice embalmer, if any;

(F) The Missouri licensed embalmer's license number, if applicable;

(G) The Missouri apprentice embalmer registration number, if any; and

(H) The name of the licensed funeral establishment, or other that was in charge of making the arrangements if from a different location.

Temporary Funeral Director – license valid for six months, to the surviving spouse or next of kin or the personal representative of a licensed funeral director, or to the spouse, next of kin, employee or conservator of a licensed funeral director disabled because of sickness, mental incapacity or injury.

(22) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.011, SB 1, Ninetyfifth General Assembly 2009 and section 333.111, RSMo 2000. This rule originally filed as 4 CSR 120-1.040. Original rule filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-1.040, effective Aug. 28, 2006. Amended: Filed Jan. 30, 2007, effective July 30, 2007. Amended: Filed July 22, 2009, effective Jan. 30, 2010.*

**Original authority: 333.011, RSMo 1965, amended 2007, 2008, 2009 and 333.111, RSMo 1965, amended 1981, 1993, 1995.*

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION

Division 2120—State Board of Embalmers and Funeral Directors

Chapter 2—General Rules

20 CSR 2120-2.010 Embalmer's Registration and Apprenticeship

PURPOSE: This rule establishes the procedures to be used to secure an embalmer's license.

(1) Every person desiring to enter the profession of embalming dead human bodies within Missouri, and who is enrolled in an accredited institution of mortuary science, shall complete a practicum as required by the accredited institution of mortuary science education.

(2) For every person desiring to enter the profession of embalming dead human bodies within Missouri the board may conduct a criminal history background check through the Missouri State Highway Patrol. Applicants shall submit to the board the applicable fee for the criminal history background check as determined by the Missouri State Highway Patrol. **(fingerprinting)**

(3) After registration with the board as a practicum student in an accredited institution of mortuary science education, the student may assist in a Missouri licensed funeral establishment preparation room only under the direct supervision of a Missouri licensed embalmer and may assist in the direction of funerals only under the direct supervision of a Missouri licensed funeral director. Each person desiring to be a practicum student shall register with the board as a practicum

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student on the form provided by the board in accordance with the requirements of the accredited institution of mortuary science prior to beginning the practicum. Applications shall be accompanied by the applicable fee. If during the course of the practicum, the practicum student wishes to work at a Missouri licensed funeral establishment other than as designated on the certificate of registration, the practicum student shall notify the board in writing of the name, location, and Missouri licensed funeral establishment license number of the new Missouri licensed funeral establishment within **[ten (10)]** fifteen (15) days of the change.

[(4) During the period of the practicum, the certificate of registration issued to the practicum student shall be displayed, at all times, in a conspicuous location accessible to the public at each funeral establishment where the practicum student is working.]

[(5) The practicum student registration authorizes the registrant to engage in the practice of embalming only at the Missouri licensed funeral establishment(s) designated on the certificate of registration and only under the direct supervision of a Missouri licensed embalmer. The practicum student may assist in the practice of funeral directing only under the direct supervision of a Missouri licensed funeral director and only at the Missouri licensed funeral establishment(s) designated on the certificate of registration. If during the course of the practicum, the practicum student wishes to work at a Missouri licensed funeral establishment other than as designated on the certificate of registration, the practicum student shall notify the board in writing of the name, location, and Missouri licensed funeral establishment license number of the new Missouri licensed funeral establishment within ten (10) days of the change.]

(6) If the practicum needs to extend the practicum a new application and fees will be applicable. Upon successful completion of the practicum, the practicum student registration shall become null and void. A practicum shall be deemed successfully completed when the practicum student has achieved a passing grade on the practicum from the institution of mortuary science at which the practicum student is enrolled.

(7) After graduating from an accredited institution of mortuary science education, the applicant then shall file, with the board, an official transcript of his/her embalming school grades showing s/he is a graduate of that school. An applicant shall submit proof of having satisfied the requirements of the National Board Funeral Service Arts section and the National Board Funeral Service Science section of the examination by having his/her official copy of the scores from the International Conference of Funeral Service Examining Boards, Inc., or designee of the board transmitted to the board from the Conference. In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the board may accept successful completion of an examination administered by another state, territory, or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination [In addition, the applicant shall ensure that his/her official copy of the National Board examination results are provided to the board in writing by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board.]

[(10) An applicant shall submit proof of having satisfied the requirements of the National Board Funeral Service Arts section and the National Board Funeral Service Science section of the examination by having his/her official copy of the scores from the International Conference of Funeral Service Examining Boards, Inc., or designee of the board transmitted to the board from the Conference. In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the board may accept successful completion of an examination administered by another state, territory, or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination.]

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(8) Effective July 30, 2004, the Missouri State Board embalmers' examination shall consist of the National Board Funeral Service Arts section, the National Board Funeral Service Science section, and Missouri Law section. Application, payment, scheduling, and administration for the [n]National [b]Board examinations will be made directly through the International Conference of Funeral Service Examining Boards, Inc., or other designee of the board. An applicant shall be exempt from the requirement of successful completion of the Missouri Law section if the applicant has successfully completed the Missouri Law section for another Missouri license within the jurisdiction of the board and the license is in active status. In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination results will be accepted, or the board may accept successful completion of an examination administered by another state, territory, or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination.

(9) The embalm[ing]er examination shall cover knowledge of the subjects of embalming, anatomy, pathology, bacteriology, mortuary administration, chemistry, restorative arts, together with statutes, rules, and regulations governing the care, custody, shelter, and disposition of dead human bodies and the transportation thereof.

[(10) An applicant shall submit proof of having satisfied the requirements of the National Board Funeral Service Arts section and the National Board Funeral Service Science section of the examination by having his/her official copy of the scores from the International Conference of Funeral Service Examining Boards, Inc., or designee of the board transmitted to the board from the Conference. In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the board may accept successful completion of an examination administered by another state, territory, or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination.]

(11) Those applicants achieving seventy-five percent (75%) on each of the three (3) sections

of the embalm[ing]er examination will be deemed to have passed the board's embalming examination. Any applicant who scores less than seventy-five percent (75%) on any section of the embalming examination may retake the failed section, upon application and payment of the administration and reexamination fees. On any reexamination of a single failed section, the applicant shall score at least seventy-five percent (75%) to pass.

(12) After the applicant has made a passing grade on the National Board Funeral Service Arts section and the National Board Funeral Service Science section of the embalm[ing]er examination, s/he then may apply for registration as an apprentice embalmer. [In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the board may accept successful completion of an examination administered by another state, territory, or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination.] [This application shall contain the name(s) of the Missouri licensed embalmer(s) under whom s/he will serve. Each supervisor must be licensed and registered with and approved by the board. Any change in supervisor shall also be registered and approved within ten (10) business days after the change has been made. Applications shall be submitted on the forms provided by the board and shall be accompanied by the applicable fee. Application forms are available from the board office or the board's website. [at <http://pr.mo.gov/embalmers.asp>.]]

(13) Each apprentice embalmer shall provide to the board, on the application provided by the board, **the name(s) of the Missouri licensed embalmer(s) under whom s/he will serve**, the name(s), location(s), and license number(s) of the licensed funeral establishment(s) where s/he is serving as an apprentice. **Each supervisor must be licensed and registered with and approved by the board.** If the apprentice embalmer begins work at any other licensed funeral establishment **or has a change in supervisors** during the period of apprenticeship, the apprentice embalmer shall notify the board, on the form provided by the

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board, within **[ten (10)]** fifteen (15) business days after the change has been made.

Applications shall be submitted on the forms provided by the board and shall be accompanied by the applicable fee.

Application

forms are available from the board office or the board's website. [at

<http://pr.mo.gov/embalmers.asp>

(14) The period of apprenticeship under this rule shall be at least twelve (12) consecutive months. The apprentice embalmer shall devote at least thirty (30) hours per week to his/her duties as an apprentice embalmer. **[During the period of the apprenticeship, the certificate of registration issued to the apprentice shall be displayed, at all times, in a conspicuous location accessible to the public at each funeral establishment where the apprentice is working.]**

(15) **[Prior to completion of the period of apprenticeship, the apprentice embalmer shall achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam. This exam may be taken any time after graduating from an accredited institution of mortuary science, but shall be successfully completed prior to appearing before the board for oral examination.] [The Missouri Law exam covers knowledge of Chapter 333, RSMo, and the rules governing the practice of embalming, funeral directing, and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition, and transportation of dead human bodies. The Missouri Law section also contains questions regarding Chapter 436, RSMo, relating to pre-need statutes and Chapters 193 and 194, RSMo, relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations [and Occupational Safety and Health Administration (OSHA)] requirements as they apply to Missouri licensees. Notification of intent to take this section of the examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination.]**

(16) An affidavit provided by the board, signed by both the apprentice and the supervisor(s) verifying that the applicant has successfully

completed the embalming of twenty-five (25) dead human bodies, shall be submitted to the board at the time of completion of the apprenticeship period.**[and prior to the oral examination.]**

(17) After successful completion of the embalmer's examination and the embalmer apprenticeship as provided in these rules, the embalmer applicant shall **[appear for the oral examination. To appear for the oral examination, the embalmer applicant shall]:**

[(A)] Submit an application on a form supplied by the board and pay the applicable fees to the board**;** **and]**

[(B) Successfully pass the oral examination administered by the board for licensure.]

[(18) The oral examination shall be conducted by one (1) or more board members who hold a Missouri state embalmer license, or a member of the board staff that is a licensed embalmer, and shall be conducted in person at a place and time established by the board. The oral examination shall consist of no fewer than five (5) substantive questions related to the practice of embalming and/or the statutes, rules, and regulations governing embalming practice in the state of Missouri. Whether the applicant satisfactorily completes the oral examination shall be in the sole discretion of the board.]

(19) After satisfactory completion of these requirements, an embalmer's license shall be issued to an apprentice embalmer upon payment of the applicable fee and subject to the provisions of section 333.**[121]330, RSMo.**

(20) An applicant shall meet the requirements of the board for licensure within five (5) years of his/her graduation from an accredited institution of mortuary science. If the applicant fails to meet the requirements of the board within the required time, a new application and applicable fees shall be filed with the board and the applicant shall be required to appear for the oral examination within five (5) years of the new date of application. No previous practicum, apprenticeship[,] or application[,] **or Missouri Law section]** will be considered for a new application. However, the successful examination results of the National **or Missouri [Board]**Funeral Service Arts section, **[and] the National Board Funeral Service Science section, and the Missouri Law Section (if applicable) developed and furnished by the International Conference of Funeral Service Examining**

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Boards, Inc., or designee of the board will be accepted.

(21) A Missouri licensed embalmer may engage in the practice of embalming [in the state of Missouri] only in a Missouri licensed funeral establishment[s]. Each embalmer shall inform the board in writing of each funeral establishment name(s), location(s), and license number(s) where the embalmer is performing embalming.

(22) A Missouri licensed embalmer has the ongoing obligation to keep the board informed if the licensee has been finally adjudicated

or found guilty, or entered a plea of guilty or *nolo contendere*, in a criminal prosecution

under the laws of any state or of the United States, whether or not sentence was imposed. This information shall be provided to the board within thirty (30) days of being finally adjudicated or found guilty.

(23) Any embalmer licensed by the board in the state of Missouri who wishes to become a licensed funeral director shall be required to comply with all requirements necessary for licensure as a funeral director, except, the Missouri licensed embalmer shall be exempt from the requirement of a funeral director apprenticeship.

(24) Should an individual desire to obtain a Missouri embalmer's license after his/her license has become void under section 333.081.3, RSMo, the individual shall be required to make application, obtain a passing grade on the embalmer examination (if applicable), and

shall be required to complete a six (6) consecutive month period of apprenticeship during which time s/he shall be required to embalm at least twelve (12) dead human bodies under the supervision of a Missouri licensed embalmer. The applicant shall be required to pay the current applicable apprenticeship and application fees to obtain a new embalmer's license under this section. No previous apprenticeship, application, or examination (if applicable) will be considered for a new application under this section. However, the successful examination results of the National Board Funeral Service Arts section and the National Board Funeral Science section will be accepted.

[(25) After successful completion of the embalmer's examination and the embalmer apprenticeship as provided in these rules, the embalmer applicant shall appear for the oral examination at a location specified by the board. To arrange for the oral examination, the embalmer applicant shall submit an application

o[f]n a form supplied by the board and pay the applicable fees to the board. Applicants shall successfully pass the oral examination administered by the board for licensure.]

[(26) All certificates, registrations, and licenses, or duplicate copies thereof, issued by the State Board of Embalmers and Funeral Directors shall be displayed at all times in a conspicuous location accessible to the public in each office or place of business where they work, for inspection by any duly authorized agent of the board.]

(27) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

*AUTHORITY: sections 333.041, 333.081, and 333.121, RSMo Supp. 2008, section 333.091, SB 1, Ninety-fifth General Assembly 2009, and section 333.111, RSMo 2000. * This rule originally filed as 4 CSR 120-2.010. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. Refiled March 26, 1976. Amended: Filed Aug. 16, 1976, effective Dec. 11, 1976. Amended: Filed April 6, 1978, effective July 13, 1978. Emergency rule filed Nov. 9, 1978, effective Nov. 20, 1978, expired Feb. 11, 1979. Rescinded and readopted: Filed Nov. 8, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Jan. 13, 1982, effective April 11, 1982. Rescinded and readopted: Filed Dec. 3, 1982, effective March 11, 1983. Amended: Filed July 17, 1989, effective Oct. 12, 1989. Amended: Filed March 26, 1991, effective Sept. 30, 1991. Amended: Filed Aug. 13, 1991, effective Jan. 13, 1992. Amended: Filed Oct. 16, 1991, effective Feb. 6, 1992. Amended: Filed Feb. 1, 1994, effective July 30, 1994. Amended: Filed Aug. 30, 1995, effective Feb. 25, 1996. Amended: Filed Dec. 22, 1997, effective*

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June 30, 1998. Amended: Filed March 24, 1999, effective Oct. 30, 1999. Amended: Filed March 10, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 1, 2001, effective April 30, 2002. Rescinded and readopted: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-2.010, effective Aug. 28, 2006. Amended: Filed Jan. 30, 2007, effective July 30, 2007. Amended: Filed July 22, 2009, effective Jan. 30, 2010.

**Original authority: 333.041, RSMo 1965, amended 1969, 1977, 1981, 1983, 1993, 1998, 2001; 333.081, RSMo 1965, amended 1981, 2001; 333.091, RSMo 1965, amended 1981, 2009; and 333.111, RSMo 1965, amended 1981, 1993, 1995; 333.121, RSMo 1965, amended 1981, 2007.*

20 CSR 2120-2.020 Biennial License Renewal

PURPOSE: This rule outlines the requirements and procedures for the renewal of embalmer's, funeral director's and funeral establishment's licenses.

- (1) Each Missouri licensed embalmer or Missouri licensed funeral director shall notify the board within **[thirty (30)] fifteen (15)** days of each address change of the Missouri licensed funeral establishment at which s/he is practicing and shall notify the board within **[thirty (30)] fifteen (15)** days of any termination or creation of an employment relationship with a Missouri licensed funeral establishment. Each holder of a Missouri funeral establishment license shall notify the board at least sixty (60) days prior to any change of address of the Missouri licensed funeral establishment, sale of the Missouri licensed funeral establishment or termination of business of the Missouri licensed funeral establishment.
- (2) A nonrenewable license, not valid for active practice in Missouri, will be issued at no charge to a currently licensed embalmer, funeral director, or both, upon presentation of a signed notarized statement from the licensee attesting to the fact that the licensee is disabled and is no longer active in the practice of embalming, funeral directing, or both. If the licensee desires at some future date to return to active practice in Missouri, the board shall issue a valid renewal license upon

payment of the current renewal fee and completion of the applicable renewal application form.

(3) The holders of expired Missouri embalmer's and funeral director's licenses which are not renewed will be notified that their licenses have expired. The holder of an expired license shall be issued a new license by the board within two (2) years of the renewal date after the proper reactivation fees have been paid. Any Missouri embalmer's license and Missouri funeral director's license not renewed within two (2) years shall be void.

(4) The licensee's failure to receive the renewal notice shall not relieve the licensee of the duty to pay the renewal fee and renew his/her license.

(5) The biennial license renewal date for Missouri licensed embalmers and Missouri licensed funeral directors shall be designated as June 1. The biennial license renewal date for Missouri licensed funeral establishments shall be designated as January 1.

(6) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

*AUTHORITY: sections 333.081, RSMo Supp. 2003 and 333.111.1, RSMo 2000. * This rule originally filed as 4 CSR 120-2.020. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. Refiled March 24, 1976. Rescinded and readopted: Filed Nov. 8, 1978, effective Feb. 11, 1979. Emergency rule filed Nov. 9, 1978, effective Nov. 20, 1978, expired Feb. 11, 1979. Rescinded and readopted: Filed Jan. 13, 1982, effective April 11, 1982. Amended: Filed June 9, 1982, effective Sept. 12, 1982. Amended: Filed Jan. 13, 1986, effective April 25, 1986. Amended: Filed April 2, 1992, effective Sept. 6, 1992. Amended: Filed March 24, 1999, effective Oct. 30, 1999. Amended: Filed Nov. 1, 2001, effective April 30, 2002. Amended: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-2.020, effective Aug. 28, 2006.*

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**Original authority: 333.081, RSMo 1965, amended 1981, 2001 and 333.111, RSMo 1965, amended 1981, 1993, 1995.*

20 CSR 2120-2.022 Retired License

PURPOSE: This rule clarifies the requirements to retire from the practice of funeral directing and/or embalming.

(1) Any person licensed to practice as a funeral director and/or embalmer in Missouri who is over sixty-five (65) years of age and who retires from such practice, shall file with the board an affidavit, on a form to be furnished by the board, which states the date on which s/he retired from such practice, that s/he will not practice such profession and such other facts as tend to verify the retirement as the board may deem necessary; but if s/he thereafter wishes to reengage in the practice, s/he shall renew his/her registration with the board as provided in section 333.081.1, RSMo.

(2) For purposes of this section, a retired Missouri licensed funeral director and/or Missouri licensed embalmer is one who is neither engaged in the active practice of funeral directing/embalming nor holds him/herself out as an actively practicing funeral director/embalmer and has executed and filed with the board a retirement affidavit. A retired Missouri licensed funeral director/embalmer may keep his/her wallhanging certificate after execution of a retirement affidavit but shall surrender, upon retirement, all other indicia of licensure.

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

*AUTHORITY: sections 333.081, RSMo Supp. 2003 and 333.111, RSMo 2000. * This rule originally filed as 4 CSR 120-2.022. Original rule filed July 15, 1996, effective Jan. 30, 1997. Amended: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-2.022, effective Aug. 28, 2006.*

**Original authority: 333.081, RSMo 1965, amended 1981,*

2001 and 333.111.1, RSMo 1965, amended 1981, 1993, 1995.

[20 CSR 2120-2.030 Registration of Licensees with Local Registrars of Vital Statistics

PURPOSE: This rule outlines the procedure for registering renewal licenses with local registrars.

(1) Pursuant to section 333.091, RSMo every holder of a Missouri embalmer's or funeral director's license, upon receiving his/her initial or renewal license(s), shall register his/her signature, name, address and license number with the local registrar of vital statistics for the registration district in which the licensee practices.

(2) Whenever a licensee changes his/her place of employment from the jurisdiction of one (1) registration district to another registration district, within ten (10) days after that change, s/he shall register with the local registrar to whose jurisdiction s/he has moved.

(3) The boundaries of the registration district shall be determined as required by the rules promulgated by the Department of Health.]

(4) Each licensed embalmer who embalms a dead human body shall state on the death certificate that s/he embalmed the dead human body described on the death certificate. Each statement shall be attested to its accuracy either by signature or an electronic process approved by the board. [must be signed by the licensed embalmer.]

If the body was not embalmed, the fact that the body was not embalmed shall be stated on the death certificate prior to the filing of the death certificate by the licensed funeral director.

(5) Each authentication [signature] of a licensed embalmer on a death certificate must correspond with the [same] licensee's authentication as approved and licensed by the board. [signature as registered with the local registrar of vital statistics.]

(6) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing

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AUTHORITY: sections 194.119, RSMo Supp. 2003 and 333.091 and 333.111, RSMo 2000. This rule originally filed as 4 CSR 120-2.030. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. Refiled March 24, 1976. Emergency rule filed Nov. 9, 1978, effective Nov. 20, 1978, expired Feb. 11, 1979. Amended: Filed Nov. 8, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Jan. 13, 1982, effective April 11, 1982. Amended: Filed June 9, 1982, effective Sept. 12, 1982. Amended: Filed Jan. 13, 1986, effective April 24, 1986. Amended: Filed Aug. 4, 1986, effective Oct. 11, 1986. Amended: Filed Jan. 15, 1988, effective April 11, 1988. Amended: Filed Nov. 1, 2001, effective April 30, 2002. Amended: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-2.030, effective Aug. 28, 2006.*

**Original authority: 194.119, RSMo 2003; 333.091, RSMo 1965, amended 1981; and 333.111, RSMo 1965, amended 1981, 1993, 1995.*

20 CSR 2120-2.040 Licensure by Reciprocity

PURPOSE: This rule outlines procedures for obtaining an embalmer or funeral director license by reciprocity.

(1) Applications for a Missouri embalmer's or funeral director's license by reciprocity shall be made on the forms provided by the board and shall be accompanied by the applicable fee. Application forms are available from the board office or the board's website [at <http://pr.mo.gov/embalmers.asp>].

Licensure by reciprocity may be given only for like license(s). An embalmer licensed in another state may obtain an embalmer license by reciprocity, but not a funeral director license unless that person is licensed as a funeral director in another state. A funeral director licensed in another state may obtain a funeral director license by reciprocity, but not an embalmer license unless that person is licensed as an embalmer in another state.

(2) Any person holding a valid unrevoked and unexpired license to practice embalming or funeral directing in another state or territory is eligible to obtain licensure by reciprocity by meeting the following requirements of the

board:

- (A) Evidence satisfactory to the board that the reciprocity applicant holds a valid, unrevoked, and unexpired license as an embalmer or funeral director in another state having substantially similar requirements to the requirements for licensure as either an embalmer or funeral director in this state including a copy of his/her original license issued by the other state;
- (B) Proof of his/her educational and professional qualifications, which shall be substantially equivalent to the requirements existing in Missouri at the time s/he was originally licensed;
- (C) A certificate of state endorsement from the examining board of the state or territory in which the applicant holds his/her license showing the grade rating upon which his/her license was granted, a statement whether the reciprocity applicant has ever been subject to discipline or if there are any complaints pending against the reciprocity applicant and a recommendation for licensure in Missouri;
- (D) Evidence sufficient to the board that the applicant has achieved a score of seventy-five percent (75%) or better on the National Board Funeral Service Arts Examination and the National Board Funeral Service Science Examination provided by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board, if applying for an embalmer license or an embalmer and funeral director license; or
- (E) Evidence sufficient to the board that the applicant has achieved a score of seventy-five percent (75%) or better on the National Board Funeral Service Arts Examination provided by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board, if applying for only a funeral director license; and
- (F) The reciprocity applicant will be required to successfully complete the reciprocity examination with a score of seventy-five percent (75%) or better within twenty-four (24) months after the board's receipt of the reciprocity application. If an applicant by reciprocity has received either an embalmer or funeral director license from the board for

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which the reciprocity examination is required, that applicant will be exempt from taking the reciprocity examination for the second license if the original Missouri license remains in active status; (new rule pending)

(G) A completed application for licensure for reciprocity provided by the board; and (H) Payment of applicable fees including the fee charged by the Missouri State Highway Patrol for a criminal history background check, as required by the board. (fingerprinting new rule)

(3) If the reciprocity applicant holds a license as an embalmer or funeral director in another state or territory with requirements less than those of this state, they may seek licensure in this state by meeting the following requirements of the board:

(A) An official certification from another state or territory which verifies that the licensee holds a valid, unrevoked, and unexpired funeral director or embalmer license in the other state or territory;

(B) A copy of his/her original funeral director or embalmer license from the other state or territory in which the applicant is licensed;

(C) Proof of his/her educational and professional qualifications;

(D) The reciprocity applicant will be required to successfully complete the reciprocity examination with a score of seventy-five percent (75%) or better within twenty-four (24) months after the board's receipt of the reciprocity application. If an applicant by reciprocity has received either an embalmer or funeral director license from the board for which the reciprocity examination is required, that applicant will be exempt from taking the reciprocity examination for the second license if the original Missouri license remains in active status; (new rule)

(E) A completed application for licensure for reciprocity provided by the board; and

(F) Payment of applicable fees including the fee charged by the Missouri State Highway Patrol for a criminal history background check, as required by the board. (fingerprinting)

[4] Licensure by reciprocity may be given only for like license(s). An embalmer licensed in another state may obtain an embalmer license by reciprocity, but not a funeral director license unless that person is licensed as a funeral director in another state. A funeral director licensed in another state

may obtain a funeral director license by reciprocity, but not an embalmer license unless that person is licensed as an embalmer in another state.]

(5) Applications for reciprocity licensure shall be completed and received by the board at least [thirty (30)] fifteen 15 days prior to the date the candidate plans to sit for the examination and shall be accompanied by the applicable fee. Applications are deemed complete upon submission

of any and all requisite forms required by the board, payment of requisite fees, and submission of all materials required by this rule or supplemental materials requested by the board. Application forms can be obtained from the board office or the board's website [at <http://pr.mo.gov/embalmers.asp>].

(6) The board shall determine the sufficiency of the materials provided in the application for reciprocity and shall have the authority to make the final determination as to the standards and qualifications of the various states from which the applicants may be accepted by reciprocity and may reject any applicant on any lawfully permitted grounds.

[7] All certificates, registrations, and licenses, or duplicate copies thereof, issued by the State Board of Embalmers and Funeral Directors shall be displayed at all times in a conspicuous location accessible to the public in the office(s) or place(s) of business, for inspection by any duly authorized agent of the board.]

(8) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

*AUTHORITY: sections 333.051 and 333.111, RSMo 2000 and section 333.091, SB 1, Ninety-fifth General Assembly 2009. * This rule originally filed as 4 CSR 120-2.040. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. Amended: Filed Aug. 16, 1976, effective Dec. 11, 1976. Emergency rule filed Nov. 9, 1978, effective Nov. 20, 1978, expired Feb. 11, 1979. Rescinded and readopted: Filed Nov. 8, 1978, effective Feb. 11, 1979.*

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Rescinded and readopted: Filed Jan. 13, 1982, effective April 11, 1982. Amended: Filed Sept. 5, 1990, effective March 14, 1991. Amended: Filed March 4, 1991, effective July 8, 1991. Amended: Filed Feb. 1, 1994, effective July 30, 1994. Amended: Filed Dec. 22, 1997, effective June 30, 1998. Amended: Filed Nov. 1, 2001, effective April 30, 2002. Rescinded and readopted: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-2.040, effective Aug. 28, 2006. Amended: Filed Jan. 30, 2007, effective July 30, 2007. Amended: Filed July 22, 2009, effective Jan. 30, 2010.

**Original authority: 333.051, RSMo 1965, amended 1981, 1998; 333.091, RSMo 1965, amended 1981, 2009; and 333.111, RSMo 1965, amended 1981, 1993, 1995.*

20 CSR 2120-2.050 Miscellaneous Rules

PURPOSE: This rule incorporates miscellaneous

rules pertaining to embalmer's and funeral director's licenses.

(1) All licensees may be represented before the board by an attorney. If the licensee desires to be represented by an attorney, the attorney shall be licensed to practice law in Missouri or meet the requirements of the Supreme Court with respect to nonresident attorneys.

(2) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

(3) All documents filed with the board shall become a part of its permanent files.

AUTHORITY: section 333.111, RSMo 2000. This rule originally filed as 4 CSR 120-2.050. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. Amended: Filed Aug. 16, 1976, effective Dec. 11, 1976. Emergency rule filed Nov. 9, 1978, effective Nov. 20, 1978, expired Feb. 11, 1979. Rescinded and readopted: Filed Nov. 8, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Jan. 13, 1982, effective April 11, 1982. Amended: Filed Nov. 1, 2001, effective April 30, 2002. Amended: Filed Dec. 31, 2003,*

effective July 30, 2004. Moved to 20 CSR 2120-2.050, effective Aug. 28, 2006. Amended: Filed Jan. 30, 2007, effective July 30, 2007.

**Original authority: 333.111, RSMo 1965, amended 1981, 1993, 1995.*

20 CSR 2120-2.060 Funeral Directing

PURPOSE: This rule outlines the provisions for the practice of funeral directing.

(1) Every person who desires to enter the profession of funeral directing in Missouri and who is not entitled to a license under section 333.051, RSMo shall provide the following to the board:

- (A) Proof of being at least eighteen (18) years of age;
- (B) Proof of possession of a high school diploma or equivalent;
- (C) Evidence of being a person of good moral character;
- (D) Proof of satisfactory completion of each section of the funeral director's examination;
- (E) Affidavit of completion of a twelve (12) consecutive month apprenticeship; or official transcript and documentation indicating he/she is a graduate of an institute of mortuary science accredited by the American Board of Funeral Service Education or any successor organization recognized by the United States Department for Funeral Service Education; or has successfully completed a course in funeral directing offered by a college accredited by a recognized national, regional, or state accrediting body and approved by the State Board of Embalmers and Funeral Directors; or proof of being a Missouri licensed embalmer;
- (F) Completed application form provided by the board;
- (G) Proof of successful completion of the National Board Funeral Service Arts examination or the Missouri Funeral Service Arts examination, if applicable;
- (H) Payment of all applicable fees;
- (I) Satisfactory criminal history background check as provided to the board by the Missouri State Highway Patrol. (**fingerprinting rule**)

Applicants shall submit to the board the applicable fee for the criminal history background check as

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determined by the Missouri State Highway Patrol; and

(J) Any other information the board may require.

(2) Every person who desires to enter the profession of funeral directing in Missouri and who is not entitled to a license under section 333.051, RSMo, shall make application with the board for a Missouri funeral director license on the forms provided by the board and shall pay the funeral director application fee directly to the board. If the applicant has successfully completed the National Board Funeral Service Arts examination, no Missouri Funeral Service Arts examination is required. Application forms can be obtained from the board office or the board's website [at <http://pr.mo.gov/embalmers.asp>].

(3) Effective July 30, 2004, the funeral director examination developed by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board, shall consist of the Missouri Law section and the Missouri Funeral Service Arts section. In lieu of the Missouri Funeral Service Arts examination, successful completion of the National Board Funeral Service Arts examination results will be accepted.

(4) To serve as an apprentice funeral director, the applicant shall file with the board a completed funeral director application on the form prescribed by the board and pay applicable fees

[and also shall complete an application to be registered as an apprentice funeral director on the form prescribed by the board and pay all applicable fees.] Application forms and a list

of fees can be obtained from the board office or on the board's website [at <http://pr.mo.gov/embalmers.asp>].

(5) The funeral director apprenticeship is not intended as a long-term method of practicing as a funeral director in the absence of progress toward licensure. Accordingly, effective February 28, 2010, an apprentice shall not be allowed to register with the board for more than two (2) apprenticeship periods that begin on or after February 28, 2010, unless otherwise approved by the board for good cause.

(6) Each registered funeral director apprentice

shall provide to the board, on the application prescribed by the board, the name(s), location(s), and license number(s) of each funeral establishment(s) where ~~they are~~ s/he is serving

as an apprentice. Upon completed application and payment in full of all applicable fees, the board shall issue the apprentice funeral director applicant a funeral director apprentice registration. This registration authorizes the apprentice registrant to engage in the practice of funeral directing under the supervision of a Missouri licensed funeral director. [The funeral director apprentice registration, or a copy thereof, shall be displayed, at all times, in a conspicuous location accessible to the public at each establishment where the apprentice is working.]

(7) The funeral director apprentice registration authorizes the registrant to engage in the practice of funeral directing only during the period of apprenticeship. Once the apprenticeship

is successfully completed as defined in this rule, the funeral director apprentice registration shall become null and void. Any Missouri licensed funeral director who allows a former apprentice who has completed his/her apprenticeship to engage in the practice of funeral directing before that apprentice is fully licensed shall be subject to discipline for misconduct under section 333.121.2, RSMo.

(8) [Each registered funeral director apprentice shall provide to the board, on the application prescribed by the board, the name(s), location(s), and license number(s) of each funeral establishment(s) where they are serving as an apprentice.] The funeral director

apprenticeship may be served at a funeral establishment licensed by a state, other than Missouri, upon submission of proof to the board that the out-of-state funeral home is licensed for the care and preparation for burial and transportation of human dead in this state or another state which has established standards for admission to practice funeral directing equal to, or more stringent than, the requirement for admission to practice funeral directing in this state. The funeral director apprenticeship shall be served under the supervision of a Missouri licensed funeral director. If the funeral director apprentice changes funeral establishments during the course of the apprenticeship, the apprentice

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shall notify the board, on the form prescribed by the board, of the name(s), location(s), and funeral establishment(s) license number of the new apprenticeship location within ten (10) business days after the change has been made.

(9) Successful completion of a funeral director apprenticeship shall consist of the following:

(A) Completed service as an apprentice funeral director for a period consisting of at least twelve (12) consecutive months in a Function C funeral establishment; and
(B) Filing with the board a notarized affidavit(s) signed by the apprentice and his/her supervisor(s) that he/she has arranged for and conducted a minimum of ten (10) funeral ceremonies

under the supervision of a Missouri licensed funeral director.

(10) An apprentice will be eligible to take the The funeral director examination after completion

of the twelve (12) consecutive month period of apprenticeship.

(11) An applicant will be deemed to have successfully completed the funeral director examination when a score of seventy-five percent

(75%) or better is achieved on each section. If the applicant fails a section of the examination, the applicant shall be permitted to retake that section of the examination. **A mandatory thirty (30) day waiting period is required between all examinations.**

(12) All notifications for the funeral director's examination shall be in writing and received by the board at least **fifteen [forty-five (45)]**

15 days prior to the date the candidate plans to sit for the examination.

(13) A college accredited by a recognized national, state, or regional accrediting body may seek the approval of the State Board of Embalmers and Funeral Directors for a course of study in funeral directing by submitting a description of the program, the college catalog listing the course of study, and evidence that the program has been approved to be offered in that institution by the administration

of the college and the Missouri Coordinating Board for Higher Education.

(14) An applicant shall be exempt from the

requirement of successful completion of the Missouri Law examination if the applicant has successfully completed the Missouri Law examination for another Missouri license within the jurisdiction of the board if the current license remains in active status. **(new rule)**

(15) Any funeral director **or funeral establishment**

that allows an unlicensed person to make at-need arrangements for the transportation or removal of a dead human body for or on behalf of the funeral director **or funeral establishment** shall supervise the unlicensed person and shall be responsible for the conduct of the unlicensed person.

This section shall not be construed to allow any unlicensed person to perform any other act for which a license is required by Chapter 333, RSMo.

(16) A Missouri licensed funeral director shall be present and personally shall supervise or conduct each funeral ceremony conducted by or from a Missouri licensed funeral establishment. A violation of this section will be considered misconduct in the practice of funeral directing.

(17) A Missouri licensed funeral director shall be present and personally shall supervise any disinterment, interment, entombment, or cremation as defined in 20 CSR 2120-1.040 conducted by a Missouri licensed funeral establishment. However, nothing in this rule shall be interpreted as requiring the presence of a Missouri licensed funeral director if the person(s) having the right to control the incidents of burial request otherwise. If the disinterment does not require legal notification

to the county coroner or medical examiner, a funeral director's presence may not be required. A violation of this section shall be deemed misconduct in the practice of funeral directing.

(A) Once the body has been delivered to a cemetery for the purpose of interment or to a crematory for the purpose of cremation and after any funeral ceremonies have been complete,

the Missouri licensed funeral director is not required to stay with the body.

(B) Nothing in this rule shall be interpreted as requiring the Missouri licensed funeral director to leave the cemetery before disposition is complete. Furthermore, nothing in this rule shall be interpreted as relieving the Missouri

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licensed funeral director of any responsibilities he/she has under his/her contract with the person(s) having the right to control the incidents of burial.

(18) Any licensed funeral establishment or funeral director that makes arrangements for an unlicensed person to transport dead human bodies within the state of Missouri, or out of this state, is responsible for the conduct of the unlicensed person.

(19) A funeral director or funeral establishment licensed in another state that enters the state of Missouri solely for the purpose of transporting a dead human body through Missouri to another state, country, or territory shall not be deemed to be in the practice of funeral directing or required to obtain a license from the board. This regulation does not exempt any person or entity from complying with any applicable statutes or regulations governing the transportation of dead human bodies, including, but not limited to, Chapters 193 and 194, RSMo.

(20) A Missouri licensed funeral establishment or funeral director shall not allow an unlicensed person to make the following atneed arrangements with the person having the right to control the incidents of disposition:

(A) Arrangements for final disposition, supervision of visitation and memorial ceremony,

grave attendance, cremation, entering into a contractual relationship for performance of any other funeral services;

(B) Embalming, cremation, care, or preparation; and

(C) Nothing in this subsection shall be construed to apply to persons exempt from Chapter 333, RSMo.

(21) The taking of preliminary information by an unlicensed person will not be construed as the making of at-need funeral arrangements under this rule.

(22) No temporary Missouri funeral director license authorized under section 333.041.7, RSMo, will be issued until the board has been advised as to the location of the Missouri licensed funeral establishment at which the temporary funeral director's license will be used. The holder of the temporary license shall be authorized to only work at the Missouri licensed funeral establishment(s) where the deceased and/or disabled Missouri licensed funeral director was authorized to work. Violation of this rule will be deemed

unauthorized practice of funeral directing.

(23) The business and practice of funeral directing may be conducted only from a fixed place or establishment which has been licensed by the board.

(24) Limited License.

(A) A person holding a limited license shall only be allowed to work in a funeral establishment that is licensed as a Function B establishment (cremation only). A limited funeral director shall only engage in the activities of funeral directing authorized for a Function B funeral establishment.

(B) Every person desiring a limited license shall provide the following to the board:

1. Proof of being at least eighteen (18) years of age;

2. Proof of possession of a high school diploma or its equivalent;

3. Evidence of being a person of good moral character;

4. Proof of successful completion by achieving a score of seventy-five percent (75%) or better on the Missouri Law examination;

5. Completed application form as provided by the board;

6. Payment of applicable fees;

7. Payment of any fee charged by the Missouri Highway Patrol for a criminal history background check; and (fingerprinting)

8. Any other information the board may require.

(C) Every limited licensee shall provide the board with the name, location, and license number of each Function B funeral establishment where he/she is employed.

(D) A limited licensee shall be obligated to comply with all Missouri laws governing funeral directors subject to the limitations imposed by this rule and section 333.042.2, RSMo.

(E) If a limited licensee desires to obtain a full funeral director's license, the licensee shall be required to complete an apprenticeship consisting of at least twelve (12) consecutive months as required by section 333.042.2, RSMo, and accompanying regulations

OR fulfill the education requirements set forth in section 333.042.3, RSMo. The limited licensee shall also provide to the board proof of successful completion of the remaining sections of the funeral director examination as required by these regulations.

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The applicant shall be exempt from the requirement of successful completion of the Missouri Law section if the applicant has successfully completed the Missouri Law section within twelve (12) months of the date that the board receives the new application. (New rule) [(25) All certificates, registrations, and licenses, or duplicate copies thereof, issued by the State Board of Embalmers and Funeral Directors shall be displayed at all times in a conspicuous location accessible to the public in each office(s) or place(s) of business where they work, for inspection by any duly authorized agent of the board.]

(26) Should an individual desire to obtain a Missouri funeral director's license after his/her license has become void under section 333.081.3, RSMo, the individual shall be required to make new application and pay all applicable fees to the board. No previous apprentice, or application, or examination (if applicable) will be considered for the new application. However, the board shall accept the successful completion of the National Board Funeral Service Arts or the Missouri Funeral Service Arts examination for new application.

(27) A Missouri licensed funeral director may engage in the practice of funeral directing in the state of Missouri only in Missouri licensed funeral establishments. Each Missouri licensed funeral director shall inform the board in writing, in a timely manner, of each Missouri licensed funeral establishment name(s), location(s), and license number(s) where the Missouri licensed funeral director is engaged in funeral directing.

(28) A Missouri licensed funeral director has the ongoing obligation to keep the board informed if the licensee has been finally adjudicated or found guilty, or entered a plea of guilty or *nolo contendere*, in a criminal prosecution under the laws of any state or of the United States, whether or not sentence was imposed. This information shall be provided to the board within thirty (30) days of being finally adjudicated or found guilty.

(29) Person Deemed to be Engaged in the Practice of Funeral Directing.

(A) No person shall be deemed by the board to be engaged in the practice of funeral

directing or to be operating a funeral establishment

if the person prepares, arranges, or carries out the burial of the dead human body of a member of one's own family or next of kin as provided by section 194.119, RSMo, provided that the activity is not conducted as a business or for business purposes.

(B) The board shall not deem a person to be engaged in the practice of funeral directing or to be operating a funeral establishment if the person prepares, arranges, or carries out the burial of a dead human body pursuant to the religious beliefs, tenets, or practices of a religious group, sect, or organization, provided that the activity is not conducted as a business or for business purposes.

(30) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.041, 333.042, and 333.121, RSMo Supp. 2008, section 333.091, SB 1, Ninety-fifth General Assembly 2009, and section 333.111, RSMo 2000. This rule originally filed as 4 CSR 120-2.060. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. Amended: Filed Aug. 16, 1976, effective Dec. 11, 1976. Emergency amendment filed Nov. 9, 1978, effective Nov. 20, 1978, expired Feb. 11, 1979. Rescinded and readopted: Filed Nov. 8, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Jan. 13, 1982, effective April 11, 1982. Amended: Filed Dec. 2, 1983, effective April 12, 1984. Amended: Filed July 29, 1988, effective Dec. 11, 1988. Amended: Filed Sept. 6, 1988, effective Dec. 11, 1988. Amended: Filed Sept. 6, 1989, effective Dec. 28, 1989. Amended: Filed Sept. 5, 1990, effective March 14, 1991. Amended: Filed March 4, 1991, effective July 8, 1991. Amended: Filed March 26, 1991, effective Sept. 30, 1991. Amended: Filed Feb. 1, 1994, effective July 30, 1994. Amended: Filed Dec. 22, 1997, effective June 30, 1998. Rescinded and readopted: Filed Sept. 8, 1998, effective Jan. 30, 1999. Amended: Filed July 26, 1999, effective Jan. 30, 2000. Amended: Filed March*

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10, 2000, effective Sept. 30, 2000. Amended: Filed Nov. 1, 2001, effective April 30, 2002. Rescinded and readopted: Filed Dec. 31, 2003, effective July 30, 2004. Amended: Filed Sept. 15, 2004, effective April 30, 2005. Moved to 20 CSR 2120-2.060, effective Aug. 28, 2006. Amended: Filed Feb. 16, 2006, effective Sept. 30, 2006. Amended: Filed Nov. 15, 2007, effective May 30, 2008. Amended: Filed July 22, 2009, effective Jan. 30, 2010.

*Original authority: 333.041, RSMo 1965, amended 1969, 1977, 1981, 1983, 1993, 1998, 2001; 333.042, RSMo 1993, amended 1998, 2001; 333.091, RSMo 1965, amended 1981, 2009; 333.111, RSMo 1965, amended 1981, 1993, 1995; and 333.121, RSMo 1965, amended 1981, 2007.

20 CSR 2120-2.070 Funeral Establishments

PURPOSE: This rule clarifies establishment license classifications, establishment names, and the documents to be maintained by licensed funeral homes.

(1) Application for a Missouri licensed funeral establishment license shall be made on the forms provided by the board and shall be accompanied by the appropriate fee.

Applications are available from the board's office or the board's website at <http://pr.mo.gov/embalmers.asp>. Each application

shall indicate which license classification is being sought.

(2) There shall be the following license classifications:

(A) Function A establishments shall have authority to embalm dead human bodies and to transport dead human bodies to and from the funeral establishment. An establishment licensed only as a Function A establishment is prohibited from the care and preparation of dead human bodies other than by embalming, and shall also be prohibited from making funeral arrangements or embalming arrangements with any unlicensed person, cremating, conducting visitations and funeral ceremonies, and furnishing any funeral service in connection with the disposition of dead human bodies, or selling of funeral merchandise.

Each Missouri licensed funeral establishment

used solely or partially for embalming shall contain a preparation room that shall be devoted to activities incident or related to the preparation or the embalming, or both, of dead human remains and shall be equipped and maintained as described in 20 CSR 2120-2.090. Each Function A funeral establishment licensed for embalming shall maintain on the premises in the preparation room a register log

(B) Function B establishments shall have authority to cremate dead human bodies and to transport dead human bodies to and from the funeral establishment. This establishment shall have a functioning cremation chamber except as otherwise provided by Chapter 333, RSMo, and the rules of the board. An establishment licensed only as a Function B establishment is prohibited from the care and preparation of dead human bodies other than by cremating, and shall also be prohibited from embalming, making funeral arrangements or cremation arrangements with any unlicensed person, conducting visitations and funeral ceremonies, and furnishing any funeral service in connection with the disposition of dead human bodies or selling funeral merchandise.

In no event shall any licensee or licensed establishment cremate human remains in the same retort used for cremating non-human remains. Each Missouri licensed funeral establishment which is used solely or partially for cremations shall be equipped and maintained as described in 20 CSR 2120-2.071. This function shall maintain on the premises in the cremation area a cremation log

(C) Function C establishments shall have authority for the care and preparation of dead human bodies, other than by embalming or cremating, authority to transport dead human bodies to and from the funeral establishment, make funeral arrangements, and furnish any funeral services in connection with the disposition of dead human bodies or the sale of funeral merchandise. This function shall contain a separate area for the care and custody of dead human remains that is secured with a functioning lock and a separate area for confidential conferences to arrange funeral services. The Function C establishment

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shall have on-site equipment necessary for arranging funeral services including tables or desks and chairs for funeral service arrangement conferences and file cabinets for the confidential storage of funeral records. This function shall contain a restroom, available drinking water, and an area where funeral ceremonies or visitations may be conducted. The establishment shall be equipped with seating for visitations or funeral ceremonies, casket bier, register book stand, officiate stand, flower display stands, and music-producing equipment.

This function shall maintain on the Missouri premises the

following documents:

- (A) General price list;
- (B) Preneed contracts which have been cancelled or fulfilled;
- (C) Purchase agreements; and
- (D) Authorizations to embalm or cremate.
- (E) Register Log
- (F) Preneeds Contracts

(D) Function D establishments shall have authority to conduct visitations and funeral ceremonies only. A Function D license is dependent upon and shall be operated under the supervision and ownership of a Function C establishment. This function shall contain a restroom, available drinking water, and an area where funeral ceremonies or visitations may be conducted. The establishment shall be equipped with seating for visitations or funeral ceremonies, casket bier, register book stand, officiate stand, flower display stands, and music-producing equipment. Each Function D funeral establishment shall maintain on the premises a register log.

(3) If a Missouri licensed funeral establishment wishes to [change or] add to its classification, it shall file a new application for a Missouri licensed funeral establishment indicating its new classification. If a Missouri licensed funeral establishment desires to eliminate one (1) of its functions[, other than a Function C,] it shall notify the board in writing of its intention to surrender the function, but is not required to file a new application for a new Missouri licensed funeral establishment.

(4) A Missouri licensed funeral establishment shall not be used for any other business purpose other than as a Missouri licensed funeral establishment. It shall be permissible for a Missouri licensed funeral establishment to be in the same building as another business so long as the Missouri licensed funeral establishment

has a separate entrance and a separate street address.

(5) A Missouri licensed funeral establishment shall be used only for the function for which it is licensed.

(6) Each application for a funeral establishment shall be made in the name of the person or business entity authorized to conduct business in Missouri. No license shall be issued to an establishment that has no legal recognition. A Missouri licensed funeral establishment shall maintain a current and active authorization to conduct business in Missouri with the Missouri Secretary of State.

(7) A funeral establishment application shall indicate the name and license number of the Missouri licensed funeral director-in-charge, as defined by 20 CSR 2120-1.040. When the Missouri licensed funeral director-in-charge changes [for a period of more than thirty (30) days], the new Missouri licensed funeral director-in-charge and the former Missouri licensed funeral director-in-charge, jointly or individually, shall notify the board of the change within [thirty (30)] fifteen (15) days of the date when the change first occurs. Failure to notify the board shall be considered a violation of this rule on the part of each Missouri funeral director licensee and on the part of the Missouri licensed funeral establishment. A change in the Missouri licensed funeral director-in-charge does not require a new Missouri licensed funeral establishment license.

(8) Within thirty (30) days after an application for a Missouri licensed funeral establishment has been received in the board's office, the board shall cause the establishment to be inspected. The board shall act on the application and, within thirty (30) days after the application was received in the board's office, the applicant will be advised whether the license is granted or denied. If an applicant determines the establishment will not meet the qualifications for inspection or licensure within the thirty (30)-day application period, up to two (2) thirty (30)-day extensions of the application may be requested by the applicant

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in writing to the board before the application expires. Each request for an extension shall be received by the board prior to the expiration of the application or extension period.

(9) The establishment license issued by the board is effective for a fixed place or establishment and for a specific name of a person or entity authorized to conduct business in Missouri and may include one (1) "doing business as" name. The license issued by the board shall be displayed in a conspicuous location accessible to the general public at that location. Whenever the ownership, location, or name of the Missouri licensed establishment is changed, a new license shall be obtained. If the Missouri licensed funeral establishment maintains a chapel, preparation room, or other facility in a building or portion physically separated from and located at a place designated by an address differing from the office, chapel, or other facilities of the applicant, the chapel, preparation room, or other funeral facility otherwise located shall be deemed to be a separate funeral establishment. Nothing contained in this rule shall be construed or interpreted to require a separate registration for a building if it is joined or connected by a private passage, walk or driveway existing between the registered establishment and the other building.

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

(B) A corporation is considered by law to be a separate person. If a corporation owns a Missouri licensed funeral establishment, it is not necessary to obtain a new establishment license or to file an amended application for an establishment license if the owners of the stock change. However, as a separate person, if a corporation begins ownership of a Missouri licensed funeral establishment or ceases ownership of a Missouri licensed funeral establishment, a new establishment license shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

(10) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment that has been licensed by the board except as permitted by section 333.071, RSMo. The Missouri licensed funeral establishment physical facility shall be under the general management and supervision of the Missouri licensed funeral director-in-charge. Every Missouri licensed funeral establishment shall provide and allow access to any member or duly authorized agent of the board for the purpose of inspection as provided by sections 333.061 and 333.101, RSMo. If any representative of the Missouri licensed funeral establishment fails or refuses to provide or allow access, it shall be considered a violation of this rule by the Missouri licensed funeral establishment and by the Missouri licensed funeral director-in-charge of the Missouri licensed funeral establishment. Additionally, if the Missouri licensed funeral establishment representative who fails or refuses to provide or allow access holds any license or registration issued by this board, that person shall be in violation of this rule.

(11) No one licensed by this board may be employed in any capacity by an unlicensed funeral establishment. Violation of this section will be deemed misconduct in the practice of embalming or funeral directing.

(12) Only one (1) license will be issued by this board for any physical facility that is considered

to be a Missouri licensed funeral establishment as defined by statute and rule. If a Missouri funeral establishment licensed by this board is destroyed by fire or some other disaster or act of God, the board, in its discretion, for a period of not more than six (6) months, may allow the Missouri licensed funeral establishment to continue its operation from another Missouri licensed funeral establishment or from a facility that has not been licensed as a funeral establishment if the facility meets the minimum requirements for the functions outlined in section (2) of this rule.

(13) A Missouri licensed funeral establishment may use only its registered name in any advertisement or holding out to the public.

(A) All signs, stationery and any advertising in newspapers, publications or otherwise, shall include the name(s) of the Missouri licensed funeral establishment registered with

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the board. Advertisements that do not comply with this section shall be deemed misleading for the purposes of section 333.[121]330, RSMo.

(B) It shall not be deemed to be misleading if a listing appears in a telephone directory or national directory if the name of the Missouri licensed funeral establishment changes after the listing has been placed, but before a new directory is published.

(14) The interior and exterior of the Missouri licensed funeral establishment physical plant shall be kept free and clean of litter, dirt, debris, and clutter or other objects or conditions which present a potential or actual hazard to the health, safety, or welfare of the public.

[(15) The interior and exterior of the Missouri licensed funeral establishment physical plant shall be maintained in a manner that does not present a potential or actual hazard to the health, safety, or welfare of the public.]

[(16) Each Missouri licensed funeral establishment used solely or partially for embalming shall contain a preparation room that shall be devoted to activities incident or related to the preparation or the embalming, or both, of dead human remains and shall be equipped and maintained as described in 20 CSR 2120-2.090.]

(17) No person shall be permitted in a preparation room during the course of embalming a dead human body except the employees of the Missouri licensed funeral establishment in that the human body is being embalmed, members of the family of the deceased, and persons authorized by the members of the family of the deceased, or any person otherwise authorized by law.

[(18) Each Missouri licensed funeral establishment which is used solely or partially for cremations shall be equipped and maintained as described in 20 CSR 2120-2.071.]

[(19) Each Function C establishment shall contain a separate area for the care and custody of dead human remains and a separate area for confidential conferences to arrange funeral services. The Function C establishment shall have on-site equipment necessary for arranging funeral services including tables or desks and chairs for funeral service arrangement conferences and file cabinets for the confidential storage of funeral records.

(20) Each Function C or Function D establishment shall contain a restroom, available drinking water, and an area where funeral ceremonies or visitations may be conducted. The establishment shall be equipped with seating for visitations or funeral ceremonies, casket bier, register book stand, officiate stand, flower display stands, and music-producing equipment.]

(21) According to section 333.[121.2(17)]330, RSMo, the State Board of Embalmers and Funeral Directors may impose disciplinary action for failure to obtain authorization to embalm from the person entitled to custody or control of the body, if the body is embalmed. If the body is not embalmed, a Missouri licensed funeral establishment shall not hold the unembalmed body for any longer than twenty-four (24) hours unless the unembalmed

body is refrigerated in a cooling unit at a temperature of forty degrees Fahrenheit (40° F) or cooler or encased in an airtight metal or metal-lined burial case, casket or box that is closed and hermetically sealed. If the deceased gave written authorization to embalm and did not revoke the authorization, the authorization shall satisfy this requirement. If the deceased did not give written authorization to embalm, the next of kin of the deceased may give authorization to embalm. Authorization to embalm may be given by the next of kin prior to the death of the person whose body is to be embalmed. Authorization to embalm given prior to death may be in any written document, including a preneed contract.

(A) The next of kin, for purposes of this rule, shall be as defined in section 194.119.2, RSMo.

(B) Any person or friend who assumes responsibility for the disposition of the deceased's remains if no next of kin assumes such responsibility may authorize to embalm the deceased;

(C) The county coroner or medical examiner pursuant to the provisions of Chapter 58, RSMo may authorize to embalm the deceased;

(D) If the body is required to be buried at public expense, the body shall be disposed of according to the terms of section 194.150, RSMo;

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(E) If the Missouri licensed funeral establishment receives no authorization to embalm from any of the persons identified in subsections (21)(A), (B), or (C) of this rule, the Missouri licensed funeral establishment may proceed with embalming if it has attempted to locate a person from whom authorization to embalm may be obtained for at least six (6) hours and it has a written statement from city, county, or state law enforcement officials that they have assisted the Missouri licensed funeral establishment in attempting to locate such a person. However, the Missouri licensed embalmer may proceed to embalm sooner if the condition of the body is such that waiting for six (6) hours would substantially impair the ability to effectively embalm the body or if the deceased died as a result of a communicable disease, was subject to isolation at the time of death; and

(F) If a Missouri licensed embalmer proceeds to embalm a body under the provisions of subsection (21)(E), the Missouri licensed funeral establishment which employs the Missouri licensed embalmer shall not require payment for the embalming unless the funeral arrangements that are subsequently made authorized the embalming.

(22) Each Missouri licensed funeral establishment shall maintain documentation of the following information regarding authorization to embalm a body which is embalmed by or on behalf of the Missouri licensed funeral establishment—

(A) When authorization to embalm is given in writing:

1. The name and signature of the person who is authorizing embalming;
2. The relationship of that person to the deceased;
3. The time and date authorization to embalm was given; and
4. The name and title of the person receiving authorization to embalm on behalf of the Missouri licensed funeral establishment; and

(B) Authorization to embalm shall be given in writing if the person authorizing embalming is present in the Missouri licensed funeral establishment or in the physical presence of the person receiving authorization to embalm on behalf of the Missouri licensed funeral establishment. If verbal authorization to

embalm is given, the Missouri licensed funeral establishment shall document:

1. The name of the person who is actually authorizing embalming, if different from the person who is verbally communicating authorization to embalm to the Missouri licensed funeral establishment;
2. The relationship of that person to the deceased;
3. The name of the person who is verbally communicating authorization to embalm and that person's relationship to the person who is actually authorizing embalming;
4. The time and date authorization to embalm was given; and
5. The name and title of the person receiving authorization to embalm on behalf of the Missouri licensed funeral establishment.

[(23) Each Function C funeral establishment shall maintain on the Missouri premises the following documents:

- (A) General price list;
- (B) Preneed contracts which have been cancelled or fulfilled;
- (C) Purchase agreements; and
- (D) Authorizations to embalm or cremate.]

[(24) Each Function A funeral establishment licensed for embalming shall maintain on the premises in the preparation room a register log.]

(25) Each Function B funeral establishment licensed for cremation shall maintain on the premises a completely functioning cremation chamber, as defined by 20 CSR 2120-2.071(1)(D), ~~[and maintain on the premises in the cremation area a cremation log]~~. A Function B establishment shall not be in violation of this rule if the cremation chamber is completely restored to functioning capacity within one hundred twenty (120) days from the date the cremation chamber ceases to be in compliance with this section. However, if there are extenuating circumstances, and the cremation chamber could not be repaired, documentation of such shall be provided to the board for review and approval. Cremation chambers shall be maintained in proper working order and in compliance with all applicable Missouri Department of Health and Senior Services statutes, rules and regulations; Missouri Department of Natural

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Resources, statutes, rules and regulations;
and all other applicable federal, **state**, city,
county,

and municipal statutes, rules and regulations.

(A) If a Function B establishment has only one (1) cremation chamber, and that chamber is not functioning, notification from the establishment shall be made to the board within ten (10) business days after the cremation chamber stops functioning.

(B) A Function B establishment that has a nonfunctioning cremation chamber may arrange for cremation at another licensed establishment, if the use of an alternate establishment

for purposes of cremation is disclosed to the third party making the arrangements on the cremation authorization form.

1. Cremation areas shall contain only the articles, instruments, and items that are necessary for the preparation and cremation of dead human bodies. For purposes of this section, the cremation area shall include the entire room where the retort is located and any rooms used for viewing or visitation of a dead human body awaiting cremation or that is being cremated or being removed from the cremation chamber. This paragraph (25)(B)1. shall not apply to establishments containing retorts or cremation areas for the cremation of non-human remains prior to April 1, 2008, provided that such establishment shall be prohibited

from cremating human remains at the same time or in the same retort as non-human remains.

2. Any establishment containing an area for the cremation of non-human remains prior to April 1, 2008, shall be required to comply with this rule if a change of ownership is caused by the addition or replacement of one (1) or more owners or a new corporation begins ownership of the establishment. This paragraph (25)(B)2. shall not apply if only the owners of the stock of a corporation changes.

3. In no event shall any licensee or licensed establishment cremate human remains in the same retort used for cremating non-human remains.

(26) All documents required by this rule to be maintained, shall be maintained on the premises of the Missouri licensed funeral establishment for two (2) years from the date the record was created. All documents

required to be maintained by this rule may be maintained electronically, but all documents shall be stored in such a manner to allow access by the board and so the board, or its assignee, may easily and timely obtain hard copies or electronic copies in a format easily readable by the board, or its assignee

(27) Each funeral establishment shall maintain a register log, as defined by 20 CSR

2120-1.040(21). **[The log shall be kept in the preparation or embalming room of the Missouri licensed funeral establishment at all times and in full view for a board inspector.**

If the funeral establishment does not contain a preparation or embalming room,] T[t]he log shall be kept on the premises of the licensed funeral establishment and shall be easily accessible and in full view for a board inspector. A register log shall contain the information required by 20 CSR 2120-1.040(21).

(28) No dead human body shall be buried, disinterred, interred, or cremated within this state or removed from this state, unless the burial, disinterment, interment, cremation, removal, or other authorized disposition, is performed under the direction of a Missouri licensed funeral establishment or Missouri licensed funeral director, unless otherwise authorized by law. If the disinterment does not require legal notification to the county coroner or medical examiner, a funeral director's presence may not be required. Nothing in this rule shall be interpreted to require the use of a Missouri licensed funeral establishment or director if the person(s) having the right to control the incidents of burial request or determine otherwise, provided that this provision does not exempt any person from licensure as required by Chapter 333, RSMo.

(A) Any licensed funeral establishment or funeral director that makes arrangements for an unlicensed person to transport dead human bodies within the state of Missouri, or out of this state, is responsible for the conduct of the unlicensed person.

(29) A licensee shall be prohibited from knowingly using, placing, or including any false, misleading, deceptive or materially incorrect information, or assisting or enabling any person to provide such information, on a death certificate filed in the state of Missouri.

(30) Whenever a dead human body is donated to a medical or educational institution for

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medical and/or scientific study and arrangements for return of the body to the legal next of kin have not been made, then delivery of the body to the medical or educational institution shall constitute final disposition. If, however, arrangements for return of the body to the legal next of kin have been made, then final disposition shall be the burial, interment, cremation, or removal of the body out of this state, after the medical or educational institution has returned the body.

(31) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.061 and 333.121, RSMo Supp. 2008 and sections 333.091, 333.111, and 333.145, RSMo 2000. This rule originally filed as 4 CSR 120-2.070. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. Amended: Filed Aug. 16, 1976, effective Dec. 11, 1976. Emergency rule filed Nov. 9, 1978, effective Nov. 20, 1978, expired Feb. 11, 1979. Rescinded and readopted: Filed Nov. 8, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Jan. 13, 1982, effective April 11, 1982. Amended: Filed Aug. 6, 1982, effective Nov. 11, 1982. Amended: Filed Sept. 12, 1985, effective Dec. 26, 1985. Rescinded and readopted: Filed May 28, 1987, effective Sept. 11, 1987. Amended: Filed June 24, 1988, effective Sept. 29, 1988. Amended: Filed Sept. 6, 1988, effective Dec. 11, 1988. Amended: Filed Sept. 6, 1989, effective Dec. 28, 1989. Amended: Filed Dec. 4, 1989, effective March 11, 1990. Amended: Filed Sept. 5, 1990, effective March 14, 1991. Amended: Filed March 4, 1991, effective Sept. 30, 1991. Amended: Filed Aug. 15, 1991, effective Jan. 13, 1992. Amended: Filed Dec. 14, 1992, effective June 7, 1993. Amended: Filed Nov. 29, 1994, effective July 30, 1995. Amended: Filed Sept. 3, 1996, effective April 30, 1997. Amended: Filed Nov. 1, 2001, effective April 30, 2002. Rescinded and readopted: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-2.070, effective Aug. 28, 2006. Amended: Filed Nov. 15, 2007, effective*

*May 30, 2008. Amended: Filed April 8, 2009, effective Oct. 30, 2009. *Original authority: 333.061, RSMo 1965, amended 1981, 2001; 333.091, RSMo 1965, amended 1981; 333.111, RSMo 1965, amended 1981, 1993, 1995; 333.121, RSMo 1965, amended 1981, 2007; and 333.145, RSMo 1981.*

20 CSR 2120-2.071 Funeral Establishments Containing a Crematory Area

PURPOSE: This rule outlines the requirements and procedures for operating a crematory establishment in Missouri.

[(1) Definitions.

(A) Cremated remains—the bone fragments which remain after the cremation process is completed.

(B) Cremation—the technical heating process which reduces remains to bone fragments

through heat and evaporation; a final disposition of dead human remains.

(C) Cremation box—a container into which cremated remains are placed for transportation or short-term storage.

(D) Cremation chamber—the total functioning mechanical unit for the actual cremation process.

(E) Cremation container—the case in which the human remains are delivered to the crematory area for cremation.

(F) Crematory area—the building or portion of a building which houses the cremation chamber and the holding facility.

(G) Holding facility—the area within the crematory area in which dead bodies are placed while awaiting cremation.

(H) Short-term storage—storage for a period of thirty (30) days or fewer.

(I) Urn—the receptacle into which the cremated remains are placed for other than transportation or short-term storage.]

(2) No body shall be cremated in this state except in a funeral establishment licensed by the board as a Function B establishment.

(3) Each Missouri licensed funeral establishment that contains a crematory area shall maintain permanent records which shall include:

(A) A written authorization for cremation executed prior to cremation by the person entitled to custody or control of the body

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which shows the time and date when authorization for cremation was given; and
(B) Information regarding the cremation which shall include:

1. The full name of the deceased;
2. The last place of residence of the deceased;
3. The place of death of the deceased;
4. The place of birth of the deceased;
5. The date and place of the funeral;
6. The name of the Missouri licensed funeral director, other than a limited license funeral director, with whom the arrangements were made;
7. The name of the person(s) who made the arrangements with the Missouri licensed funeral director and the relationship to the deceased;
8. The date and time when cremation was begun;
9. The name and address of the person to whom the cremated remains were released or the location where the cremated remains were placed; and
10. If the cremated remains were delivered or placed other than by an employee of the Missouri licensed funeral establishment, the name of the person who made the delivery or placement or the name of the business by which the cremated remains were shipped along with the receipt number.

[(4) Cremation log—a written record or log kept in the cremation area available at all times in full view, which will include the following:

- (A) The name of the deceased to be cremated;
- (B) The name of the Missouri licensed establishment where the body is cremated;
- (C) The date and time the body arrived at the crematory;
- (D) The date and time the cremation took place;
- (E) The name and signature of the Missouri licensed funeral director or Missouri licensed embalmer supervising the cremation;
- (F) The supervising Missouri licensed funeral director's license number or the supervising Missouri licensed embalmer's license number; and
- (G) The name of the Missouri licensed funeral establishment or other that was in charge of making the arrangements if from a different location.]

(5) All records required to be maintained by

this rule shall be maintained on the premises of the Missouri licensed funeral establishment for two (2) years from the date the record was created. All documents required to be maintained by this rule may be maintained electronically, but all documents shall be stored in such a manner to allow access by the board, or its assignee, and so the board, or its assignee, may easily and timely obtain hard copies or electronic copies in a format easily readable by the board, or its assignee.

(6) If the deceased gave written authorization to cremate and did not revoke the authorization, that authorization shall satisfy the requirement for authorization to cremate. If the deceased did not give written authorization to cremate, the next of kin of the deceased or the county coroner or medical examiner pursuant to Chapter 58, RSMo, may give authorization to cremate. Authorization to cremate given prior to the death may be in any written document, including a preneed contract. The next of kin, for purposes of this rule, shall be as defined in section 194.119.2, RSMo.

(7) If the Missouri licensed funeral establishment receives no authorization for cremation from any of the persons identified in section (6) of this rule, the Missouri licensed funeral establishment may proceed with cremation if it has attempted to locate a person from whom authorization to cremate may be obtained for at least ten (10) days and it has a written statement from city, county, or state law enforcement officials that they have assisted the Missouri licensed funeral establishment

in attempting to locate a person from whom authorization for cremation could be obtained but have been unable to locate such a person. However, the Missouri licensed funeral establishment may proceed with cremation prior to the elapse of twentyfour (24) hours if the deceased died as a result of a communicable disease, was subject to isolation at the time of death, and has not been properly embalmed in accordance with 19 CSR 20-24.010.

(8) The cremation chamber shall be completely functioning at all times and shall be constructed specially to withstand high temperatures and protect the surrounding structure. A Function B establishment shall not be in violation of this rule if the cremation chamber is

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completely restored to functioning capacity within one hundred twenty (120) days from the date the cremation chamber ceases to be in compliance with this section. However, if there are extenuating circumstances and the cremation chamber could not be repaired, documentation of such shall be provided to the board for review and approval. Cremation chambers shall be maintained in proper working order and in compliance with all applicable Missouri Department of Health and Senior Services statutes, rules and regulations,

Missouri Department of Natural Resources, statutes, rules and regulations, and all other applicable federal, city, county, and municipal statutes, rules and regulations. (A) If a Function B has only one (1) cremation chamber and that chamber is not functioning, written notification shall be made to the board within ten (10) business days after the cremation chamber stops functioning.

(B) A Function B establishment that has a nonfunctioning cremation chamber may arrange for cremation at another licensed establishment, if the use of an alternate establishment for purposes of cremation is disclosed to the person making the arrangements on the cremation authorization form.

(9) The crematory area shall include a work center area equipped with forced air ventilation adequate to protect the health and safety of the operator and any other person(s) present.

(10) No person shall be permitted in the crematory area while any dead human body is in the crematory area awaiting cremation or being cremated or while the cremation remains are being removed from the cremation chamber except the Missouri licensed funeral director, the Missouri licensed embalmer, employees of the Missouri licensed funeral establishment in which the body is being cremated, members of the family of the deceased, persons authorized by the members of the family of the deceased, or any other person authorized by law.

(11) When there is no Missouri licensed funeral establishment employee in the crematory area, the crematory area shall be secure from entry by persons other than Missouri licensed funeral establishment employees or a Missouri licensed embalmer authorized by

the funeral establishment.

(12) Each body delivered to the crematory, if not already in a cremation container, plastic pouch, cardboard cremation container, casket made of wood or wood product or metal, shall be placed in such a pouch, container or casket. If a metal container or casket is used, the person making the arrangements shall be informed by the Missouri licensed funeral director with whom the arrangements are made of the disposition of the metal container or casket after cremation, if not placed in the retort. The cremation container shall be composed of a combustible, nonexplosive, opaque material which is adequate to assure protection to the health and safety of any person in the crematory area. The casket or container shall be leak resistant if the body enclosed is not embalmed or if death was caused by a contagious disease.

Each cremation box or urn into which the cremated remains are placed after removal from the cremation chamber shall be labeled clearly with the full name of the deceased and the name of the Missouri licensed funeral establishment with whom the arrangements were made, in accordance to 193.175.

(13) The Missouri licensed funeral director with whom the arrangements are made shall make inquiry to determine the presence or existence of any body prosthesis, bridgework or similar items.

(14) No body shall be cremated with a pacemaker in place. The Missouri licensed funeral director with whom the arrangements are made shall take all steps necessary to ensure that any pacemakers are removed prior to cremation.

(15) No body shall be cremated until after a completed death certificate has been filed with the local registrar as required by section 193.175, RSMo.

[(16) Except for metal containers or caskets, each cremation container or casket into which a body is placed shall be placed into the cremation chamber with the body and be cremated. If a metal container or casket is used, the purchaser shall be informed by the funeral director at the time the arrangements are made of the disposition of the metal container or casket after cremation, if the container or casket is not to be placed in the

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retort. Each cremation box or urn into which the cremated remains are placed after removal from the cremation chamber shall be labeled clearly with the full name of the deceased and the name of the Missouri licensed funeral establishment with whom the arrangements were made.]

(17) The remains of only one (1) body shall be in the cremation chamber at one (1) time unless simultaneous cremation has been authorized in writing by the person(s) entitled to custody or control of each body.

(18) Following the completion of the cremation process, all residual of the cremation process including the cremated remains and any other matter shall be thoroughly removed from the cremation chamber prior to placing another body in the cremation chamber.

(19) If the cremated remains do not fill the interior of the cremation box adequately, the extra space may be filled with shredded paper or clean absorbent cotton.

(20) If the cremated remains will not fit within the receptacle designated in the arrangements, the remainder shall be placed in a separate receptacle or, if written permission is obtained from the person entitled to custody or control of the body, disposed of in some other manner.

(21) The cremation box shall be composed of rigid materials which shall be sealed in order to prevent the leakage of cremated remains or the entry of foreign objects.

(22) If the cremated remains are to be shipped, the cremation box shall be packed securely in a corrugated cardboard box which is securely closed with tape acceptable to the shipper.

(23) Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery.

(24) Each urn into which cremated remains are placed shall be made of a durable material which shall enclose the cremated remains entirely.

(25) Each Missouri licensed funeral establishment which comes into possession of cremated remains, whether or not it is the Missouri licensed funeral establishment at which the cremation occurred, shall retain the cremated remains until they are delivered, placed, or shipped pursuant to the instructions of the person(s) entitled to custody or

control of the body. However, nothing in this rule shall prohibit a Missouri licensed funeral establishment from disposing of cremated remains in another fashion if the Missouri licensed funeral establishment has obtained written permission for other disposition contingent

upon the Missouri licensed funeral establishment attempting to dispose of the cremated remains according to instructions but being unable to do so through no fault of the Missouri licensed funeral establishment and provided that other disposition shall not occur prior to thirty (30) days after cremation. (new Health law on disposal of cremated remains)

(26) Nothing in this rule shall be construed to prohibit a Missouri licensed funeral establishment which contains a crematory area from establishing more restrictive standards for its own operation.

(27) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

*AUTHORITY: sections 333.061 and 333.121, RSMo Supp. 2008 and sections 333.111 and 333.145, RSMo 2000. * This rule originally filed as 4 CSR 120-2.071. Original rule filed May 29, 1987, effective Sept. 11, 1987. Amended: Filed Jan. 15, 1988, effective April 11, 1988. Amended: Filed April 16, 1990, effective Sept. 28, 1990. Amended: Filed Nov. 15, 1991, effective April 4, 1992. Amended: Filed Sept. 3, 1996, effective April 30, 1997. Amended: Filed Dec. 22, 1997, effective June 30, 1998. Amended: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-2.071, effective Aug. 28, 2006. Amended: Filed Jan. 30, 2007, effective July 30, 2007. Amended: Filed April 8, 2009, effective Oct. 30, 2009.*

**Original authority: 333.061, RSMo 1965, amended 1981, 2001; 333.111, RSMo 1965, amended 1981, 1993, 1995; 333.121, RSMo 1965 amended 1981, 2007; and 333.145, RSMo 1981.*

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20 CSR 2120-2.080 Written Statement of Charges

PURPOSE: This rule establishes a minimum disclosure requirement to provide better safeguards

to Missouri citizens purchasing funeral services and merchandise and in particular, purchases of caskets and outer burial containers by requiring specific identifying information to be included on the written statement of charges.

(1) Every Missouri licensed funeral director responsible for providing funeral services or arranging for the delivery of any funeral merchandise,

shall give or cause to be given to the person(s) making such arrangements a written statement of charges for the funeral merchandise and funeral services selected.

(2) At the time of need, a written statement of charges shall be completed and given to the person making the at-need arrangements. The written statement of charges shall be completed prior to the rendering of the funeral services or providing merchandise. At a minimum,

the written statement of charges shall contain the following:

(A) The name and signature of the Missouri licensed funeral director responsible for making the arrangements or providing the funeral merchandise;

(B) The name and address of the Missouri licensed funeral establishment in charge of providing the merchandise or funeral services;

(C) The name, address and signature of the person making the at-need arrangements;

(D) The date of the signatures;

(E) The name of the deceased;

(F) The date of death;

(G) The price of the service(s) selected and the price of the supplemental (additional) items;

(H) The price of the merchandise selected including a detailed description of the casket and outer burial container;

(I) The amount and description of all cash advance items; and

(J) The method of payment.

(3) A preneed contract shall not be substituted for the written statement of charges [required by the this rule.]

(4) Violations of this rule will be deemed misconduct in the practice of funeral directing.

(5) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

*AUTHORITY: sections 333.111 and 333.145, RSMo 2000. * This rule originally filed as 4 CSR 120-2.080. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. Amended: Filed Nov. 10, 1976, effective March 11, 1977. Emergency amendment filed Nov. 9, 1978, effective Nov. 20, 1978, expired Feb. 11, 1979. Amended: Filed Nov. 8, 1978, effective Feb. 11, 1978. Rescinded: Filed Jan. 13, 1982, effective April 11, 1982. Readopted: Filed Nov. 29, 1994, effective July 30, 1995. Amended: Filed Dec. 22, 1997, effective June 30, 1998. Amended: Filed May 3, 2004, effective Sept. 30, 2004. Moved to 20 CSR 2120-2.080, effective Aug. 28, 2006. *Original authority: 331.111, RSMo 1965 amended 1981, 1993, 1995 and 333.145, RSMo 1981.*

20 CSR 2120-2.090 Preparation Rooms/Embalming Room

PURPOSE: This rule outlines the laws and rules governing the standards required of funeral establishment preparation rooms.

(1) Whenever used in this rule, the phrase preparation room refers to that room in a Missouri licensed funeral establishment where dead human bodies are embalmed.

(2) The following requirements for the maintenance and cleanliness of preparation rooms apply at all times, regardless of whether a dead human body is being embalmed or not.

(3) Floors, Walls and Ceilings. All preparation room floor surfaces shall be smooth,

nonabsorbent materials and so constructed as to be kept clean easily. [Floor drains shall be provided where the floor is to be subjected to cleaning by flooding.]

All walls and ceilings shall be easily cleanable and light colored, and shall be kept and maintained in good repair. All walls shall have washable surfaces.

(4) Each Missouri licensed establishment shall comply with Missouri Department of Health and Senior Services

<http://www.dhss.mo.gov> rules and regulations,

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Missouri Department of Natural Resources rules and regulations

<http://dnr.mo.gov>,

and all other applicable county, city, municipal and state

rules and regulations relating to **containment backflow prevention devices**, plumbing, sewage and liquid waste, solid waste disposal and disposal of body parts.

(5) Sewage and Liquid Waste Disposal.

(A) All sewage and water-carried wastes from the entire Missouri licensed funeral establishment, including the preparation room, shall be disposed of in a public sewage system or an approved disposal system which is constructed, operated and maintained in conformance with the minimum standards of the Department of Health and Senior Services and Department of Natural Resources.

(B) The following aspirators are approved for preparation rooms:

1. Electric aspirators;
2. Water-operated aspirators. All water-operated aspirators shall be protected from back siphonage by the minimum of an atmospheric vacuum breaker approved by the American Society of Sanitary Engineering (ASSE) or by the *Uniform Plumbing Code* and installed a minimum of twelve inches (12") above the maximum possible height of the embalming table ;and

[3. Water-controlled unit. All water-controlled units shall be installed and maintained according to the *Uniform Plumbing Code*, and properly protected from back siphonage with a backflow prevention device approved by the American Society of Sanitary Engineering or the *Uniform Plumbing Code*.]

(6) Solid Waste Disposal.

(A) All waste materials, refuse, bandages, cotton and other solid waste materials shall be kept in a leakproof, nonabsorbent containers which shall be covered with tight-fitting lids. [prior to disposal.] Destruction shall be within city, county and state government regulations. [(B) All waste materials, refuse, and used bandage and cotton shall be destroyed by reducing to ashes through incineration or shall be sterilized and buried. Sterilization may be accomplished by soaking for thirty

(30) minutes in a solution of five percent (5%) formaldehyde, one (1) pint of formalin to seven (7) pints of water.]

(7) Disposal of Body Parts. Human body parts not buried within the casket shall be disposed of by incineration in a commercial or industrial-type incinerator or buried to a depth which will insure a minimum of three feet (3') of compacted earth cover (overlay).

(8) A mechanical exhaust system is required. Care shall be taken to prevent the discharge of exhaust air into an area where odors may create nuisance problems.

(9) All preparation rooms and all articles stored in them shall be kept and maintained in a clean and sanitary condition. All embalming tables, hoppers, sinks, receptacles, instruments and other appliances used in embalming or other preparation of dead human bodies shall be so constructed that they can be kept and maintained in a clean and sanitary condition. The following minimum standards shall apply:

(A) An eye wash kit (bank) or suitable facilities for quick drenching or flushing of the eyes shall be provided within the area for immediate emergency use;

(B) Facilities shall exist for the proper disinfection of embalming instruments and the embalming table;

(C) Facilities for the proper storage of embalming instruments shall be maintained.

At a minimum, a chest or cabinet shall be used for the storage of embalming instruments;

(D) All types of blocks used in positioning a dead human body on an embalming table shall be made of nonabsorbent material. All wooden blocks shall be sealed and painted with enamel; and

(E) When not in use, embalming tables shall be cleaned, disinfected and covered with a sheet.

[(10) Food and Beverages.

(A) There may be no direct opening between the preparation room and any room where food and beverages are prepared or served.

(B) The Department of Health and Senior Services sanitation laws and rules governing food sanitation apply to the operation, construction and sanitation of food service facilities, where provided for the comfort and convenience of a funeral party; provided,

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however, that coffee service utilizing singleservice cups and spoons and a coffeemaker of easily cleanable construction shall be deemed acceptable where this service is the only food service offered.

(C) A Missouri licensed funeral home providing coffee service utilizing single-service items and coffeemakers of easily cleanable construction shall provide a water supply faucet at a suitable sink of easily cleanable construction for the filling and cleaning of this equipment in an area separate from the preparation room and restrooms.]

(11) A separate wash sink (separate from slop drain sink) shall be present or in close proximity to the preparation room for a personal hand wash facility for Missouri licensed embalmers and the disinfecting of embalming equipment. If the wash sink is not present in the preparation room, it shall be in a location close to the preparation room which is not accessible to the public and it shall be at a distance of no further than ten feet (10') from the door of the preparation room.

(12) Preparation rooms shall contain only the articles, instruments, and items that are necessary for the preparation, embalming, and final disposition of dead human bodies.

(13) Preparation rooms shall be secured with a functional lock so as to prevent entrance by unauthorized persons.

(14) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

AUTHORITY: sections 333.111.1, RSMo 2000 and 192.020 and 333.061, RSMo Supp. 2006. This rule originally filed as 4 CSR 120-2.090. Original rule filed Oct. 17, 1975, effective Oct. 28, 1975. Refiled March 24, 1976. Emergency rule filed Nov. 9, 1978, effective Nov. 20, 1978, expired Feb. 11, 1979. Rescinded and readopted: Filed Nov. 8, 1978, effective Feb. 11, 1979. Rescinded and readopted: Filed Jan. 13, 1982, effective April 11, 1982. Amended: Filed Aug. 13, 1984, effective Jan. 13, 1985. Amended: Filed June 2, 1986, effective Sept. 1, 1986. Amended: Filed Nov. 15, 1991, effective April*

4, 1992. Amended: Filed May 26, 1993, effective Nov. 8, 1993. Amended: Filed May 16, 1995, effective Dec. 30, 1995. Amended: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-2.090, effective Aug. 28, 2006. Amended: Filed Jan. 30, 2007, effective July 30, 2007.

**Original authority: 192.020, RSMo 1939, amended 1945, 1951, 2004; 333.061, RSMo 1965, amended 1981, 2001; and 333.111, RSMo 1965, amended 1981, 1993, 1995.*

[20 CSR 2120-2.100 Fees

PURPOSE: This rule establishes and fixes the various fees and charges authorized by Chapter 333, RSMo.

(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 \$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 (1) year after lapse) \$100

(K) Reactivation Fee (up to two (2) years after 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 \$ 5*

(S) Examination Review Fee \$ 25

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(T) Background Check Fee
(amount determined by the
Missouri State Highway
Patrol)

(U) Provider License Application
Fee (if no Funeral Establishment
license) \$200

(V) Provider License Application
Fee (if also Funeral
Establishment license) \$100

(W) Provider Biennial Renewal
Fee \$**

(X) Seller License Application
Fee \$75

(Y) Seller Biennial Renewal Fee \$ **

(Z) Seller Agent Registration Fee \$ 50

(AA) Seller Agent Biennial
Registration Renewal Fee \$ **

(BB) Seller Annual Report Fee \$ **

(CC) Seller Annual Report Late
Fee \$ **

(DD) Seller Agent Law Examination
Fee \$**

(EE) Seller per Contract Annual
Reporting Fee (for contracts
executed on or after August
28, 2009) \$ 36

(FF) Amended Provider Application
Fee \$25

(GG) Amended Seller Application
Fee \$25

[*This fee will not apply to the initial copy of the law book which is automatically mailed to all applicants for licensure and to educational institutions of mortuary science. Furthermore, this fee will not be charged to licensees or any other individual, for additions or corrections to the law book after the initial copy is mailed.

**This fee is not yet determined by the board.

(2) All fees are nonrefundable.

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

*AUTHORITY: section 333.111.1, RSMo 2000 and section 333.340, RSMo Supp. 2009.**

This rule originally filed as 4 CSR 120-2.100. Emergency rule filed June 30, 1981, effective July 9, 1981, expired Nov. 11, 1981. Original rule filed June 30, 1981, effective Oct. 12, 1981. Emergency amendment filed April 7,

1982, effective April 17, 1982, expired Aug. 14, 1982. Amended: Filed April 13, 1982, effective July 11, 1982. Amended: Filed June 9, 1982, effective Sept. 12, 1982. Amended: Filed Aug. 9, 1982, effective Nov. 11, 1982. Amended: Filed Jan. 13, 1984, effective April 12, 1984. Amended: Filed Aug. 9, 1984, effective Jan. 13, 1985. Amended: Filed Feb. 7, 1985, effective May 11, 1985. Amended: Filed Sept. 12, 1985, effective Dec. 26, 1985. Amended: Filed Oct. 3, 1986, effective Jan. 12, 1987. Amended: Filed Dec. 2, 1986, effective March 12, 1987. Amended: Filed March 2, 1987, effective May 25, 1987. Amended: Filed March 16, 1988, effective July 28, 1988. Amended: Filed Sept. 6, 1988, effective Dec. 11, 1988. Amended: Filed Dec. 2, 1988, effective March 11, 1989. Amended: Filed July 17, 1989, effective Oct. 12, 1989. Amended: Filed Dec. 4, 1989, effective March 11, 1990. Amended: Filed March 12, 1991, effective Aug. 30, 1991. Amended: Filed Oct. 16, 1991, effective May 14, 1992. Amended: Filed Feb. 1, 1994, effective July 30, 1994. Amended: Filed June 9, 1995, effective Dec. 30, 1995. Rescinded and readopted:

Filed April 16, 1996, effective Nov. 30, 1996. Amended: Filed Dec. 22, 1997, effective June 30, 1998. Amended: Filed Sept. 8, 1998, effective Jan. 30, 1999. Amended: Filed March 24, 1999, effective Oct. 30, 1999. Amended: Filed July 26, 1999, effective Jan. 30, 2000. Amended: Filed Dec. 30, 1999, effective June 30, 2000. Amended: Filed Aug. 18, 2000, effective Feb. 28, 2001. Amended: Filed April 6, 2001, effective Oct. 30, 2001. Amended: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-2.100, effective Aug. 28, 2006. Amended: Filed Jan. 30, 2007, effective July 30, 2007. Emergency amendment filed Sept. 24, 2009, effective Oct. 4, 2009, expired April 1, 2010. Amended: Filed Sept. 24, 2009, effective April 30, 2010.

**Original authority: 333.111, RSMo 1965, amended 1981, 1993, 1995 and 333.340, RSMo 2009.]*

[20 CSR 2120-2.105 Preneed Fees

PURPOSE: This rule establishes and fixes the fee for registration as a preneed contract seller and as a preneed contract provider.

(1) The following registration fees for preneed funeral contract sellers and providers are established by the State Board of

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Embalmers and Funeral Directors:

(A) Seller Registration Fee \$125.00;

(B) Provider Registration Fee
(per funeral establishment) \$125.00;

(C) Processing an Amended
Seller Registration Fee \$ 25.00;
and

(D) Processing an Amended
Provider Registration Fee \$ 25.00.

(2) All fees are nonrefundable.

(3) The provisions of this rule are declared severable. If either 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 and effect, unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.

*AUTHORITY: sections 333.111(2), RSMo Supp. 1993 and 436.071, RSMo 1986. * This rule originally filed as 4 CSR 120-2.105. Emergency rule filed Aug. 5, 1982, effective Aug. 15, 1982, expired Nov. 15, 1982. Original rule filed Aug. 5, 1982, effective Nov. 11, 1982. Amended: Filed Sept. 6, 1988, effective Dec. 11, 1988. Moved to 20 CSR 2120-2.105, effective Aug. 28, 2006.*

**Original authority: 333.111(2), RSMo 1965, amended 1981, 1993 and 436.071, RSMo 1982.]*

20 CSR 2120-2.110 Public Complaint Handling and Disposition Procedure

PURPOSE: This rule establishes a procedure for the receipt, handling and disposition of public complaints by the board, pursuant to the mandate of section 4.16(6) of the Omnibus State Reorganization Act of 1974, Appendix B, RSMo.

(1) The State Board of Embalmers and Funeral Directors shall receive and process each complaint made against any licensee, permit holder, registrant of the board or unlicensed individual or entity, which complaint alleges certain acts or practices which may constitute one (1) or more violations of the provisions of Chapter 333, RSMo. Any member of the public or the profession, or any federal, state or local officials may make and file a complaint with the board. Complaints shall be received from sources outside Missouri and processed in the same manner as

those originating within Missouri. No member of the State Board of Embalmers and Funeral Directors shall file a complaint with this board while s/he holds that office, unless that member excuses him/herself from further board deliberations or activity concerning the matters alleged within that complaint. The executive director or any staff member of the board may file a complaint pursuant to this rule in the same manner as any member of the public.

(2) Complaints should be mailed or delivered to the following address: Executive Director, State Board of Embalmers and Funeral Directors, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102-0423. However, actual receipt of the complaint by the board at its administrative offices in any manner shall be sufficient. Complaint may be made based upon personal knowledge, or upon information and belief, reciting information received from other sources.

(3) All complaints shall be made in writing and shall fully identify the complainant by name and address. Complaints shall be made on forms provided by the board and available upon request. Oral or telephone communications will not be considered or processed as complaints, but the person making these communications will be provided with a complaint

form and requested to complete it and return it to the board in written form. Any member of the administrative staff of the board or any member of the board may make and file a complaint based upon information and belief, in reliance upon oral, telephone or written communications received by the board, unless those communications are believed by that staff member to be false.

(4) Each complaint received under this rule shall be logged in a book and/or database maintained by the board for that purpose. Complaints shall be logged in consecutive order as received. The logbook and/or database shall contain a record of each complainant's name and address; the name and address of the subject(s) of the complaint; the date each complaint is received by the board; a brief statement of the acts complained of, including the name of any person injured or victimized by the alleged acts or practices; a notation whether the complaint resulted in its dismissal by the board or informal charges being filed with the Administrative Hearing

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Commission; and the ultimate disposition of the complaint. This logbook and/or database shall be a closed record of the board.

(5) Each complaint received under this rule shall be acknowledged in writing. The acknowledgment shall state that the complaint is being referred to the board for consideration at its next regularly scheduled meeting.

The complainant shall be informed as to whether the complaint is being investigated, and later, as to whether the complaint has been dismissed by the board, or is being referred to legal counsel for filing with the Administrative Hearing Commission. The complainant shall be notified of the ultimate disposition of the complaint, excluding judicial appeals and shall be provided with copies of the decisions (if any) of the Administrative Hearing Commission and the board at that time. Provided, that the provisions of this section shall not apply to complaints filed by staff members of the board based on information and belief, acting in reliance on thirdparty information received by the board.

(6) The chairman of the board, from time-to-time and as s/he deems necessary, may instruct the board inspector/investigator to investigate any complaint before the complaint has been considered at a regularly scheduled board meeting. The inspector/investigator shall provide a report of any actions taken to the board at its next regularly scheduled meeting.

(7) Both the complaint and any information obtained as a result of the investigation shall be considered a closed record and shall not be available for inspection by the general public. However, a copy of the complaint and any attachments shall be provided to any licensee who is the subject of that complaint, or his/her legal counsel, upon written request to the board.

(8) This rule shall not be deemed to limit the board's authority to file a complaint with the Administrative Hearing Commission charging a licensee of the board with any actionable conduct or violation, whether or not the complaint exceeds the scope of the acts charged in a preliminary public complaint filed with the board, and whether or not any public complaint has been filed with the board.

(9) The board interprets this rule, which is required by law, to exist for the benefit of those members of the public who submit

complaints to the board and for those persons or entities within the legislative and executive branches of government having supervisory or other responsibilities or control over the professional licensing boards. This rule is not deemed to protect, or inure to the benefit of, those licensees or other persons against whom the board has instituted or may institute administrative or judicial proceeding concerning possible violations of the provisions of Chapter 333, RSMo.

AUTHORITY: sections 333.111, RSMo 2000 and 620.010.15(6), RSMo Supp. 2003. This rule originally filed as 4 CSR 120-2.110.*

Original rule filed Jan. 13, 1982, effective April 11, 1982. Amended: Filed Dec. 4, 1989, effective March 11, 1990. Amended: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-2.110, effective Aug. 28, 2006.

**Original authority: 333.111, RSMo 1965, amended 1981, 1993 and 620.010, 1973 amended 1981, 1983, 1986, 1989, 1990, 1993, 1994, 1995, 1999, 2001.*

20 CSR 2120-2.115 Procedures for Handling Complaints Against Board Members

PURPOSE: This rule establishes a procedure for the receipt, handling and disposition of complaints filed against members of the board.

(1) Complaints against members of the board will be handled in the same manner as complaints

against other licensees with minor variations specifically described in this rule.

(2) When a complaint against a board member is received by the staff, the staff shall take steps to make sure that the complaint is on the proper form(s) (that is, the Uniform Complaint

Form). Once the complaint is received in the proper form, the complaint will be mailed to all members of the board except the member who is the subject of the complaint. The member who is the subject of the complaint will automatically receive a summary of the complaint and will receive all agendas or other notices pertaining to when and where the complaint will be discussed. If the member who is the subject of the complaint requests additional information in writing, that information will be provided by the staff

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in consultation with the chairman (or vicechairman, if the chairman is the subject of the complaint). In no event will the member who is the subject of the complaint be given information

by the board or its staff which would reveal the name of the complainant, unless the member would have access if s/he were not a member of the board. If the board member learns the complainant's identity from the complainant, other board members and the staff subsequently may include the complainant's name in communication with the board member.

(3) At the meeting when the complaint is discussed,

the board member who is the subject of the complaint shall not be present during discussion of the complaint unless by vote or consensus the remaining board members request the presence of the board member in question. The board member shall not participate in discussion of the complaint as a member of the board but shall participate in the same manner as any other licensee who is invited to appear before the board to discuss a complaint. The board member may be asked to leave the room at any time during the discussion. The board member shall leave the room prior to any vote which will determine the manner in which the complaint will be handled.

(4) After the remaining board members have completed voting on all action to be taken as a result of the complaint, the board member may return to the room. At that time, the board chairman (or vice-chairman, if the chairman is the subject of the complaint) will inform the board member of the action which the board has decided to take.

(5) If the board decides to have the complaint investigated, a copy of the investigative report will be mailed to all board members except the board member who is the subject of the complaint. The board member who is the subject of the complaint will be sent a copy of any notice or agenda which indicates that the investigative report will be discussed. The meeting at which the investigative report is discussed will follow the same procedures outlined in section (4) for the meeting at which the complaint is discussed.

(6) If the board chooses to take no further action as a result of the complaint or the

investigative report, the board member will be informed of this decision. The board member will not subsequently have access to the investigative report or the complaint unless the member would have that access if s/he were not a member of the board.

(7) If the board chooses to refer the case to the attorney general's office, the board member will be informed of that fact. The board member will not be allowed access to the complaint or investigative report by virtue of his/her status as a board member. If the attorney assigned to the case chooses to release these documents to the board member or if the attorney is required for legal reasons to release these documents to the board member, the board member will be permitted access to the documents released by the attorney.

(8) The board member will not be present during any discussion of the case once the board has voted to refer the case to the attorney general's office. The exception to this rule will be only for prearranged formal meetings to discuss settlement, if the attorneys for both parties agree. The other board members will not discuss the case with the board member who is the subject of the case except at the formal meeting.

(9) The board member has the right to be represented by counsel at all formal or informal proceedings. Admissions made by the board member at or outside a board meeting may be used against the board member at hearing.

(10) The board member shall not have access to that portion of the minutes of any meeting which reflects discussion, motions or votes related to the complaint or case against the board member. These minutes shall be kept separately as special closed minutes and shall not be shared with the board member by the other board members or the staff unless the board member would be entitled to access to the minutes if s/he were not a board member.

(11) The provisions of sections (1)–(10) of this rule shall apply to any complaint against a Missouri licensed funeral establishment at which a member of the board is employed or with which a member of the board is associated.

(12) The provisions of sections (1)–(10) of this rule shall apply to any complaint against any preneed registrant by which a member of the board is employed or with which a member of the board is associated, including, but not limited to, a complaint against a preneed

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seller who sells for a Missouri licensed funeral establishment with which a member of the board is associated. A board member will be considered to be employed by or associated with a preneed registrant if the board member receives a salary or wages from the preneed registrant or if a board member has an ownership interest in a preneed registrant. However, these procedures shall not apply to a board member who only receives commissions from the preneed registrant. Each member of the board shall keep the board's executive director notified of the preneed registrants by which the board member is employed and with which the board member is associated.

(13) The remaining members of the board may vote to exclude a member from participating in any matter based upon a conflict of interest. The vote must be a majority vote of all of the members present and voting except the member who is the subject of the vote. Participation shall include, but not be limited to, receipt of materials, presence during discussion and voting.

AUTHORITY: section 333.111, RSMo 2000. This rule originally filed as 4 CSR 120-2.115. Original rule filed Dec. 4, 1989, effective March 11, 1990. Amended: Filed April 16, 1990, effective Nov. 30, 1990. Amended: Filed April 2, 1992, effective Sept. 6, 1992. Amended: Filed Dec. 31, 2003, effective July 30, 2004. Moved to 20 CSR 2120-2.115, effective Aug. 28, 2006.*

**Original authority: 333.111, RSMo 1965, amended 1981, 1993.*

20 CSR 2120-2.120 Public Records

PURPOSE: This rule establishes standards of compliance with Chapter 610, RSMo, as it relates to public records of the State Board of Embalmers and Funeral Directors.

(1) All public records of the State Board of Embalmers and Funeral Directors shall be open for inspection and copying by the general public at the board's office during normal business hours, holidays excepted, except for those records closed pursuant to section 610.021, RSMo. All public meetings of the State Board of Embalmers and Funeral Directors, not closed pursuant to the provisions of section 610.021, RSMo, will be open to the

public.

(2) The State Board of Embalmers and Funeral Directors establishes the executive director of the board as the custodian of its records as required by section 610.023, RSMo. The executive director is responsible for maintaining the board's records and for responding to requests for access to public records and may appoint deputy custodians as necessary for the efficient operation of the board.

(3) When the custodian believes that requested access is not required under Chapter 610, RSMo, the custodian shall inform the requesting party that compliance cannot be made, specifying what sections of Chapter 610, RSMo, require that the record remain closed. Correspondence or documentation of the denial shall be copied to the board's general counsel. The custodian also shall inform the requesting party that s/he may appeal directly to the board for access to the records requested. The appeal and all pertinent information

shall be placed on the agenda for the board's next regularly scheduled meeting. If the board reverses the decision of the custodian, the board shall direct the custodian to advise the requesting party and supply access to the information during regular business hours at the requesting party's convenience.

(4) The custodian shall maintain a file that will contain copies of all written requests for access to records and responses to these requests. The requests shall be maintained on file with the board for a period of one (1) year and will be maintained as a public record of the board open for inspection by any member of the general public during regular business hours.

(5) Whenever a request for inspection of public records is made and the individual inspecting the records requests copies of the records, the board may charge a reasonable fee for the cost of inspecting and copying the records. The fee charged by the board shall be as follows:

(A) A fee for copying public records shall not exceed the actual cost of the document search and duplication; and

(B) The board may required payment for these Fees prior to making the copies.

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**Title 20—DEPARTMENT OF
INSURANCE, FINANCIAL
INSTITUTIONS AND
PROFESSIONAL REGISTRATION**

**Division 2120—State Board of
Embalmers and Funeral Directors**

Chapter 3—Preneed

**20 CSR 2120-3.010 Preneed Seller
Registration**

PURPOSE: Under Chapter 436, RSMo, the State Board of Embalmers and Funeral Directors is directed to register persons as preneed sellers. Under section 333.111.1., RSMo, the State Board of Embalmers and Funeral Directors is directed to promulgate rules. . . “for the transaction of its business. . .” This rule complies with the statutory directive that the board promulgate rules for the transaction of its business in registering persons as preneed sellers.

(1) Whenever used in this rule, the word person means any individual, partnership, corporation, cooperative, association or other entity.

(2) Applications for registration as preneed sellers must be made on the forms provided by the board and must be accompanied by the applicable preneed seller registration fee.

(3) The board office will contact persons who have submitted applications for registration as preneed sellers whenever it appears that a slight change or modification on the form is necessary to accomplish registration. No such change or modification will be made without the consent of the person submitting the application. If telephone contact is impossible,

the application form and the tendered seller registration fee will be returned to the applicant with instructions for completing the form properly.

(4) The board office will accept seller registration applications even though certain information is not provided, if the application is accompanied by a statement that the information will be provided as soon as it is known to the applicant. If the information is not provided in a timely fashion, the registration will be cancelled.

(5) Each person seeking registration as a preneed seller will be required to submit a partial annual report at the time of registration, containing—1) the name and address of the

financial institution in Missouri in which it will maintain the trust accounts required under Chapter 436, RSMo and the account numbers of those trust accounts, 2) a consent authorizing the state board to order an examination and, if necessary, an audit by the staff of the Division of Professional Registration who are not connected with the state board, of the trust account designated by depository and account number and 3) a consent authorizing the state board to order an examination and, if necessary, an audit by the staff of the Division of Professional Registration who are not connected with the state board, of its books and records relating to the sale of preneed contracts and name and address of the person designated by the seller as custodian of those books and records.

(6) The board will acknowledge receipt of each application for registration as a preneed seller if the application is completed properly and is accompanied by the preneed registration fee. A registration number will be assigned.

(7) Application forms for registration as preneed contract sellers will be provided to any person upon request.

AUTHORITY: section 333.111.1, RSMo 1986. This rule originally filed as 4 CSR 120-3.010. Original rule filed Jan. 7, 1983, effective June 11, 1983. Moved to 20 CSR 2120-3.010, effective Aug. 28, 2006.*

**Original authority: 333.111.1, RSMo 1965, amended 1981.*

**20 CSR 2120-3.020 Preneed Provider
Registration**

PURPOSE: Under Chapter 436, RSMo, the State Board of Embalmers and Funeral Directors is directed to register persons as preneed providers. Under section 333.111.1., RSMo, the State Board of Embalmers and Funeral Directors is directed to promulgate rules. . . “for the transaction of its business. . .” This rule complies with the statutory directive that the board promulgate rules for the transaction of its business in registering persons as preneed providers.

(1) Whenever used in this rule, the word person means any individual, partnership, corporation, cooperative, association or other entity.

(2) Applications for registration as preneed providers must be made on the forms provided

Renumbering has not been completed. This is a Board draft for consideration.

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by the board and must be accompanied by the applicable preneed provider registration fee.

(3) The board office will contact persons who have submitted applications for registration as preneed providers whenever it appears that a slight change or modification on the form is necessary to accomplish registration. No such change or modification will be made without the consent of the person submitting the application. If telephone contact is impossible,

the application form and the tendered provider registration fee will be returned to the applicant with instructions for completing the form properly.

(4) The board office will accept provider registration applications even though certain information is not provided, if the application is accompanied by a statement that the information will be provided as soon as it is known to the applicant. If the information is not provided in a timely fashion, the provider registration will be cancelled.

(5) Each establishment which is licensed separately by the state board as a funeral establishment must register separately as a preneed provider, if the establishment will perform or agree to perform the obligations of, or be designated as, the provider under a preneed contract. Nothing in this rule will require registration of funeral establishments as preneed providers if the establishment will not perform or agree to perform the obligations of, or be designated as, the provider under a preneed contract.

(6) The board will acknowledge receipt of each application for registration as a preneed provider, if the application is completed properly and is accompanied by the preneed provider registration fee. A registration number will be assigned.

(7) Application forms for registration as preneed providers will be provided to any person upon request.

AUTHORITY: section 333.111.1, RSMo 1986. This rule originally filed as 4 CSR 120-3.020. Original rule filed Jan. 7, 1983, effective June 11, 1983. Moved to 20 CSR 2120-3.020, effective Aug. 28, 2006.*

**Original authority: 333.111.1, RSMo 1965, amended*

1981.

20 CSR 2120-3.030 Notification of Intent to Sell Assets or Cease Doing Business (Seller or Provider)

PURPOSE: Under Chapter 436, RSMo, the State Board of Embalmers and Funeral Directors is directed to accept notification of intent to sell assets or cease doing business from persons registered as preneed sellers or preneed providers, or both. Under section 333.111.1., RSMo, the State Board of Embalmers and Funeral Directors is directed to promulgate rules. . . “for the transaction of its business. . .” This rule complies with the statutory directive that the board promulgate in accepting notifications of intent to sell assets or cease doing business from registered preneed sellers or providers, or both.

(1) Whenever used in this rule, the word person means any individual, partnership, corporation, cooperative, association or other entity.

(2) Notification of intent to sell assets or cease doing business must be made on the forms provided by the board.

(3) As part of the notification, each registered seller must inform the board of the actions it has taken or will take to ensure that the trust assets of the seller will be set aside and used to serve outstanding preneed contracts sold by the seller and each registered provider must inform the board of the actions it has taken or will take to ensure that the provider's obligations under preneed contracts will be satisfied.

(4) In its discretion, the board may take reasonable and necessary actions to ensure that the provider's obligations under preneed contracts will be satisfied or that the trust assets of the seller will be set aside and used to service outstanding preneed contracts sold by the seller.

(5) Failure of the board to take action regarding any sale or termination of business within thirty (30) days of receipt of notification for providers and within sixty (60) days of receipt of notification for sellers will constitute a waiver of the board's authority under Chapter 436, RSMo.

(6) Forms for submitting notifications of intent to sell assets or cease doing business will be provided upon request.

Renumbering has not been completed. This is a Board draft for consideration.

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AUTHORITY: section 333.111.1, RSMo 1986. This rule originally filed as 4 CSR 120-3.030. Original rule filed Jan. 7, 1983, effective June 11, 1983. Moved to 20 CSR 2120-3.030, effective Aug. 28, 2006.
Original authority: 333.111.1, RSMo 1965, amended 1981.]

EXISTING FEE RULE

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

(A) Embalmer Practicum Student Registration Fee \$ 25

Embalmer Apprentice Registration Fee \$200

(B) Embalmer License [Application] Fee \$[200]125

[(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 (1) year after lapse) \$100

(K) Reactivation Fee (up to two (2) years after 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 \$ 5*

(S) Examination Review Fee \$ 25

(T) Background Check Fee (amount determined by the Missouri State Highway Patrol)

(U) Provider License Application Fee (if no Funeral Establishment license) \$200

(V) Provider License Application Fee (If also Funeral Establishment license) \$100

(W) Provider Biennial Renewal Fee \$ **

(X) Seller License Application Fee \$ 75

(Y) Seller Biennial Renewal Fee \$ **

(Z) Seller Agent Registration Fee \$ 50

(AA) Seller Agent Biennial Registration Renewal Fee \$ **

(BB) Seller Annual Report Fee \$ **

(CC) Seller Annual Report Late Fee \$ **

(DD) Seller Agent Law Examination Fee \$ **

(EE) Seller per Contract Annual Reporting Fee (For contracts executed on or after August 28, 2009) \$ 36

(FF) Amended Provider Application Fee \$ 25

(GG) Amended Seller Application Fee \$ 25

*This fee will not apply to the initial copy of the law book which is automatically mailed to all applicants for licensure and to educational institutions of mortuary science. Furthermore, this fee

will not be charged to licensees or any other individual, for additions or corrections to the law book after the initial copy is mailed.

****This fee is not yet determined by the board.**

(2) All fees are nonrefundable.

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

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