

State Board of Embalmers and Funeral Directors

March 16-17, 2015

Drury Inn & Suites – Brentwood
8700 Eager Road
Brentwood, MO 63144

AMENDED OPEN AGENDA

Monday, March 16, 2014 – 2:00p.m.

1. Call to Order
 2. Roll Call
 3. Approval of Agenda
 4. Election of Officers
- CLOSED

Tuesday, March 17, 2014 – 8:00a.m.

5. Financial Examination Committee Appointment effective January 1, 2015
6. (Tab 1) Executive Director Report
 - Staffing Update
 - Financial Report
 - Legislative Update
 - License Reports (new, closed/ceased, disciplined)
 - Conference Updates
 - 2015 FARB Forum – January 22-25, 2015 – Tucson, AZ
 - The Conference – February 25-26, 2015 - Dallas Texas
 - Department of Health and Senior Services – Vital Statistics – Lexi Hall
 - Next Meeting Dates/Location
- 7.(Tab 2) The International Conference of Funeral Service Examining Boards Model Practice Act
- 8.(Tab 3) Legal Counsel Report
 - Update on National Prearranged Services litigation
 - Update on North Carolina State Board of Dental Examiners v Federal Trade Commission

8:45a.m.

9. St. Louis Community College Presentation – David Coughran
10. Open Session/Discussion

9:15a.m.

11. Jonathan Hughes – Discussion relating to Alkaline Hyrolysis
12. CLOSED

10:15a.m.

- 12.(Tab 4) Gregory Crocker – Funeral Director – Disciplinary Hearing - Case #14-1545 EM
Micah Wynes - Preneed Agent – Settlement Modification Hearing – Case EMB 15-004
Leland Kolkmeyer – Embalmer, Funeral Director, Preneed Funeral Director Agent – Disciplinary Hearing – Case #14-1160 EM
13. CLOSED
14. Adjourn

**Board of Embalmers
Financial Statement - FY 2015
as of January 31, 2015**

	Year-To-Date	Projected	Remaining
FY 2014 Beginning Fund Balance	3,009,200.72		
Revenue	752,923.00	704,565.00	(44,437.00)
Expense and Equipment	59,466.42	164,200.00	119,148.42
Total Transfers & Licensure System	403,460.21	939,819.42	593,455.99
Ending Fund Balance	3,299,197.09		



Contact: Dalene Paul
Executive Director, The International Conference of Funeral Service Examining Boards, Inc.
director@theconferenceonline.org
479-442-7076 Ext. 9

FOR IMMEDIATE RELEASE: December 12, 2014

The Conference Announces Settlement of AAMI Litigation and Return to Regular Testing Schedule for AAMI Students in May 2015

The International Conference of Funeral Service Examining Boards ("The Conference"), the American Academy McAllister Institute of Funeral Service, Inc. ("AAMI"), and Mary Margaret Dunn are pleased to announce the resolution of the litigation filed by the Conference in the Southern District of New York against AAMI and Ms. Dunn.

In its lawsuit, the Conference alleged copyright infringement and misappropriation of trade secrets related to the National Board Examination ("NBE") program, as well as tortious interference with test takers' confidentiality obligations to the Conference. AAMI has denied the allegations. The Parties have entered into a confidential settlement agreement resolving the litigation. AAMI has agreed to a permanent injunction prohibiting the activities alleged in the lawsuit and has instituted processes to promote the integrity of the NBE and the licensure process. This includes the creation of a Director of Academic Integrity position within the school, whose duties will include the preparation and implementation of an academic integrity program. AAMI looks forward to working with the Conference to better ensure the security of the NBE and to clarify the lines between educational curricula and preparation for entry-level licensure examinations.

The parties recognize and agree that the integrity of the examination and licensure process undertaken by Conference member boards is paramount to the public-protection mission of all parties involved. The Conference has committed considerable resources to replacing questions retired from the item bank and will continue to take all necessary measures to ensure the validity, reliability and defensibility of the NBE examination program.

The Conference is also pleased to announce that, as of May 2015, the standard continuous testing schedule for the administration of the NBE will be available to AAMI candidates.

Questions can be directed to the Executive Director of The Conference.

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Board Name**Embalmers & Funeral Directors**

Licensee Name	License #	Orig Issue Date
Weeks, Avery Anne	2014042907	12/12/2014
Davis, Madeleine Carla	2015001303	1/15/2015
Monzyk, Jared Michael	2015004233	2/10/2015
Cole, Andrew Neal	2015004795	2/18/2015
Tezon, John Charles, III	2015005461	2/20/2015
McIntyre, Sara Jane	2015006312	2/26/2015
Northern, Donald Joe, II	2015007047	3/4/2015

Embalmer Apprentice

7

Licensee Name	License #	Orig Issue Date
Lancaster, Kyle Otis	2014041894	12/3/2014
Green, Lacey Michael	2014044083	12/26/2014
LoBaido, Christine Elizabeth	2014044183	12/29/2014
Vann, Michael Anthony	2015001806	1/22/2015

Embalmer

4

Licensee Name	License #	Orig Issue Date
Ruiz, Stacie Lynn	2014044413	1/1/2015
McClain, Schyler David	2015000052	1/1/2015
Quernheim, Jacob Douglas	2015001338	1/20/2015
Hathaway, Karin Paige	2015001446	1/20/2015
Dobson, Payton Lindsey	2015003918	2/5/2015

Embalmer Practicum

5

Licensee Name	License #	Orig Issue Date
Hamilton, Russell Warren	2014041897	12/3/2014
Jenkins, Jerry Dean	2014042020	12/4/2014
Dirickson, Kristen Marie	2014042499	12/9/2014
Vowell, Andrew David	2014044186	12/29/2014
McGinnis, Luke M.	2014044187	12/29/2014
Gibson, Tyler Wade	2014044188	12/29/2014
Havard, Tara Nicole	2014044192	12/29/2014
Harbison, Timothy Michael	2014044399	12/31/2014
Smith, Joshua M.	2015000988	1/13/2015
Wedel, Corey Jason	2015004634	2/12/2015
Olsen, Kaycee Elizabeth	2015005526	2/23/2015
Bagley, Colleena Marnae	2015007278	3/6/2015
Hodgdon, Jason Brewster	2015007280	3/6/2015

Funeral Director Apprentice

13

Licensee Name	License #	Orig Issue Date
Hutchens, Mark Steven	2014042506	12/9/2014
Newcomb, Paul DeWayne	2014043279	12/17/2014

3/6/2015

**Original Licenses Issued
Between 12/01/2014 and 03/06/2015**

Board Name**Embalmers & Funeral Directors**

Licensee Name	License #	Orig Issue Date
Harris, Tiara Charon	2014043791	12/23/2014
Green, Lacey Michael	2014044084	12/26/2014
Thompson, Teresa Jo	2015001026	1/13/2015
Hilker, Stephanie Rena	2015001308	1/15/2015
Vann, Michael Anthony	2015001772	1/22/2015
Lewis, Charlotte Irene	2015006128	2/25/2015
Walker, Michelle Dawnette	2015006135	2/25/2015
Northern, Donald Joe, II	2015007070	3/4/2015

Funeral Director**10**

Licensee Name	License #	Orig Issue Date
Kalmer Memorial, LLC	2014042481	12/9/2014
Islamic Foundation of Greater St. Louis, Inc.	2014042802	12/11/2014
Bibb-Veach Funeral Homes, LLC	2014044531	12/31/2014
Bibb-Veach Funeral Homes, LLC	2014044532	12/31/2014
Bellefontaine Cemetery Association	2015000635	1/8/2015
Funeral Directors Service, Inc.	2015002918	1/30/2015
MVP Investment Group, LLC	2015004846	2/18/2015

Funeral Establishment**7**

Licensee Name	License #	Orig Issue Date
Martin, Brian David	2014042497	12/9/2014
VonAllmen, Dennis Keith	2014042963	12/15/2014
VonAllmen, Judy Lynett	2014042965	12/15/2014
Zwyer, Ryan James	2014043278	12/17/2014
Foster, Anna Maire	2014043314	12/17/2014
Boudinot, Tom Lawrence	2014043782	12/23/2014
Lane, Stephen Raymond	2014044076	12/26/2014
Hurt, Zachary Paul	2014044085	12/26/2014
Pollard, Vanessa E.	2014044086	12/26/2014
Hines, Danna La' Trice	2014044403	12/31/2014
Gatlin-Barnard, A'Gia Charisse	2015000142	1/5/2015
May, Holwell James	2015000736	1/9/2015
Llewellyn, Ronald James	2015000792	1/12/2015
Robinson, John Edward	2015001051	1/13/2015
Lindner, Andrew Evan	2015001329	1/15/2015
Swallows, Alfred Lee	2015002020	1/23/2015
Hanson, Charles Melvin	2015002350	1/27/2015
Moore, Andrew Trammel	2015004845	2/18/2015
Wix, Jason Douglas	2015005462	2/20/2015

3/6/2015

Original Licenses Issued
Between 12/01/2014 and 03/06/2015

Board Name

Embalmers & Funeral Directors

Licensee Name	License #	Orig Issue Date
Baker, Beth Ann	2015005756	2/23/2015
Nace, Randy Francis	2015006439	2/27/2015
Murray, Michael D.	2015006440	2/27/2015

Preneed Agent Funeral Director 22

Licensee Name	License #	Orig Issue Date
Harbison, Timothy Michael	2014041771	12/2/2014
Stevens, Donald Lee	2014041784	12/2/2014
Jones, Robert Lee	2014043781	12/23/2014
Meyers, Kourtney Jayne	2014043784	12/23/2014
Lawrence, Nathaniel Hylton, Jr	2014044073	12/26/2014
Puyear, Timothy Hugh	2014044182	12/29/2014
Morris, Robert Eric	2014044402	12/31/2014
Geller, David Jonathan	2015001777	1/22/2015
Cordry, Raymond Theo	2015002808	1/30/2015
James, Jacqueline Denise	2015002810	1/30/2015
Ryan, Kimberly	2015005754	2/23/2015
Kintner, Kirk Henry	2015005755	2/23/2015

Preneed Agent 12

Licensee Name	License #	Orig Issue Date
Kalmer Memorial, LLC	2014042480	12/9/2014
Bibb-Veach Funeral Homes, LLC	2014044533	12/31/2014
MVP Investment Group, LLC	2015004847	2/18/2015
Hillview Memorial Gardens	2015006031	2/25/2015

Preneed Provider 4

Licensee Name	License #	Orig Issue Date
Charles M. Hanson	2014042829	12/11/2014
Bibb-Veach Funeral Homes, LLC	2014044530	12/31/2014
MVP Investment Group, LLC	2015004848	2/18/2015

Preneed Seller 3

Total count for the Embalmers & Funeral Directors board: 87

**Closed Funeral Establishments, Predeceased Providers, and Preneed Sellers
Between 12/1/2014 and 3/6/2015**

Funeral Establishment	Name	Lic Number	Address	License Status	Exp Date	Closed Date
Mudd-Veach Funeral Homes LLC		2009037967	606 W Main	Closed/Change of Owner	12/31/2015	12/31/2014
SCI Missouri Funeral Services, Inc.		002416	Bowling Green, MO 63334 10507 Holmes Road	Active	12/31/2015	2/19/2015
Mudd-Veach Funeral Homes LLC		2009037966	Kansas City, MO 64131 11S First St	Closed/Change of Owner	12/31/2015	12/31/2014
Kolkmeier Funeral Homes, Inc.		2003031662	Silex, MO 63377 401 Walnut St	Closed/Out of Business	12/31/2015	1/9/2015
Preneed Provider						
Mudd-Veach Funeral Homes, LLC		2009037792	Wellington, MO 64097 606 W. Main	Closed/Change of Owner	10/31/2015	12/31/2014
Kolkmeier Funeral Homes, Inc		2009038281	Bowling Green, MO 63334 401 Walnut St	Closed/Out of Business	10/31/2014	1/9/2015
SCI Missouri Funeral Services, Inc		2009038945	Wellington, MO 64097 10507 Holmes Road	Active	10/31/2015	2/19/2015
Kalmer Memorial LLC		2013027614	Kansas City, MO 64131 5444 US Hwy 61-67	Closed/Change of Location	10/31/2015	12/9/2014
Preneed Seller						
Mudd-Veach Funeral Homes, LLC		2009037794	Imperial, MO 63052 606 W. Main	Closed/Change of Owner	10/31/2015	12/31/2014
Kolkmeier Funeral Homes, Inc		2009038282	Bowling Green, MO 63334 401 Walnut St	Closed/Out of Business	10/31/2014	1/9/2015
Cantion Prearranged Services		2009037754	Wellington, MO 64097 P.O. Box 993	Closed/Out of Business	10/31/2014	1/2/2015
			Buffalo, MO 65622			

3/6/2015

Disciplinary Actions Initiated
Between 12/01/2014 and 03/06/2015

Board Name

Embalmers & Funeral Directors

Embalmer

2006032649	Shannon, Matthew Shane	Probation
Total Revoked: 0		Total Revoked 324.010: 0
Total Suspension: 0		Total Suspended 324.010: 0
Total Probation: 1		Total Other: 0
Total Suspension/Probation: 0		

Funeral Director

2010023693	Hayes, Kassondra K	Probation
2013013358	Morgan, Matthew B	Probation
006070	Polley, Toby L	Probation
2005038187	Shannon, Matthew S	Probation
Total Revoked: 0		Total Revoked 324.010: 0
Total Suspension: 0		Total Suspended 324.010: 0
Total Probation: 4		Total Other: 0
Total Suspension/Probation: 0		

Funeral Director Apprentice

2014019513	Brown, David Charles	Suspended 324.010
2014011325	Smith, Shawn Demont	Suspended 324.010
Total Revoked: 0		Total Revoked 324.010: 0
Total Suspension: 0		Total Suspended 324.010: 2
Total Probation: 0		Total Other: 0
Total Suspension/Probation: 0		

Funeral Establishment

2014042481	Kalmer Memorial, LLC	Issued Probated License
2007008991	Polley Funeral Home LLC	Probation
2007008989	Polley Funeral Home LLC	Probation
2006025730	Polley Funeral Homes LLC	Probation
Total Revoked: 0		Total Revoked 324.010: 0
Total Suspension: 0		Total Suspended 324.010: 0
Total Probation: 3		Total Other: 1
Total Suspension/Probation: 0		

Preneed Agent Funeral Director

2013025158	Morgan, Matthew Blake	Probation
2010001031	Shannon, Matthew Shane	Probation
Total Revoked: 0		Total Revoked 324.010: 0
Total Suspension: 0		Total Suspended 324.010: 0
Total Probation: 2		Total Other: 0
Total Suspension/Probation: 0		

Preneed Provider

2014042480	Kalmer Memorial, LLC	Issued Probated License
2009039724	Polley Funeral Home, LLC	Probation
2009039722	Polley Funeral Home, LLC	Probation

3/6/2015

Disciplinary Actions Initiated
Between 12/01/2014 and 03/06/2015

Board Name

Embalmers & Funeral Directors

reneed Provider

2009039721 Polley Funeral Home, LLC Probation

Total Revoked: 0 **Total Revoked 324.010: 0**

Total Suspension: 0 **Total Suspended 324.010: 0**

Total Probation: 3 **Total Other: 1**

Total Suspension/Probation: 0

Preneed Seller

2009038563 Evelyn Michel Probation

2009037728 Neil Travis & Randy Travis Probation

2009039723 Polley Funeral Home LLC Probation

Total Revoked: 0 **Total Revoked 324.010: 0**

Total Suspension: 0 **Total Suspended 324.010: 0**

Total Probation: 3 **Total Other: 0**

Total Suspension/Probation: 0

FIRST REGULAR SESSION

SENATE BILL NO. 498

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

Read 1st time February 24, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2243S.011

AN ACT

To repeal sections 436.405, 436.430, 436.450, 436.456, 436.457, and 436.460, RSMo, and to enact in lieu thereof six new sections relating to preneed funeral contracts.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 436.405, 436.430, 436.450, 436.456, 436.457, and
2 436.460, RSMo, are repealed and six new sections enacted in lieu thereof, to be
3 known as sections 436.405, 436.430, 436.450, 436.456, 436.457, and 436.460, to
4 read as follows:

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

3 (1) "Beneficiary", the individual who is to be the subject of the disposition
4 or who will receive funeral services, facilities, or merchandise described in a
5 preneed contract;

6 (2) "Board", the board of embalmers and funeral directors;

7 (3) "Guaranteed contract", a preneed contract in which the seller
8 promises, assures, or guarantees to the purchaser that all or any portion of the
9 costs for the disposition, services, facilities, or merchandise identified in a
10 preneed contract will be no greater than the amount designated in the contract
11 upon the preneed beneficiary's death or that such costs will be otherwise limited
12 or restricted;

13 (4) "Insurance-funded preneed contract", a preneed contract which is
14 designated to be funded by payments or proceeds from an insurance policy or a
15 deferred annuity contract **where the annuitant is the beneficiary of the**
16 **preneed contract**, that is not classified as a variable annuity, and has death

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 benefit proceeds that are never less than the sum of premiums paid;

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

22 (6) "Market value", a fair market value:

23 (a) As to cash, the amount thereof;

24 (b) As to a security as of any date, the price for the security as of that
25 date obtained from a generally recognized source, or to the extent no generally
26 recognized source exists, the price to sell the security in an orderly transaction
27 between unrelated market participants at the measurement date; and

28 (c) As to any other asset, the price to sell the asset in an orderly
29 transaction between unrelated market participants at the measurement date
30 consistent with statements of financial accounting standards;

31 (7) "Nonguaranteed contract", a preneed contract in which the seller does
32 not promise, assure, or guarantee that all or any portion of the costs for the
33 disposition, facilities, service, or merchandise identified in a preneed contract will
34 be limited to the amount designated in the contract upon the preneed
35 beneficiary's death or that such costs will be otherwise limited or restricted;

36 (8) "Preneed contract", any contract or other arrangement which provides
37 for the final disposition in Missouri of a dead human body, funeral or burial
38 services or facilities, or funeral merchandise, where such disposition, services,
39 facilities, or merchandise are not immediately required. Such contracts include,
40 but are not limited to, agreements providing for a membership fee or any other
41 fee for the purpose of furnishing final disposition, funeral or burial services or
42 facilities, or funeral merchandise at a discount or at a future date;

43 (9) "Preneed trust", a trust to receive deposits of, administer, and disburse
44 payments received under preneed contracts, together with income thereon;

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

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

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

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

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] **thirty** 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 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 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

37 control does not in fact exist.

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

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

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

55 10. The seller and provider of a trust-funded guaranteed preneed contract
56 shall be entitled to all income, including, but not limited to, interest, dividends,
57 capital gains, and losses generated by the investment of preneed trust property
58 regarding such contract as stipulated in the contract between the seller and
59 provider. Income of the trust, excluding expenses allowed under [this] subsection
60 **9 of this section**, shall accrue through the life of the trust, except in instances
61 when a contract is cancelled. The trustee of the trust may distribute market
62 value of all income, net of losses, to the seller upon, but not before, the final
63 disposition of the beneficiary and provision of the funeral and burial services and
64 facilities, and merchandise to, or for, the benefit of the beneficiary. This
65 subsection shall apply to trusts established on or after August 28, 2009.

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

73 receiving the certificate of performance.

74 12. If a seller fails to make timely payment of an amount due a provider
75 under sections 436.400 to 436.520, the provider shall have the right, in addition
76 to other rights and remedies against such seller, to make demand upon the
77 trustee of the preneed trust for the contract to distribute to the provider from the
78 trust all amounts to which the seller would be entitled to receive for the preneed
79 contract.

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

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

 436.450. 1. An insurance-funded preneed contract shall comply with
2 sections 436.400 to 436.520 and the specific requirements of this section.

3 2. A seller, provider, or any preneed agent shall not receive or collect from
4 the purchaser of an insurance-funded preneed contract any amount in excess of
5 what is required to pay the premiums on the insurance policy as assessed or
6 required by the insurer as premium payments for the insurance policy except for
7 any amount required or authorized by this chapter or by rule. A seller shall not
8 receive or collect any administrative or other fee from the purchaser for or in
9 connection with an insurance-funded preneed contract, other than those fees or
10 amounts assessed by the insurer. As of August 29, 2009, no preneed seller,
11 provider, or agent shall use any existing preneed contract as collateral or security
12 pledged for a loan or take preneed funds of any existing preneed contract as a
13 loan for any purpose other than as authorized by this chapter.

14 3. Payments collected by or on behalf of a seller for an insurance-funded
15 preneed contract shall be promptly remitted to the insurer or the insurer's

16 designee as required by the insurer; provided that payments shall not be retained
17 or held by the seller or preneed agent for more than thirty days from the date of
18 receipt.

19 4. It is unlawful for a seller, provider, or preneed agent to procure or
20 accept a loan against any insurance contract used to fund a preneed contract.

21 5. Laws regulating insurance shall not apply to preneed contracts, but
22 shall apply to any insurance or annuity sold with a preneed contract; provided,
23 however, the provisions of sections 436.400 to 436.520 shall not apply to annuities
24 or insurance policies regulated by chapters 374, 375, and 376 used to fund preneed
25 funeral agreements, contracts, or programs.

26 6. This section shall apply to all preneed contracts including those entered
27 into before August 28, 2009.

28 7. For any insurance-funded preneed contract sold after August 28, 2009,
29 the following shall apply:

30 (1) The purchaser or beneficiary **of the preneed contract** shall be the
31 owner of the insurance policy purchased to fund a preneed contract; and

32 (2) An insurance-funded preneed contract shall be valid and enforceable
33 only if the seller or provider is named as the beneficiary or assignee of the life
34 insurance policy funding the contract.

35 8. If the proceeds of the life insurance policy exceed the actual cost of the
36 goods and services provided pursuant to the nonguaranteed preneed contract, any
37 overage shall be paid to the estate of the beneficiary, or, if the beneficiary
38 received public assistance, to the state of Missouri.

436.456. At any time before final disposition, or before the funeral or
2 burial services, facilities, or merchandise described in a preneed contract are
3 furnished, the purchaser may cancel the contract, if designated as revocable,
4 without cause. In order to cancel the contract the purchaser shall:

5 (1) In the case of a joint account-funded preneed contract, deliver written
6 notice of the cancellation to the seller. Within fifteen days of receipt of notice of
7 the cancellation, the seller shall take whatever steps may be required by the
8 financial institution to obtain the funds from the financial institution. Upon
9 receipt of the funds from the financial institution, the seller shall distribute the
10 principal to the purchaser. Interest shall be distributed as provided in the
11 agreement with the seller and purchaser;

12 (2) In the case of an insurance-funded preneed contract, deliver written
13 notice of the cancellation to the seller. Within fifteen days of receipt of notice of

14 the cancellation, the seller shall notify the purchaser that the cancellation of the
15 contract shall not cancel any life insurance funding the contract and that
16 insurance cancellation is required to be made in writing to the insurer;

17 (3) In the case of a trust-funded preneed contract, deliver written notice
18 of the cancellation to the seller and trustee. Within fifteen days of receipt of
19 notice of the cancellation, the trustee shall distribute one hundred percent of the
20 trust property including any percentage of the total payments received on the
21 trust-funded contract that have been withdrawn from the account under
22 subsection 4 of section 436.430 but excluding the income, to the purchaser of the
23 contract;

24 (4) In the case of a guaranteed installment payment contract where the
25 beneficiary dies before all installments have been paid, the purchaser shall pay
26 the seller the amount remaining due under the contract in order to receive the
27 goods and services set out in the contract, otherwise the purchaser or their estate
28 will receive full credit for all payments the purchaser has made towards the cost
29 of the beneficiary's funeral at the [provider] **provider's** current prices.

436.457. 1. A seller shall have the right to cancel a trust-funded or
2 joint-account funded preneed contract if the purchaser is in default of any
3 installment payment for over sixty days.

4 2. Prior to cancelling the contract, the seller shall notify the purchaser
5 and provider in writing that the contract shall be cancelled if payment is not
6 received within thirty days of the postmarked date of the notice. The notice shall
7 include the amount of payments due, the date the payment is due, and the date
8 of cancellation.

9 3. If the purchaser fails to remit the payments due within thirty days of
10 the postmarked date of the notice, then the seller, at its option, may either cancel
11 the contract or may continue the contract as a nonguaranteed contract where the
12 purchaser will receive full credit for all payments the purchaser has made into
13 the trust towards the cost of the beneficiary's funeral service or merchandise from
14 the provider.

15 4. Upon cancellation by the seller under this section, eighty-five percent
16 of the contract payments shall be refunded to the purchaser. All remaining funds
17 shall be distributed to the seller.

18 **5. Where the consideration for a preneed contract includes the**
19 **seller or provider being made the beneficiary or assignee of a life**
20 **insurance policy, should that life insurance policy have lapsed, no**

21 longer be in force, or have had loans taken against it, the seller may
22 cancel the contract and shall refund to the purchaser other payments
23 in accordance with this section apart from insurance premiums that
24 were made by the purchaser of the contract.

436.460. 1. Each seller shall file an annual report with the board which
2 shall contain the following information:

3 (1) The contract number of each preneed contract sold since the filing of
4 the last report with an indication of, and whether it is funded by a trust,
5 insurance or joint account;

6 (2) The total number and total face value of preneed contracts sold since
7 the filing of the last report;

8 (3) The contract amount of each preneed contract sold since the filing of
9 the last report, identified by contract;

10 (4) The name, address, and license number of all preneed agents
11 authorized to sell preneed contracts on behalf of the seller;

12 (5) The date the report is submitted and the date of the last report;

13 (6) The list including the name, address, contract number and whether it
14 is funded by a trust, insurance or joint account of all Missouri preneed contracts
15 fulfilled, cancelled or transferred by the seller during the preceding calendar year;

16 (7) The name and address of each provider with whom it is under
17 contract;

18 (8) The name and address of the person designated by the seller as
19 custodian of the seller's books and records relating to the sale of preneed
20 contracts;

21 (9) Written consent authorizing the board to order an investigation,
22 examination and, if necessary, an audit of any joint or trust account established
23 under sections 436.400 to 436.520, designated by depository or account number;

24 (10) Written consent authorizing the board to order an investigation,
25 examination and if necessary an audit of its books and records relating to the sale
26 of preneed contracts; and

27 (11) Certification under oath that the report is complete and correct
28 attested to by an officer of the seller. The seller or officer shall be subject to the
29 penalty of making a false affidavit or declaration.

30 2. A seller that sells or has sold trust-funded preneed contracts shall also
31 include in the annual report required by subsection 1 of this section:

32 (1) The name and address of the financial institution in which it

33 maintains a preneed trust account and the account numbers of such trust
34 accounts;

35 (2) The trust fund balance as reported in the previous year's report;

36 (3) The current [face] **market** value of the trust fund;

37 (4) Principal contributions received by the trustee since the previous
38 report;

39 (5) Total trust earnings and total distributions to the seller since the
40 previous report;

41 (6) Authorization of the board to request from the trustee a copy of any
42 trust statement, as part of an investigation, examination or audit of the preneed
43 seller;

44 (7) Total expenses, excluding distributions to the seller, since the previous
45 report; and

46 (8) Certification under oath that the information required by subdivisions
47 (1) to (7) of this subsection is complete and correct and attested to by a corporate
48 officer of the trustee. The trustee shall be subject to the penalty of making a
49 false affidavit or declaration.

50 3. A seller that sells or who has sold joint account-funded preneed
51 contracts shall also include in the annual report required by subsection 1 of this
52 section:

53 (1) The name and address of the financial institution in Missouri in which
54 it maintains the joint account and the account numbers for each joint account;

55 (2) The amount on deposit in each joint account;

56 (3) The joint account balance as reported in the previous year's report;

57 (4) Principal contributions placed into each joint account since the filing
58 of the previous report;

59 (5) Total earnings since the previous report;

60 (6) Total distributions to the seller from each joint account since the
61 previous report;

62 (7) Total expenses deducted from the joint account, excluding distributions
63 to the seller, since the previous report; and

64 (8) Certification under oath that the information required by subdivisions
65 (1) to (7) of this subsection is complete and correct and attested to by an
66 authorized representative of the financial institution. The affiant shall be subject
67 to the penalty of making a false affidavit or declaration.

68 4. A seller that sells or who has sold any insurance-funded preneed

69 contracts shall also include in the annual report required by subsection 1 of this
70 section:

71 (1) The name and address of each insurance company issuing insurance
72 to fund a preneed contract sold by the seller during the preceding year;

73 (2) The status and total face value of each policy **as requested by the**
74 **board;**

75 (3) The amount of funds the seller directly received on each contract and
76 the date the amount was forwarded to any insurance company; and

77 (4) Certification under oath that the information required by subsections
78 1 to 3 of this section is complete and correct attested to by an authorized
79 representative of the insurer. The affiant shall be subject to the penalty of
80 making a false affidavit or declaration.

81 5. Each seller shall remit an annual reporting fee in an amount
82 established by the board by rule for each preneed contract sold in the year since
83 the date the seller filed its last annual report with the board. This reporting fee
84 shall be paid annually and may be collected from the purchaser of the preneed
85 contract as an additional charge or remitted to the board from the funds of the
86 seller. The reporting fee shall be in addition to any other fees authorized under
87 sections 436.400 to 436.520.

88 6. All reports required by this section shall be filed by the thirty-first day
89 of October of each year or by the date established by the board by rule. Annual
90 reports filed after the date provided herein shall be subject to a late fee in an
91 amount established by rule of the board.

92 7. If a seller fails to file the annual report on or before its due date, his
93 or her preneed seller license shall automatically be suspended until such time as
94 the annual report is filed and all applicable fees have been paid.

95 8. This section shall apply to contracts entered into before August 28,
96 2009.

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FIRST REGULAR SESSION

HOUSE BILL NO. 276

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CORNEJO.

1012L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 513.430, RSMo, and to enact in lieu thereof one new section relating to property exemptions from attachment.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 513.430, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 513.430, to read as follows:

513.430. 1. The following property shall be exempt from attachment and execution to the extent of any person's interest therein:

(1) Household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments that are held primarily for personal, family or household use of such person or a dependent of such person, not to exceed three thousand dollars in value in the aggregate;

(2) A wedding ring not to exceed one thousand five hundred dollars in value and other jewelry held primarily for the personal, family or household use of such person or a dependent of such person, not to exceed five hundred dollars in value in the aggregate;

(3) Any other property of any kind, not to exceed in value six hundred dollars in the aggregate;

(4) Any implements or professional books or tools of the trade of such person or the trade of a dependent of such person not to exceed three thousand dollars in value in the aggregate;

(5) Any motor vehicles, not to exceed three thousand dollars in value in the aggregate;

(6) Any mobile home used as the principal residence but not attached to real property in which the debtor has a fee interest, not to exceed five thousand dollars in value;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (7) Any one or more unmaturred life insurance contracts owned by such person, other
19 than a credit life insurance contract, **and up to fifteen thousand dollars of any matured life**
20 **insurance proceeds for actual funeral, cremation, or burial expenses where the deceased**
21 **is the spouse, child, or parent of the beneficiary;**

22 (8) The amount of any accrued dividend or interest under, or loan value of, any one or
23 more unmaturred life insurance contracts owned by such person under which the insured is such
24 person or an individual of whom such person is a dependent; provided, however, that if
25 proceedings under Title 11 of the United States Code are commenced by or against such person,
26 the amount exempt in such proceedings shall not exceed in value one hundred fifty thousand
27 dollars in the aggregate less any amount of property of such person transferred by the life
28 insurance company or fraternal benefit society to itself in good faith if such transfer is to pay a
29 premium or to carry out a nonforfeiture insurance option and is required to be so transferred
30 automatically under a life insurance contract with such company or society that was entered into
31 before commencement of such proceedings. No amount of any accrued dividend or interest
32 under, or loan value of, any such life insurance contracts shall be exempt from any claim for
33 child support. Notwithstanding anything to the contrary, no such amount shall be exempt in such
34 proceedings under any such insurance contract which was purchased by such person within one
35 year prior to the commencement of such proceedings;

36 (9) Professionally prescribed health aids for such person or a dependent of such person;

37 (10) Such person's right to receive:

38 (a) A Social Security benefit, unemployment compensation or a public assistance
39 benefit;

40 (b) A veteran's benefit;

41 (c) A disability, illness or unemployment benefit;

42 (d) Alimony, support or separate maintenance, not to exceed seven hundred fifty dollars
43 a month;

44 (e) Any payment under a stock bonus plan, pension plan, disability or death benefit plan,
45 profit-sharing plan, nonpublic retirement plan or any plan described, defined, or established
46 pursuant to section 456.014, the person's right to a participant account in any deferred
47 compensation program offered by the state of Missouri or any of its political subdivisions, or
48 annuity or similar plan or contract on account of illness, disability, death, age or length of
49 service, to the extent reasonably necessary for the support of such person and any dependent of
50 such person unless:

51 a. Such plan or contract was established by or under the auspices of an insider that
52 employed such person at the time such person's rights under such plan or contract arose;

53 b. Such payment is on account of age or length of service; and

54 c. Such plan or contract does not qualify under Section 401(a), 403(a), 403(b), 408, 408A
55 or 409 of the Internal Revenue Code of 1986, as amended, (26 U.S.C. Section 401(a), 403(a),
56 403(b), 408, 408A or 409);

57

58 except that any such payment to any person shall be subject to attachment or execution pursuant
59 to a qualified domestic relations order, as defined by Section 414(p) of the Internal Revenue
60 Code of 1986, as amended, issued by a court in any proceeding for dissolution of marriage or
61 legal separation or a proceeding for disposition of property following dissolution of marriage by
62 a court which lacked personal jurisdiction over the absent spouse or lacked jurisdiction to
63 dispose of marital property at the time of the original judgment of dissolution;

64 (f) Any money or assets, payable to a participant or beneficiary from, or any interest of
65 any participant or beneficiary in, a retirement plan, profit-sharing plan, health savings plan, or
66 similar plan, including an inherited account or plan, that is qualified under Section 401(a),
67 403(a), 403(b), 408, 408A or 409 of the Internal Revenue Code of 1986, as amended, whether
68 such participant's or beneficiary's interest arises by inheritance, designation, appointment, or
69 otherwise, except as provided in this paragraph. Any plan or arrangement described in this
70 paragraph shall not be exempt from the claim of an alternate payee under a qualified domestic
71 relations order; however, the interest of any and all alternate payees under a qualified domestic
72 relations order shall be exempt from any and all claims of any creditor, other than the state of
73 Missouri through its department of social services. As used in this paragraph, the terms
74 "alternate payee" and "qualified domestic relations order" have the meaning given to them in
75 Section 414(p) of the Internal Revenue Code of 1986, as amended. If proceedings under Title
76 11 of the United States Code are commenced by or against such person, no amount of funds shall
77 be exempt in such proceedings under any such plan, contract, or trust which is fraudulent as
78 defined in subsection 2 of section 428.024 and for the period such person participated within
79 three years prior to the commencement of such proceedings. For the purposes of this section,
80 when the fraudulently conveyed funds are recovered and after, such funds shall be deducted and
81 then treated as though the funds had never been contributed to the plan, contract, or trust;

82 (11) The debtor's right to receive, or property that is traceable to, a payment on account
83 of the wrongful death of an individual of whom the debtor was a dependent, to the extent
84 reasonably necessary for the support of the debtor and any dependent of the debtor.

85 2. Nothing in this section shall be interpreted to exempt from attachment or execution
86 for a valid judicial or administrative order for the payment of child support or maintenance any
87 money or assets, payable to a participant or beneficiary from, or any interest of any participant
88 or beneficiary in, a retirement plan which is qualified pursuant to Section 408A of the Internal
89 Revenue Code of 1986, as amended.

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FIRST REGULAR SESSION

[P E R F E C T E D]

SENATE BILL NO. 164

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SIFTON.

Pre-filed December 17, 2014, and ordered printed.

Read 2nd time January 29, 2015, and referred to the Committee on Small Business, Insurance and Industry.

Reported from the Committee March 5, 2015, with recommendation that the bill do pass.

Taken up for Perfection March 11, 2015. Bill declared Perfected and Ordered Printed.

ADRIANE D. CROUSE, Secretary.

0844S.01P

AN ACT

To repeal section 513.430, RSMo, and to enact in lieu thereof one new section relating to the exemption from attachment and execution of matured life insurance proceeds.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 513.430, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 513.430, to read as follows:

513.430. 1. The following property shall be exempt from attachment and
2 execution to the extent of any person's interest therein:

3 (1) Household furnishings, household goods, wearing apparel, appliances,
4 books, animals, crops or musical instruments that are held primarily for personal,
5 family or household use of such person or a dependent of such person, not to
6 exceed three thousand dollars in value in the aggregate;

7 (2) A wedding ring not to exceed one thousand five hundred dollars in
8 value and other jewelry held primarily for the personal, family or household use
9 of such person or a dependent of such person, not to exceed five hundred dollars
10 in value in the aggregate;

11 (3) Any other property of any kind, not to exceed in value six hundred
12 dollars in the aggregate;

13 (4) Any implements or professional books or tools of the trade of such
14 person or the trade of a dependent of such person not to exceed three thousand
15 dollars in value in the aggregate;

16 (5) Any motor vehicles, not to exceed three thousand dollars in value in
17 the aggregate;

18 (6) Any mobile home used as the principal residence but not attached to
19 real property in which the debtor has a fee interest, not to exceed five thousand
20 dollars in value;

21 (7) Any one or more unmaturred life insurance contracts owned by such
22 person, other than a credit life insurance contract, **and up to fifteen thousand**
23 **dollars of any matured life insurance proceeds for actual funeral,**
24 **cremation, or burial expenses where the deceased is the spouse, child,**
25 **or parent of the beneficiary;**

26 (8) The amount of any accrued dividend or interest under, or loan value
27 of, any one or more unmaturred life insurance contracts owned by such person
28 under which the insured is such person or an individual of whom such person is
29 a dependent; provided, however, that if proceedings under Title 11 of the United
30 States Code are commenced by or against such person, the amount exempt in
31 such proceedings shall not exceed in value one hundred fifty thousand dollars in
32 the aggregate less any amount of property of such person transferred by the life
33 insurance company or fraternal benefit society to itself in good faith if such
34 transfer is to pay a premium or to carry out a nonforfeiture insurance option and
35 is required to be so transferred automatically under a life insurance contract with
36 such company or society that was entered into before commencement of such
37 proceedings. No amount of any accrued dividend or interest under, or loan value
38 of, any such life insurance contracts shall be exempt from any claim for child
39 support. Notwithstanding anything to the contrary, no such amount shall be
40 exempt in such proceedings under any such insurance contract which was
41 purchased by such person within one year prior to the commencement of such
42 proceedings;

43 (9) Professionally prescribed health aids for such person or a dependent
44 of such person;

45 (10) Such person's right to receive:

46 (a) A Social Security benefit, unemployment compensation or a public
47 assistance benefit;

48 (b) A veteran's benefit;

49 (c) A disability, illness or unemployment benefit;

50 (d) Alimony, support or separate maintenance, not to exceed seven
51 hundred fifty dollars a month;

52 (e) Any payment under a stock bonus plan, pension plan, disability or
53 death benefit plan, profit-sharing plan, nonpublic retirement plan or any plan

54 described, defined, or established pursuant to section 456.014, the person's right
55 to a participant account in any deferred compensation program offered by the
56 state of Missouri or any of its political subdivisions, or annuity or similar plan or
57 contract on account of illness, disability, death, age or length of service, to the
58 extent reasonably necessary for the support of such person and any dependent of
59 such person unless:

60 a. Such plan or contract was established by or under the auspices of an
61 insider that employed such person at the time such person's rights under such
62 plan or contract arose;

63 b. Such payment is on account of age or length of service; and

64 c. Such plan or contract does not qualify under Section 401(a), 403(a),
65 403(b), 408, 408A or 409 of the Internal Revenue Code of 1986, as amended, (26
66 U.S.C. Section 401(a), 403(a), 403(b), 408, 408A or 409);

67 except that any such payment to any person shall be subject to attachment or
68 execution pursuant to a qualified domestic relations order, as defined by Section
69 414(p) of the Internal Revenue Code of 1986, as amended, issued by a court in
70 any proceeding for dissolution of marriage or legal separation or a proceeding for
71 disposition of property following dissolution of marriage by a court which lacked
72 personal jurisdiction over the absent spouse or lacked jurisdiction to dispose of
73 marital property at the time of the original judgment of dissolution;

74 (f) Any money or assets, payable to a participant or beneficiary from, or
75 any interest of any participant or beneficiary in, a retirement plan, profit-sharing
76 plan, health savings plan, or similar plan, including an inherited account or plan,
77 that is qualified under Section 401(a), 403(a), 403(b), 408, 408A or 409 of the
78 Internal Revenue Code of 1986, as amended, whether such participant's or
79 beneficiary's interest arises by inheritance, designation, appointment, or
80 otherwise, except as provided in this paragraph. Any plan or arrangement
81 described in this paragraph shall not be exempt from the claim of an alternate
82 payee under a qualified domestic relations order; however, the interest of any and
83 all alternate payees under a qualified domestic relations order shall be exempt
84 from any and all claims of any creditor, other than the state of Missouri through
85 its department of social services. As used in this paragraph, the terms "alternate
86 payee" and "qualified domestic relations order" have the meaning given to them
87 in Section 414(p) of the Internal Revenue Code of 1986, as amended. If
88 proceedings under Title 11 of the United States Code are commenced by or
89 against such person, no amount of funds shall be exempt in such proceedings

90 under any such plan, contract, or trust which is fraudulent as defined in
91 subsection 2 of section 428.024 and for the period such person participated within
92 three years prior to the commencement of such proceedings. For the purposes of
93 this section, when the fraudulently conveyed funds are recovered and after, such
94 funds shall be deducted and then treated as though the funds had never been
95 contributed to the plan, contract, or trust;

96 (11) The debtor's right to receive, or property that is traceable to, a
97 payment on account of the wrongful death of an individual of whom the debtor
98 was a dependent, to the extent reasonably necessary for the support of the debtor
99 and any dependent of the debtor.

100 2. Nothing in this section shall be interpreted to exempt from attachment
101 or execution for a valid judicial or administrative order for the payment of child
102 support or maintenance any money or assets, payable to a participant or
103 beneficiary from, or any interest of any participant or beneficiary in, a retirement
104 plan which is qualified pursuant to Section 408A of the Internal Revenue Code
105 of 1986, as amended.

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FIRST REGULAR SESSION

HOUSE BILL NO. 283

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WHITE.

0727H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 193.145, RSMo, and to enact in lieu thereof one new section relating to an electronic death registration system.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 193.145, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 193.145, to read as follows:

193.145. 1. A certificate of death for each death which occurs in this state shall be filed with the local registrar, or as otherwise directed by the state registrar, within five **business** days after death and shall be registered if such certificate has been completed and filed pursuant to this section. All data providers in the death registration process, including, but not limited to, the state registrar, local registrars, the state medical examiner, county medical examiners, coroners, funeral directors or persons acting as such, embalmers, sheriffs, attending physicians and resident physicians, and the chief medical officers of licensed health care facilities, and other public or private institutions providing medical care, treatment, or confinement to persons, shall be required to use and utilize [any] **the** electronic death registration system required and adopted under [subsection 1 of section 193.265] **this section** within six months of the system being certified by the director of the department of health and senior services, or the director's designee, to be operational and available to all data providers in the death registration process. [However, should the person or entity that certifies the cause of death not be part of, or does not use, the electronic death registration system, the funeral director or person acting as such may enter the required personal data into the electronic death registration system and then complete the filing by presenting the signed cause of death certification to the local registrar, in which case the local registrar shall issue death certificates as set out in subsection 2 of section 193.265.] **By**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 **September 1, 2016, the department of health and senior services shall develop an electronic**
19 **death registration system. The electronic death registration system shall utilize a secure**
20 **login for data providers but shall not require data providers to change their authentication**
21 **data including, but not limited to, their user identification or password more than once**
22 **annually and shall provide a secure mechanism for data providers to regain access to the**
23 **system via a “forgot password” function in the event such providers are unable to recall**
24 **their authentication data.** Nothing in this section shall prevent the state registrar from adopting
25 pilot programs or voluntary electronic death registration programs until such time as the system
26 can be certified; however, no such pilot or voluntary electronic death registration program shall
27 prevent the filing of a death certificate with the local registrar or the ability to obtain certified
28 copies of death certificates under subsection 2 of section 193.265 until six months after such
29 certification that the system is operational.

30 2. If the place of death is unknown but the dead body is found in this state, the certificate
31 of death shall be completed and filed pursuant to the provisions of this section. The place where
32 the body is found shall be shown as the place of death. The date of death shall be the date on
33 which the remains were found.

34 3. When death occurs in a moving conveyance in the United States and the body is first
35 removed from the conveyance in this state, the death shall be registered in this state and the place
36 where the body is first removed shall be considered the place of death. When a death occurs on
37 a moving conveyance while in international waters or air space or in a foreign country or its air
38 space and the body is first removed from the conveyance in this state, the death shall be
39 registered in this state but the certificate shall show the actual place of death if such place may
40 be determined.

41 4. The funeral director or person in charge of final disposition of the dead body shall file
42 the certificate of death. The funeral director or person in charge of the final disposition of the
43 dead body shall obtain or verify:

44 (1) The personal data from the next of kin or the best qualified person or source
45 available; and

46 (2) The medical certification from the person responsible for such certification.

47 5. **The funeral director shall enter the personal data under subdivision (1) of**
48 **subsection 4 of this section into the electronic death registration system within one business**
49 **day of receipt of the information. Upon entry and completion of the personal data in the**
50 **electronic death registration system, the system shall automatically notify the physician in**
51 **charge of the patient’s care for the illness or condition which resulted in death using an**
52 **electronic notification as determined by the department.** The medical certification shall be
53 completed, attested to its accuracy [either by signature or] by an electronic process approved by

54 the department, and returned to the funeral director or person in charge of final disposition within
55 [seventy-two hours after death] **three business days of the electronic notification** by the
56 physician in charge of the patient's care for the illness or condition which resulted in death. **If**
57 **the physician is unable to complete the medical certification due to exigent circumstances**
58 **including an immediate or long-term absence or illness, the physician shall complete the**
59 **medical certification as soon as practicable, or** in the absence of the physician or with the
60 physician's approval the certificate may be completed and attested to its accuracy [either by
61 signature or an] **by the** approved electronic process by the physician's associate physician, the
62 chief medical officer of the institution in which death occurred, **an individual to whom the**
63 **physician has delegated authority to complete the certificate,** or the physician who performed
64 an autopsy upon the decedent, provided such individual has access to the medical history of the
65 case, views the deceased at or after death and death is due to natural causes. [The state registrar
66 may approve alternate methods of obtaining and processing the medical certification and filing
67 the death certificate.] The Social Security number of any individual who has died shall be placed
68 in the records relating to the death and recorded on the death certificate.

69 **6. Any physician, nurse practitioner, physician assistant, or other medical**
70 **professional who in good faith completes a medical certification of death or determines the**
71 **cause of death shall be immune from civil liability only for such certificate completion or**
72 **determination of cause of death, absent gross negligence or willful misconduct.**

73 **7.** When death occurs from natural causes more than thirty-six hours after the decedent
74 was last treated by a physician, the case shall be referred to the county medical examiner or
75 coroner or physician or local registrar for investigation to determine and certify the cause of
76 death. If the death is determined to be of a natural cause, the medical examiner or coroner or
77 local registrar shall refer the certificate of death to the attending physician for such physician's
78 certification. If the attending physician refuses or is otherwise unavailable, the medical examiner
79 or coroner or local registrar shall attest to the accuracy of the certificate of death [either by
80 signature or an] **by the** approved electronic process within thirty-six hours.

81 [7.] **8.** If the circumstances suggest that the death was caused by other than natural
82 causes, the medical examiner or coroner shall determine the cause of death and shall complete
83 and attest to the accuracy [either by signature or an] **by the** approved electronic process the
84 medical certification within seventy-two hours after taking charge of the case.

85 [8.] **9.** If the cause of death cannot be determined within seventy-two hours after death,
86 the attending medical examiner or coroner or attending physician or local registrar shall give the
87 funeral director, or person in charge of final disposition of the dead body, notice of the reason
88 for the delay, and final disposition of the body shall not be made until authorized by the medical
89 examiner or coroner, attending physician or local registrar. **If determination of the cause of**

90 **death is prolonged because further testing is necessary or other exigent circumstances, the**
91 **certificate of death shall be completed within six months after death.**

92 [9.] **10.** When a death is presumed to have occurred within this state but the body cannot
93 be located, a death certificate may be prepared by the state registrar upon receipt of an order of
94 a court of competent jurisdiction which shall include the finding of facts required to complete
95 the death certificate. Such a death certificate shall be marked "Presumptive", show on its face
96 the date of registration, and identify the court and the date of decree.

97 **11. If a certificate of death is not filed with the local registrar or state registrar**
98 **within five business days after death, the state registrar shall upon request issue a**
99 **provisional certificate of death. Upon filing of the certificate of death with the local**
100 **registrar or state registrar, the state registrar shall issue a certificate of death. After the**
101 **certificate of death has been completed, any person who has obtained a provisional**
102 **certificate of death may obtain a copy of the completed certificate of death at no charge.**

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FIRST REGULAR SESSION

HOUSE BILL NO. 618

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FRAKER.

1456H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 194.119, RSMo, and to enact in lieu thereof one new section relating to the right to choose the final disposition of a dead body.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 194.119, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 194.119, to read as follows:

194.119. 1. As used in this section, the term "right of sepulcher" means the right to choose and control the burial, cremation, or other final disposition of a dead human body.

2. For purposes of this chapter and chapters 193, 333, and 436, and in all cases relating to the custody, control, and disposition of deceased human remains, including the common law right of sepulcher, where not otherwise defined, the term "next-of-kin" means the following persons in the priority listed if such person is eighteen years of age or older, is mentally competent, and is willing to assume responsibility for the costs of disposition:

(1) An attorney in fact designated in a durable power of attorney wherein the deceased specifically granted the right of sepulcher over his or her body to such attorney in fact;

(2) For a decedent who was on active duty in the United States military at the time of death, the person designated by such decedent in the written instrument known as the United States Department of Defense Form 93, Record of Emergency Data, in accordance with P.L. 109-163, Section 564, 10 U.S.C. Section 1482;

(3) The surviving spouse;

(4) Any surviving child of the deceased. If a surviving child is less than eighteen years of age and has a legal or natural guardian, such child shall not be disqualified on the basis of the child's age and such child's legal or natural guardian, if any, shall be entitled to serve in the place

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

18 of the child unless such child's legal or natural guardian was subject to an action in dissolution
19 from the deceased. In such event the person or persons who may serve as next-of-kin shall serve
20 in the order provided in subdivisions (5) to (9) of this subsection;

21 (5) (a) Any surviving parent of the deceased; or

22 (b) If the deceased is a minor, a surviving parent who has custody of the minor; or

23 (c) If the deceased is a minor and the deceased's parents have joint custody, the parent
24 whose residence is the minor child's residence for purposes of mailing and education;

25 (6) Any surviving sibling of the deceased;

26 (7) The next nearest surviving relative of the deceased by consanguinity or affinity;

27 (8) Any person or friend who assumes financial responsibility for the disposition of the
28 deceased's remains if no next-of-kin assumes such responsibility;

29 (9) The county coroner or medical examiner; provided however that such assumption
30 of responsibility shall not make the coroner, medical examiner, the county, or the state
31 financially responsible for the cost of disposition.

32 3. The next-of-kin of the deceased shall be entitled to control the final disposition of the
33 remains of any dead human being consistent with all applicable laws, including all applicable
34 health codes.

35 4. A funeral director or establishment is entitled to rely on and act according to the
36 lawful instructions of any person claiming to be the next-of-kin of the deceased; provided
37 however, in any civil cause of action against a funeral director or establishment licensed pursuant
38 to this chapter for actions taken regarding the funeral arrangements for a deceased person in the
39 director's or establishment's care, the relative fault, if any, of such funeral director or
40 establishment may be reduced if such actions are taken in reliance upon a person's claim to be
41 the deceased person's next-of-kin.

42 5. Any person who desires to exercise the right of sepulcher and who has knowledge of
43 an individual or individuals with a superior right to control disposition shall notify such
44 individual or individuals prior to making final arrangements.

45 6. If an individual with a superior claim is personally served with written notice from a
46 person with an inferior claim that such person desires to exercise the right of sepulcher and the
47 individual so served does not object within forty-eight hours of receipt, such individual shall be
48 deemed to have waived such right. An individual with a superior right may also waive such right
49 at any time if such waiver is in writing and dated.

50 7. If there is more than one person in a class who are equal in priority and the funeral
51 director has no knowledge of any objection by other members of such class, the funeral director
52 or establishment shall be entitled to rely on and act according to the instructions of the first such
53 person in the class to make arrangements; provided that such person assumes responsibility for

54 the costs of disposition and no other person in such class provides written notice of his or her
55 objection. **If the funeral director has knowledge that there is more than one person in a**
56 **class who are equal in priority and who do not agree on the disposition, the decision of the**
57 **majority of the members of such class shall control the disposition.**

✓

FIRST REGULAR SESSION

HOUSE BILL NO. 1113

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE FRAKER.

2321H.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 193.015 and 193.145, RSMo, and to enact in lieu thereof two new sections relating to death certificates.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 193.015 and 193.145, RSMo, are repealed and two new sections
2 enacted in lieu thereof, to be known as sections 193.015 and 193.145, to read as follows:

193.015. As used in sections 193.005 to 193.325, unless the context clearly indicates
2 otherwise, the following terms shall mean:

3 (1) **“Advanced practice registered nurse”**, a person licensed to practice as an
4 **advanced practice registered nurse under chapter 335;**

5 (2) **“Assistant physician”**, as such term is defined in section 334.036;

6 (3) **“Dead body”**, a human body or such parts of such human body from the condition
7 of which it reasonably may be concluded that death recently occurred;

8 [(2)] (4) **“Department”**, the department of health and senior services;

9 [(3)] (5) **“Final disposition”**, the burial, interment, cremation, removal from the state, or
10 other authorized disposition of a dead body or fetus;

11 [(4)] (6) **“Institution”**, any establishment, public or private, which provides inpatient or
12 outpatient medical, surgical, or diagnostic care or treatment or nursing, custodian, or domiciliary
13 care, or to which persons are committed by law;

14 [(5)] (7) **“Live birth”**, the complete expulsion or extraction from its mother of a child,
15 irrespective of the duration of pregnancy, which after such expulsion or extraction, breathes or
16 shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the
18 placenta is attached;

19 [(6)] (8) "Physician", a person authorized or licensed to practice medicine or osteopathy
20 pursuant to chapter 334;

21 [(7)] (9) **"Physician assistant", a person licensed to practice as a physician assistant**
22 **under chapter 334;**

23 (10) "Spontaneous fetal death", a noninduced death prior to the complete expulsion or
24 extraction from its mother of a fetus, irrespective of the duration of pregnancy; the death is
25 indicated by the fact that after such expulsion or extraction the fetus does not breathe or show
26 any other evidence of life such as beating of the heart, pulsation of the umbilical cord, or definite
27 movement of voluntary muscles;

28 [(8)] (11) "State registrar", state registrar of vital statistics of the state of Missouri;

29 [(9)] (12) "System of vital statistics", the registration, collection, preservation,
30 amendment and certification of vital records; the collection of other reports required by sections
31 193.005 to 193.325 and section 194.060; and activities related thereto including the tabulation,
32 analysis and publication of vital statistics;

33 [(10)] (13) "Vital records", certificates or reports of birth, death, marriage, dissolution
34 of marriage and data related thereto;

35 [(11)] (14) "Vital statistics", the data derived from certificates and reports of birth, death,
36 spontaneous fetal death, marriage, dissolution of marriage and related reports.

193.145. 1. A certificate of death for each death which occurs in this state shall be filed
2 with the local registrar, or as otherwise directed by the state registrar, within five days after death
3 and shall be registered if such certificate has been completed and filed pursuant to this section.
4 All data providers in the death registration process, including, but not limited to, the state
5 registrar, local registrars, the state medical examiner, county medical examiners, coroners,
6 funeral directors or persons acting as such, embalmers, sheriffs, attending physicians and resident
7 physicians, **physician assistants, assistant physicians, advanced practice registered nurses,**
8 and the chief medical officers of licensed health care facilities, and other public or private
9 institutions providing medical care, treatment, or confinement to persons, shall be required to use
10 and utilize any electronic death registration system required and adopted under subsection 1 of
11 section 193.265 within six months of the system being certified by the director of the department
12 of health and senior services, or the director's designee, to be operational and available to all data
13 providers in the death registration process. However, should the person or entity that certifies
14 the cause of death not be part of, or does not use, the electronic death registration system, the
15 funeral director or person acting as such may enter the required personal data into the electronic
16 death registration system and then complete the filing by presenting the signed cause of death

17 certification to the local registrar, in which case the local registrar shall issue death certificates
18 as set out in subsection 2 of section 193.265. Nothing in this section shall prevent the state
19 registrar from adopting pilot programs or voluntary electronic death registration programs until
20 such time as the system can be certified; however, no such pilot or voluntary electronic death
21 registration program shall prevent the filing of a death certificate with the local registrar or the
22 ability to obtain certified copies of death certificates under subsection 2 of section 193.265 until
23 six months after such certification that the system is operational.

24 2. If the place of death is unknown but the dead body is found in this state, the certificate
25 of death shall be completed and filed pursuant to the provisions of this section. The place where
26 the body is found shall be shown as the place of death. The date of death shall be the date on
27 which the remains were found.

28 3. When death occurs in a moving conveyance in the United States and the body is first
29 removed from the conveyance in this state, the death shall be registered in this state and the place
30 where the body is first removed shall be considered the place of death. When a death occurs on
31 a moving conveyance while in international waters or air space or in a foreign country or its air
32 space and the body is first removed from the conveyance in this state, the death shall be
33 registered in this state but the certificate shall show the actual place of death if such place may
34 be determined.

35 4. The funeral director or person in charge of final disposition of the dead body shall file
36 the certificate of death. The funeral director or person in charge of the final disposition of the
37 dead body shall obtain or verify **and enter into the electronic death registration system:**

38 (1) The personal data from the next of kin or the best qualified person or source
39 available; [and]

40 (2) The medical certification from the person responsible for such certification **if**
41 **designated to do so under subsection 5 of this section; and**

42 (3) **Any other information or data that may be required to be placed on a death**
43 **certificate or entered into the electronic death certificate system including, but not limited**
44 **to, the name and license number of the embalmer.**

45 5. The medical certification shall be completed, attested to its accuracy either by
46 signature or an electronic process approved by the department, and returned to the funeral
47 director or person in charge of final disposition within seventy-two hours after death by the
48 physician, **physician assistant, assistant physician, or advanced practice registered nurse**
49 in charge of the patient's care for the illness or condition which resulted in death. In the absence
50 of the physician, **physician assistant, assistant physician, or advanced practice registered**
51 **nurse** or with the physician's, **physician assistant's, assistant physician's, or advanced**
52 **practice registered nurse's** approval the certificate may be completed and attested to its

53 accuracy either by signature or an approved electronic process by the physician's associate
54 physician, the chief medical officer of the institution in which death occurred, or the [physician]
55 **individual** who performed an autopsy upon the decedent, provided such individual has access
56 to the medical history of the case, views the deceased at or after death and death is due to natural
57 causes. **The person authorized to complete the medical certification may, in writing,**
58 **designate any other person to enter the medical certification information into the electronic**
59 **death registration system if the person authorized to complete the medical certification has**
60 **physically or by electronic process signed a statement stating the cause of death. Any**
61 **persons completing the medical certification or entering data into the electronic death**
62 **registration system shall be immune from civil liability for such certificate completion, data**
63 **entry, or determination of the cause of death, absent gross negligence or willful**
64 **misconduct.** The state registrar may approve alternate methods of obtaining and processing the
65 medical certification and filing the death certificate. The Social Security number of any
66 individual who has died shall be placed in the records relating to the death and recorded on the
67 death certificate.

68 6. When death occurs from natural causes more than thirty-six hours after the decedent
69 was last treated by a physician, **physician assistant, assistant physician, or advanced practice**
70 **registered nurse**, the case shall be referred to the county medical examiner or coroner or
71 physician or local registrar for investigation to determine and certify the cause of death. If the
72 death is determined to be of a natural cause, the medical examiner or coroner or local registrar
73 shall refer the certificate of death to the attending physician, **physician assistant, assistant**
74 **physician, or advanced practice registered nurse** for such [physician's] certification. If the
75 attending physician, **physician assistant, assistant physician, or advanced practice registered**
76 **nurse** refuses or is otherwise unavailable, the medical examiner or coroner or local registrar shall
77 attest to the accuracy of the certificate of death either by signature or an approved electronic
78 process within thirty-six hours.

79 7. If the circumstances suggest that the death was caused by other than natural causes,
80 the medical examiner or coroner shall determine the cause of death and shall complete and attest
81 to the accuracy either by signature or an approved electronic process the medical certification
82 within seventy-two hours after taking charge of the case.

83 8. If the cause of death cannot be determined within seventy-two hours after death, the
84 attending medical examiner or coroner [or] , attending physician [or] , **physician assistant,**
85 **assistant physician, advanced practice registered nurse, or** local registrar shall give the
86 funeral director, or person in charge of final disposition of the dead body, notice of the reason
87 for the delay, and final disposition of the body shall not be made until authorized by the medical

88 examiner or coroner, attending physician, **physician assistant, assistant physician, advanced**
89 **practice registered nurse**, or local registrar.

90 9. When a death is presumed to have occurred within this state but the body cannot be
91 located, a death certificate may be prepared by the state registrar upon receipt of an order of a
92 court of competent jurisdiction which shall include the finding of facts required to complete the
93 death certificate. Such a death certificate shall be marked "Presumptive", show on its face the
94 date of registration, and identify the court and the date of decree.

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FIRST REGULAR SESSION

SENATE BILL NO. 333

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NASHEED.

Read 1st time January 28, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1727S.011

AN ACT

To repeal sections 595.010 and 595.015, RSMo, and to enact in lieu thereof two new sections relating to crime victims' compensation fund claims.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 595.010 and 595.015, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 595.010 and 595.015, to
3 read as follows:

595.010. 1. As used in sections 595.010 to 595.075, unless the context
2 requires otherwise, the following terms shall mean:

3 (1) "Child", a dependent, unmarried person who is under eighteen years
4 of age and includes a posthumous child, stepchild, or an adopted child;

5 (2) "Claimant", a victim or a dependent, relative, survivor, or member of
6 the family of a victim eligible for compensation pursuant to sections 595.010 to
7 595.075, **or a funeral home if the victim's family or next of kin**
8 **designates it as such under section 595.015;**

9 (3) "Conservator", a person or corporation appointed by a court to have the
10 care and custody of the estate of a minor or a disabled person, including a limited
11 conservator;

12 (4) "Counseling", problem-solving and support concerning emotional issues
13 that result from criminal victimization licensed pursuant to section 595.030.
14 Counseling is a confidential service provided either on an individual basis or in
15 a group. Counseling has as a primary purpose to enhance, protect and restore a
16 person's sense of well-being and social functioning after victimization. Counseling
17 does not include victim advocacy services such as crisis telephone counseling,
18 attendance at medical procedures, law enforcement interviews or criminal justice
19 proceedings;

20 (5) "Crime", an act committed in this state which, if committed by a
21 mentally competent, criminally responsible person who had no legal exemption
22 or defense, would constitute a crime; provided that, such act involves the
23 application of force or violence or the threat of force or violence by the offender
24 upon the victim but shall include the crime of driving while intoxicated, vehicular
25 manslaughter and hit and run; and provided, further, that no act involving the
26 operation of a motor vehicle except driving while intoxicated, vehicular
27 manslaughter and hit and run which results in injury to another shall constitute
28 a crime for the purpose of sections 595.010 to 595.075, unless such injury was
29 intentionally inflicted through the use of a motor vehicle. A crime shall also
30 include an act of terrorism, as defined in 18 U.S.C. Section 2331, which has been
31 committed outside of the United States against a resident of Missouri;

32 (6) "Crisis intervention counseling", helping to reduce psychological
33 trauma where victimization occurs;

34 (7) "Department", the department of public safety;

35 (8) "Dependent", mother, father, spouse, spouse's mother, spouse's father,
36 child, grandchild, adopted child, illegitimate child, niece or nephew, who is wholly
37 or partially dependent for support upon, and living with, but shall include
38 children entitled to child support but not living with, the victim at the time of his
39 injury or death due to a crime alleged in a claim pursuant to sections 595.010 to
40 595.075;

41 (9) "Direct service", providing physical services to a victim of crime
42 including, but not limited to, transportation, funeral arrangements, child care,
43 emergency food, clothing, shelter, notification and information;

44 (10) "Director", the director of public safety of this state or a person
45 designated by him for the purposes of sections 595.010 to 595.075;

46 (11) "Disabled person", one who is unable by reason of any physical or
47 mental condition to receive and evaluate information or to communicate decisions
48 to such an extent that the person lacks ability to manage his financial resources,
49 including a partially disabled person who lacks the ability, in part, to manage his
50 financial resources;

51 (12) "Emergency service", those services provided within thirty days to
52 alleviate the immediate effects of the criminal act or offense, and may include
53 cash grants of not more than one hundred dollars;

54 (13) "Earnings", net income or net wages;

55 (14) "Family", the spouse, parent, grandparent, stepmother, stepfather,

56 child, grandchild, brother, sister, half brother, half sister, adopted children of
57 parent, or spouse's parents;

58 (15) "Funeral expenses", the expenses of the funeral, burial, cremation or
59 other chosen method of interment, including plot or tomb and other necessary
60 incidents to the disposition of the remains;

61 (16) "Gainful employment", engaging on a regular and continuous basis,
62 up to the date of the incident upon which the claim is based, in a lawful activity
63 from which a person derives a livelihood;

64 (17) "Guardian", one appointed by a court to have the care and custody of
65 the person of a minor or of an incapacitated person, including a limited guardian;

66 (18) "Hit and run", the crime of leaving the scene of a motor vehicle
67 accident as defined in section 577.060;

68 (19) "Incapacitated person", one who is unable by reason of any physical
69 or mental condition to receive and evaluate information or to communicate
70 decisions to such an extent that he lacks capacity to meet essential requirements
71 for food, clothing, shelter, safety or other care such that serious physical injury,
72 illness, or disease is likely to occur, including a partially incapacitated person
73 who lacks the capacity to meet, in part, such essential requirements;

74 (20) "Injured victim", a person:

75 (a) Killed or receiving a personal physical injury in this state as a result
76 of another person's commission of or attempt to commit any crime;

77 (b) Killed or receiving a personal physical injury in this state while in a
78 good faith attempt to assist a person against whom a crime is being perpetrated
79 or attempted;

80 (c) Killed or receiving a personal physical injury in this state while
81 assisting a law enforcement officer in the apprehension of a person who the
82 officer has reason to believe has perpetrated or attempted a crime;

83 (21) "Law enforcement official", a sheriff and his regular deputies,
84 municipal police officer or member of the Missouri state highway patrol and such
85 other persons as may be designated by law as peace officers;

86 (22) "Offender", a person who commits a crime;

87 (23) "Personal physical injury", actual bodily harm only with respect to
88 the victim. Personal physical injury may include mental or nervous shock
89 resulting from the specific incident upon which the claim is based;

90 (24) "Private agency", a not-for-profit corporation, in good standing in this
91 state, which provides services to victims of crime and their dependents;

92 (25) "Public agency", a part of any local or state government organization
93 which provides services to victims of crime;

94 (26) "Relative", the spouse of the victim or a person related to the victim
95 within the third degree of consanguinity or affinity as calculated according to civil
96 law;

97 (27) "Survivor", the spouse, parent, legal guardian, grandparent, sibling
98 or child of the deceased victim of the victim's household at the time of the crime;

99 (28) "Victim", a person who suffers personal physical injury or death as
100 a direct result of a crime, as defined in subdivision (5) of this subsection;

101 (29) "Victim advocacy", assisting the victim of a crime and his dependents
102 to acquire services from existing community resources.

103 2. As used in sections 565.024 and 565.060 and sections 595.010 to
104 595.075, the term "alcohol-related traffic offense" means those offenses defined
105 by sections 577.001, 577.010, and 577.012, and any county or municipal ordinance
106 which prohibits operation of a motor vehicle while under the influence of alcohol.

595.015. 1. The department of public safety shall, pursuant to the
2 provisions of sections 595.010 to 595.075, have jurisdiction to determine and
3 award compensation to, or on behalf of, victims of crimes. In making such
4 determinations and awards, the department shall ensure the compensation
5 sought is reasonable and consistent with the limitations described in sections
6 595.010 to 595.075. Additionally, if compensation being sought includes medical
7 expenses, the department shall further ensure that such expenses are medically
8 necessary. The department of public safety may pay directly to the provider of
9 the services compensation for medical or funeral expenses, or expenses for other
10 services as described in section 595.030, incurred by the claimant. The
11 department is not required to provide compensation in any case, nor is it required
12 to award the full amount claimed. The department shall make its award of
13 compensation based upon independent verification obtained during its
14 investigation.

15 2. Such claims shall be made by filing an application for compensation
16 with the department of public safety. The application form shall be furnished by
17 the department and the signature shall be notarized. The application shall
18 include:

19 (1) The name and address of the victim;

20 (2) If the claimant is not the victim, the name and address of the claimant
21 and relationship to the victim, the names and addresses of the victim's

22 dependents, if any, and the extent to which each is so dependent;

23 (3) The date and nature of the crime or attempted crime on which the
24 application for compensation is based;

25 (4) The date and place where, and the law enforcement officials to whom,
26 notification of the crime was given;

27 (5) The nature and extent of the injuries sustained by the victim, the
28 names and addresses of those giving medical and hospital treatment to the victim
29 and whether death resulted;

30 (6) The loss to the claimant or a dependent resulting from the injury or
31 death;

32 (7) The amount of benefits, payments or awards, if any, payable from any
33 source which the claimant or dependent has received or for which the claimant
34 or dependent is eligible as a result of the injury or death;

35 (8) Releases authorizing the surrender to the department of reports,
36 documents and other information relating to the matters specified under this
37 section; and

38 (9) Such other information as the department determines is necessary.

39 3. In addition to the application, the department may require that the
40 claimant submit materials substantiating the facts stated in the application.

41 4. If the department finds that an application does not contain the
42 required information or that the facts stated therein have not been substantiated,
43 it shall notify the claimant in writing of the specific additional items of
44 information or materials required and that the claimant has thirty days from the
45 date of mailing in which to furnish those items to the department. Unless a
46 claimant requests and is granted an extension of time by the department, the
47 department shall reject with prejudice the claim of the claimant for failure to file
48 the additional information or materials within the specified time.

49 5. The claimant may file an amended application or additional
50 substantiating materials to correct inadvertent errors or omissions at any time
51 before the department has completed its consideration of the original application.

52 6. The claimant, victim or dependent shall cooperate with law enforcement
53 officials in the apprehension and prosecution of the offender in order to be
54 eligible, or the department has found that the failure to cooperate was for good
55 cause.

56 7. Any state or local agency, including a prosecuting attorney or law
57 enforcement agency, shall make available without cost to the fund all reports,

58 files and other appropriate information which the department requests in order
59 to make a determination that a claimant is eligible for an award pursuant to
60 sections 595.010 to 595.075.

61 **8. If the victim is deceased, the victim's family or next of kin may**
62 **sign a notarized statement designating the funeral home as a claimant**
63 **eligible for compensation from the crime victims' compensation fund**
64 **provided such funeral home complies with the provisions of this**
65 **section.**

✓

FIRST REGULAR SESSION

SENATE BILL NO. 416

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

Read 1st time February 5, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1903S.02I

AN ACT

To repeal sections 194.119 and 214.208, RSMo, and to enact in lieu thereof two new sections relating to the disposition of dead bodies.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 194.119 and 214.208, RSMo, are repealed and two new
2 sections enacted in lieu thereof, to be known as sections 194.119 and 214.208, to
3 read as follows:

194.119. 1. As used in this section, the term "right of sepulcher" means
2 the right to choose and control the burial, cremation, or other final disposition of
3 a dead human body.

4 2. For purposes of this chapter and chapters 193, 333, and 436, and in all
5 cases relating to the custody, control, and disposition of deceased human remains,
6 including the common law right of sepulcher, where not otherwise defined, the
7 term "next-of-kin" means the following persons in the priority listed if such
8 person is eighteen years of age or older, is mentally competent, and is willing to
9 assume responsibility for the costs of disposition:

10 (1) An attorney in fact designated in a durable power of attorney wherein
11 the deceased specifically granted the right of sepulcher over his or her body to
12 such attorney in fact;

13 (2) For a decedent who was on active duty in the United States military
14 at the time of death, the person designated by such decedent in the written
15 instrument known as the United States Department of Defense Form 93, Record
16 of Emergency Data, in accordance with P.L. 109-163, Section 564, 10 U.S.C.
17 Section 1482;

18 (3) The surviving spouse;

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 (4) Any surviving child of the deceased. If a surviving child is less than
20 eighteen years of age and has a legal or natural guardian, such child shall not be
21 disqualified on the basis of the child's age and such child's legal or natural
22 guardian, if any, shall be entitled to serve in the place of the child unless such
23 child's legal or natural guardian was subject to an action in dissolution from the
24 deceased. In such event the person or persons who may serve as next-of-kin shall
25 serve in the order provided in subdivisions (5) to (9) of this subsection;

26 (5) (a) Any surviving parent of the deceased; or

27 (b) If the deceased is a minor, a surviving parent who has custody of the
28 minor; or

29 (c) If the deceased is a minor and the deceased's parents have joint
30 custody, the parent whose residence is the minor child's residence for purposes
31 of mailing and education;

32 (6) Any surviving sibling of the deceased;

33 (7) The next nearest surviving relative of the deceased by consanguinity
34 or affinity;

35 (8) Any person or friend who assumes financial responsibility for the
36 disposition of the deceased's remains if no next-of-kin assumes such
37 responsibility;

38 (9) The county coroner or medical examiner; provided however that such
39 assumption of responsibility shall not make the coroner, medical examiner, the
40 county, or the state financially responsible for the cost of disposition.

41 3. The next-of-kin of the deceased shall be entitled to control the final
42 disposition of the remains of any dead human being consistent with all applicable
43 laws, including all applicable health codes.

44 4. A funeral director or establishment is entitled to rely on and act
45 according to the lawful instructions of any person claiming to be the next-of-kin
46 of the deceased; provided however, in any civil cause of action against a funeral
47 director or establishment licensed pursuant to this chapter for actions taken
48 regarding the funeral arrangements for a deceased person in the director's or
49 establishment's care, the relative fault, if any, of such funeral director or
50 establishment may be reduced if such actions are taken in reliance upon a
51 person's claim to be the deceased person's next-of-kin.

52 5. Any person who desires to exercise the right of sepulcher and who has
53 knowledge of an individual or individuals with a superior right to control
54 disposition shall notify such individual or individuals prior to making final

55 arrangements.

56 6. If an individual with a superior claim is personally served with written
57 notice from a person with an inferior claim that such person desires to exercise
58 the right of sepulcher and the individual so served does not object within
59 forty-eight hours of receipt, such individual shall be deemed to have waived such
60 right. An individual with a superior right may also waive such right at any time
61 if such waiver is in writing and dated.

62 7. If there is more than one person in a class who are equal in priority
63 and the funeral director has no knowledge of any objection by other members of
64 such class, the funeral director or establishment shall be entitled to rely on and
65 act according to the instructions of the first such person in the class to make
66 arrangements; provided that such person assumes responsibility for the costs of
67 disposition and no other person in such class provides written notice of his or her
68 objection. **If the funeral director has knowledge that there is more than
69 one person in a class who are equal in priority and who do not agree
70 on the disposition, the decision of the majority of the members of such
71 class shall control the disposition.**

214.208. 1. Every person or association which owns any cemetery in
2 which dead human remains are buried or otherwise interred is authorized, at the
3 cemetery owner's expense, to disinter individual remains and reinter or rebury
4 the remains at another location within the cemetery in order to correct an error
5 made in the original burial or interment of the remains.

6 2. Every person or association which owns any cemetery in which dead
7 human remains are buried or otherwise interred is authorized to disinter
8 individual remains and either to reinter or rebury the remains at another location
9 within the cemetery or to deliver the remains to a carrier for transportation out
10 of the cemetery, all pursuant to written instructions signed and acknowledged by
11 **the next-of-kin at the time of death of the deceased person as set out in
12 section 194.119. In the event that the next-of-kin at the time of death
13 as set out in 194.119 is no longer living then** a majority of the following
14 adult members of the deceased person's family who are then known and living:
15 surviving spouse, children, and parents **may authorize the disinterment.** If
16 none of the above family members survive the deceased, then the majority of the
17 grandchildren, brothers and sisters of whole and half blood may authorize the
18 disinterment, relocation or delivery of the remains of the deceased. The costs of
19 such disinterment, relocation or delivery shall be paid by the deceased person's

20 family.

21 3. Every person or association which owns any cemetery in which dead
22 human remains are buried or otherwise interred is authorized to disinter
23 individual remains and either to reinter or rebury the remains at another location
24 within the cemetery or to deliver the remains to a carrier for transportation out
25 of the cemetery, all pursuant to a final order issued by the circuit court for the
26 county in which the cemetery is located. The court may issue the order, in the
27 court's discretion and upon such notice and hearing as the court shall deem
28 appropriate, for good cause shown, including without limitation, the best interests
29 of public health or safety, the best interests of the deceased person's family, or
30 the reasonable requirements of the cemetery to facilitate the operation,
31 maintenance, improvement or enlargement of the cemetery. The costs of such
32 disinterment, relocation and delivery, and the related court proceedings, shall be
33 paid by the persons so ordered by the court.

34 4. **[The cemetery owner] A person or association which owns a**
35 **cemetery, cemetery operator, funeral director, funeral establishment,**
36 **or any other person or entity involved in the process** shall not be liable
37 to the deceased person's family or to any third party for a disinterment, relocation
38 or delivery of deceased human remains made pursuant to this section.

✓

FIRST REGULAR SESSION

[PERFECTED]

HOUSE BILL NO. 32

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE HOSKINS.

0508H.01P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 1.310 and 143.173, RSMo, and to enact in lieu thereof two new sections relating to the big government get off my back act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 1.310 and 143.173, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 1.310 and 143.173, to read as follows:

1.310. 1. This section shall be known and may be cited as the "Big Government Get Off My Back Act".

2. Any federal mandate compelling the state to enact, enforce, or administer a federal regulatory program shall be subject to authorization through appropriation or statutory enactment.

3. No user fees imposed by the state of Missouri shall increase for the [five-year] **ten-year** period beginning on August 28, 2009, unless such fee increase is to implement a federal program administered by the state or is a result of an act of the general assembly. For purposes of this section, "user fee" does not include employer taxes or contributions, assessments to offset the cost of examining insurance or financial institutions, any health-related taxes approved by the Center for Medicare and Medicaid Services, or any professional or occupational licensing fees set by a board of members of that profession or occupation and required by statute to be set at a level not to exceed the cost of administration.

4. For the [five-year] **ten-year** period beginning on August 28, 2009, any state agency proposing a rule as that term is defined in subdivision (6) of section 536.010, other than any rule

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 promulgated as a result of a federal mandate, or to implement a federal program administered
17 by the state or an act of the general assembly, shall either:

18 (1) Certify that the rule does not have an adverse impact on small businesses consisting
19 of fewer than fifty full- or part-time employees; or

20 (2) Certify that the rule is necessary to protect the life, health or safety of the public; or

21 (3) Exempt any small business consisting of fewer than fifty full- or part-time employees
22 from coverage.

23 5. The provisions of this section shall not be construed to prevent or otherwise restrict
24 an agency from promulgating emergency rules pursuant to section 536.025, or from rescinding
25 any existing rule pursuant to section 536.021.

143.173. 1. As used in this section, the following terms mean:

2 (1) "County average wage", the average wages in each county as determined by the
3 department of economic development for the most recently completed full calendar year.
4 However, if the computed county average wage is above the statewide average wage, the
5 statewide average wage shall be deemed the county average wage for such county for the purpose
6 of this section;

7 (2) "Deduction", an amount subtracted from the taxpayer's Missouri adjusted gross
8 income to determine Missouri taxable income, or federal taxable income in the case of a
9 corporation, for the tax year in which such deduction is claimed;

10 (3) "Full-time employee", a position in which the employee is considered full-time by
11 the taxpayer and is required to work an average of at least thirty-five hours per week for a
12 fifty-two week period;

13 (4) "New job", the number of full-time employees employed by the small business in
14 Missouri on the qualifying date that exceeds the number of full-time employees employed by the
15 small business in Missouri on the same date of the immediately preceding taxable year;

16 (5) "Qualifying date", any date during the tax year as chosen by the small business;

17 (6) "Small business", any small business, including any sole proprietorship, partnership,
18 S-corporation, C-corporation, limited liability company, limited liability partnership, or other
19 business entity, consisting of fewer than fifty full- or part-time employees;

20 (7) "Taxpayer", any small business subject to the income tax imposed in this chapter,
21 including any sole proprietorship, partnership, S-corporation, C-corporation, limited liability
22 company, limited liability partnership, or other business entity.

23 2. In addition to all deductions listed in this chapter, for all taxable years beginning on
24 or after January 1, 2011, and ending on or before December 31, [2014] **2019**, a taxpayer shall be
25 allowed a deduction for each new job created by the small business in the taxable year. Tax
26 deductions allowed to any partnership, limited liability company, S-corporation, or other

27 pass-through entity may be allocated to the partners, members, or shareholders of such entity for
28 their direct use in accordance with the provisions of any agreement among such partners,
29 members, or shareholders. The deduction amount shall be as follows:

30 (1) Ten thousand dollars for each new job created with an annual salary of at least the
31 county average wage; or

32 (2) Twenty thousand dollars for each new job created with an annual salary of at least
33 the county average wage if the small business offers health insurance and pays at least fifty
34 percent of such insurance premiums.

35 3. The department of revenue shall establish the procedure by which the deduction
36 provided in this section may be claimed, and may promulgate rules to implement the provisions
37 of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that is
38 created under the authority delegated in this section shall become effective only if it complies
39 with and is subject to all of the provisions of chapter 536 and, if applicable, section 536.028.
40 This section and chapter 536 are nonseverable and if any of the powers vested with the general
41 assembly under chapter 536 to review, to delay the effective date, or to disapprove and annul a
42 rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule
43 proposed or adopted after August 28, 2011, shall be invalid and void.

44 4. Under section 23.253 of the Missouri sunset act:

45 (1) The provisions of the new program authorized under this section shall automatically
46 sunset on December thirty-first three years after August 28, [2011] **2019**, unless reauthorized by
47 an act of the general assembly; and

48 (2) If such program is reauthorized, the program authorized under this section shall
49 automatically sunset on December thirty-first three years after the effective date of the
50 reauthorization of this section; and

51 (3) This section shall terminate on September first of the calendar year immediately
52 following the calendar year in which the program authorized under this section is sunset.

✓

FIRST REGULAR SESSION

HOUSE BILL NO. 422

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE BURLISON.

0839H.01I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 324, RSMo, by adding thereto one new section relating to opinions issued by boards or commissions under the division of professional registration.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 324, RSMo, is amended by adding thereto one new section, to be
2 known as section 324.023, to read as follows:

**324.023. 1. Notwithstanding any law to the contrary, any board or commission
2 within the division may, at its discretion, issue oral or written opinions addressing topics
3 relating to the qualifications, functions, or duties of any profession licensed by any board
4 or commission within the division. Any such opinion is for educational purposes only, is
5 in no way binding on the licensees of the respective board or commission, and cannot be
6 used as the basis for any discipline against any licensee under chapters 214, 317, 326, 327,
7 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, and 345.**

**8 2. The recipient of an opinion given pursuant to this section shall be informed that
9 the opinion is for educational purposes only, is in no way binding on the licensees of the
10 board, and cannot be used as the basis for any discipline against any licensee under
11 chapters 214, 317, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340,
12 and 345.**

✓

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

FIRST REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 107
98TH GENERAL ASSEMBLY

Reported from the Committee on Financial and Governmental Organizations and Elections, February 26, 2015, with recommendation that the Senate Committee Substitute do pass.

Senate Committee Substitute for Senate Bill No. 107, adopted March 4, 2015.

Taken up for Perfection March 4, 2015. Bill declared Perfected and Ordered Printed, as amended.

ADRIANE D. CROUSE, Secretary.

0642S.03P

AN ACT

To repeal sections 345.015, 345.020, 345.022, 345.025, 345.040, 345.050, 345.051, 345.065, and 345.080, RSMo, and to enact in lieu thereof nine new sections relating to professions regulated under the division of professional registration.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 345.015, 345.020, 345.022, 345.025, 345.040, 345.050, 2 345.051, 345.065, and 345.080, RSMo, are repealed and nine new sections enacted 3 in lieu thereof, to be known as sections 324.023, 345.015, 345.020, 345.025, 4 345.040, 345.050, 345.051, 345.065, and 345.080, to read as follows:

324.023. 1. Notwithstanding any law to the contrary, any board 2 or commission established under chapters 330, 331, 332, 334, 335, 336, 3 337, 338, 340, and 345 may, at its discretion, issue oral or written 4 opinions addressing topics relating to the qualifications, functions, or 5 duties of any profession licensed by the specific board or commission 6 issuing such guidance. Any such opinion is for educational purposes 7 only, is in no way binding on the licensees of the respective board or 8 commission, and cannot be used as the basis for any discipline against 9 any licensee under chapters 330, 331, 332, 334, 335, 336, 337, 338, 340, 10 and 345. No board or commission may address topics relating to the 11 qualifications, functions, or duties of any profession licensed by a 12 different board or commission.

13 2. The recipient of an opinion given under this section shall be

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

14 informed that the opinion is for educational purposes only, is in no way
15 binding on the licensees of the board, and cannot be used as the basis
16 for any discipline against any licensee under chapters 330, 331, 332, 334,
17 335, 336, 337, 338, 340, and 345.

345.015. As used in sections 345.010 to 345.080, the following terms
2 mean:

3 (1) "Audiologist", a person who is licensed as an audiologist pursuant to
4 sections 345.010 to 345.080 to practice audiology;

5 (2) "Audiology aide", a person who is registered as an audiology aide by
6 the board, who does not act independently but works under the direction and
7 supervision of a licensed audiologist. Such person assists the audiologist with
8 activities which require an understanding of audiology but do not require formal
9 training in the relevant academics. To be eligible for registration by the board,
10 each applicant shall submit a registration fee, be of good moral and ethical
11 character; and:

12 (a) Be at least eighteen years of age;

13 (b) Furnish evidence of the person's educational qualifications which shall
14 be at a minimum:

15 a. Certification of graduation from an accredited high school or its
16 equivalent; and

17 b. On-the-job training;

18 (c) Be employed in a setting in which direct and indirect supervision are
19 provided on a regular and systematic basis by a licensed audiologist.

20 However, the aide shall not administer or interpret hearing screening or
21 diagnostic tests, fit or dispense hearing instruments, make ear impressions, make
22 diagnostic statements, determine case selection, present written reports to anyone
23 other than the supervisor without the signature of the supervisor, make referrals
24 to other professionals or agencies, use a title other than [speech-language
25 pathology aide or clinical] audiology aide, develop or modify treatment plans,
26 discharge clients from treatment or terminate treatment, disclose clinical
27 information, either orally or in writing, to anyone other than the supervising
28 [speech-language pathologist/audiologist] **audiologist**, or perform any procedure
29 for which he or she is not qualified, has not been adequately trained or both;

30 (3) "Board", the state board of registration for the healing arts;

31 (4) ["Clinical fellowship", the supervised professional employment period
32 following completion of the academic and practicum requirements of an accredited

33 training program as defined in sections 345.010 to 345.080;

34 (5) "Commission", the advisory commission for speech-language
35 pathologists and audiologists;

36 [(6)] (5) "Hearing instrument" or "hearing aid", any wearable device or
37 instrument designed for or offered for the purpose of aiding or compensating for
38 impaired human hearing and any parts, attachments or accessories, including ear
39 molds, but excluding batteries, cords, receivers and repairs;

40 [(7)] (6) "Person", any individual, organization, or corporate body, except
41 that only individuals may be licensed pursuant to sections 345.010 to 345.080;

42 [(8)] (7) "Practice of audiology":

43 (a) The application of accepted audiologic principles, methods and
44 procedures for the measurement, testing, interpretation, appraisal and prediction
45 related to disorders of the auditory system, balance system or related structures
46 and systems;

47 (b) Provides consultation[,] or counseling to the patient, client, student,
48 their family or interested parties;

49 (c) Provides academic, social and medical referrals when appropriate;

50 (d) Provides for establishing goals, implementing strategies, methods and
51 techniques, for habilitation, rehabilitation or aural rehabilitation, related to
52 disorders of the auditory system, balance system or related structures and
53 systems;

54 (e) Provides for involvement in related research, teaching or public
55 education;

56 (f) Provides for rendering of services or participates in the planning,
57 directing or conducting of programs which are designed to modify audition,
58 communicative, balance or cognitive disorder, which may involve speech and
59 language or education issues;

60 (g) Provides and interprets behavioral and neurophysiologic
61 measurements of auditory balance, cognitive processing and related functions,
62 including intraoperative monitoring;

63 (h) Provides involvement in any tasks, procedures, acts or practices that
64 are necessary for evaluation of audition, hearing, training in the use of
65 amplification or assistive listening devices;

66 (i) Provides selection, assessment, fitting, programming, and dispensing
67 of hearing instruments, assistive listening devices, and other amplification
68 systems;

- 69 (j) Provides for taking impressions of the ear, making custom ear molds,
70 ear plugs, swim molds and industrial noise protectors;
- 71 (k) Provides assessment of external ear and cerumen management;
- 72 (l) Provides advising, fitting, mapping assessment of implantable devices
73 such as cochlear or auditory brain stem devices;
- 74 (m) Provides information in noise control and hearing conservation
75 including education, equipment selection, equipment calibration, site evaluation
76 and employee evaluation;
- 77 (n) Provides performing basic speech-language screening test;
- 78 (o) Provides involvement in social aspects of communication, including
79 challenging behavior and ineffective social skills, lack of communication
80 opportunities;
- 81 (p) Provides support and training of family members and other
82 communication partners for the individual with auditory balance, cognitive and
83 communication disorders;
- 84 (q) Provides aural rehabilitation and related services to individuals with
85 hearing loss and their families;
- 86 (r) Evaluates, collaborates and manages audition problems in the
87 assessment of the central auditory processing disorders and providing
88 intervention for individuals with central auditory processing disorders;
- 89 (s) Develops and manages academic and clinical problems in
90 communication sciences and disorders;
- 91 (t) Conducts, disseminates and applies research in communication
92 sciences and disorders;
- 93 [(9)] (8) "Practice of speech-language pathology":
- 94 (a) Provides screening, identification, assessment, diagnosis, treatment,
95 intervention, including but not limited to prevention, restoration, amelioration
96 and compensation, and follow-up services for disorders of:
- 97 a. Speech: articulation, fluency, voice, including respiration, phonation
98 and resonance;
- 99 b. Language, involving the parameters of phonology, morphology, syntax,
100 semantics and pragmatic; and including disorders of receptive and expressive
101 communication in oral, written, graphic and manual modalities;
- 102 c. Oral, pharyngeal, cervical esophageal and related functions, such as
103 dysphagia, including disorders of swallowing and oral functions for feeding;
104 orofacial myofunctional disorders;

105 d. Cognitive aspects of communication, including communication disability
106 and other functional disabilities associated with cognitive impairment;

107 e. Social aspects of communication, including challenging behavior,
108 ineffective social skills, lack of communication opportunities;

109 (b) Provides consultation and counseling and makes referrals when
110 appropriate;

111 (c) Trains and supports family members and other communication
112 partners of individuals with speech, voice, language, communication and
113 swallowing disabilities;

114 (d) Develops and establishes effective augmentative and alternative
115 communication techniques and strategies, including selecting, prescribing and
116 dispensing of augmentative aids and devices; and the training of individuals,
117 their families and other communication partners in their use;

118 (e) Selects, fits and establishes effective use of appropriate
119 prosthetic/adaptive devices for speaking and swallowing, such as
120 tracheoesophageal valves, electrolarynges, or speaking valves;

121 (f) Uses instrumental technology to diagnose and treat disorders of
122 communication and swallowing, such as videofluoroscopy, nasendoscopy,
123 ultrasonography and stroboscopy;

124 (g) Provides aural rehabilitative and related counseling services to
125 individuals with hearing loss and to their families;

126 (h) Collaborates in the assessment of central auditory processing disorders
127 in cases in which there is evidence of speech, language or other cognitive
128 communication disorders; provides intervention for individuals with central
129 auditory processing disorders;

130 (i) Conducts pure-tone air conduction hearing screening and screening
131 tympanometry for the purpose of the initial identification or referral;

132 (j) Enhances speech and language proficiency and communication
133 effectiveness, including but not limited to accent reduction, collaboration with
134 teachers of English as a second language and improvement of voice, performance
135 and singing;

136 (k) Trains and supervises support personnel;

137 (l) Develops and manages academic and clinical programs in
138 communication sciences and disorders;

139 (m) Conducts, disseminates and applies research in communication
140 sciences and disorders;

141 (n) Measures outcomes of treatment and conducts continuous evaluation
142 of the effectiveness of practices and programs to improve and maintain quality
143 of services;

144 [(10)] (9) "Speech-language pathologist", a person who is licensed as a
145 speech-language pathologist pursuant to sections 345.010 to 345.080; who engages
146 in the practice of speech-language pathology as defined in sections 345.010 to
147 345.080;

148 [(11)] (10) "Speech-language pathology aide", a person who is registered
149 as a speech-language aide by the board, who does not act independently but
150 works under the direction and supervision of a licensed speech-language
151 pathologist. Such person assists the speech-language pathologist with activities
152 which require an understanding of speech-language pathology but do not require
153 formal training in the relevant academics. To be eligible for registration by the
154 board, each applicant shall submit a registration fee, be of good moral and ethical
155 character; and:

156 (a) Be at least eighteen years of age;

157 (b) Furnish evidence of the person's educational qualifications which shall
158 be at a minimum:

159 a. Certification of graduation from an accredited high school or its
160 equivalent; and

161 b. On-the-job training;

162 (c) Be employed in a setting in which direct and indirect supervision is
163 provided on a regular and systematic basis by a licensed speech-language
164 pathologist. However, the aide shall not administer or interpret hearing
165 screening or diagnostic tests, fit or dispense hearing instruments, make ear
166 impressions, make diagnostic statements, determine case selection, present
167 written reports to anyone other than the supervisor without the signature of the
168 supervisor, make referrals to other professionals or agencies, use a title other
169 than speech-language pathology aide [or clinical audiology aide], develop or
170 modify treatment plans, discharge clients from treatment or terminate treatment,
171 disclose clinical information, either orally or in writing, to anyone other than the
172 supervising speech-language [pathologist/audiologist] **pathologist**, or perform
173 any procedure for which he or she is not qualified, has not been adequately
174 trained or both;

175 [(12)] (11) "Speech-language pathology assistant", a person who is
176 registered as a speech-language pathology assistant by the board, who does not

177 act independently but works under the direction and supervision of a licensed
178 speech-language pathologist **practicing for at least one year or speech-**
179 **language pathologist practicing under subdivisions (1) or (6) of**
180 **subsection 1 of section 345.025 for at least one year** and whose activities
181 require both academic and practical training in the field of speech-language
182 pathology although less training than those established by sections 345.010 to
183 345.080 as necessary for licensing as a speech-language pathologist. To be
184 eligible for registration by the board, each applicant shall submit the registration
185 fee, **supervising speech-language pathologist information if employment**
186 **is confirmed, if not such information shall be provided after**
187 **registration**, be of good moral character and furnish evidence of the person's
188 educational qualifications which meet the following:

189 (a) Hold a bachelor's level degree [in the field of speech-language
190 pathology] from an institution accredited or approved by a regional accrediting
191 body recognized by the United States Department of Education or its equivalent;
192 and

193 (b) Submit official transcripts from one or more accredited colleges or
194 universities presenting evidence of the completion of bachelor's level course work
195 and [clinical practicum] requirements [equivalent to that required or approved
196 by a regional accrediting body recognized by the United States Department of
197 Education or its equivalent] **in the field of speech-language pathology as**
198 **established by the board through rules and regulations;**

199 (c) **Submit proof of completion of the number and type of clinical**
200 **hours as established by the board through rules and regulations.**

345.020. 1. Licensure or registration shall be granted in either
2 speech-language pathology or audiology independently. A person may be licensed
3 or registered in both areas if the person is qualified. Each licensed or registered
4 person shall display the license or certificate prominently in the person's place
5 of practice.

6 2. No person shall practice or hold himself or herself out as being able to
7 practice speech-language pathology or audiology in this state unless the person
8 is licensed in accordance with the provisions of sections 345.010 to
9 345.080. Nothing in sections 345.010 to 345.080, however, shall be construed to
10 prevent a qualified person licensed in this state under any other law from
11 engaging in the profession for which the person is licensed, and a licensed
12 physician or surgeon may practice speech-language pathology or audiology

13 without being licensed in accordance with the provisions of sections 345.010 to
14 345.080.

15 3. No person shall hold himself or herself out as being a speech-language
16 pathologist in this state unless the person is licensed as provided in sections
17 345.010 to 345.080. Any person who, in any manner, represents himself or
18 herself as a speech-language pathologist or who uses in connection with such
19 person's name the words or letters: "speech-language pathologist", "speech
20 pathologist", "speech therapy", "speech therapist", "speech clinic", "speech
21 clinician", "S.L.P.", "language specialist", "logopedist" or any other letters, words,
22 abbreviations or insignia, indicating or implying that the person is a
23 speech-language pathologist without a valid existing license is guilty of a class
24 B misdemeanor.

25 4. No person shall hold himself or herself out as being an audiologist in
26 this state unless the person is licensed as provided in sections 345.010 to
27 345.080. Any person who, in any manner, represents himself or herself as an
28 audiologist or who uses in connection with such person's name the words:
29 "audiology", "audiologist", "audiological", "hearing clinic", "hearing clinician",
30 "hearing therapist" or any other letters, words, abbreviations or insignia,
31 indicating or implying that the person is an audiologist without a valid existing
32 license is guilty of a class B misdemeanor.

33 5. No person shall hold himself or herself out as being a speech-language
34 pathology assistant or aide or audiology aide in this state unless the person is
35 registered as provided in sections 345.010 to 345.080.

36 6. Nothing in sections 345.010 to 345.080 shall prohibit a corporation,
37 partnership, trust, association, or other like organization from engaging in the
38 business of speech-language pathology or audiology without licensure if it
39 employs licensed natural persons in the direct practice of speech-language
40 pathology or audiology. [Any such corporation, partnership, trust, association, or
41 other like organization shall also file with the board a statement, on a form
42 approved by the board, that it submits itself to the rules and regulations of the
43 board and the provisions of sections 345.010 to 345.080 which the board shall
44 deem applicable to it.]

345.025. 1. The provisions of sections 345.010 to 345.080 do not apply to:

2 (1) The activities, services, and the use of an official title on the part of
3 a person in the employ of a federal agency insofar as such services are part of the
4 duties of the person's office or position with such agency;

5 (2) The activities and services of certified teachers of the deaf;

6 (3) The activities and services of a student in speech-language pathology
7 or audiology pursuing a course of study at a university or college that has been
8 approved by its regional accrediting association, or working in a recognized
9 training center, if these activities and services constitute a part of the person's
10 course of study supervised by a licensed speech-language pathologist or
11 audiologist as provided in section 345.050;

12 (4) The activities and services of physicians and surgeons licensed
13 pursuant to chapter 334;

14 (5) Audiometric technicians who are certified by the council for
15 accreditation of occupational hearing conservationists when conducting pure tone
16 air conduction audiometric tests for purposes of industrial hearing conservation
17 and comply with requirements of the federal Occupational Safety and Health
18 Administration;

19 (6) A person who holds a current valid certificate as a speech-language
20 pathologist issued **before January 1, 2016**, by the Missouri department of
21 elementary and secondary education and who is an employee of a public school
22 while providing speech-language pathology services in such school system;

23 **(7) Any person completing the required number and type of**
24 **clinical hours required by paragraph (c) of subdivision (11) of section**
25 **345.015 as long as such person is under the direct supervision of a**
26 **licensed speech-language pathologist and has not completed more than**
27 **the number of clinical hours required by rule.**

28 2. No one shall be exempt pursuant to subdivision (1) or (6) of subsection
29 1 of this section if the person does any work as a speech-language pathologist or
30 audiologist outside of the exempted areas outlined in this section for which a fee
31 or compensation may be paid by the recipient of the service. When college or
32 university clinics charge a fee, supervisors of student clinicians shall be licensed.

345.040. The board shall adopt a seal by which it shall authenticate its
2 proceedings. Copies of its proceedings, records, and acts, when signed by the
3 [secretary] **executive director** and authenticated by the seal, shall be prima
4 facie evidence in all courts of this state.

345.050. 1. To be eligible for licensure by the board by examination, each
2 applicant shall submit the application fee and shall furnish evidence of such
3 person's good moral and ethical character, current competence and shall:

4 (1) Hold a master's or a doctoral degree from a program accredited by the

5 Council on Academic Accreditation of the American Speech-Language-Hearing
6 Association or other accrediting agency approved by the board in the area in
7 which licensure is sought;

8 (2) Submit official transcripts from one or more accredited colleges or
9 universities presenting evidence of the completion of course work and clinical
10 practicum requirements equivalent to that required by the Council on Academic
11 Accreditation of the American Speech-Language-Hearing Association or other
12 accrediting agency approved by the board; **and**

13 (3) [Present written evidence of completion of clinical fellowship as
14 defined in subdivision (4) of section 345.015 from supervisors. The experience
15 required by this subdivision shall follow the completion of the requirements of
16 subdivisions (1) and (2) of this subsection. This period of employment shall be
17 under the direct supervision of a person who is licensed by the state of Missouri
18 in the profession in which the applicant seeks to be licensed. Persons applying
19 with an audiology clinical doctoral degree are exempt from this provision;

20 (4) Pass an examination promulgated or approved by the board. The
21 board shall determine the subject and scope of the examinations.

22 2. To be eligible for licensure by the board without examination, each
23 applicant shall make application on forms prescribed by the board, submit the
24 application fee and shall be of good moral and ethical character, submit an
25 activity statement and meet one of the following requirements:

26 (1) The board shall issue a license to any speech-language pathologist or
27 audiologist who is licensed in another jurisdiction and who has had no violations,
28 suspension or revocations of a license to practice speech-language pathology or
29 audiology in any jurisdiction; provided that, such person is licensed in a
30 jurisdiction whose requirements are substantially equal to, or greater than,
31 Missouri at the time the applicant applies for licensure; or

32 (2) Hold the certificate of clinical competence issued by the American
33 Speech-Language-Hearing Association in the area in which licensure is sought.

345.051. 1. Every person licensed or registered pursuant to the provisions
2 of sections 345.010 to 345.080 shall renew the license **or registration** on or
3 before the renewal date. Such renewal date shall be determined by the
4 board. The application shall be made on a form furnished by the board. The
5 application shall include, but not be limited to, disclosure of the applicant's full
6 name and the applicant's office and residence addresses and the date and number
7 of the applicant's license **or registration**, all final disciplinary actions taken

8 against the applicant by any speech-language-hearing association or society,
9 state, territory[,] or federal agency or country and information concerning the
10 applicant's current physical and mental fitness to practice [as a speech-language
11 pathologist or audiologist].

12 2. A blank form for application for license **or registration** renewal shall
13 be mailed to each person licensed **or registered** in this state at the person's last
14 known office or residence address. The failure to mail the form of application or
15 the failure to receive it does not, however, relieve any person of the duty to renew
16 the license **or registration** and pay the fee required by sections 345.010 to
17 345.080 for failure to renew the license **or registration**.

18 3. An applicant for renewal of a license [pursuant to] **or registration**
19 **under** this section shall:

20 (1) Submit an amount established by the board; and

21 (2) Meet any other requirements the board establishes as conditions for
22 license **or registration** renewal, including the demonstration of continued
23 competence to practice the profession for which the license **or registration** is
24 issued. A requirement of continued competence may include, but is not limited
25 to, continuing education, examination, self-evaluation, peer review, performance
26 appraisal or practical simulation.

27 4. If a license **or registration** is suspended pursuant to section 345.065,
28 the license **or registration** expires on the expiration date as established by the
29 board for all licenses **and registrations** issued pursuant to sections 345.010 to
30 345.080. Such license **or registration** may be renewed but does not entitle the
31 licensee to engage in the licensed **or registered** activity or in any other conduct
32 or activity which violates the order of judgment by which the license **or**
33 **registration** was suspended until such license **or registration** has been
34 reinstated.

35 5. If a license **or registration** is revoked on disciplinary grounds
36 pursuant to section 345.065, the license **or registration** expires on the
37 expiration date as established by the board for all licenses **and registrations**
38 issued pursuant to sections 345.010 to 345.080. Such license **or registration**
39 may not be renewed. If a license **or registration** is reinstated after its
40 expiration, the licensee, as a condition of reinstatement, shall pay a
41 reinstatement fee that is equal to the renewal fee in effect on the last regular
42 renewal date immediately preceding the date of reinstatement plus any late fee
43 established by the board.

345.065. 1. The board may refuse to issue any certificate of registration
2 or authority, permit or license required pursuant to sections 345.010 to 345.080
3 for one or any combination of causes stated in subsection 2 of this section. The
4 board shall notify the applicant in writing of the reasons for the refusal and shall
5 advise the applicant of the applicant's right to file a complaint with the
6 administrative hearing commission as provided by chapter 621. As an alternative
7 to a refusal to issue or renew any certificate, registration or authority, the board
8 may, at its discretion, issue a license **or registration** which is subject to
9 probation, restriction or limitation to an applicant for licensure **or registration**
10 for any one or any combination of causes stated in subsection 2 of this
11 section. The board's order of probation, limitation or restriction shall contain a
12 statement of the discipline imposed, the basis therefor, the date such action shall
13 become effective and a statement that the applicant has thirty days to request in
14 writing a hearing before the administrative hearing commission. If the board
15 issues a probationary, limited or restricted license **or registration** to an
16 applicant for licensure **or registration**, either party may file a written petition
17 with the administrative hearing commission within thirty days of the effective
18 date of the probationary, limited or restricted license **or registration** seeking
19 review of the board's determination. If no written request for a hearing is
20 received by the administrative hearing commission within the thirty-day period,
21 the right to seek review of the board's decision shall be considered as waived.

22 2. The board may cause a complaint to be filed with the administrative
23 hearing commission as provided by chapter 621 against any holder of any
24 certificate of registration or authority, permit or license required by sections
25 345.010 to 345.080 or any person who has failed to renew or has surrendered the
26 person's certificate of registration or authority, permit or license for any one or
27 any combination of the following causes:

28 (1) Use of any controlled substance, as defined in chapter 195, or alcoholic
29 beverage to an extent that such use impairs a person's ability to perform the work
30 of any profession licensed or regulated by sections 345.010 to 345.080;

31 (2) The person has been finally adjudicated and found guilty, or entered
32 a plea of guilty or nolo contendere, in a criminal prosecution under the laws of
33 any state or of the United States, for any offense reasonably related to the
34 qualifications, functions or duties of any profession licensed or regulated
35 pursuant to sections 345.010 to 345.080, for any offense an essential element of
36 which is fraud, dishonesty or an act of violence, or for any offense involving moral

37 turpitude, whether or not sentence is imposed;

38 (3) Use of fraud, deception, misrepresentation or bribery in securing any
39 certificate of registration or authority, permit or license issued pursuant to
40 sections 345.010 to 345.080 or in obtaining permission to take any examination
41 given or required pursuant to sections 345.010 to 345.080;

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

44 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation
45 or dishonesty in the performance of the functions or duties of any profession
46 licensed or regulated by sections 345.010 to 345.080;

47 (6) Violation of, or assisting or enabling any person to violate, any
48 provision of sections 345.010 to 345.080, or of any lawful rule or regulation
49 adopted pursuant to sections 345.010 to 345.080;

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

53 (8) Disciplinary action against the holder of a license or other right to
54 practice any profession regulated by sections 345.010 to 345.080 granted by
55 another state, territory, federal agency or country upon grounds for which
56 revocation or suspension is authorized in this state;

57 (9) A person is finally adjudged insane or incompetent by a court of
58 competent jurisdiction;

59 (10) Assisting or enabling any person to practice or offer to practice any
60 profession licensed or regulated by sections 345.010 to 345.080 who is not
61 registered and currently eligible to practice pursuant to sections 345.010 to
62 345.080;

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

65 (12) Failure to display a valid certificate or license if so required by
66 sections 345.010 to 345.080 or any rule promulgated pursuant to sections 345.010
67 to 345.080;

68 (13) Violation of any professional trust or confidence;

69 (14) Fraudulently or deceptively using a license, provisional license or
70 registration;

71 (15) Altering a license, provisional license or registration;

72 (16) Willfully making or filing a false report or record in the practice of

73 speech-language pathology or audiology;

74 (17) Using or promoting or causing the use of any misleading, deceiving,
75 improbable or untruthful advertising matter, promotional literature, testimonial,
76 guarantee, warranty, label, brand, insignia or any other representation;

77 (18) Falsely representing the use or availability of services or advice of a
78 physician;

79 (19) Misrepresenting the applicant, licensee or holder by using the word
80 doctor or any similar word, abbreviation or symbol if the use is not accurate or
81 if the degree was not obtained from a regionally accredited institution;

82 (20) Committing any act of dishonorable, immoral or unprofessional
83 conduct while engaging in the practice of speech-language pathology or audiology;

84 (21) Providing services or promoting the sale of devices, appliances or
85 products to a person who cannot reasonably be expected to benefit from such
86 services, devices, appliances or products.

87 3. After the filing of such complaint, the proceedings shall be conducted
88 in accordance with the provisions of chapter 621. Upon a finding by the
89 administrative hearing commission that the grounds, provided in subsection 2 of
90 this section, for disciplinary action are met, the board may, singly or in
91 combination, censure or place the person named in the complaint on probation on
92 such terms and conditions as the board deems appropriate for a period not to
93 exceed ten years, or may suspend, for a period not to exceed three years, **or**
94 **restrict or limit the person's ability to practice for an indefinite period**
95 **of time**, or revoke the license or registration.

96 4. The board may apply for relief by injunction, without bond, to restrain
97 any person, partnership or corporation from engaging in any act or practice which
98 constitutes an offense pursuant to sections 345.010 to 345.080. The board does
99 not need to allege and prove that there is no adequate remedy at law to obtain
100 an injunction. The members of the board and the advisory commission shall not
101 be individually liable for applying for such relief.

345.080. 1. There is hereby established an "Advisory Commission for
2 Speech-Language Pathologists and Audiologists" which shall guide, advise and
3 make recommendations to the board. The commission shall approve the
4 examination required by section 345.050, and shall assist the board in carrying
5 out the provisions of sections 345.010 to 345.075.

6 2. After August 28, 1997, the commission shall consist of seven members,
7 one of whom shall be a voting public member, appointed by the board of

8 registration for the healing arts. Each member shall be a citizen of the United
9 States and a resident of this state. Three members of the commission shall be
10 licensed speech-language pathologists and three members of the commission shall
11 be licensed audiologists. The public member shall be at the time of appointment
12 a citizen of the United States; a resident of this state for a period of one year and
13 a registered voter; a person who is not and never was a member of any profession
14 licensed or regulated pursuant to sections 345.010 to 345.080 or the spouse of
15 such person; and a person who does not have and never has had a material,
16 financial interest in either the providing of the professional services regulated by
17 sections 345.010 to 345.080, or an activity or organization directly related to any
18 profession licensed or regulated pursuant to sections 345.010 to
19 345.080. Members shall be appointed to serve three-year terms, except as
20 provided in this subsection. Each member of the advisory commission for
21 **[speech] speech-language** pathologists and **[clinical]** audiologists on August 28,
22 1995, shall become a member of the advisory commission for speech-language
23 pathologists and **[clinical]** audiologists and shall continue to serve until the term
24 for which the member was appointed expires. Each member of the advisory
25 commission for speech-language pathologists and **[clinical]** audiologists on August
26 28, 1997, shall become a member of the advisory commission for speech-language
27 pathologists and audiologists and shall continue to serve until the term for which
28 the member was appointed expires. The first public member appointed pursuant
29 to this subsection shall be appointed for a two-year term and the one additional
30 member appointed pursuant to this subsection shall be appointed for a full
31 three-year term. No person **[shall be eligible for reappointment]** who has served
32 as a member of the advisory commission for **[speech] speech-language**
33 pathologists and audiologists **[or as a member of the commission as established**
34 **on August 28, 1995, for a total of six years]** **for two consecutive terms may**
35 **be reappointed to the advisory commission until a lapse of at least two**
36 **years has occurred following the completion of his or her two**
37 **consecutive terms.** The membership of the commission shall reflect the
38 differences in levels of education, work experience and geographic residence. For
39 a licensed speech-language pathologist member, the president of the Missouri
40 Speech-Language-Hearing Association in office at the time, and for a licensed
41 audiologist member, the president of the Missouri Academy of Audiologists in
42 office at the time, in consultation with the president of the Missouri
43 Speech-Language-Hearing Association, shall, at least ninety days prior to the

44 expiration of a term of a commission member, other than the public member, or
45 as soon as feasible after a vacancy on the commission otherwise occurs, submit
46 to the **executive** director of the [division of professional registration] **board** a
47 list of five persons qualified and willing to fill the vacancy in question, with the
48 request and recommendation that the board of registration for the healing arts
49 appoint one of the five persons so listed, and with the list so submitted, the
50 president of the Missouri Speech-Language-Hearing Association or the president
51 of the Missouri Academy of Audiologists in office at the time shall include in his
52 or her letter of transmittal a description of the method by which the names were
53 chosen by that association.

54 3. Notwithstanding any other provision of law to the contrary, any
55 appointed member of the commission shall receive as compensation an amount
56 established by the director of the division of professional registration not to
57 exceed seventy dollars per day for commission business plus actual and necessary
58 expenses. The director of the division of professional registration shall establish
59 by rule guidelines for payment. All staff for the commission shall be provided by
60 the board of registration for the healing arts.

61 4. The commission shall hold an annual meeting at which it shall elect
62 from its membership a chairman and secretary. The commission may hold such
63 additional meetings as may be required in the performance of its duties, provided
64 that notice of every meeting shall be given to each member at least ten days prior
65 to the date of the meeting. A quorum of the commission shall consist of a
66 majority of its members.

67 5. The board of registration for the healing arts may remove a commission
68 member for misconduct, incompetency or neglect of the member's official duties
69 after giving the member written notice of the charges against such member and
70 an opportunity to be heard thereon.

[345.022. 1. Any person in the person's clinical fellowship
2 as defined in sections 345.010 to 345.080 shall hold a provisional
3 license to practice speech-language pathology or audiology. The
4 board may issue a provisional license to an applicant who:

5 (1) Has met the requirements for practicum and academic
6 requirements from an accredited training program as defined in
7 sections 345.010 to 345.080;

8 (2) Submits an application to the board on a form
9 prescribed by the board. Such form shall include a plan for the

10 content and supervision of the clinical fellowship, as well as
11 evidence of good moral and ethical character; and

12 (3) Submits to the board an application fee, as set by the
13 board, for the provisional license.

14 2. A provisional license is effective for one year and may be
15 extended for an additional twelve months only for purposes of
16 completing the postgraduate clinical experience portion of the
17 clinical fellowship; provided that, the applicant has passed the
18 national examination and shall hold a master's degree from an
19 approved training program in his or her area of application.

20 3. Within twelve months of issuance of the provisional
21 license, the applicant shall pass an examination promulgated or
22 approved by the board.

23 4. Within twelve months of issuance of a provisional
24 license, the applicant shall complete the master's or doctoral degree
25 from a program accredited by the Council on Academic
26 Accreditation of the American Speech-Language-Hearing
27 Association or other accrediting agency approved by the board in
28 the area in which licensure is sought.]

✓

FIRST REGULAR SESSION

SENATE BILL NO. 88

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LeVOTA.

Pre-filed December 1, 2014, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0441S.011

AN ACT

To repeal section 105.010, RSMo, and to enact in lieu thereof one new section relating to the term of office for appointed officers.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 105.010, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 105.010, to read as follows:

105.010. All officers elected [or appointed] by the authority of the laws of
2 this state shall hold their offices until their successors are elected [or appointed],
3 commissioned, and qualified. **All officers appointed by the authority of the**
4 **laws of this state shall hold office until their term ends. If no successor**
5 **is appointed, then the office shall remain vacant until such time as a**
6 **successor is appointed.**

✓

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

FIRST REGULAR SESSION

SENATE BILL NO. 95

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LeVOTA.

Pre-filed December 1, 2014, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0437S.011

AN ACT

To repeal section 324.001, RSMo, and to enact in lieu thereof one new section relating to procedures under the division of professional registration.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 324.001, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 324.001, to read as follows:

324.001. 1. For the purposes of this section, the following terms mean:

2 (1) "Department", the department of insurance, financial institutions and
3 professional registration;

4 (2) "Director", the director of the division of professional registration; and

5 (3) "Division", the division of professional registration.

6 2. There is hereby established a "Division of Professional Registration"
7 assigned to the department of insurance, financial institutions and professional
8 registration as a type III transfer, headed by a director appointed by the governor
9 with the advice and consent of the senate. All of the general provisions,
10 definitions and powers enumerated in section 1 of the Omnibus State
11 Reorganization Act of 1974 and Executive Order 06-04 shall apply to this
12 department and its divisions, agencies, and personnel.

13 3. The director of the division of professional registration shall promulgate
14 rules and regulations which designate for each board or commission assigned to
15 the division the renewal date for licenses or certificates. After the initial
16 establishment of renewal dates, no director of the division shall promulgate a rule
17 or regulation which would change the renewal date for licenses or certificates if
18 such change in renewal date would occur prior to the date on which the renewal
19 date in effect at the time such new renewal date is specified next occurs. Each

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

20 board or commission shall by rule or regulation establish licensing periods of one,
21 two, or three years. Registration fees set by a board or commission shall be
22 effective for the entire licensing period involved, and shall not be increased
23 during any current licensing period. Persons who are required to pay their first
24 registration fees shall be allowed to pay the pro rata share of such fees for the
25 remainder of the period remaining at the time the fees are paid. Each board or
26 commission shall provide the necessary forms for initial registration, and
27 thereafter the director may prescribe standard forms for renewal of licenses and
28 certificates. Each board or commission shall by rule and regulation require each
29 applicant to provide the information which is required to keep the board's records
30 current. Each board or commission shall have the authority to collect and
31 analyze information required to support workforce planning and policy
32 development. Such information shall not be publicly disclosed so as to identify
33 a specific health care provider, as defined in section 376.1350. Each board or
34 commission shall issue the original license or certificate.

35 4. The division shall provide clerical and other staff services relating to
36 the issuance and renewal of licenses for all the professional licensing and
37 regulating boards and commissions assigned to the division. The division shall
38 perform the financial management and clerical functions as they each relate to
39 issuance and renewal of licenses and certificates. "Issuance and renewal of
40 licenses and certificates" means the ministerial function of preparing and
41 delivering licenses or certificates, and obtaining material and information for the
42 board or commission in connection with the renewal thereof. It does not include
43 any discretionary authority with regard to the original review of an applicant's
44 qualifications for licensure or certification, or the subsequent review of licensee's
45 or certificate holder's qualifications, or any disciplinary action contemplated
46 against the licensee or certificate holder. The division may develop and
47 implement microfilming systems and automated or manual management
48 information systems.

49 5. The director of the division shall maintain a system of accounting and
50 budgeting, in cooperation with the director of the department, the office of
51 administration, and the state auditor's office, to ensure proper charges are made
52 to the various boards for services rendered to them. The general assembly shall
53 appropriate to the division and other state agencies from each board's funds
54 moneys sufficient to reimburse the division and other state agencies for all
55 services rendered and all facilities and supplies furnished to that board.

56 6. For accounting purposes, the appropriation to the division and to the
57 office of administration for the payment of rent for quarters provided for the
58 division shall be made from the "Professional Registration Fees Fund", which is
59 hereby created, and is to be used solely for the purpose defined in subsection 5
60 of this section. The fund shall consist of moneys deposited into it from each
61 board's fund. Each board shall contribute a prorated amount necessary to fund
62 the division for services rendered and rent based upon the system of accounting
63 and budgeting established by the director of the division as provided in
64 subsection 5 of this section. Transfers of funds to the professional registration
65 fees fund shall be made by each board on July first of each year; provided,
66 however, that the director of the division may establish an alternative date or
67 dates of transfers at the request of any board. Such transfers shall be made until
68 they equal the prorated amount for services rendered and rent by the
69 division. The provisions of section 33.080 to the contrary notwithstanding, money
70 in this fund shall not be transferred and placed to the credit of general revenue.

71 7. The director of the division shall be responsible for collecting and
72 accounting for all moneys received by the division or its component agencies. Any
73 money received by a board or commission shall be promptly given, identified by
74 type and source, to the director. The director shall keep a record by board and
75 state accounting system classification of the amount of revenue the director
76 receives. The director shall promptly transmit all receipts to the department of
77 revenue for deposit in the state treasury to the credit of the appropriate
78 fund. The director shall provide each board with all relevant financial
79 information in a timely fashion. Each board shall cooperate with the director by
80 providing necessary information.

81 8. All educational transcripts, test scores, complaints, investigatory
82 reports, and information pertaining to any person who is an applicant or licensee
83 of any agency assigned to the division of professional registration by statute or
84 by the department are confidential and may not be disclosed to the public or any
85 member of the public, except with the written consent of the person whose records
86 are involved. The agency which possesses the records or information shall
87 disclose the records or information if the person whose records or information is
88 involved has consented to the disclosure. Each agency is entitled to the
89 attorney-client privilege and work-product privilege to the same extent as any
90 other person. Provided, however, that any board may disclose confidential
91 information without the consent of the person involved in the course of voluntary

92 interstate exchange of information, or in the course of any litigation concerning
93 that person, or pursuant to a lawful request, or to other administrative or law
94 enforcement agencies acting within the scope of their statutory authority, **or**
95 **when the information is requested by a member of the general assembly**
96 **or his or her employee.** Information regarding identity, including names and
97 addresses, registration, and currency of the license of the persons possessing
98 licenses to engage in a professional occupation and the names and addresses of
99 applicants for such licenses is not confidential information.

100 9. Any deliberations conducted and votes taken in rendering a final
101 decision after a hearing before an agency assigned to the division shall be closed
102 to the parties and the public. Once a final decision is rendered, that decision
103 shall be made available to the parties and the public.

104 10. A compelling governmental interest shall be deemed to exist for the
105 purposes of section 536.025 for licensure fees to be reduced by emergency rule, if
106 the projected fund balance of any agency assigned to the division of professional
107 registration is reasonably expected to exceed an amount that would require
108 transfer from that fund to general revenue.

109 11. (1) The following boards and commissions are assigned by specific
110 type transfers to the division of professional registration: Missouri state board of
111 accountancy, chapter 326; board of cosmetology and barber examiners, chapters
112 328 and 329; Missouri board for architects, professional engineers, professional
113 land surveyors and landscape architects, chapter 327; Missouri state board of
114 chiropractic examiners, chapter 331; state board of registration for the healing
115 arts, chapter 334; Missouri dental board, chapter 332; state board of embalmers
116 and funeral directors, chapter 333; state board of optometry, chapter 336;
117 Missouri state board of nursing, chapter 335; board of pharmacy, chapter 338;
118 state board of podiatric medicine, chapter 330; Missouri real estate appraisers
119 commission, chapter 339; and Missouri veterinary medical board, chapter
120 340. The governor shall appoint members of these boards by and with the advice
121 and consent of the senate.

122 (2) The boards and commissions assigned to the division shall exercise all
123 their respective statutory duties and powers, except those clerical and other staff
124 services involving collecting and accounting for moneys and financial
125 management relating to the issuance and renewal of licenses, which services shall
126 be provided by the division, within the appropriation therefor. Nothing herein
127 shall prohibit employment of professional examining or testing services from

128 professional associations or others as required by the boards or commissions on
129 contract. Nothing herein shall be construed to affect the power of a board or
130 commission to expend its funds as appropriated. However, the division shall
131 review the expense vouchers of each board. The results of such review shall be
132 submitted to the board reviewed and to the house and senate appropriations
133 committees annually.

134 (3) Notwithstanding any other provisions of law, the director of the
135 division shall exercise only those management functions of the boards and
136 commissions specifically provided in the Reorganization Act of 1974, and those
137 relating to the allocation and assignment of space, personnel other than board
138 personnel, and equipment.

139 (4) "Board personnel", as used in this section or chapters [317,] 326, 327,
140 328, 329, 330, 331, 332, 333, 334, 335, 336, [337,] 338, 339, [340,] and 345, shall
141 mean personnel whose functions and responsibilities are in areas not related to
142 the clerical duties involving the issuance and renewal of licenses, to the collecting
143 and accounting for moneys, or to financial management relating to issuance and
144 renewal of licenses; specifically included are executive [secretaries] **directors** (or
145 comparable positions), consultants, inspectors, investigators, counsel, and
146 secretarial support staff for these positions; and such other positions as are
147 established and authorized by statute for a particular board or
148 commission. Boards and commissions may employ legal counsel, if authorized by
149 law, and temporary personnel if the board is unable to meet its responsibilities
150 with the employees authorized above. Any board or commission which hires
151 temporary employees shall annually provide the division director and the
152 appropriation committees of the general assembly with a complete list of all
153 persons employed in the previous year, the length of their employment, the
154 amount of their remuneration, and a description of their responsibilities.

155 (5) Board personnel for each board or commission shall be employed by
156 and serve at the pleasure of the board or commission, shall be supervised as the
157 board or commission designates, and shall have their duties and compensation
158 prescribed by the board or commission, within appropriations for that purpose,
159 except that compensation for board personnel shall not exceed that established
160 for comparable positions as determined by the board or commission pursuant to
161 the job and pay plan of the department of insurance, financial institutions and
162 professional registration. Nothing herein shall be construed to permit salaries
163 for any board personnel to be lowered except by board action.

164 12. All the powers, duties, and functions of the division of athletics,
165 chapter 317, and others, are assigned by type I transfer to the division of
166 professional registration.

167 13. Wherever the laws, rules, or regulations of this state make reference
168 to the "division of professional registration of the department of economic
169 development", such references shall be deemed to refer to the division of
170 professional registration.

171 14. **Any board personnel who functions as a full-time equivalent**
172 **executive director or comparable position on a board or commission**
173 **assigned to the division shall be limited to serving as an executive**
174 **director or comparable position on one board or commission assigned**
175 **to the division, or a combination of boards or commissions assigned to**
176 **the division when the total number of licensees under the authority of**
177 **the boards or commissions is no more than two thousand. A person**
178 **functioning as a full-time equivalent executive director or comparable**
179 **position on a board or commission may still serve on multiple boards**
180 **or commissions as board personnel in any other capacity other than an**
181 **executive director or comparable position.**

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FIRST REGULAR SESSION

SENATE BILL NO. 103

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LeVOTA.

Pre-filed December 1, 2014, and ordered printed.

ADRIANE D. CROUSE, Secretary.

0534S.011

AN ACT

To repeal section 324.001, RSMo, and to enact in lieu thereof one new section relating to the disclosure of licensee information under the division of professional registration.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 324.001, RSMo, is repealed and one new section
2 enacted in lieu thereof, to be known as section 324.001, to read as follows:

324.001. 1. For the purposes of this section, the following terms mean:

2 (1) "Department", the department of insurance, financial institutions and
3 professional registration;

4 (2) "Director", the director of the division of professional registration; and

5 (3) "Division", the division of professional registration.

6 2. There is hereby established a "Division of Professional Registration"
7 assigned to the department of insurance, financial institutions and professional
8 registration as a type III transfer, headed by a director appointed by the governor
9 with the advice and consent of the senate. All of the general provisions,
10 definitions and powers enumerated in section 1 of the Omnibus State
11 Reorganization Act of 1974 and Executive Order 06-04 shall apply to this
12 department and its divisions, agencies, and personnel.

13 3. The director of the division of professional registration shall promulgate
14 rules and regulations which designate for each board or commission assigned to
15 the division the renewal date for licenses or certificates. After the initial
16 establishment of renewal dates, no director of the division shall promulgate a rule
17 or regulation which would change the renewal date for licenses or certificates if
18 such change in renewal date would occur prior to the date on which the renewal

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 date in effect at the time such new renewal date is specified next occurs. Each
20 board or commission shall by rule or regulation establish licensing periods of one,
21 two, or three years. Registration fees set by a board or commission shall be
22 effective for the entire licensing period involved, and shall not be increased
23 during any current licensing period. Persons who are required to pay their first
24 registration fees shall be allowed to pay the pro rata share of such fees for the
25 remainder of the period remaining at the time the fees are paid. Each board or
26 commission shall provide the necessary forms for initial registration, and
27 thereafter the director may prescribe standard forms for renewal of licenses and
28 certificates. Each board or commission shall by rule and regulation require each
29 applicant to provide the information which is required to keep the board's records
30 current. Each board or commission shall have the authority to collect and
31 analyze information required to support workforce planning and policy
32 development. Such information shall not be publicly disclosed so as to identify
33 a specific health care provider, as defined in section 376.1350. Each board or
34 commission shall issue the original license or certificate.

35 4. The division shall provide clerical and other staff services relating to
36 the issuance and renewal of licenses for all the professional licensing and
37 regulating boards and commissions assigned to the division. The division shall
38 perform the financial management and clerical functions as they each relate to
39 issuance and renewal of licenses and certificates. "Issuance and renewal of
40 licenses and certificates" means the ministerial function of preparing and
41 delivering licenses or certificates, and obtaining material and information for the
42 board or commission in connection with the renewal thereof. It does not include
43 any discretionary authority with regard to the original review of an applicant's
44 qualifications for licensure or certification, or the subsequent review of licensee's
45 or certificate holder's qualifications, or any disciplinary action contemplated
46 against the licensee or certificate holder. The division may develop and
47 implement microfilming systems and automated or manual management
48 information systems.

49 5. The director of the division shall maintain a system of accounting and
50 budgeting, in cooperation with the director of the department, the office of
51 administration, and the state auditor's office, to ensure proper charges are made
52 to the various boards for services rendered to them. The general assembly shall
53 appropriate to the division and other state agencies from each board's funds
54 moneys sufficient to reimburse the division and other state agencies for all

55 services rendered and all facilities and supplies furnished to that board.

56 6. For accounting purposes, the appropriation to the division and to the
57 office of administration for the payment of rent for quarters provided for the
58 division shall be made from the "Professional Registration Fees Fund", which is
59 hereby created, and is to be used solely for the purpose defined in subsection 5
60 of this section. The fund shall consist of moneys deposited into it from each
61 board's fund. Each board shall contribute a prorated amount necessary to fund
62 the division for services rendered and rent based upon the system of accounting
63 and budgeting established by the director of the division as provided in
64 subsection 5 of this section. Transfers of funds to the professional registration
65 fees fund shall be made by each board on July first of each year; provided,
66 however, that the director of the division may establish an alternative date or
67 dates of transfers at the request of any board. Such transfers shall be made until
68 they equal the prorated amount for services rendered and rent by the
69 division. The provisions of section 33.080 to the contrary notwithstanding, money
70 in this fund shall not be transferred and placed to the credit of general revenue.

71 7. The director of the division shall be responsible for collecting and
72 accounting for all moneys received by the division or its component agencies. Any
73 money received by a board or commission shall be promptly given, identified by
74 type and source, to the director. The director shall keep a record by board and
75 state accounting system classification of the amount of revenue the director
76 receives. The director shall promptly transmit all receipts to the department of
77 revenue for deposit in the state treasury to the credit of the appropriate
78 fund. The director shall provide each board with all relevant financial
79 information in a timely fashion. Each board shall cooperate with the director by
80 providing necessary information.

81 8. All educational transcripts, test scores, complaints, investigatory
82 reports, and information pertaining to any person who is an applicant or licensee
83 of any agency assigned to the division of professional registration by statute or
84 by the department are confidential and may not be disclosed to the public or any
85 member of the public, except with the written consent of the person whose records
86 are involved. The agency which possesses the records or information shall
87 disclose the records or information if the person whose records or information is
88 involved has consented to the disclosure. Each agency is entitled to the
89 attorney-client privilege and work-product privilege to the same extent as any
90 other person. Provided, however, that any board may disclose confidential

91 information without the consent of the person involved in the course of voluntary
92 interstate exchange of information, or in the course of any litigation concerning
93 that person, or pursuant to a lawful request, or to other administrative or law
94 enforcement agencies acting within the scope of their statutory authority, **or**
95 **when the information is requested by a member of the general assembly**
96 **or his or her employee.** Information regarding identity, including names and
97 addresses, registration, and currency of the license of the persons possessing
98 licenses to engage in a professional occupation and the names and addresses of
99 applicants for such licenses is not confidential information.

100 9. Any deliberations conducted and votes taken in rendering a final
101 decision after a hearing before an agency assigned to the division shall be closed
102 to the parties and the public. Once a final decision is rendered, that decision
103 shall be made available to the parties and the public.

104 10. A compelling governmental interest shall be deemed to exist for the
105 purposes of section 536.025 for licensure fees to be reduced by emergency rule, if
106 the projected fund balance of any agency assigned to the division of professional
107 registration is reasonably expected to exceed an amount that would require
108 transfer from that fund to general revenue.

109 11. (1) The following boards and commissions are assigned by specific
110 type transfers to the division of professional registration: Missouri state board of
111 accountancy, chapter 326; board of cosmetology and barber examiners, chapters
112 328 and 329; Missouri board for architects, professional engineers, professional
113 land surveyors and landscape architects, chapter 327; Missouri state board of
114 chiropractic examiners, chapter 331; state board of registration for the healing
115 arts, chapter 334; Missouri dental board, chapter 332; state board of embalmers
116 and funeral directors, chapter 333; state board of optometry, chapter 336;
117 Missouri state board of nursing, chapter 335; board of pharmacy, chapter 338;
118 state board of podiatric medicine, chapter 330; Missouri real estate appraisers
119 commission, chapter 339; and Missouri veterinary medical board, chapter
120 340. The governor shall appoint members of these boards by and with the advice
121 and consent of the senate.

122 (2) The boards and commissions assigned to the division shall exercise all
123 their respective statutory duties and powers, except those clerical and other staff
124 services involving collecting and accounting for moneys and financial
125 management relating to the issuance and renewal of licenses, which services shall
126 be provided by the division, within the appropriation therefor. Nothing herein

127 shall prohibit employment of professional examining or testing services from
128 professional associations or others as required by the boards or commissions on
129 contract. Nothing herein shall be construed to affect the power of a board or
130 commission to expend its funds as appropriated. However, the division shall
131 review the expense vouchers of each board. The results of such review shall be
132 submitted to the board reviewed and to the house and senate appropriations
133 committees annually.

134 (3) Notwithstanding any other provisions of law, the director of the
135 division shall exercise only those management functions of the boards and
136 commissions specifically provided in the Reorganization Act of 1974, and those
137 relating to the allocation and assignment of space, personnel other than board
138 personnel, and equipment.

139 (4) "Board personnel", as used in this section or chapters [317,] 326, 327,
140 328, 329, 330, 331, 332, 333, 334, 335, 336, [337,] 338, 339, [340,] and 345, shall
141 mean personnel whose functions and responsibilities are in areas not related to
142 the clerical duties involving the issuance and renewal of licenses, to the collecting
143 and accounting for moneys, or to financial management relating to issuance and
144 renewal of licenses; specifically included are executive secretaries (or comparable
145 positions), consultants, inspectors, investigators, counsel, and secretarial support
146 staff for these positions; and such other positions as are established and
147 authorized by statute for a particular board or commission. Boards and
148 commissions may employ legal counsel, if authorized by law, and temporary
149 personnel if the board is unable to meet its responsibilities with the employees
150 authorized above. Any board or commission which hires temporary employees
151 shall annually provide the division director and the appropriation committees of
152 the general assembly with a complete list of all persons employed in the previous
153 year, the length of their employment, the amount of their remuneration, and a
154 description of their responsibilities.

155 (5) Board personnel for each board or commission shall be employed by
156 and serve at the pleasure of the board or commission, shall be supervised as the
157 board or commission designates, and shall have their duties and compensation
158 prescribed by the board or commission, within appropriations for that purpose,
159 except that compensation for board personnel shall not exceed that established
160 for comparable positions as determined by the board or commission pursuant to
161 the job and pay plan of the department of insurance, financial institutions and
162 professional registration. Nothing herein shall be construed to permit salaries

163 for any board personnel to be lowered except by board action.

164 12. All the powers, duties, and functions of the division of athletics,
165 chapter 317, and others, are assigned by type I transfer to the division of
166 professional registration.

167 13. Wherever the laws, rules, or regulations of this state make reference
168 to the "division of professional registration of the department of economic
169 development", such references shall be deemed to refer to the division of
170 professional registration.

FIRST REGULAR SESSION

SENATE BILL NO. 348

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAEFER.

Read 1st time January 29, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1763S.01I

AN ACT

Relating to the transfer of funds to the general revenue fund, with an emergency clause.

Be it enacted by the General Assembly of the State of Missouri, as follows:

**Section 1. Beginning July 1, 2015, the balances of all funds
2 created by statute and administratively created by the office of
3 administration that maintain an annual excess fund balance, with the
4 exception of funds for the payment of interest and principal for any
5 bonded indebtedness, shall be transferred and credited to the state
6 general revenue fund.**

Section A. Because of the need to increase access to certain state revenue
2 in light of the current fiscal crisis, section A of this act is deemed necessary for
3 the immediate preservation of the public health, welfare, peace and safety, and
4 is hereby declared to be an emergency act within the meaning of the constitution,
5 and section A of this act shall be in full force and effect upon its passage and
6 approval.

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FIRST REGULAR SESSION

SENATE BILL NO. 363

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR PARSON.

Read 1st time February 2, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1371S.02I

AN ACT

To repeal sections 621.145 and 621.189, RSMo, and to enact in lieu thereof seven new sections relating to the board of administrative appeals.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 621.145 and 621.189, RSMo, are repealed and seven
2 new sections enacted in lieu thereof, to be known as sections 536.250, 536.255,
3 536.260, 536.265, 536.270, 621.145, and 621.189, to read as follows:

536.250. 1. **There is hereby established within the office of**
2 **administration the "Board of Administrative Appeals".**

3 2. **The board of administrative appeals shall consist of five voting**
4 **nonattorney members of the public, which shall include two members**
5 **appointed by the speaker of the house of representatives, two members**
6 **appointed by the president pro tempore of the senate, and one member**
7 **appointed by the governor, with the advice and consent of the**
8 **senate. Each member of the board shall be a citizen of the United**
9 **States, a resident of this state for at least one year and a registered**
10 **voter. Members shall serve on the board until a successor is appointed.**

11 3. **Beginning with the initial appointments made after August 28,**
12 **2015, two members shall be appointed for four years, two members for**
13 **five years, and one member for six years. Thereafter, all members shall**
14 **be appointed to serve six year terms, and no member shall serve more**
15 **than one term or qualify for reappointment. A vacancy in the office of**
16 **a member shall be filled by appointment for the remainder of the**
17 **unexpired term by the respective appointing authority who initially**
18 **appointed the member.**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 4. The appointing authority may remove a member appointed by
20 that authority for inefficiency, neglect of duty, or misconduct in office,
21 giving to the member a copy of the charges and an opportunity of being
22 publicly heard in person or by counsel, in the member's own defense,
23 upon not less than ten days' notice. If such member shall be removed,
24 the appointing authority shall file in the office of the secretary of state
25 a complete statement of all charges made against such member, and the
26 findings thereon, together with a complete record of the proceedings.

27 5. The board of administrative appeals shall hold an annual
28 meeting at which it shall elect from its membership a chairperson and
29 a vice chairperson. The board may hold such additional meetings as
30 may be required in the performance of its duties. A quorum of the
31 board shall consist of a majority of its voting members.

32 6. The board of administrative appeals shall keep records of its
33 official acts, and certified copies of any such records attested by a
34 designee of the board shall be received as evidence in all courts to the
35 same extent as the board's original records would be received.

36 7. The board shall have the authority to promulgate rules under
37 chapter 536 as it deems necessary to implement sections 536.250 to
38 536.270, including rules of procedure for the conduct of the proceedings
39 before it. Any rule or portion of a rule, as that term is defined in
40 section 536.010, that is created under the authority delegated in this
41 section shall become effective only if it complies with and is subject to
42 all of the provisions of chapter 536, and, if applicable, section
43 536.028. This section and chapter 536 are nonseverable and if any of
44 the powers vested with the general assembly pursuant to chapter 536,
45 to review, to delay the effective date, or to disapprove and annul a rule
46 are subsequently held unconstitutional, then the grant of rulemaking
47 authority and any rule proposed or adopted after August 28, 2015, shall
48 be invalid and void.

 536.255. There is hereby established in the state treasury the
2 "Board of Administrative Appeals Fund". The fund shall be
3 administered by the board of administrative appeals. The state
4 treasurer shall be custodian of the fund. The fund shall consist of all
5 moneys that may be appropriated to it by the general assembly and
6 may also include any gifts, contributions, grants, or bequests received
7 from federal, state, private, or other sources. In accordance with

8 sections 30.170 and 30.180, the state treasurer may approve
9 disbursements. The fund shall be a dedicated fund and moneys in the
10 fund shall be used solely for the payment of expenditures actually
11 incurred by the board of administrative appeals. Notwithstanding the
12 provisions of section 33.080, to the contrary, money remaining in the
13 fund at the end of the biennium shall not revert to the credit of the
14 general revenue fund. The state treasurer shall invest moneys in the
15 fund in the same manner as other funds are invested. Any interest and
16 moneys earned on such investments shall be credited to the fund.

536.260. 1. The principal office of the board of administrative
2 appeals shall be in the city of Jefferson City. The office required by
3 this subsection shall be provided and assigned by the board of public
4 buildings. The offices of the board of administrative appeals shall be
5 open during business hours on all days except Saturdays, Sundays, and
6 legal holidays, and one or more responsible persons, designated by the
7 board, shall be on duty at all times.

8 2. The board of administrative appeals may hire additional
9 employees as may be needed to carry out the functions and purposes of
10 the board.

11 3. All salaries and expenses of the board shall be audited and
12 allowed by the commissioner of administration and paid by the state
13 treasurer upon warrants out of the fund as provided in section 536.255.

536.265. 1. The board of administrative appeals shall have an
2 independent technical advisory staff of up to six full-time
3 employees. The advisory staff shall have expertise in accounting,
4 economics, finance, law, public policy, or any other subject which
5 would aid the board in fulfilling its duties.

6 2. In addition, each board member shall also have the authority
7 to retain one personal advisor, who shall be deemed a member of the
8 technical advisory staff. The personal advisors will serve at the
9 pleasure of the individual board member whom they serve and shall
10 possess expertise in one or more of the following fields: accounting,
11 economics, finance, law, public policy, or any other subject which
12 would aid the board member in fulfilling his or her duties.

13 3. It shall be the duty of the technical advisory staff to render
14 advice and assistance to the board members on technical matters
15 within their respective areas of expertise that may arise during the

16 course of proceedings before the board.

17 4. The technical advisory staff shall also update the board
18 periodically on developments and trends in administrative law and
19 regulations used by agencies in this state and other jurisdictions.

20 5. The technical advisory staff shall never be a party to any case
21 before the board.

536.270. 1. Any person aggrieved by a final decision in a
2 contested case may file an appeal with the board of administrative
3 appeals, and shall be entitled to a hearing before the board after
4 exhausting all other administrative remedies as provided by law,
5 including an appeal to the administrative hearing commission. The
6 person shall file the petition with the board within thirty days after the
7 decision is delivered.

8 2. Decisions of the board shall be binding and subject to appeal
9 to a court with competent jurisdiction. The procedures established
10 under chapter 536 shall apply to any hearings and determinations
11 under this section.

12 3. Any hearing or proceeding shall only be conducted when a
13 quorum of the board is present. The method of assignment of petitions,
14 appeals, or other cases may be determined by rule or other agreement
15 between the board members. Formal procedural requirements shall not
16 be required of any complaint filed pursuant to any provision of law
17 relating to the board of administrative appeals, and substantial
18 compliance with the requirements of the law relating to the board of
19 administrative appeals shall be deemed sufficient; however, all
20 testimony in any hearing shall be under oath and a board member may
21 administer oaths or affirmations to any witness. It shall not be
22 necessary for a person to be represented by counsel in order to
23 institute any such proceeding, and the board shall adopt rules and
24 procedures which shall facilitate the filing and processing of such
25 complaints without formal representation. The board may stay or
26 suspend any action of an administrative agency pending the board's
27 findings and determination in the cause. The board may condition the
28 issuance of such order upon the posting of bond or other security in
29 such amount as the board deems necessary to adequately protect the
30 public interest.

621.145. Except as otherwise provided by law, all final decisions of the

2 administrative hearing commission shall be subject to [judicial] review **by the**
3 **board of administrative appeals** as provided in and subject to the provisions
4 of sections [536.100 to 536.140] **536.250 to 536.270**, except that in cases where
5 a disciplinary order may be entered by the agency, no decision of the
6 administrative hearing commission shall be deemed final until such order is
7 entered. For purposes of review, the action of the commission and the order, if
8 any, of the agency shall be treated as one decision. The right to [judicial] review
9 as provided herein shall also be available to administrative agencies aggrieved
10 by a final decision of the administrative hearing commission.

621.189. Final decisions of the administrative hearing commission in
2 cases arising pursuant to the provisions of section 621.050 shall be subject to
3 review pursuant to a petition for review to be filed [in the court of appeals in the
4 district in which the hearing, or any part thereof, is held or, where
5 constitutionally required or ordered by transfer, to the supreme court, and by
6 delivery of copies of the petition to each party of record, within thirty days after
7 the mailing or delivery of the final decision and notice thereof in such a
8 case. Review under this section shall be exclusive, and decisions of the
9 administrative hearing commission reviewable pursuant to this section shall not
10 be reviewable in any other proceeding, and no other official or court shall have
11 power to review any such decision by an action in the nature of mandamus or
12 otherwise except pursuant to the provisions of this section. The party seeking
13 review shall be responsible for the filing of the transcript and record of all
14 proceedings before the administrative hearing commission in the case with the
15 appropriate court of appeals] **with the board of administrative appeals**
16 **pursuant to sections 536.250 to 536.270.**

✓

FIRST REGULAR SESSION

SENATE BILL NO. 459

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LIBLA.

Read 1st time February 18, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2119S.011

AN ACT

To repeal sections 1.310 and 536.205, RSMo, and to enact in lieu thereof four new sections relating to administrative rulemaking.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 1.310 and 536.205, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 1.310, 536.205, 536.225,
3 and 536.360, to read as follows:

1.310. 1. This section shall be known and may be cited as the "Big
2 Government Get Off My Back Act".

3 2. Any federal mandate compelling the state to enact, enforce, or
4 administer a federal regulatory program shall be subject to authorization through
5 appropriation or statutory enactment.

6 3. No user fees imposed by the state of Missouri shall increase for the
7 [five-year] **ten-year** period beginning on August 28, 2009, unless such fee
8 increase is to implement a federal program administered by the state or is a
9 result of an act of the general assembly. For purposes of this section, "user fee"
10 does not include employer taxes or contributions, assessments to offset the cost
11 of examining insurance or financial institutions, any health-related taxes
12 approved by the Center for Medicare and Medicaid Services, or any professional
13 or occupational licensing fees set by a board of members of that profession or
14 occupation and required by statute to be set at a level not to exceed the cost of
15 administration.

16 4. For the [five-year] **ten-year** period beginning on August 28, 2009, any
17 state agency proposing a rule as that term is defined in subdivision (6) of section
18 536.010, other than any rule promulgated as a result of a federal mandate, or to

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 implement a federal program administered by the state or an act of the general
20 assembly, shall either:

21 (1) Certify that the rule does not have an adverse impact on small
22 businesses consisting of fewer than fifty full- or part-time employees; or

23 (2) Certify that the rule is necessary to protect the life, health or safety
24 of the public; or

25 (3) Exempt any small business consisting of fewer than fifty full- or
26 part-time employees from coverage.

27 5. The provisions of this section shall not be construed to prevent or
28 otherwise restrict an agency from promulgating emergency rules pursuant to
29 section 536.025, or from rescinding any existing rule pursuant to section 536.021.

536.205. 1. Any state agency filing a notice of proposed rulemaking, as
2 required by section 536.021, whereby the adoption, amendment, or rescission of
3 the rule would require an expenditure of money by or a reduction in income for
4 any person, firm, corporation, association, partnership, proprietorship or business
5 entity of any kind or character which is estimated to cost more than five hundred
6 dollars in the aggregate, shall at the time of filing the notice with the secretary
7 of state file a fiscal note containing the following information and estimates of
8 cost:

9 (1) An estimate of the number of persons, firms, corporations,
10 associations, partnerships, proprietorships or business entities of any kind or
11 character by class which would likely be affected by the adoption of the proposed
12 rule, amendment or rescission of a rule;

13 (2) A classification by types of the business entities in such manner as to
14 give reasonable notice of the number and kind of businesses which would likely
15 be affected;

16 (3) An estimate in the aggregate as to the cost of compliance with the
17 rule, amendment or rescission of a rule by the affected persons, firms,
18 corporations, associations, partnerships, proprietorships or business entities of
19 any kind or character.

20 **2. Any person, firm, corporation, association, partnership,**
21 **proprietorship, or business entity of any kind or character financially**
22 **impacted by the adoption, amendment, or rescission of a rule due to the**
23 **requirement of an expenditure of money or by a reduction in income,**
24 **may, within one calendar year after the implementation of the rule, file**
25 **a statement of actual cost to such person or entity with the state**

26 agency which promulgated the adoption, amendment, or rescission of
27 the rule and with the joint committee on administrative rules. The
28 state agency shall compile such statements of actual cost and if at the
29 end of the first full fiscal year after the implementation of the rule,
30 amendment, or rescission the cost to all affected entities has exceeded
31 by ten percent or more the estimated cost in the fiscal note or has
32 exceeded five hundred dollars if an affidavit has been filed stating the
33 proposed change will cost less than five hundred dollars, the original
34 estimated cost together with the actual cost during the first fiscal year
35 shall be published by the adopting agency in the Missouri Register
36 within ninety days after the close of the fiscal year. Such costs shall be
37 determined by the adopting agency. If the adopting agency fails to
38 publish such costs as required by this section, the rule, amendment, or
39 rescission shall be void and of no further force or effect.

40 3. The fiscal note shall be published in the Missouri Register
41 contemporary with and adjacent to the notice of proposed rulemaking, and failure
42 to do so shall render any rule promulgated thereunder void and of no force and
43 effect.

44 [3.] 4. Any challenge to a rule based on failure to meet the requirements
45 of this section shall be commenced no later than five years after the effective date
46 of the rule.

47 [4.] 5. In the event that any rule published prior to June 3, 1994, shall
48 have failed to provide a fiscal note as required by this section, such agency shall
49 publish the required fiscal note prior to August 28, 1995, and in that event the
50 rule shall not be void. Any such rule shall be deemed to have met the
51 requirements of this section until that date.

536.225. Any rule, amendment, or rescission for which a
2 statement of actual cost is published in the Missouri Register, pursuant
3 to section 536.200 or 536.205, shall expire one year after the publication
4 of the statement of actual cost. The secretary of state shall publish
5 notice of such expiration as a part of the rule in the code of state
6 regulations. If a state agency desires for such rule, amendment, or
7 rescission to remain in effect, the rule shall be repromulgated pursuant
8 to this chapter.

536.360. 1. Any state agency filing a notice of proposed
2 rulemaking, as required by section 536.021, whereby the adoption,
3 amendment, or rescission of a rule would affect business, as defined in

4 section 144.010, the state agency shall meet the following filing
5 requirements in addition to any other requirements existing in law:

6 (1) If the adoption, amendment, or rescission of the rule has any
7 fiscal impact on businesses, in addition to the fiscal note requirements
8 contained in section 536.205, the agency shall also provide in the fiscal
9 note:

10 (a) A description of the business entities that will be required to
11 comply with the proposed rules;

12 (b) Specific examples of the fiscal impact on business;

13 (c) Whether additional training of business employees and the
14 level of such training will be necessary to implement the provisions of
15 the rule; and

16 (d) The monetary costs and benefits to the implementing agency
17 and other agencies directly affected;

18 (2) Designate staff or an ombudsman to address business
19 concerns regarding implementation of the rule;

20 (3) Create provisions which will delay implementation of the new
21 provisions for a minimum of one year for business entities currently in
22 existence.

23 2. Any state agency which promulgates a rule affecting business
24 and containing a penalty or fine shall be prohibited from enforcing
25 such fine or penalty for the first year after promulgation. Further, the
26 state agency shall be required to work with businesses affected by such
27 fine or penalty to evaluate the reason for the violation, suggest
28 solutions to remediate the violation and educate businesses to avoid
29 future violations.

✓

FIRST REGULAR SESSION

SENATE BILL NO. 536

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHAAF.

Read 1st time February 25, 2015, and ordered printed.

ADRIANE D. CROUSE, Secretary.

2390S.011

AN ACT

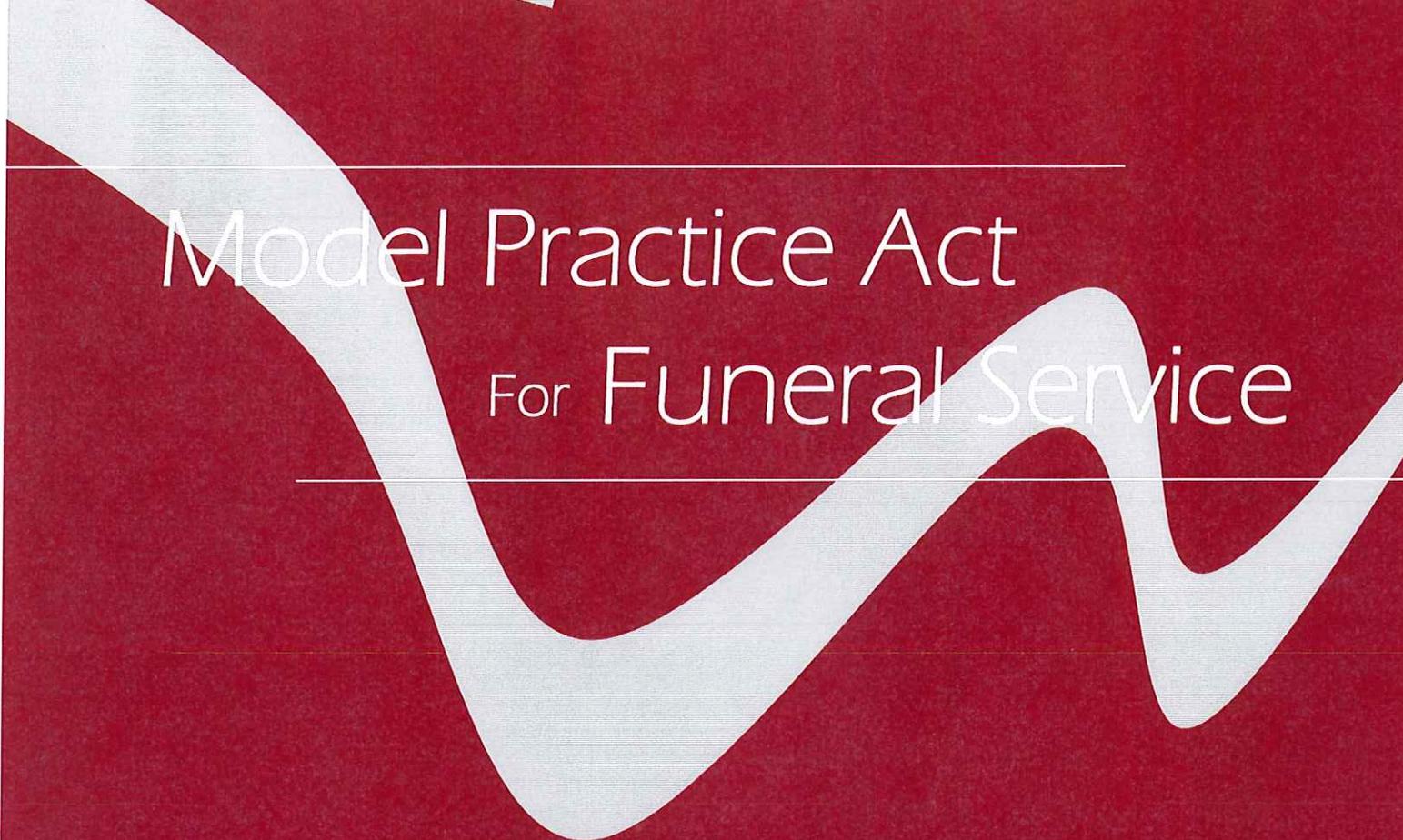
To amend chapter 21, RSMo, by adding thereto one new section relating to requests for state agency documents by members of the general assembly.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 21, RSMo, is amended by adding thereto one new
2 section, to be known as section 21.195, to read as follows:

21.195. Any state agency, when acting as the client in an
2 attorney-client relationship, shall waive the attorney-client privilege
3 with regard to any documents requested by a member of the general
4 assembly, when such member is acting in an official capacity and shall
5 release such documents to the requesting member. No state agency
6 shall assert that a requested document is a closed record under chapter
7 610. As used in this section, the term "state agency" means each board,
8 commission, department, division, officer, including the governor, or
9 other administrative office or unit of the state other than the general
10 assembly, the courts, or a political subdivision of the state, existing
11 under the constitution or statute.

✓



Model Practice Act
For Funeral Service

Presented By:

The Conference

THE INTERNATIONAL CONFERENCE OF
FUNERAL SERVICE EXAMINING BOARDS

MPAFS 2015

Conference Model Practice Act for Funeral Service

Table of Contents

Introduction	4
Article I. Title and Definitions	5
Article II. Board	11
Article III. Licensing Qualifications	15
Unlawful Practice	16
Qualifications for Licensure as a Funeral Director	16
Qualifications for Licensure as an Embalmer	17
Qualifications for Internship as a Funeral Director	18
Qualifications for Internship as an Embalmer	19
Approved Supervisor Requirements	20
Qualifications for Crematory Operator Certification	21
Qualifications for Transporter Certification	22
Continuing Education Requirements	23
Business Licensure Requirements	24
Article IV. Discipline	27

Conference Model Practice Act for Funeral Service

INTRODUCTION

The International Conference of Funeral Service Examining Boards (Conference or ICFSEB) is pleased to introduce its *Conference Model Practice Act for Funeral Service*. *The Conference Model Act* serves as a guideline to the legislature, regulatory officials, and members of the profession seeking to adopt or amend the laws governing mortuary arts and funeral services. The purpose of this Model Act is to facilitate the protection of the public by providing legal mechanisms that establish and provide for the enforcement of uniform standards. The provisions and language contained in this Model Act represent currently accepted standards, practices and terms and represents the collective wisdom of the funeral service regulatory community.

With the primary goal of consumer protection in mind, the wide-spread uniform adoption of the Model Act will facilitate standardization of terminology and regulation, which promotes increased public trust and understanding. Standardization also promotes consistency in compliance, enforcement and legal decisions related to licensure, renewal, discipline and other state sponsored activities. While uniformity in laws may be desired or helpful, The Conference recognizes that each state has a unique process and every body of law makers will have different goals or policies, which can result in alterations or only portions of the Act being enacted. Nevertheless, consistency in a regulatory system and adoption of generally accepted standards strengthens the profession and will assist in assuring greater compliance.

The members of the Model Act Committee were appointed by the Conference Board of Directors in June 2013 and included representatives from nine funeral service states serving as licensees, administrators, and consumers. Following their appointment, the Committee worked for over a year and a half with two in-person meetings, several conference calls, and individual research to develop the language in this Model Act. In order to be inclusive of all relevant stakeholders, The Conference solicited and considered input from funeral service regulatory Boards, professional associations, accredited mortuary colleges, and counterparts from other regulatory professions. With the able assistance of the ICFSEB Staff, a final draft of the Conference Model Act was approved by the Committee on January 7, 2015, the Board of Directors on January 20, 2015 and will be presented for adoption at the 111th Annual Meeting on February 26, 2015.

The Conference Model Act includes sections on standards and the regulation of specific professions, provision of related services, and practices associated with funerals and the proper care of human remains. Some Model Act sections are followed by notes that provide additional information, such as comments, background or suggested alternatives. In reviewing the Model Act, readers are strongly encouraged to consider this additional information. If your state is considering licensure or another form of regulation affecting individuals or businesses engaged in funeral services or handling human remains, please contact The Conference for additional assistance.



Title and Definitions

Conference Model Practice Act for Funeral Service

Article I

Title and Definitions

Section 101. Title of Act.

This Act shall be known as the "The International Conference of Funeral Service Examining Boards (Conference) Model Practice Act for Funeral Service."

Section 102. Legislative Declaration.

The practice of funeral service in the _____ of _____ is declared a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of funeral service, as defined in this Act, merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of funeral service in the _____ of _____. This Act shall be liberally construed to carry out these objectives and purposes.

Section 103. Statement of Purpose.

It is the purpose of this Act to promote, preserve, and protect the public health, safety, and welfare by and through the effective control and regulation of persons, in or out of the state that practice funeral service within this state.

Section 104. Definitions.

(a) **Alkaline Hydrolysis** means technical process that reduces Human Remains to bone fragments using heat, water and chemical agents.

(b) **Approved Provider of Continuing Education** means any professional association, university, or college, corporation or other entity that has met the requirements of the Board to provide educational courses that are designed to maintain, improve, or enhance funeral or embalming practice.

(c) **Approved Supervisor** means a Funeral Director or Embalmer who has been approved by the Board to provide instruction and Direct Supervision to Interns.

(d) **Associated Location** means any garage or other facility where any vehicle may be stored or sheltered, or office space used, in the conduct of a transport business.

(e) **Board of Funeral Service (Board)** means the entity created and empowered under this Act.

(f) **Board Members** means professional or consumer members of a Board.

(g) **Certificate or Certificate Holder** means a credential issued by the Board authorizing a person to engage in the practice defined under this Act.

(h) **Consumer Board Member** means a representative of the public in general who does not hold any license or certification issued by the board and meets the qualifications as stated under section 203 (b) of this Act.

Conference Model Practice Act for Funeral Service

Section 104. Definitions.

(i) **Continuing Education** means education and training designed to maintain, improve, or enhance funeral or embalming practice.

(j) **Conviction** means a conviction of a crime by a court of competent jurisdiction and shall include a finding or verdict of guilt whether or not the adjudication of guilt is withheld or not entered on an admission of guilt, a no contest plea, a plea of nolo contendere, or a guilty plea.

(k) **Cremation** means the technical process that reduces Human Remains to bone fragments through incineration.

(l) **Crematory** means a building or area that houses one or more cremation chambers where Cremation takes place and includes an area to properly hold a body in preparation for Cremation.

(m) **Crematory Operator** means any certified person who operates a Crematory.

(n) **Direct Supervision** means as used in connection with direct supervision, the Approved Supervisor is immediately and physically available (also known as mentor, preceptor, trainee supervisor, etc.).

(o) **Embalmer** means any person licensed to engage in the business, practice, science or profession of Embalming.

(p) **Embalming** means the process of chemically treating the dead human body by arterial injection, cavity treatment and/or, when necessary, hypodermic tissue injection to reduce the presence and growth of microorganisms to temporarily slow organic decomposition, and restore acceptable physical appearance.

(q) **Examination** means a standardized test assessing entry-level competence of applicants seeking licensure under this Act and approved by the Board.

(r) **Felony** means a criminal act defined by this state or any other state or by definition under federal law.

(s) **Final Adverse Action** means any action taken or order entered by the Board, even if an appeal is pending, whether through a consent agreement, as a result of a contested hearing, issued through a letter of reprimand/admonition/warning, or other action against any person or entity that is public information under applicable law. Final adverse actions also include, without limitation denial of application for licensure or renewal and surrender of licensure.

(t) **Full-time Employment** means working a minimum of 32 hours each week.

Notes on Full-time Employment. MPA committee had several discussions regarding full-time employment and its (federal) interpretation. State boards should adapt as necessary to meet the needs of their respective jurisdiction.

Conference Model Practice Act for Funeral Service

Section 104. Definitions.

(u) **Funeral Director** means any person licensed to engage in the business, practice or profession of Funeral Directing.

(v) **Funeral Directing** means preparing for the transportation, burial or disposal of Human Remains; directing and supervising for transportation or burial or disposal of Human Remains; providing for the care and shelter of Human Remains, and may include arranging and directing funerals, memorials or other services.

(w) **Funeral Establishment** means any place of business licensed by the Board to be used exclusively for storing and embalming Human Remains; preparing Human Remains for disposition; viewing Human Remains; and may include conducting funeral or memorial services and making funeral arrangements.

(x) **Funeral Home Supervisor** means a Funeral Director designated to serve as the supervisor responsible for the overall operations of the Funeral Establishment.

(y) **Human Remains** means the body of a deceased person, regardless of its stage of decomposition, and cremated remains.

(z) **Intern** means any person registered to engage in the business, practice or profession of interning under the instruction and Direct Supervision of a Funeral Director or Embalmer.

(aa) **Internship** means a period of training during which the Intern gains practical and documented experience in Funeral Directing or Embalming under the direction of an Approved Supervisor licensed by the Board.

(bb) **License** means a credential issued by the Board authorizing a person or entity to engage in the practice defined under this Act.

(cc) **Licensee** means a person or entity duly licensed under this Act.

(dd) **Mortuary Science Program** means a curriculum in an accredited mortuary science program approved by the Board.

(ee) **Person** means any individual, firm, partnership, association, joint venture, cooperative, corporation, or any other group or combination acting in concert; and whether or not acting as an individual, principal, trustee, fiduciary, receiver, or as any kind of legal or personal representative, or as the successor in interest, assignee, agent, factor, servant, employee, director, officer, or any other representative of such person.

(ff) **Practice of Funeral Service** means the professional practice of arranging for and providing funeral merchandise and services to consumers in a Funeral Establishment or other location in order to effect disposition of Human Remains.

Conference Model Practice Act for Funeral Service

Section 104. Definitions.

(gg) **Professional Board Member** means a person holding a current license issued by the Board, who is currently engaged in the practice of embalming or funeral service in this state and meets the qualifications as stated under section 203 (a) of this Act.

(hh) **Registrant** means a credential issued by the Board authorizing a person to engage in the practice defined under this Act.

(ii) **Storage** means a place to properly hold a body for preparation of final disposition. (should only occur in a Funeral Establishment or Crematory)

(jj) **The Conference** means the International Conference of Funeral Service Examining Boards.

(kk) **Transporter** means a certified person who engages in the transportation of Human Remains.



Board of Funeral Service

Conference Model Practice Act for Funeral Service

Article II

Board of Funeral Service

Section 201. Designation.

The responsibility for enforcement of the provisions of this Act is hereby vested in the Board of Funeral Service (Board). The Board shall have the duties, powers, and authority as set forth in Section 210.

Section 202. Membership.

The Board shall consist of _____ members of which at least _____ shall be Consumer Members with the remainder of the Professional Board Members being Licensees whom also possess the qualifications specified in Section 203. Professional and Consumer Members may be collectively referred to as Board members.

Notes on Section 202. *After reviewing the size of Boards, the MPA committee recommends that the number of Board Members should be an odd number, due to voting purposes, of at least nine members with one-third being Consumer Members.*

Section 203. Qualifications.

(a) Professional Board Members shall at all times during service to the Board:

- (1) Be a resident of this state for not less than five years prior to appointment to the Board;
- (2) Be currently licensed and in good standing as a Funeral Director or Embalmer in this state; and
- (3) Have had at least five (5) years of licensed experience in the Practice of Funeral Service in this state.

(b) Consumer Members of the Board shall:

- (1) Be a resident of this state;
- (2) Be at least twenty-one (21) years of age;
- (3) Shall not be, and never have been, a Licensee;
- (4) Shall not employ or be employed by, or professionally or financially associated with a Licensee.

Section 204. Appointment, Terms of Office, and Officers.

(a) Board Members shall be appointed by the Governor in accordance with this Act and the state constitution.

(b) Board Members shall serve for a term of ____ years and such terms shall be staggered to provide for continuity of service. Board Members may serve until a successor is duly appointed.

(c) Board Members shall serve no more than two (2) full consecutive terms.

(d) Board Members who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the remaining portion of the term to which the former member was appointed.

(e) The Board shall annually elect from its members a Chairperson and such other officers as it deems appropriate and necessary for the conduct of its business.

Notes on Section 204. *MPA Committee recommends Board Members be appointed for a term of four years. The term of years was based on the experience needed to become an effective member coupled with the taxing demand placed on governor's offices to appoint more frequently. Ideally, the member should serve two terms, with an eight year maximum. Terms should be staggered so the experience levels are maintained, while no more than one-fourth shall expire in any year.*

Conference Model Practice Act for Funeral Service

Section 205. Removal.

In accordance with applicable law, a Board Member may be removed on one or more of the following grounds:

- (a) The refusal or inability to perform Board duties in an efficient, responsible, and professional manner;
- (b) The misuse of the Board Member position in order to obtain financial gain or seek personal advantage for self or others;
- (c) A final adjudication or determination by any lawful authority wherein the Board Member has been found guilty or otherwise sanctioned for a violation of any laws substantially related to any practice governed by this Act;
- (d) For other just and reasonable causes.

Section 206. Compensation of Board Members.

Board Members shall receive as compensation the sum of \$_____ for each day in which the member is engaged in the performance of official duties of the Board and shall be reimbursed for all reasonable and necessary expenses incurred in connection with the discharge of such official duties.

Section 207. Meetings.

- (a) The Board shall meet at least twice a year.
- (b) The Board shall meet at such time and place as it may determine. The place for each meeting shall be determined prior to giving notice of such meeting and shall not be changed after such notice is given without adequate prior notice.
- (c) Notice of all meetings of the Board shall be given in the manner and pursuant to requirements prescribed by law.
- (d) A majority of the members of the Board shall constitute a quorum for the conduct of a Board meeting and all actions of the Board shall be by a majority of a quorum.
- (e) All meetings of the Board shall be subject to the state's open meeting laws.

Section 208. Employees.

The Board may, in its discretion, employ an Executive Director and other persons as deemed necessary for the proper conduct of Board business and the fulfillment of the Board's responsibilities as set forth by the Act.

Section 209. Rules.

The Board shall make, adopt, amend, and repeal such regulations as may be deemed necessary by the board from time to time for the proper administration and enforcement of this Act. Such rules shall be promulgated in accordance with state law.

Conference Model Practice Act for Funeral Service

Section 210. Powers and Duties.

(a) The Board shall be responsible for the control and regulation of the Practice of Funeral Service in this state including but not limited to the authority to:

- (1) Grant licenses by examination, endorsement, temporary or provisional recognition, reinstate, and renew licenses of Persons who the Board determines are qualified to engage in the Practice of Funeral Service under the regulations of this Act;
- (2) License and renew Funeral Establishments under this Act;
- (3) Establish and enforce standards for Continuing Education to maintain, improve, or enhance funeral or embalming practice;
- (4) Establish and enforce compliance with professional standards and rules of conduct for Licensees, Certificate Holders, or Registrants engaged in the Practice of Funeral Service or practice of Embalming within this state;
- (5) Determine and establish educational standards for licensure in this state;
- (6) Take Final Adverse Action against Persons or Funeral Establishments identified under this Act to suspend, revoke, restrict, or place on probation Licenses to engage in the Practice of Funeral Service;
- (7) Seek to enjoin, prevent, discipline or otherwise sanction the unauthorized Practice of Funeral Service by any Person or entity;
- (8) Take all available action necessary to collect and maintain data concerning professional demographics;
- (9) Investigate any Person or facility for the purpose of determining compliance with the provisions of the laws governing the Practice of Funeral Service;
- (10) Conduct compliance inspections of Funeral Establishments;
- (11) Subpoena Persons and documents in the same manner as prescribed and for the same purposes allowed under (*insert appropriate state law applicable to civil cases in the courts of this state*). Any member of the Board, hearing officer, or administrative law judge conducting a hearing under this Act shall have power to administer oaths;
- (12) Assess costs, inclusive of attorney's fees;
- (13) Issue fines.

(b) The Board shall have such other duties, powers, and authority as may be necessary to the enforcement of this Act and to the enforcement of Board rules made pursuant thereto, which shall include, but are not limited to the following:

- (1) The Board may be a member of a national regulatory organization that promotes the public's health, safety, and welfare through development of national licensing requirements, licensing examinations and other regulatory activities;
- (2) The Board may establish committees;
- (3) The Board, its staff, officers, inspectors, and representatives shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state, and of all other states relating to the Practice of Funeral Service;
- (4) The Board may promulgate regulations to establish, charge and collect fees;

(c) The Board shall have continuing jurisdiction to initiate or continue a disciplinary proceeding against any licensee, registrant or certificate holder when the license, registration, or certification has been suspended, expired, or forfeited provided.



Licensing Qualifications

Conference Model Practice Act for Funeral Service

Article III. Unlawful Practice & Qualifications

Introductory Comment to Article III.

The Model Act Committee concluded, for the protection of the public, each applicant (whether applying for a license, certification, or internship) must submit to a criminal background check. Such investigations will be performed during the initial application process or during the application process for reciprocity (endorsement) from another state.

Section 301. Unlawful Practice

It is unlawful for any Person or entity to engage in the practice of Funeral Directing; practice of Embalming; practice as an Intern; operate a Crematory; or transport Human Remains or hold themselves out as qualified to engage in the practice of Funeral Directing; practice of Embalming; practice of interning; operating a Crematory; or transportation of Human Remains without a valid license, certification or registration issued by the Board.

Section 302. Qualifications for Licensure by Examination as a Funeral Director

To obtain a License as a Funeral Director, an applicant for licensure bears the burden of substantiating to the satisfaction of the Board the following:

- (a) Submit a completed application as required by the Board;
- (b) Be a minimum of eighteen (18) years of age;
- (c) Possession of an associate degree in _____, or the equivalent, approved by the Board;
- (d) Within the last five years, passing an entry level Examination administered by The International Conference of Funeral Service Examining Boards or examinations determined by the Board;
- (e) Payment of all applicable fees;
- (f) Within the last five years, completion of an Internship as defined under this Act;
- (g) Be of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to *(insert reference to authorizing state statute)* and applicable federal law. The *(state agency responsible for managing fingerprint data e.g. the department of public safety)* may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

Notes on Section 302. *The associate degree requirement provides the student the basic core curriculum needed to gain fundamental knowledge of the requirements to succeed (communication, writing, mathematical) in a business setting. Candidates for licensure shall have attained the age of majority (18) in the state in which they intend to practice, allowing them to enter into or be the signatory in contractual agreements on behalf of the firm. Continuing education is not required for initial licensing. The requirements in states that require CE vary greatly as to the number of hours, content, subject matter etc.*

Conference Model Practice Act for Funeral Service

Section 303. Qualifications for Licensure by Examination as an Embalmer

To obtain a license as an Embalmer, an applicant for licensure bears the burden of substantiating to the satisfaction of the Board the following:

- (a) Submit a completed application as required by the Board;
- (b) Be a minimum of eighteen (18) years of age;
- (c) Graduation from a Mortuary Science Program approved by the Board and accredited by the American Board of Funeral Service Education or its equivalent;
- (d) Within the last five years, completion of an Internship as defined under this Act;
- (e) Within the last five years, passing the National Board Examination administered by The International Conference of Funeral Service Examining Boards or examinations determined by the board;
- (f) Payment of all applicable fees;
- (g) Be of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to *(insert reference to authorizing state statute)* and applicable federal law. The *(state agency responsible for managing fingerprint data e.g. the department of public safety)* may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

Notes on Section 303. *Candidates for licensure shall have attained the age of majority (18) in the state in which they intend to practice, allowing them to enter into or be the signatory in contractual agreements on behalf of the firm.*

Conference Model Practice Act for Funeral Service

Introductory Comment to Section 304.

The MPA Committee had a lengthy discussion on how to properly identify this person whether it be: an Intern, apprentice, registrant, trainee, etc. Ultimately, the group determined that the terms can be used interchangeably and that "Intern" was a universal, professional term.

Section 304. Qualifications for Internship as a Funeral Director

(a) To qualify for an Internship as a Funeral Director; an applicant must meet the following criteria:

- (1) Submit a completed application as required by the Board, identifying the Approved Supervisor under whom the applicant will Intern;
- (2) Be a minimum of eighteen (18) years of age;
- (3) Be a graduate of high school or the equivalent;
- (4) Pay all applicable fees;
- (5) Be of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to *(insert reference to authorizing state statute)* and applicable federal law. The *(state agency responsible for managing fingerprint data e.g. the department of public safety)* may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

(b) Interns must:

- (1) Under the Direct Supervision of an Approved Supervisor, complete at least 2,000 hours during a two-year period of formal training, and complete the minimum number of cases;
- (2) Under the Direct Supervision of an Approved Supervisor, assist in the arranging/directing of (insert #) funerals; and
- (3) Under the Direct Supervision of an Approved Supervisor, submit Internship report(s) as required by the Board.

(c) If the Internship as a Funeral Director is terminated or interrupted prior to completion or if there is a change to Approved Supervisor or site, the Intern and Approved Supervisor shall submit a written report indicating the number of hours completed and the cause of the termination, interruption, or change.

Notes on Section 304. *The time restriction for the Internship is based on the need for the Intern to complete a minimum case volume. It is critically important for the Intern to be exposed to the many non-quantifiable experiences only attainable by participating in the day-to-day funeral environment over a period of time.*

The committee concluded that daytime and nighttime employment shall be acceptable so long as the Intern receives training in all aspects of the license sought.

MPA committee recommends assisting in the arranging/directing of 50 funerals for Internship duties for a Funeral Director. The committee was mindful that industry changes, geographic locations, and dual licensure may affect these numbers and time frames.

Conference Model Practice Act for Funeral Service

Section 305. Qualifications for Internship as an Embalmer

- (a) To qualify for an Internship as an Embalmer; an applicant must meet the following criteria:
- (1) Submit a completed application as required by the Board, identifying the Approved Supervisor under whom the applicant will Intern;
 - (2) Be a minimum of eighteen (18) years of age;
 - (3) Be a graduate of high school or the equivalent;
 - (4) Pay all applicable fees;
 - (5) Be of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to *(insert reference to authorizing state statute)* and applicable federal law. The *(state agency responsible for managing fingerprint data e.g. the department of public safety)* may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.
- (b) Interns must:
- (1) Under the Direct Supervision of an Approved Supervisor, work at least 2,000 hours during a two-year period of training, and complete the minimum number of cases;
 - (2) Under the Direct Supervision of an Approved Supervisor, embalm at least (insert #) bodies; and
 - (3) Under the Direct Supervision of an Approved Supervisor, submit Internship report(s) as required by the Board.
- (c) If the Internship as an Embalmer is terminated or interrupted prior to completion or if there is a change to Approved Supervisor or site, the Intern and Approved Supervisor shall submit a written report indicating the number of hours completed and the cause of the termination, interruption, or change.

Notes on Section 305. *The time restriction for the Internship is based on the need for the Intern to complete a minimum case volume. It is critically important for the Intern to be exposed to the many non-quantifiable experiences only attainable by participating in the day-to-day funeral environment over a period of time.*

The committee concluded that daytime and nighttime employment shall be acceptable so long as the Intern receives training in all aspects of the license sought.

MPA committee recommends Embalming at least 50 bodies for Internship duties for an Embalmer. The committee was mindful that industry changes, geographic locations, and dual licensure may affect these numbers and time frames.

States may want to determine the inclusion of a number of cases required to embalm after an autopsy. MPA committee did not include because it could be very limiting.

Conference Model Practice Act for Funeral Service

Section 306. Approved Supervisor Requirements

(a) To be an Approved Supervisor, an applicant bears the burden of substantiating to the satisfaction of the Board the following:

- (1) Be a Licensee in good standing;
- (2) Submit a completed application as required by the Board;
- (3) Practiced as a Funeral Director or practiced as an Embalmer Full-Time for a minimum of five years before the date of the application;
- (4) Currently employed by a Funeral Establishment;

(b) An Approved Supervisor may only supervise one Intern at a time.

Notes on Section 306. *Interns may be supervised by more than one Approved Supervisor.*

Conference Model Practice Act for Funeral Service

Introductory Comment to Section 307.

The MPA Committee concluded the term “certification” should be used opposed to “license” for a Crematory Operator and Transporter. Both positions engage in specific, limited activity which has a lower risk to the public than the activities that require full licensure (e.g. Funeral Directors; Embalmers).

Section 307. Qualifications for Crematory Operator Certification

(a) To obtain a certificate as a Crematory Operator, an applicant bears the burden of substantiating to the satisfaction of the Board the following:

- (1) Submit a completed application as required by the Board;
- (2) Be a minimum of 18 years of age;
- (3) Be a graduate of high school or equivalent;
- (4) Pay all applicable fees;
- (5) Completion of a (six hour minimum) approved course in crematory operator training approved by the Board;
- (6) Documented training in Occupational Safety and Health Administration standards for universal precautions and blood-borne pathogens approved by the Board;
- (7) Be of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to *(insert reference to authorizing state statute)* and applicable federal law. The *(state agency responsible for managing fingerprint data e.g. the department of public safety)* may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

Notes on Section 307. *MPA Committee recommends the operator successfully complete manufacturer-developed training specific to the crematory equipment, regardless of the length of the course, in addition to on-the-job training specific to company policies and procedures.*

The addition of OSHA training was included as well due to the contact between the operator and Human Remains. Such training will protect certificate holder.

Conference Model Practice Act for Funeral Service

Introductory Comment to Section 308.

The MPA Committee concluded the term "certification" should be used opposed to "license" for a Crematory Operator and Transporter. Both positions engage in specific, limited activity which has a lower risk to the public than the activities that require full licensure (e.g. Funeral Directors; Embalmers).

Section 308. Qualifications for Transporter Certification

(a) All Transporter certificate holders must submit to inspections by the Board of any records, any vehicles used to remove or transport Human Remains, and any associated location. A holder of a Transporter Certification shall not engage in the practice of Funeral Directing, Embalming or arranging for the final disposition of Human Remains or to hold itself out as a business used in the care or preparation for final disposition of Human Remains. A Transporter certificate holder shall not store Human Remains.

(b) To obtain a certificate as a Transporter, an applicant bears the burden of substantiating to the satisfaction of the Board the following:

- (1) Submit a completed application as required by the Board;
- (2) Be a minimum of 21 age years old;
- (3) Be a graduate of high school or equivalent;
- (4) Possess and maintain a valid driver's license issued by this state and provide proof of the minimum liability insurance required for the registration of any vehicle in which the person intends to engage in the business of the removal or transportation of a dead human body;
- (5) Affirmatively state under oath that the person has read and understands the statutes and regulations relating to the removal and transportation of dead Human Remains and any regulations as may be adopted by the Board;
- (6) Documented training in Occupational Safety and Health Administration standards for universal precautions and blood-borne pathogens approved by the Board;
- (7) Be of good moral character. As one element of good moral character, the Board shall require each applicant for licensure to submit a full set of fingerprints for the purpose of obtaining state and federal criminal records checks, pursuant to *(insert reference to authorizing state statute)* and applicable federal law. The *(state agency responsible for managing fingerprint data e.g. the department of public safety)* may submit fingerprints to and exchange data with the Federal Bureau of Investigation. All character information, including the information obtained through the criminal records checks, shall be considered in licensure decisions to the extent permissible by all applicable laws.

Notes on Section 308. *The increased age requirement of 21 for the Transporter is due to the primary responsibility of transporting Human Remains, which requires less professional education, but greater driving experience and higher insurance coverage. MPA Committee surveyed membership on the amount of liability insurance and a consistent standard does not exist. Therefore, the amount or level of liability is left up to state. The addition of OSHA training was included as well due to the contact between the Transporter and Human Remains. Such training will protect certificate holder.*

Licensed persons are excluded from requiring a Transporter Certification.

Conference Model Practice Act for Funeral Service

Introductory Comment to Section 309.

Continuing Education activities, approved by the Board, shall be required as a condition of renewal of Funeral Director and Embalmer licenses, in order to maintain and improve the quality of their services to the public.

Section 309. Continuing Education Requirements

(a) Persons seeking to be an Approved Provider of Continuing Education bear the burden of substantiating to the satisfaction of the Board the following:

- (1) Submit a completed application as required by the Board;
- (2) Submit written evidence that demonstrates the applicant meets the standards and requirements established by the Board;
- (3) Payment of all applicable fees.

(b) Entities and persons seeking approval of a Continuing Education course bear the burden of substantiating to the satisfaction of the Board the following:

- (1) Submit a completed application as required by the Board;
- (2) Submit evidence that the offering, course or program met the Continuing Education standards established by the regulations of the Board; and
- (3) Payment of all applicable fees.

(c) The Approved Provider shall retain records of all persons attending or satisfactorily completing such Continuing Education courses for a period of time determined by the Board. The Board may require Approved Providers or Licensees to submit copies of such records, as it deems necessary, to ensure compliance with Continuing Education requirements. The Approved Provider shall furnish written certification to Licensees of the Board attending and completing Continuing Education course(s), indicating the satisfactory completion of an approved Continuing Education course.

(d) Any Licensee required to complete Continuing Education requirements shall retain the certification issued by the Approved Provider for a period of time determined by the Board.

Notes on Section 309. *The MPA committee concluded it important to leave the number of hours of CEU to each Board to specify. Additionally, the Board should be responsible to determine the applicability of a Continuing Education course to each states needs, not the MPA Committee.*

A recommendation by the committee for approved providers is listed below:

Unless disqualified by action of the Board, Continuing Education courses offered by the following providers are approved:

1. *local, state or federal government agencies;*
2. *regionally accredited colleges and universities; or*
3. *Board recognized national, regional, state, and local associations or organizations.*

MPA committee recommends a year beyond state's annual renewal cycle for record retention for Approved Providers and Licensees.

Conference Model Practice Act for Funeral Service

Introductory Comment to Section 310.

Each state regulates Funeral Establishments and branches differently. The MPA Committee recommends the following Funeral Establishment standards which provide a guideline for states to use.

Section 310. Business Licensure

(a) All Funeral Establishments must have a physical address for each location and are subject to inspection as determined by the Board. A Funeral Establishment having more than one location at which it performs funeral services shall not be required to maintain more than one preparation room.

(b) To obtain a license as a Funeral Establishment, an applicant bears the burden of substantiating that it has met the following criteria to the satisfaction of the Board:

- (1) Submit a completed application as required by the Board;
- (2) Payment of all applicable fee(s);
- (3) Designate a Funeral Director who will serve as the manager of record;
- (4) Maintain a preparation and storage room; and
- (5) Satisfactory completion of an inspection by the Board.

(c) All Funeral Establishments must:

- (1) Comply with all provisions of this Act;
- (2) Employ a Funeral Director who shall serve as manager of record. Such manager shall:
 - (i) be and remain employed Full-Time by such Funeral Establishment at the designated location;
 - (ii) be responsible and accountable for the Funeral Establishment;
 - (iii) be responsible for any and all activities performed on the premises;
 - (iv) responsible for reports and documents prescribed by the Board;
 - (v) responsible to report any changes of information to the Board; and
 - (vi) have a license in good standing as a Funeral Director;
- (3) Disclose the location and method of storage of Human Remains to the person who has right to control those remains;
- (4) Be available for inspections as determined by the Board;
- (5) Conspicuously display all current and valid licenses; and
- (6) Ensure all licenses are renewed timely.

(d) A Funeral Establishment license shall not be transferable. If the Funeral Establishment changes ownership or there is more than a 50% change in equitable ownership, the person or entity acquiring such ownership or control bears the burden of substantiating that it has met the following criteria to the satisfaction of the Board:

- (1) Submit a completed application at least 30 days prior to change of ownership as required by the Board;
- (2) Payment of all applicable fees;
- (3) Meet all the requirements outlined as qualifications for licensure Section 310 (b);

Conference Model Practice Act for Funeral Service

Section 310. Business Licensure cont.

- (4) Notify in writing prior to change of ownership all existing prearrangement funeral service contracts holders; and
- (5) Satisfactory completion of an inspection by the Board.

(e) The person or entity acquiring a change of location bears the burden of substantiating that it has met the following criteria to the satisfaction of the Board:

- (1) Submit a completed application at least 30 days prior to change of location as required by the Board;
- (2) Payment of all applicable fees;
- (3) Meet all the requirements outlined as qualifications for licensure Section 310 (b);
- (4) Notify in writing prior to change of location all existing prearrangement funeral service contracts holders; and
- (5) Satisfactory completion of an inspection by the Board.



Discipline

Conference Model Practice Act for Funeral Service

Article IV. Discipline

Introductory Comment to Section 401.

General powers are phrased in such a way as to allow the Board a wide range of actions, including the refusal to issue or renew a License, and the use of License restrictions or limitations. The penalties outlined in this section give the Board the ability to make the disciplinary action fit the offense. References to time intervals can be determined by the Board.

Section 401. Grounds

(a) The Board may refuse to issue or renew, or may suspend, revoke, censure, reprimand, restrict or limit the License of, or fine any person pursuant to the Administrative Procedures Act (APA) upon one or more of the following grounds as determined by the Board:

- (1) Unprofessional conduct in the practice of any Persons or Funeral Establishments regulated under this Act;
- (2) Violating any of the provisions of this Act or any rules adopted by the Board or other federal, state, or local laws relating to conduct under this Act;
- (3) The commission of any act involving moral turpitude relating to the practice of the person's profession or operation of the person's business, whether the act constitutes a crime or not;
- (4) Misrepresentation or concealment of a material fact related to obtaining or renewing a License;
- (5) Fraud or misrepresentation in any aspect of the business or profession conducted pursuant to this Act;
- (6) Advertising that is false, deceptive, or misleading;
- (7) Incompetence, negligence, or malpractice that creates an unreasonable risk of harm or damage to another;
- (8) Failure to practice in accordance with the provisions identified in Section 210 (a) (4);
- (9) Conduct which violates the security of any licensure examination materials;
- (10) Failure to treat Human Remains with respect at all times;
- (11) Refusal to promptly surrender the custody of Human Remains upon the expressed order of the person lawfully entitled to such custody;

Notes on Section 401 (a) (9). Such content may include, but is not limited to: removing from the examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination-takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination material, except by specific authorization either before, during or after an examination; or using or purporting to use any examination questions or materials which were improperly removed or taken from any examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination; Communicating with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one's answers to be copied by another examinee; having in one's possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind, other than the examination materials distributed, or otherwise authorized to be in one's possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one's behalf.

Conference Model Practice Act for Funeral Service

Section 401. Grounds cont.

- (12) Solicitation of Human Remains by the Licensee, certificate holder, registrant, or agent of the Licensee, whether the solicitation occurs after death or while death is impending. Solicitation may include employment of solicitors, payment of commission, bonus, rebate, or any form of gratuity or payment of a finder's fee, referral fee or other consideration given for the purpose of obtaining or providing the services for Human Remains or where death is impending;
- (13) Acceptance by any employee or agent of a Funeral Establishment of a commission, bonus, rebate, or gratuity in consideration of directing business to a cemetery, Crematory, mausoleum, columbarium, florist, or other person providing goods and services to the disposition of Human Remains, without the required disclosure to the next of kin or authorizing agent;
- (14) Any Final Adverse Action issued by this or another Board in or out of this state;
- (15) Failure to cooperate or interfering with the Board in the course of an investigation, audit, or inspection authorized by law;
- (16) Failure to comply with an order issued by the Board;
- (17) Aiding or abetting unlicensed activity or operating a Funeral Establishment without the License(s) required by this Act;
- (18) Practice or operation of a business or profession beyond the scope of practice permitted under this Act;
- (19) Failure to adequately supervise or oversee auxiliary licensed or unlicensed staff, employees, agents, or contractors as required by this Act or the rules of the Board;
- (20) Disclosure by a licensee, certificate holder or registrant of confidences, privacies, confidential facts, confidential opinions or secrets of the life of any person, persons or family members, the knowledge of which was acquired through professional relationship with said person, persons or family members;
- (21) Allowing the Licensee's signature and/or License number to be placed on a death certificate or any other official form of Human Remains, as the Funeral Director, if the Licensee did not prepare the body or supervise the final disposition of that body; knowingly making any false statement on a certificate of death;
- (22) Using any funeral merchandise previously used, with the exception of a casket or merchandise that is explicitly designated for reuse, without informing the person selecting and/or paying for the use of the merchandise, that the merchandise has been used;
- (23) Failure to provide funeral goods that the consumer selected, or substitution of funeral goods or services without the consumer's knowledge or consent; or
- (24) Failure to follow the directions of the person or persons with the right to control disposition.

Section 402. Penalties

- (a) Any of the actions under this section may be totally or partly stayed by the Board. In determining what action is appropriate, the Board must first consider what sanctions are necessary to ensure public protection. After protection of the public has been addressed, the Board may consider and impose by order requirements designed to rehabilitate the License holder. All costs associated with compliance with orders issued under this section are the obligation of the Licensee, Intern or Certificate holder.
- (b) Upon the substantiation of wrongdoing under Section 401, the Board has the authority to issue an order providing for one or any combination of the following:
 - (1) Revocation of the License, Certificate, or Registration;
 - (2) Suspension of the License, Certificate, or Registration for a fixed or indefinite term;
 - (3) Restriction or limitation on the License, Certificate, or Registration or use thereof;

Conference Model Practice Act for Funeral Service

Section 402. Penalties cont.

- (4) Satisfactory completion of a specific program of remedial education or treatment;
- (5) Monitoring of the practice in a manner directed by the board;
- (6) Censure or reprimand;
- (7) Probation and required compliance with conditions of probation for a designated period of time;
- (8) Impose a fine for each violation found by the board, not to exceed \$_____ per violation;
- (9) Denial of an initial or renewal application;
- (10) Assessment of costs related to the investigation, prosecution and adjudication of the administrative matter, including attorney's fees; or
- (11) Issue an order to cease and desist.

Notes on Section 402. *Boards who want to collect cost recovery for administrative disciplinary actions or sanctions should refer to their applicable Government Codes for their respective state to determine if an Administrative Procedure Act governs their administrative discipline process. Boards who want to impose a monetary administrative fine as part of an order should promulgate regulations to identify minimum and maximum fine amounts associated with specific violations. When determining reinstatement petitions of a License, the Board is encouraged to promulgate regulations for rehabilitative criteria to include factors such as length of time since the act occurred, evidence of rehabilitation, restitution to consumers, mitigating circumstances, and any other specific requirements for license issuance by the licensing state.*

Section 403. Unlicensed Practice

- (a) In addition to any other penalty authorized under this Act, any Person or entity who after a hearing has been found to have engaged in the unlicensed practice of _____ shall be subject to a fine not to exceed \$___ for each offense as well as any other sanctions authorized under this Act.



Arkansas, Illinois, Kansas, Kentucky, Missouri, Oklahoma, and Texas. These individual guaranty associations, as well as those represented by NOLHGA, are statutory entities created by state legislatures to provide protection for resident policyholders in the event that a member insurance company becomes insolvent. Plaintiffs represent that these state guaranty associations have been assigned or subrogated to the claims of funeral homes and consumers arising out of dealings with NPS through (1) each state guaranty association's enabling act; (2) the NPS / Lincoln / Memorial Liquidation Plan approved by the Texas Receivership Court on September 22, 2008; or (3) express assignments received from recipients of death benefits paid by a state guaranty association.

Prior to the institution of the Texas proceedings, NPS was in the business of selling pre-need funeral service contracts, which were sold to consumers through funeral homes. Lincoln and Memorial were issuers of life insurance policies. NPS represented to these consumers that the necessary funds would be available when the pre-need beneficiary died and the funeral home's claim became due. In accordance with state law, this process was accomplished in certain states by requiring the purchaser to simultaneously apply for a life insurance policy issued by Lincoln or Memorial in an amount corresponding to the amount of the pre-need contract. In other states, the pre-need trust itself purchased the life insurance policies.

On May 3, 2012, Plaintiffs herein filed their Third Amended Complaint, asserting a wide variety of claims against various defendants, including, but not limited to, claims for violations of the Racketeer Influenced and Corrupt Organizations ("RICO") Act, 18 U.S.C. §§ 1961-1968, violations of the Lanham Act, 15 U.S.C. §§ 1051-1141n, state law claims concerning intentional

Minnesota, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Washington, West Virginia, Wisconsin, and Wyoming.

and negligent fraudulent misrepresentations, negligence and gross negligence, breach of fiduciary duties, and violations of the Texas Receivership Act, Tex. Ins. Code §§ 443.202-443.205 [ECF No. 916]. The Third Amended Complaint alleges the fraudulent scheme's ultimate goal was to siphon funds away from NPS, Lincoln, and Memorial for the personal use of certain defendants, a scheme that ultimately left more than \$600 million in liabilities to be satisfied by the SDR, NOHLGA, and the state life and health guaranty association Plaintiffs.

There are over forty defendants named in Plaintiffs' Third Amended Complaint, with varying degrees of alleged involvement in what Plaintiffs characterize as a scheme to defraud individual consumers and funeral homes in the sale of NPS's pre-need funeral contracts. Many of these defendants have since been dismissed.

Plaintiffs are asking the Court to rule as a matter of law on two issues: (1) the recipients of funeral services, funeral homes, and NPS are beneficiaries of the preneed trusts; and (2) the independent investment advisor appointed by the seller must be independent of the seller of the preneed contracts and grantor of the preneed trust.¹

II. SUMMARY JUDGMENT STANDARD

A court shall grant a motion for summary judgment only if the moving party shows "there is no genuine dispute as to any material fact and that the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). By definition, material facts "might affect the outcome of the suit under the governing law," and a genuine dispute of material fact is one "such that a reasonable jury could return a

¹ Plaintiffs have styled their motion as a motion for rulings as a matter of law. However, Plaintiffs cite to the summary judgment standard and Federal Rule of Civil Procedure 56. Local Rule 7-4.01 requires a statement of uncontroverted material facts be attached to the party's memorandum in support of a motion for summary judgment. Because the issues presented are legal in nature and do not require a determination of facts to be decided, the Court will rule on the motion without the required statement of uncontroverted facts.

verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). If the non-moving party has failed to “make a showing sufficient to establish the existence of an element essential to that party’s case, . . . there can be ‘no genuine issue as to any material fact,’ since a complete failure of proof concerning an essential element of the non-moving party’s case necessarily renders all other facts immaterial.” *Celotex*, 477 U.S. at 322-23.

The moving party bears the initial burden of proof in establishing “the non-existence of any genuine issue of fact that is material to a judgment in his favor.” *City of Mt. Pleasant, Iowa v. Associated Elec. Co-op., Inc.*, 838 F.2d 268, 273 (8th Cir. 1988). The moving party must show that “there is an absence of evidence to support the nonmoving party’s case.” *Celotex*, 477 U.S. at 325. If the moving party meets this initial burden, the non-moving party must then set forth affirmative evidence and specific facts that demonstrate a genuine dispute on that issue. *Anderson*, 477 U.S. at 250. When the burden shifts, the non-moving party may not rest on the allegations in its pleadings, but, by affidavit and other evidence, must set forth specific facts showing that a genuine dispute of material fact exists. Fed. R. Civ. P. 56(c)(1); *Stone Motor Co. v. Gen. Motors Corp.*, 293 F.3d 456, 465 (8th Cir. 2002). To meet its burden and survive summary judgment, the non-moving party must “do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). Instead, the non-moving party must demonstrate sufficient favorable evidence that could enable a jury to return a verdict for it. *Anderson*, 477 U.S. at 249. “If the non-moving party fails to produce such evidence, summary judgment is proper.” *Olson v. Pennzoil Co.*, 943 F.2d 881, 883 (8th Cir. 1991).

In ruling on a motion for summary judgment, the Court may not “weigh the evidence in the summary judgment record, decide credibility questions, or determine the truth of any factual

issue.” *Kampouris v. St. Louis Symphony Soc.*, 210 F.3d 845, 847 (8th Cir. 2000). The Court instead “perform[s] only a gatekeeper function of determining whether there is evidence in the summary judgment record generating a genuine issue of material fact for trial on each essential element of a claim.” *Id.* The Court must view the facts and all reasonable inferences in the light most favorable to the nonmoving party. *Reed v. City of St. Charles*, 561 F.3d 788, 790 (8th Cir. 2009).

III. DISCUSSION

In their Motion, Plaintiffs request the Court find the consumers who will receive funeral services under the preneed contracts, the funeral homes providing the services, and NPS are beneficiaries of the preneed trusts. Plaintiffs also request the Court find the investment advisor appointed by the seller must be independent from the seller. The Court addresses each argument as follows.

A. Beneficiaries of the Preneed Trusts

In gaining a better understanding of whether a consumer, funeral home, or provider of funeral services is a beneficiary under the trust agreement or statute, and how a beneficial interest is determined in interpreting and applying language in trust agreements and statutes, as they relate to the pre-need funeral industry, it is helpful to follow the flow of money from when the funeral agreements are signed through distribution of the money by the Trustee. The language in the trust agreements and Chapter 436 show the principal purpose of both is to protect the interests of the purchaser of preneed services and the consumer, funeral homes, and providers of funeral services are beneficiaries of the pre-need trusts. The Court will examine the pre-need agreements, the trust agreements, and Chapter 436 in its analysis.

1. The Pre-Need Funeral Agreement

The pre-need funeral agreement involves the funeral home provider, the purchaser or beneficiary, and NPS. The trust agreements define the parties of the funeral agreements. The “owner” is the “person who shall execute a Funeral Agreement with the Seller for the purchase of the funeral services, articles and facilities agreed to be furnished thereunder and either the person designated as his successor (or if there is no designation) his legal representation.” The “seller” shall mean National Prearranged Services, Inc., as the seller and any successor thereto who agree to accept and discharge the obligations of the Seller under its outstanding Funeral Agreements.” “Funeral Agreement” is the “written agreement between the Owner and Seller entered into for the purpose of providing the Beneficiary thereof with funeral or burial services, by the terms of which Seller has agreed to deposit into this trust a portion of amounts paid to it thereunder.” “Provider” is the “person obligated to provide the disposition and funeral and/or burial services, facilities, and merchandise described in the Funeral Agreement.”

In a common occurrence, the funeral agreement is provided to funeral homes or other providers of funeral services to use in their contracts [ECF No. 1769-3].² The agreement includes services for the purchaser to choose from and areas for the provider to write in the price of the services. A total amount of services is provided and boxes to check if the purchaser paid in full or an installment agreement is attached. The preneed purchaser signs the agreement as well as the “Counselor” who is listed as the “Funeral Director appointed by NPS as its agent.” Part VI of the agreement includes four references to Chapter 436 of the Revised Missouri Statutes which is dedicated to “Special Purpose Funeral Contracts.” Part VI states, in part,

“In conformity with Chapter 436 of the laws of the State of Missouri, National Prearranged Services, Inc., shall deposit all payments required to be placed in trust to secure the performance of the Prearranged Funeral Agreement [stating

² The Court used Ex. 63 to the Trustees’ Motion for Summary Judgment as an example Funeral Agreement.

name of trust bank] pursuant to the trust agreement of [stating date of trust agreement] as amended as provided by Chapter 436 of the Laws of the State of Missouri.”

The Court discerns from the earliest opportunity NPS interacts with a purchaser, it represents there is protection of the purchaser’s money “to secure the performance of the Preneed Funeral Agreement.” The purchaser pays the funeral home or provider of funeral services who then gives the money to NPS. NPS is required to deposit the amount in the trusts and upon the death of a beneficiary; NPS shall pay the provider of the funeral services, as is outlined below in the Court’s analysis of the trust agreement and statute. It is reasonable to assume, salesmen³ motivated to sell agreements would tell prospective customers their money will be safe in a trust. The concept of a safe harbor for money in a trust is well known and respected.

2. *Beneficiary under the Trust Agreement*

Plaintiffs state the trust agreements⁴ designate the beneficiaries of the preneed trusts as consumers who will receive the funeral services (“consumers”) and funeral homes who provide the services (“funeral homes”). Plaintiffs cite to several sections within the trust agreement to support their proposition. Defendants National City Bank and U.S. Bank (“Trustees”) claim NPS is the sole beneficiary under the trust agreement because NPS is the only entity with an interest in the trust property, and the trust agreement gives all rights in the trust property to NPS.

In Missouri, “the intention of a trust instrument is to be ascertained from reading its provisions as a whole.” *Funsten v. C.I.R.*, 148 F.2d 805, 808 (8th Cir. 1945) (citing *Krause v.*

³ Salesmen include those individuals working directly for NPS and individuals in funeral homes or providers of funeral services who collect money under the funeral agreements for NPS.

⁴ There are individual trust agreements governing each of the preneed trusts at issue in this case. All of the trust agreements are substantially similar. For simplicity, the Court references the trust agreement between NPS and Mark Twain Bank, created on February 22, 1989, and is attached to the Missouri Trustees’ Motion for Partial Summary Judgment [ECF No. 1763-1].

Jeannette Inv. Co., 62 S.W.2d 890, 892 (Mo. 1933)). Reading the trust agreement as a whole, it is clear the beneficiary of the trust was intended to be the consumers, funeral homes and seller.

Section 1.5 of the trust agreement defines “beneficiary” as “the person designated in writing by the Owner of a Funeral Agreement as the person who is to be the subject of the disposition and is to receive the funeral and/or burial services therein described, or if no such person is designated then the Owner thereof.” There is no clearer indicator of who the intended beneficiary is than the definition of beneficiary. The Trustees argue the trust agreement is defining beneficiary of the funeral contract, not beneficiary of the trust. The most logical reading of the definitions of a trust agreement is to assume it is defining terms in this agreement, not terms in other contracts or agreements. If beneficiary was defining something other than the beneficiary of the trust, this would mean the trust agreement names no beneficiary. It seems more likely the creators of the trust agreement would name a beneficiary rather than none at all, especially when beneficiary is a defined term in the agreement.

The only other provision in the trust agreement which references “beneficiary” is Section 3.2(a) “Death of a Beneficiary.” This section states as follows:

“Upon presentation to the Trustee of the Provider’s notarized affidavit to the effect (i) that a Funeral Agreement has matured as the result of the death of the Beneficiary thereof, and (ii) that all the terms and conditions of the Funeral Agreement applicable to such Beneficiary have been fully performed by Provider, or that Provider has provided alternative funeral benefits for the Beneficiary pursuant to special arrangements made with the Owner, accompanied by a copy of the death certificate of the Beneficiary, the Trustee shall distribute and pay to the Seller all amounts which have been theretofore deposited into the Trust as respects said Funeral Agreement.”

This section does not provide assistance in determining who is a beneficiary of the trusts.

3. *Beneficiary under the Statute*

Chapter 436 of the Missouri Revised Statutes governs funeral contracts.⁵ When interpreting a statute, the Court must consider the words in the statute in their plain and ordinary meaning. *Laclede Gas Co. v. Labor and Indus. Relations Comm. of Mo.*, 657 S.W.2d 644, 650 (Mo. Ct. App. 1983) (citing *City of Willow Springs v. Mo. State Librarian*, 596 S.W.2d 441, 445-46 (Mo. banc 1980)). The duty of the court is to give the statute the effect the legislature intended. *Hyde v. City of Columbia*, 637 S.W.2d 251, 262 (Mo. Ct. App. 1982). To do so, the Court looks to “the evil the enactment means to remedy, the assumption that the legislative purpose was a reasonable one, the presumption that the law was passed for the welfare of the community, [and] that an effective law was intended.” *Id.* (citing *Cohen v. Poelker*, 520 S.W.2d 50 (Mo. banc 1975)).

Plaintiffs assert Chapter 436 supports the conclusion consumers are beneficiaries of the trusts. To begin, Plaintiffs reference the definitions section. Section 436.005(1) defines “beneficiary” as “the individual who is to be the subject of the disposition and who will receive funeral services, facilities or merchandise described in a preneed contract.” The analysis of this definition is different than under the trust agreement. This statute governs funeral contracts and includes the establishment of preneed trusts but it is not solely referencing trusts when it defines beneficiary unlike the trust agreement. Thus, the definition of beneficiary under the statute does not carry the same weight as it did in the trust agreement.

The statute requires a trust be created by the seller into which at least eighty percent of the amount of every contract is deposited. Mo. Rev. Stat. §§ 436.007.1(4), 436.021.1(2), 436.027. A preneed trust is defined as “a trust established by a seller, as grantor, to receive

⁵ At all times when referencing Missouri Revised Statute Chapter 436, the Court refers to the statute as written in 1989 which was in effect until 2008 when the statute was substantially revised.

deposits of, administer, and disburse payments received under preneed contracts by such seller, together with income thereon.” Mo. Rev. Stat. § 436.005(6). When a beneficiary dies, the seller shall pay the provider of the funeral services the amount equal to the contract amount and then, upon receipt, the trustee shall distribute the same amount to the seller. Mo. Rev. Stat. § 436.045.

Although the seller has a right to the income of the trust, other provisions of the statute and the purposes of the statute indicate consumers and funeral homes are beneficiaries. A consumer is entitled to a refund at any time from the seller for all payments paid into the trust under the consumer’s contract and if the seller is unwilling to provide the refund, the consumer can make a demand upon the trustee for the distribution. Mo. Rev. Stat. §§ 436.035(1), 436.048. These provisions indicate the consumer has an interest in the trust assets which is a key indicator of a person being a beneficiary of a trust. *See* Restatement (Second) of Trusts § 127 (1959).

An important purpose of the statute is to protect the consumers and funeral homes that will need these funds in the future. Specific statutes were enacted across the country to prevent the sellers of future funeral services from using the money for improper purposes. If consumers and funeral homes were not beneficiaries, they would be left with few options for recovering their payments. Making the consumers and funeral homes beneficiaries of the trusts protects their payments and gives them powerful options for enforcing those protections should someone try to improperly access or use those funds. It is clear the statute establishes the trust to hold the funds for the benefit of the consumers which satisfies the definition of a beneficiary. *See* Restatement (Second) of Trusts § 3. If NPS were the sole beneficiary of the trusts, as the Trustees suggest, it would eviscerate the protections of the statute because NPS would be able to dissolve the trust assets at any time as the sole beneficiary. *See* Restatement (Second) of Trusts § 339. The statute could have been drafted to allow for the seller, NPS, to receive all of the funds

placed in the trust, but under the clear language of the statute, seller is only entitled to a portion of the funds.

The providers of funeral services benefit from the trust as well, in knowing money will be paid to them when they have provided funeral services. Funeral homes and providers can be assured they will be able to collect in the future from protected money known to be in trust.

From the time money leaves the hand of a person desiring to have a preneed funeral, as it passes to the seller then to the trustee, and eventually leaves the trustee, it is intended to be used to pay for a funeral of a named beneficiary. The trust does not exist solely for the benefit of the seller and the seller is not the sole beneficiary of the trust.

The Court, after considering the parties excellent briefs, hearing superb arguments of counsel, after considering the most persuasive authority cited, and after applying a modicum of common sense, concludes NPS is not the exclusive beneficiary under the Missouri statutory scheme and the trust agreements. The Court agrees with Plaintiffs, recipients of funeral services and providers of funeral services are beneficiaries of the preneed trusts.

B. Independent Investment Advisor

Chapter 436 allows an investment advisor be appointed to manage investment of the trust assets. Mo. Rev. Stat. § 436.031(2). The statute states:

“A preneed trust agreement may provide that when the principal and interest in a preneed trust exceeds two hundred fifty thousand dollars, investment decisions regarding the principal and undistributed income may be made by a federally registered or Missouri-registered independent qualified investment advisor designated by the seller who established the trust; provided that title to all investment assets shall remain with the trustee and be kept by the trustee to be liquidated upon request of the advisor of the seller. In no case shall control of said assets be divested from the trustee nor shall said assets be placed in any investment which would be beyond the authority of a reasonably prudent trustee

to invest in. The trustee shall be relieved of all liability regarding investment decisions made by such qualified investment advisor.”⁶

The statute requires the investment advisor to be independent. The issue raised is from whom must the investment advisor be independent, the seller, the trustee, or both? Plaintiffs assert the investment advisor must be independent from the seller. Plaintiffs argue the seller is prevented from having control over trust funds by the statute and it would not make sense if the seller then was allowed to appoint an investment advisor that was not independent because this would allow the seller to gain control of the trust funds. The Missouri Trustees disagree and argue the statute does not specify the entity from which the investment advisor must be independent, and the only logical reading of the entire statute is for the investment advisor to be independent from the trustee. The Trustees reason a trustee’s liability for investment decisions hinges on whether the investment advisor is independent and a trustee can only be confident the investment advisor is independent from itself not from the seller.

An investment advisor must be independent from the trustee and the pre-need seller. The statute does not explicitly state from whom the investment advisor must be independent. If a statute is ambiguous, the Court should construe the statute to be consistent with the legislative intent and the purpose of enacting the law. *Estate of Williams v. Williams*, 12 S.W.3d 302, 306 (Mo. 2000). As stated previously, the purpose of this statute is to protect the consumers’ funds so they are available at a future date when needed for funeral services. If the trustee is to be relieved of liability for the investment advisor’s decisions, it makes sense the investment advisor be independent from the trustee. If this was not required, the trustee would be able to easily

⁶ The trust agreement’s language mirrors the statute in relation to appointment of an investment advisor. Section 2.2 of the agreement states “The Trustee shall have the exclusive management and control of the Trust and its funds; provided that when the principal and interest of this pre-need trust exceeds \$250,000, the Seller at its discretion may appoint an independent qualified investment advisor so long as the requirements of Missouri law are met, and the Trustee shall have no liability for any investment decision made by such investment advisor.”

circumvent its duties by controlling the investment advisor's decisions and then state it had no liability for those decisions because they were made by the investment advisor.

The investment advisor must also be independent of the seller. If the seller was allowed to appoint any investment advisor, it could appoint one over which it had control and then would have access and control of the trust assets, eviscerating the protections of the statute. To be consistent with the legislative intent of the statute, the statute must be read as to require the investment advisor be independent of both the trustee and the pre-need seller.⁷

The parties also raise the issue of whether the statute relieves the trustee of all liability for investment decisions made by the investment advisor, assuming the investment advisor was properly independent. Plaintiffs claim a trustee has obligations under the statute even if an investment advisor is appointed. According to Plaintiffs, these obligations include the trustee keeping all title to the investment assets, keeping control of the assets, and ensuring the assets not be placed in any investment beyond the authority of a reasonably prudent trustee. The Missouri Trustees assert the statute relieves them of all liability for the investment advisor's decisions. They argue no "rational trustee" would give authority for investment decisions to a third party it did not select, if it could later be held liable for those decisions.

The statute relieves the trustee of all liability regarding investment decisions made by the investment advisor if the investment advisor is federally registered or Missouri-registered, qualified, independent, control of the assets remains with the trustee, and the assets are not placed in any investment which would be beyond the authority of a reasonably prudent trustee to invest in. The statute's language is clear: "In no case shall control of said assets be divested from

⁷ The Court will not decide if the investment advisor was independent of either the trustee or NPS. This is a genuine dispute of material fact which must be decided by the jury.

the trustee nor shall said assets be placed in any investment which would be beyond the authority of a reasonably prudent trustee to invest in.” The Court reads the statute to require these obligations whether an investment advisor is appointed or not. The last two sentences must be read together. If the Court were to read the statute as relieving the trustees of any liability for investment of the trust assets, it would make the previous sentence superfluous. A trustee always has an overarching duty to protect the trust assets and reading the statute as the Court has fulfills both the purpose of the statute and the trustee’s duties.

Accordingly,

IT IS HEREBY ORDERED that “Plaintiffs’ Motion for Rulings as a Matter of Law as to Beneficiary Status Under Preneed Trusts and Independence of Investment Advisor Under Mo. Rev. Stat. § 436.031(2)” [ECF No. 1754] is **GRANTED in part, and DENIED in part.**

So Ordered this 9th Day of January, 2015.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE



Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

**NORTH CAROLINA STATE BOARD OF DENTAL
EXAMINERS v. FEDERAL TRADE COMMISSION**

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT

No. 13–534. Argued October 14, 2014—Decided February 25, 2015

North Carolina’s Dental Practice Act (Act) provides that the North Carolina State Board of Dental Examiners (Board) is “the agency of the State for the regulation of the practice of dentistry.” The Board’s principal duty is to create, administer, and enforce a licensing system for dentists; and six of its eight members must be licensed, practicing dentists.

The Act does not specify that teeth whitening is “the practice of dentistry.” Nonetheless, after dentists complained to the Board that nondentists were charging lower prices for such services than dentists did, the Board issued at least 47 official cease-and-desist letters to nondentist teeth whitening service providers and product manufacturers, often warning that the unlicensed practice of dentistry is a crime. This and other related Board actions led nondentists to cease offering teeth whitening services in North Carolina.

The Federal Trade Commission (FTC) filed an administrative complaint, alleging that the Board’s concerted action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition under the Federal Trade Commission Act. An Administrative Law Judge (ALJ) denied the Board’s motion to dismiss on the ground of state-action immunity. The FTC sustained that ruling, reasoning that even if the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board must be actively supervised by the State to claim immunity, which it was not. After a hearing on the merits, the ALJ determined that the Board had unreasonably restrained trade in violation of antitrust law. The FTC again sustained the ALJ, and the Fourth Circuit affirmed the FTC in

Syllabus

all respects.

Held: Because a controlling number of the Board's decisionmakers are active market participants in the occupation the Board regulates, the Board can invoke state-action antitrust immunity only if it was subject to active supervision by the State, and here that requirement is not met. Pp. 5–18.

(a) Federal antitrust law is a central safeguard for the Nation's free market structures. However, requiring States to conform to the mandates of the Sherman Act at the expense of other values a State may deem fundamental would impose an impermissible burden on the States' power to regulate. Therefore, beginning with *Parker v. Brown*, 317 U. S. 341, this Court interpreted the antitrust laws to confer immunity on the anticompetitive conduct of States acting in their sovereign capacity. Pp. 5–6.

(b) The Board's actions are not cloaked with *Parker* immunity. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if “the challenged restraint . . . [is] clearly articulated and affirmatively expressed as state policy,” and . . . “the policy . . . [is] actively supervised by the State.” *FTC v. Phoebe Putney Health System, Inc.*, 568 U. S. ___, ___ (quoting *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97, 105). Here, the Board did not receive active supervision of its anticompetitive conduct. Pp. 6–17.

(1) An entity may not invoke *Parker* immunity unless its actions are an exercise of the State's sovereign power. See *Columbia v. Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374. Thus, where a State delegates control over a market to a nonsovereign actor the Sherman Act confers immunity only if the State accepts political accountability for the anticompetitive conduct it permits and controls. Limits on state-action immunity are most essential when a State seeks to delegate its regulatory power to active market participants, for dual allegiances are not always apparent to an actor and prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. Accordingly, *Parker* immunity requires that the anticompetitive conduct of nonsovereign actors, especially those authorized by the State to regulate their own profession, result from procedures that suffice to make it the State's own. *Midcal*'s two-part test provides a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for entities purporting to act under state authority might diverge from the State's considered definition of the public good and engage in private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this

Syllabus

harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity. Pp. 6–10.

(2) There are instances in which an actor can be excused from *Midcal's* active supervision requirement. Municipalities, which are electorally accountable, have general regulatory powers, and have no private price-fixing agenda, are subject exclusively to the clear articulation requirement. See *Hallie v. Eau Claire*, 471 U. S. 34, 35. That *Hallie* excused municipalities from *Midcal's* supervision rule for these reasons, however, all but confirms the rule's applicability to actors controlled by active market participants. Further, in light of *Omni's* holding that an otherwise immune entity will not lose immunity based on ad hoc and *ex post* questioning of its motives for making particular decisions, 499 U. S., at 374, it is all the more necessary to ensure the conditions for granting immunity are met in the first place, see *FTC v. Ticor Title Ins. Co.*, 504 U. S. 621, 633, and *Phoebe Putney, supra*, at _____. The clear lesson of precedent is that *Midcal's* active supervision test is an essential prerequisite of *Parker* immunity for any nonsovereign entity—public or private—controlled by active market participants. Pp. 10–12.

(3) The Board's argument that entities designated by the States as agencies are exempt from *Midcal's* second requirement cannot be reconciled with the Court's repeated conclusion that the need for supervision turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade. State agencies controlled by active market participants pose the very risk of self-dealing *Midcal's* supervision requirement was created to address. See *Goldfarb v. Virginia State Bar*, 421 U. S. 773, 791. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals. While *Hallie* stated "it is likely that active state supervision would also not be required" for agencies, 471 U. S., at 46, n. 10, the entity there was more like prototypical state agencies, not specialized boards dominated by active market participants. The latter are similar to private trade associations vested by States with regulatory authority, which must satisfy *Midcal's* active supervision standard. 445 U. S., at 105–106. The similarities between agencies controlled by active market participants and such associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. See *Hallie, supra*, at 39. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. Thus,

Syllabus

the Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal's* active supervision requirement in order to invoke state-action antitrust immunity. Pp. 12–14.

(4) The State argues that allowing this FTC order to stand will discourage dedicated citizens from serving on state agencies that regulate their own occupation. But this holding is not inconsistent with the idea that those who pursue a calling must embrace ethical standards that derive from a duty separate from the dictates of the State. Further, this case does not offer occasion to address the question whether agency officials, including board members, may, under some circumstances, enjoy immunity from damages liability. Of course, States may provide for the defense and indemnification of agency members in the event of litigation, and they can also ensure *Parker* immunity is available by adopting clear policies to displace competition and providing active supervision. Arguments against the wisdom of applying the antitrust laws to professional regulation absent compliance with the prerequisites for invoking *Parker* immunity must be rejected, see *Patrick v. Burget*, 486 U. S. 94, 105–106, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. Pp. 14–16.

(5) The Board does not contend in this Court that its anticompetitive conduct was actively supervised by the State or that it should receive *Parker* immunity on that basis. The Act delegates control over the practice of dentistry to the Board, but says nothing about teeth whitening. In acting to expel the dentists' competitors from the market, the Board relied on cease-and-desist letters threatening criminal liability, instead of other powers at its disposal that would have invoked oversight by a politically accountable official. Whether or not the Board exceeded its powers under North Carolina law, there is no evidence of any decision by the State to initiate or concur with the Board's actions against the nondentists. P. 17.

(c) Here, where there are no specific supervisory systems to be reviewed, it suffices to note that the inquiry regarding active supervision is flexible and context-dependent. The question is whether the State's review mechanisms provide "realistic assurance" that a non-sovereign actor's anticompetitive conduct "promotes state policy, rather than merely the party's individual interests." *Patrick*, 486 U. S., 100–101. The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, see *id.*, at 102–103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see *ibid.*; and the "mere potential for state

Syllabus

supervision is not an adequate substitute for a decision by the State,” *Ticor, supra*, at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case. Pp. 17–18.

717 F. 3d 359, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which ROBERTS, C. J., and GINSBURG, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. ALITO, J., filed a dissenting opinion, in which SCALIA and THOMAS, JJ., joined.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 13–534

**NORTH CAROLINA STATE BOARD OF DENTAL
EXAMINERS, PETITIONER v. FEDERAL
TRADE COMMISSION**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[February 25, 2015]

JUSTICE KENNEDY delivered the opinion of the Court.

This case arises from an antitrust challenge to the actions of a state regulatory board. A majority of the board’s members are engaged in the active practice of the profession it regulates. The question is whether the board’s actions are protected from Sherman Act regulation under the doctrine of state-action antitrust immunity, as defined and applied in this Court’s decisions beginning with *Parker v. Brown*, 317 U. S. 341 (1943).

I

A

In its Dental Practice Act (Act), North Carolina has declared the practice of dentistry to be a matter of public concern requiring regulation. N. C. Gen. Stat. Ann. §90–22(a) (2013). Under the Act, the North Carolina State Board of Dental Examiners (Board) is “the agency of the State for the regulation of the practice of dentistry.” §90–22(b).

The Board’s principal duty is to create, administer, and enforce a licensing system for dentists. See §§90–29 to

90-41. To perform that function it has broad authority over licensees. See §90-41. The Board's authority with respect to unlicensed persons, however, is more restricted: like "any resident citizen," the Board may file suit to "perpetually enjoin any person from . . . unlawfully practicing dentistry." §90-40.1.

The Act provides that six of the Board's eight members must be licensed dentists engaged in the active practice of dentistry. §90-22. They are elected by other licensed dentists in North Carolina, who cast their ballots in elections conducted by the Board. *Ibid.* The seventh member must be a licensed and practicing dental hygienist, and he or she is elected by other licensed hygienists. *Ibid.* The final member is referred to by the Act as a "consumer" and is appointed by the Governor. *Ibid.* All members serve 3-year terms, and no person may serve more than two consecutive terms. *Ibid.* The Act does not create any mechanism for the removal of an elected member of the Board by a public official. See *ibid.*

Board members swear an oath of office, §138A-22(a), and the Board must comply with the State's Administrative Procedure Act, §150B-1 *et seq.*, Public Records Act, §132-1 *et seq.*, and open-meetings law, §143-318.9 *et seq.* The Board may promulgate rules and regulations governing the practice of dentistry within the State, provided those mandates are not inconsistent with the Act and are approved by the North Carolina Rules Review Commission, whose members are appointed by the state legislature. See §§90-48, 143B-30.1, 150B-21.9(a).

B

In the 1990's, dentists in North Carolina started whitening teeth. Many of those who did so, including 8 of the Board's 10 members during the period at issue in this case, earned substantial fees for that service. By 2003, nondentists arrived on the scene. They charged lower

Opinion of the Court

prices for their services than the dentists did. Dentists soon began to complain to the Board about their new competitors. Few complaints warned of possible harm to consumers. Most expressed a principal concern with the low prices charged by nondentists.

Responding to these filings, the Board opened an investigation into nondentist teeth whitening. A dentist member was placed in charge of the inquiry. Neither the Board's hygienist member nor its consumer member participated in this undertaking. The Board's chief operations officer remarked that the Board was "going forth to do battle" with nondentists. App. to Pet. for Cert. 103a. The Board's concern did not result in a formal rule or regulation reviewable by the independent Rules Review Commission, even though the Act does not, by its terms, specify that teeth whitening is "the practice of dentistry."

Starting in 2006, the Board issued at least 47 cease-and-desist letters on its official letterhead to nondentist teeth whitening service providers and product manufacturers. Many of those letters directed the recipient to cease "all activity constituting the practice of dentistry"; warned that the unlicensed practice of dentistry is a crime; and strongly implied (or expressly stated) that teeth whitening constitutes "the practice of dentistry." App. 13, 15. In early 2007, the Board persuaded the North Carolina Board of Cosmetic Art Examiners to warn cosmetologists against providing teeth whitening services. Later that year, the Board sent letters to mall operators, stating that kiosk teeth whiteners were violating the Dental Practice Act and advising that the malls consider expelling violators from their premises.

These actions had the intended result. Nondentists ceased offering teeth whitening services in North Carolina.

C

In 2010, the Federal Trade Commission (FTC) filed an

NORTH CAROLINA STATE BD. OF DENTAL
EXAMINERS v. FTC
Opinion of the Court

administrative complaint charging the Board with violating §5 of the Federal Trade Commission Act, 38 Stat. 719, as amended, 15 U. S. C. §45. The FTC alleged that the Board's concerted action to exclude nondentists from the market for teeth whitening services in North Carolina constituted an anticompetitive and unfair method of competition. The Board moved to dismiss, alleging state-action immunity. An Administrative Law Judge (ALJ) denied the motion. On appeal, the FTC sustained the ALJ's ruling. It reasoned that, even assuming the Board had acted pursuant to a clearly articulated state policy to displace competition, the Board is a "public/private hybrid" that must be actively supervised by the State to claim immunity. App. to Pet. for Cert. 49a. The FTC further concluded the Board could not make that showing.

Following other proceedings not relevant here, the ALJ conducted a hearing on the merits and determined the Board had unreasonably restrained trade in violation of antitrust law. On appeal, the FTC again sustained the ALJ. The FTC rejected the Board's public safety justification, noting, *inter alia*, "a wealth of evidence . . . suggesting that non-dentist provided teeth whitening is a safe cosmetic procedure." *Id.*, at 123a.

The FTC ordered the Board to stop sending the cease-and-desist letters or other communications that stated nondentists may not offer teeth whitening services and products. It further ordered the Board to issue notices to all earlier recipients of the Board's cease-and-desist orders advising them of the Board's proper sphere of authority and saying, among other options, that the notice recipients had a right to seek declaratory rulings in state court.

On petition for review, the Court of Appeals for the Fourth Circuit affirmed the FTC in all respects. 717 F. 3d 359, 370 (2013). This Court granted certiorari. 571 U. S. ____ (2014).

Opinion of the Court

II

Federal antitrust law is a central safeguard for the Nation's free market structures. In this regard it is "as important to the preservation of economic freedom and our free-enterprise system as the Bill of Rights is to the protection of our fundamental personal freedoms." *United States v. Topco Associates, Inc.*, 405 U. S. 596, 610 (1972). The antitrust laws declare a considered and decisive prohibition by the Federal Government of cartels, price fixing, and other combinations or practices that undermine the free market.

The Sherman Act, 26 Stat. 209, as amended, 15 U. S. C. §1 *et seq.*, serves to promote robust competition, which in turn empowers the States and provides their citizens with opportunities to pursue their own and the public's welfare. See *FTC v. Ticor Title Ins. Co.*, 504 U. S. 621, 632 (1992). The States, however, when acting in their respective realm, need not adhere in all contexts to a model of unfettered competition. While "the States regulate their economies in many ways not inconsistent with the antitrust laws," *id.*, at 635–636, in some spheres they impose restrictions on occupations, confer exclusive or shared rights to dominate a market, or otherwise limit competition to achieve public objectives. If every duly enacted state law or policy were required to conform to the mandates of the Sherman Act, thus promoting competition at the expense of other values a State may deem fundamental, federal antitrust law would impose an impermissible burden on the States' power to regulate. See *Exxon Corp. v. Governor of Maryland*, 437 U. S. 117, 133 (1978); see also Easterbrook, *Antitrust and the Economics of Federalism*, 26 J. Law & Econ. 23, 24 (1983).

For these reasons, the Court in *Parker v. Brown* interpreted the antitrust laws to confer immunity on anticompetitive conduct by the States when acting in their sovereign capacity. See 317 U. S., at 350–351. That ruling

recognized Congress' purpose to respect the federal balance and to "embody in the Sherman Act the federalism principle that the States possess a significant measure of sovereignty under our Constitution." *Community Communications Co. v. Boulder*, 455 U. S. 40, 53 (1982). Since 1943, the Court has reaffirmed the importance of *Parker's* central holding. See, e.g., *Ticor*, *supra*, at 632–637; *Hoover v. Ronwin*, 466 U. S. 558, 568 (1984); *Lafayette v. Louisiana Power & Light Co.*, 435 U. S. 389, 394–400 (1978).

III

In this case the Board argues its members were invested by North Carolina with the power of the State and that, as a result, the Board's actions are cloaked with *Parker* immunity. This argument fails, however. A nonsovereign actor controlled by active market participants—such as the Board—enjoys *Parker* immunity only if it satisfies two requirements: "first that 'the challenged restraint . . . be one clearly articulated and affirmatively expressed as state policy,' and second that 'the policy . . . be actively supervised by the State.'" *FTC v. Phoebe Putney Health System, Inc.*, 568 U. S. ___, ___ (2013) (slip op., at 7) (quoting *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97, 105 (1980)). The parties have assumed that the clear articulation requirement is satisfied, and we do the same. While North Carolina prohibits the unauthorized practice of dentistry, however, its Act is silent on whether that broad prohibition covers teeth whitening. Here, the Board did not receive active supervision by the State when it interpreted the Act as addressing teeth whitening and when it enforced that policy by issuing cease-and-desist letters to nondentist teeth whiteners.

A

Although state-action immunity exists to avoid conflicts

Opinion of the Court

between state sovereignty and the Nation's commitment to a policy of robust competition, *Parker* immunity is not unbounded. "[G]iven the fundamental national values of free enterprise and economic competition that are embodied in the federal antitrust laws, 'state action immunity is disfavored, much as are repeals by implication.'" *Phoebe Putney, supra*, at ____ (slip op., at 7) (quoting *Ticor, supra*, at 636).

An entity may not invoke *Parker* immunity unless the actions in question are an exercise of the State's sovereign power. See *Columbia v. Omni Outdoor Advertising, Inc.*, 499 U. S. 365, 374 (1991). State legislation and "decision[s] of a state supreme court, acting legislatively rather than judicially," will satisfy this standard, and "*ipso facto* are exempt from the operation of the antitrust laws" because they are an undoubted exercise of state sovereign authority. *Hoover, supra*, at 567–568.

But while the Sherman Act confers immunity on the States' own anticompetitive policies out of respect for federalism, it does not always confer immunity where, as here, a State delegates control over a market to a non-sovereign actor. See *Parker, supra*, at 351 ("[A] state does not give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful"). For purposes of *Parker*, a nonsovereign actor is one whose conduct does not automatically qualify as that of the sovereign State itself. See *Hoover, supra*, at 567–568. State agencies are not simply by their governmental character sovereign actors for purposes of state-action immunity. See *Goldfarb v. Virginia State Bar*, 421 U. S. 773, 791 (1975) ("The fact that the State Bar is a state agency for some limited purposes does not create an antitrust shield that allows it to foster anticompetitive practices for the benefit of its members"). Immunity for state agencies, therefore, requires more than a mere facade of state involvement, for it is necessary in light of

Parker's rationale to ensure the States accept political accountability for anticompetitive conduct they permit and control. See *Ticor*, 504 U. S., at 636.

Limits on state-action immunity are most essential when the State seeks to delegate its regulatory power to active market participants, for established ethical standards may blend with private anticompetitive motives in a way difficult even for market participants to discern. Dual allegiances are not always apparent to an actor. In consequence, active market participants cannot be allowed to regulate their own markets free from antitrust accountability. See *Midcal, supra*, at 106 (“The national policy in favor of competition cannot be thwarted by casting [a] gauzy cloak of state involvement over what is essentially a private price-fixing arrangement”). Indeed, prohibitions against anticompetitive self-regulation by active market participants are an axiom of federal antitrust policy. See, e.g., *Allied Tube & Conduit Corp. v. Indian Head, Inc.*, 486 U. S. 492, 501 (1988); *Hoover, supra*, at 584 (Stevens, J., dissenting) (“The risk that private regulation of market entry, prices, or output may be designed to confer monopoly profits on members of an industry at the expense of the consuming public has been the central concern of . . . our antitrust jurisprudence”); see also Elhauge, *The Scope of Antitrust Process*, 104 Harv. L. Rev. 667, 672 (1991). So it follows that, under *Parker* and the Supremacy Clause, the States’ greater power to attain an end does not include the lesser power to negate the congressional judgment embodied in the Sherman Act through unsupervised delegations to active market participants. See Garland, *Antitrust and State Action: Economic Efficiency and the Political Process*, 96 Yale L. J. 486, 500 (1986).

Parker immunity requires that the anticompetitive conduct of nonsovereign actors, especially those authorized by the State to regulate their own profession, result from procedures that suffice to make it the State’s own.

Opinion of the Court

See *Goldfarb, supra*, at 790; see also 1A P. Areeda & H. Hovencamp, *Antitrust Law* ¶226, p. 180 (4th ed. 2013) (Areeda & Hovencamp). The question is not whether the challenged conduct is efficient, well-functioning, or wise. See *Ticor, supra*, at 634–635. Rather, it is “whether anti-competitive conduct engaged in by [nonsovereign actors] should be deemed state action and thus shielded from the antitrust laws.” *Patrick v. Burget*, 486 U. S. 94, 100 (1988).

To answer this question, the Court applies the two-part test set forth in *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97, a case arising from California’s delegation of price-fixing authority to wine merchants. Under *Midcal*, “[a] state law or regulatory scheme cannot be the basis for antitrust immunity unless, first, the State has articulated a clear policy to allow the anticompetitive conduct, and second, the State provides active supervision of [the] anticompetitive conduct.” *Ticor, supra*, at 631 (citing *Midcal, supra*, at 105).

Midcal’s clear articulation requirement is satisfied “where the displacement of competition [is] the inherent, logical, or ordinary result of the exercise of authority delegated by the state legislature. In that scenario, the State must have foreseen and implicitly endorsed the anticompetitive effects as consistent with its policy goals.” *Phoebe Putney*, 568 U. S., at ____ (slip op., at 11). The active supervision requirement demands, *inter alia*, “that state officials have and exercise power to review particular anticompetitive acts of private parties and disapprove those that fail to accord with state policy.” *Patrick, supra*, U. S., at 101.

The two requirements set forth in *Midcal* provide a proper analytical framework to resolve the ultimate question whether an anticompetitive policy is indeed the policy of a State. The first requirement—clear articulation—rarely will achieve that goal by itself, for a policy may

satisfy this test yet still be defined at so high a level of generality as to leave open critical questions about how and to what extent the market should be regulated. See *Ticor*, *supra*, at 636–637. Entities purporting to act under state authority might diverge from the State’s considered definition of the public good. The resulting asymmetry between a state policy and its implementation can invite private self-dealing. The second *Midcal* requirement—active supervision—seeks to avoid this harm by requiring the State to review and approve interstitial policies made by the entity claiming immunity.

Midcal’s supervision rule “stems from the recognition that [w]here a private party is engaging in anticompetitive activity, there is a real danger that he is acting to further his own interests, rather than the governmental interests of the State.” *Patrick*, *supra*, at 100. Concern about the private incentives of active market participants animates *Midcal*’s supervision mandate, which demands “realistic assurance that a private party’s anticompetitive conduct promotes state policy, rather than merely the party’s individual interests.” *Patrick*, *supra*, at 101.

B

In determining whether anticompetitive policies and conduct are indeed the action of a State in its sovereign capacity, there are instances in which an actor can be excused from *Midcal*’s active supervision requirement. In *Hallie v. Eau Claire*, 471 U. S. 34, 45 (1985), the Court held municipalities are subject exclusively to *Midcal*’s “clear articulation” requirement. That rule, the Court observed, is consistent with the objective of ensuring that the policy at issue be one enacted by the State itself. *Hallie* explained that “[w]here the actor is a municipality, there is little or no danger that it is involved in a private price-fixing arrangement. The only real danger is that it will seek to further purely parochial public interests at the

Opinion of the Court

expense of more overriding state goals.” 471 U. S., at 47. *Hallie* further observed that municipalities are electorally accountable and lack the kind of private incentives characteristic of active participants in the market. See *id.*, at 45, n. 9. Critically, the municipality in *Hallie* exercised a wide range of governmental powers across different economic spheres, substantially reducing the risk that it would pursue private interests while regulating any single field. See *ibid.* That *Hallie* excused municipalities from *Midcal*’s supervision rule for these reasons all but confirms the rule’s applicability to actors controlled by active market participants, who ordinarily have none of the features justifying the narrow exception *Hallie* identified. See 471 U. S., at 45.

Following *Goldfarb*, *Midcal*, and *Hallie*, which clarified the conditions under which *Parker* immunity attaches to the conduct of a nonsovereign actor, the Court in *Columbia v. Omni Outdoor Advertising, Inc.*, 499 U. S. 365, addressed whether an otherwise immune entity could lose immunity for conspiring with private parties. In *Omni*, an aspiring billboard merchant argued that the city of Columbia, South Carolina, had violated the Sherman Act—and forfeited its *Parker* immunity—by anticompetitively conspiring with an established local company in passing an ordinance restricting new billboard construction. 499 U. S., at 367–368. The Court disagreed, holding there is no “conspiracy exception” to *Parker*. *Omni, supra*, at 374.

Omni, like the cases before it, recognized the importance of drawing a line “relevant to the purposes of the Sherman Act and of *Parker*: prohibiting the restriction of competition for private gain but permitting the restriction of competition in the public interest.” 499 U. S., at 378. In the context of a municipal actor which, as in *Hallie*, exercised substantial governmental powers, *Omni* rejected a conspiracy exception for “corruption” as vague and unworkable, since “virtually all regulation benefits some

segments of the society and harms others” and may in that sense be seen as “‘corrupt.’” 499 U. S., at 377. *Omni* also rejected subjective tests for corruption that would force a “deconstruction of the governmental process and probing of the official ‘intent’ that we have consistently sought to avoid.” *Ibid.* Thus, whereas the cases preceding it addressed the preconditions of *Parker* immunity and engaged in an objective, *ex ante* inquiry into nonsovereign actors’ structure and incentives, *Omni* made clear that recipients of immunity will not lose it on the basis of ad hoc and *ex post* questioning of their motives for making particular decisions.

Omni’s holding makes it all the more necessary to ensure the conditions for granting immunity are met in the first place. The Court’s two state-action immunity cases decided after *Omni* reinforce this point. In *Ticor* the Court affirmed that *Midcal*’s limits on delegation must ensure that “[a]ctual state involvement, not deference to private price-fixing arrangements under the general auspices of state law, is the precondition for immunity from federal law.” 504 U. S., at 633. And in *Phoebe Putney* the Court observed that *Midcal*’s active supervision requirement, in particular, is an essential condition of state-action immunity when a nonsovereign actor has “an incentive to pursue [its] own self-interest under the guise of implementing state policies.” 568 U. S., at ___ (slip op., at 8) (quoting *Hallie*, *supra*, at 46–47). The lesson is clear: *Midcal*’s active supervision test is an essential prerequisite of *Parker* immunity for any nonsovereign entity—public or private—controlled by active market participants.

C

The Board argues entities designated by the States as agencies are exempt from *Midcal*’s second requirement. That premise, however, cannot be reconciled with the Court’s repeated conclusion that the need for supervision

Opinion of the Court

turns not on the formal designation given by States to regulators but on the risk that active market participants will pursue private interests in restraining trade.

State agencies controlled by active market participants, who possess singularly strong private interests, pose the very risk of self-dealing *Midcal*'s supervision requirement was created to address. See *Areeda & Hovencamp* ¶227, at 226. This conclusion does not question the good faith of state officers but rather is an assessment of the structural risk of market participants' confusing their own interests with the State's policy goals. See *Patrick*, 486 U. S., at 100–101.

The Court applied this reasoning to a state agency in *Goldfarb*. There the Court denied immunity to a state agency (the Virginia State Bar) controlled by market participants (lawyers) because the agency had “joined in what is essentially a private anticompetitive activity” for “the benefit of its members.” 421 U. S., at 791, 792. This emphasis on the Bar's private interests explains why *Goldfarb*, though it predates *Midcal*, considered the lack of supervision by the Virginia Supreme Court to be a principal reason for denying immunity. See 421 U. S., at 791; see also *Hoover*, 466 U. S., at 569 (emphasizing lack of active supervision in *Goldfarb*); *Bates v. State Bar of Ariz.*, 433 U. S. 350, 361–362 (1977) (granting the Arizona Bar state-action immunity partly because its “rules are subject to pointed re-examination by the policymaker”).

While *Hallie* stated “it is likely that active state supervision would also not be required” for agencies, 471 U. S., at 46, n. 10, the entity there, as was later the case in *Omni*, was an electorally accountable municipality with general regulatory powers and no private price-fixing agenda. In that and other respects the municipality was more like prototypical state agencies, not specialized boards dominated by active market participants. In important regards, agencies controlled by market partici-

pants are more similar to private trade associations vested by States with regulatory authority than to the agencies *Hallie* considered. And as the Court observed three years after *Hallie*, “[t]here is no doubt that the members of such associations often have economic incentives to restrain competition and that the product standards set by such associations have a serious potential for anticompetitive harm.” *Allied Tube*, 486 U. S., at 500. For that reason, those associations must satisfy *Midcal*’s active supervision standard. See *Midcal*, 445 U. S., at 105–106.

The similarities between agencies controlled by active market participants and private trade associations are not eliminated simply because the former are given a formal designation by the State, vested with a measure of government power, and required to follow some procedural rules. See *Hallie*, *supra*, at 39 (rejecting “purely formalistic” analysis). *Parker* immunity does not derive from nomenclature alone. When a State empowers a group of active market participants to decide who can participate in its market, and on what terms, the need for supervision is manifest. See *Areeda & Hovencamp* ¶227, at 226. The Court holds today that a state board on which a controlling number of decisionmakers are active market participants in the occupation the board regulates must satisfy *Midcal*’s active supervision requirement in order to invoke state-action antitrust immunity.

D

The State argues that allowing this FTC order to stand will discourage dedicated citizens from serving on state agencies that regulate their own occupation. If this were so—and, for reasons to be noted, it need not be so—there would be some cause for concern. The States have a sovereign interest in structuring their governments, see *Gregory v. Ashcroft*, 501 U. S. 452, 460 (1991), and may conclude there are substantial benefits to staffing their

Opinion of the Court

agencies with experts in complex and technical subjects, see *Southern Motor Carriers Rate Conference, Inc. v. United States*, 471 U. S. 48, 64 (1985). There is, moreover, a long tradition of citizens esteemed by their professional colleagues devoting time, energy, and talent to enhancing the dignity of their calling.

Adherence to the idea that those who pursue a calling must embrace ethical standards that derive from a duty separate from the dictates of the State reaches back at least to the Hippocratic Oath. See generally S. Miles, *The Hippocratic Oath and the Ethics of Medicine* (2004). In the United States, there is a strong tradition of professional self-regulation, particularly with respect to the development of ethical rules. See generally R. Rotunda & J. Dzienkowski, *Legal Ethics: The Lawyer's Deskbook on Professional Responsibility* (2014); R. Baker, *Before Bioethics: A History of American Medical Ethics From the Colonial Period to the Bioethics Revolution* (2013). Dentists are no exception. The American Dental Association, for example, in an exercise of “the privilege and obligation of self-government,” has “call[ed] upon dentists to follow high ethical standards,” including “honesty, compassion, kindness, integrity, fairness and charity.” American Dental Association, *Principles of Ethics and Code of Professional Conduct* 3–4 (2012). State laws and institutions are sustained by this tradition when they draw upon the expertise and commitment of professionals.

Today's holding is not inconsistent with that idea. The Board argues, however, that the potential for money damages will discourage members of regulated occupations from participating in state government. Cf. *Filarsky v. Delia*, 566 U. S. ____, ____ (2012) (slip op., at 12) (warning in the context of civil rights suits that the “the most talented candidates will decline public engagements if they do not receive the same immunity enjoyed by their public employee counterparts”). But this case, which does not

present a claim for money damages, does not offer occasion to address the question whether agency officials, including board members, may, under some circumstances, enjoy immunity from damages liability. See *Goldfarb*, 421 U. S., at 792, n. 22; see also Brief for Respondent 56. And, of course, the States may provide for the defense and indemnification of agency members in the event of litigation.

States, furthermore, can ensure *Parker* immunity is available to agencies by adopting clear policies to displace competition; and, if agencies controlled by active market participants interpret or enforce those policies, the States may provide active supervision. Precedent confirms this principle. The Court has rejected the argument that it would be unwise to apply the antitrust laws to professional regulation absent compliance with the prerequisites for invoking *Parker* immunity:

“[Respondents] contend that effective peer review is essential to the provision of quality medical care and that any threat of antitrust liability will prevent physicians from participating openly and actively in peer-review proceedings. This argument, however, essentially challenges the wisdom of applying the antitrust laws to the sphere of medical care, and as such is properly directed to the legislative branch. To the extent that Congress has declined to exempt medical peer review from the reach of the antitrust laws, peer review is immune from antitrust scrutiny only if the State effectively has made this conduct its own.” *Patrick*, 486 U. S. at 105–106 (footnote omitted).

The reasoning of *Patrick v. Burget* applies to this case with full force, particularly in light of the risks licensing boards dominated by market participants may pose to the free market. See generally Edlin & Haw, *Cartels by Another Name: Should Licensed Occupations Face Antitrust Scrutiny?* 162 U. Pa. L. Rev. 1093 (2014).

Opinion of the Court

E

The Board does not contend in this Court that its anti-competitive conduct was actively supervised by the State or that it should receive *Parker* immunity on that basis.

By statute, North Carolina delegates control over the practice of dentistry to the Board. The Act, however, says nothing about teeth whitening, a practice that did not exist when it was passed. After receiving complaints from other dentists about the nondentists' cheaper services, the Board's dentist members—some of whom offered whitening services—acted to expel the dentists' competitors from the market. In so doing the Board relied upon cease-and-desist letters threatening criminal liability, rather than any of the powers at its disposal that would invoke oversight by a politically accountable official. With no active supervision by the State, North Carolina officials may well have been unaware that the Board had decided teeth whitening constitutes “the practice of dentistry” and sought to prohibit those who competed against dentists from participating in the teeth whitening market. Whether or not the Board exceeded its powers under North Carolina law, cf. *Omni*, 499 U. S., at 371–372, there is no evidence here of any decision by the State to initiate or concur with the Board's actions against the nondentists.

IV

The Board does not claim that the State exercised active, or indeed any, supervision over its conduct regarding nondentist teeth whiteners; and, as a result, no specific supervisory systems can be reviewed here. It suffices to note that the inquiry regarding active supervision is flexible and context-dependent. Active supervision need not entail day-to-day involvement in an agency's operations or micromanagement of its every decision. Rather, the question is whether the State's review mechanisms provide “realistic assurance” that a nonsovereign actor's anticom-

petitive conduct “promotes state policy, rather than merely the party’s individual interests.” *Patrick, supra*, at 100–101; see also *Ticor*, 504 U. S., at 639–640.

The Court has identified only a few constant requirements of active supervision: The supervisor must review the substance of the anticompetitive decision, not merely the procedures followed to produce it, see *Patrick*, 486 U. S., at 102–103; the supervisor must have the power to veto or modify particular decisions to ensure they accord with state policy, see *ibid.*; and the “mere potential for state supervision is not an adequate substitute for a decision by the State,” *Ticor, supra*, at 638. Further, the state supervisor may not itself be an active market participant. In general, however, the adequacy of supervision otherwise will depend on all the circumstances of a case.

* * *

The Sherman Act protects competition while also respecting federalism. It does not authorize the States to abandon markets to the unsupervised control of active market participants, whether trade associations or hybrid agencies. If a State wants to rely on active market participants as regulators, it must provide active supervision if state-action immunity under *Parker* is to be invoked.

The judgment of the Court of Appeals for the Fourth Circuit is affirmed.

It is so ordered.

ALITO, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 13–534

**NORTH CAROLINA STATE BOARD OF DENTAL
EXAMINERS, PETITIONER *v.* FEDERAL
TRADE COMMISSION**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE FOURTH CIRCUIT

[February 25, 2015]

JUSTICE ALITO, with whom JUSTICE SCALIA and JUSTICE THOMAS join, dissenting.

The Court’s decision in this case is based on a serious misunderstanding of the doctrine of state-action antitrust immunity that this Court recognized more than 60 years ago in *Parker v. Brown*, 317 U. S. 341 (1943). In *Parker*, the Court held that the Sherman Act does not prevent the States from continuing their age-old practice of enacting measures, such as licensing requirements, that are designed to protect the public health and welfare. *Id.*, at 352. The case now before us involves precisely this type of state regulation—North Carolina’s laws governing the practice of dentistry, which are administered by the North Carolina Board of Dental Examiners (Board).

Today, however, the Court takes the unprecedented step of holding that *Parker* does not apply to the North Carolina Board because the Board is not structured in a way that merits a good-government seal of approval; that is, it is made up of practicing dentists who have a financial incentive to use the licensing laws to further the financial interests of the State’s dentists. There is nothing new about the structure of the North Carolina Board. When the States first created medical and dental boards, well before the Sherman Act was enacted, they began to staff

them in this way.¹ Nor is there anything new about the suspicion that the North Carolina Board—in attempting to prevent persons other than dentists from performing teeth-whitening procedures—was serving the interests of dentists and not the public. Professional and occupational licensing requirements have often been used in such a way.² But that is not what *Parker* immunity is about. Indeed, the very state program involved in that case was unquestionably designed to benefit the regulated entities, California raisin growers.

The question before us is not whether such programs serve the public interest. The question, instead, is whether this case is controlled by *Parker*, and the answer to that question is clear. Under *Parker*, the Sherman Act (and the Federal Trade Commission Act, see *FTC v. Ticor Title Ins. Co.*, 504 U. S. 621, 635 (1992)) do not apply to state agencies; the North Carolina Board of Dental Examiners is a state agency; and that is the end of the matter. By straying from this simple path, the Court has not only distorted *Parker*; it has headed into a morass. Determining whether a state agency is structured in a way that militates against regulatory capture is no easy task, and there is reason to fear that today's decision will spawn confusion. The Court has veered off course, and therefore I cannot go along.

¹S. White, *History of Oral and Dental Science in America 197–214* (1876) (detailing earliest American regulations of the practice of dentistry).

²See, e.g., R. Shrylock, *Medical Licensing in America* 29 (1967) (Shrylock) (detailing the deterioration of licensing regimes in the mid-19th century, in part out of concerns about restraints on trade); Gellhorn, *The Abuse of Occupational Licensing*, 44 U. Chi. L. Rev. 6 (1976); Shepard, *Licensing Restrictions and the Cost of Dental Care*, 21 J. Law & Econ. 187 (1978).

ALITO, J., dissenting

I

In order to understand the nature of *Parker* state-action immunity, it is helpful to recall the constitutional landscape in 1890 when the Sherman Act was enacted. At that time, this Court and Congress had an understanding of the scope of federal and state power that is very different from our understanding today. The States were understood to possess the exclusive authority to regulate “their purely internal affairs.” *Leisy v. Hardin*, 135 U. S. 100, 122 (1890). In exercising their police power in this area, the States had long enacted measures, such as price controls and licensing requirements, that had the effect of restraining trade.³

The Sherman Act was enacted pursuant to Congress’ power to regulate interstate commerce, and in passing the Act, Congress wanted to exercise that power “to the utmost extent.” *United States v. South-Eastern Underwriters Assn.*, 322 U. S. 533, 558 (1944). But in 1890, the understanding of the commerce power was far more limited than it is today. See, e.g., *Kidd v. Pearson*, 128 U. S. 1, 17–18 (1888). As a result, the Act did not pose a threat to traditional state regulatory activity.

By 1943, when *Parker* was decided, however, the situation had changed dramatically. This Court had held that the commerce power permitted Congress to regulate even local activity if it “exerts a substantial economic effect on interstate commerce.” *Wickard v. Filburn*, 317 U. S. 111, 125 (1942). This meant that Congress could regulate many of the matters that had once been thought to fall exclusively within the jurisdiction of the States. The new interpretation of the commerce power brought about an expansion of the reach of the Sherman Act. See *Hospital*

³See Handler, The Current Attack on the *Parker v. Brown* State Action Doctrine, 76 Colum. L. Rev. 1, 4–6 (1976) (collecting cases).

Building Co. v. Trustees of Rex Hospital, 425 U. S. 738, 743, n. 2 (1976) (“[D]ecisions by this Court have permitted the reach of the Sherman Act to expand along with expanding notions of congressional power”). And the expanded reach of the Sherman Act raised an important question. The Sherman Act does not expressly exempt States from its scope. Does that mean that the Act applies to the States and that it potentially outlaws many traditional state regulatory measures? The Court confronted that question in *Parker*.

In *Parker*, a raisin producer challenged the California Agricultural Prorate Act, an agricultural price support program. The California Act authorized the creation of an Agricultural Prorate Advisory Commission (Commission) to establish marketing plans for certain agricultural commodities within the State. 317 U. S., at 346–347. Raisins were among the regulated commodities, and so the Commission established a marketing program that governed many aspects of raisin sales, including the quality and quantity of raisins sold, the timing of sales, and the price at which raisins were sold. *Id.*, at 347–348. The *Parker* Court assumed that this program would have violated “the Sherman Act if it were organized and made effective solely by virtue of a contract, combination or conspiracy of private persons,” and the Court also assumed that Congress could have prohibited a State from creating a program like California’s if it had chosen to do so. *Id.*, at 350. Nevertheless, the Court concluded that the California program did not violate the Sherman Act because the Act did not circumscribe state regulatory power. *Id.*, at 351.

The Court’s holding in *Parker* was not based on either the language of the Sherman Act or anything in the legislative history affirmatively showing that the Act was not meant to apply to the States. Instead, the Court reasoned that “[i]n a dual system of government in which, under the Constitution, the states are sovereign, save only as Con-

ALITO, J., dissenting

gress may constitutionally subtract from their authority, an unexpressed purpose to nullify a state's control over its officers and agents is not lightly to be attributed to Congress." 317 U. S., at 351. For the Congress that enacted the Sherman Act in 1890, it would have been a truly radical and almost certainly futile step to attempt to prevent the States from exercising their traditional regulatory authority, and the *Parker* Court refused to assume that the Act was meant to have such an effect.

When the basis for the *Parker* state-action doctrine is understood, the Court's error in this case is plain. In 1890, the regulation of the practice of medicine and dentistry was regarded as falling squarely within the States' sovereign police power. By that time, many States had established medical and dental boards, often staffed by doctors or dentists,⁴ and had given those boards the authority to confer and revoke licenses.⁵ This was quintessential police power legislation, and although state laws were often challenged during that era under the doctrine of substantive due process, the licensing of medical professionals easily survived such assaults. Just one year before the enactment of the Sherman Act, in *Dent v. West Virginia*, 129 U. S. 114, 128 (1889), this Court rejected such a challenge to a state law requiring all physicians to obtain a certificate from the state board of health attesting to their qualifications. And in *Hawker v. New York*, 170 U. S. 189, 192 (1898), the Court reiterated that a law

⁴Shrylock 54–55; D. Johnson and H. Chaudry, *Medical Licensing and Discipline in America* 23–24 (2012).

⁵In *Hawker v. New York*, 170 U. S. 189 (1898), the Court cited state laws authorizing such boards to refuse or revoke medical licenses. *Id.*, at 191–193, n. 1. See also *Douglas v. Noble*, 261 U. S. 165, 166 (1923) (“In 1893 the legislature of Washington provided that only licensed persons should practice dentistry” and “vested the authority to license in a board of examiners, consisting of five practicing dentists”).

specifying the qualifications to practice medicine was clearly a proper exercise of the police power. Thus, the North Carolina statutes establishing and specifying the powers of the State Board of Dental Examiners represent precisely the kind of state regulation that the *Parker* exemption was meant to immunize.

II

As noted above, the only question in this case is whether the North Carolina Board of Dental Examiners is really a state agency, and the answer to that question is clearly yes.

- The North Carolina Legislature determined that the practice of dentistry “affect[s] the public health, safety and welfare” of North Carolina’s citizens and that therefore the profession should be “subject to regulation and control in the public interest” in order to ensure “that only qualified persons be permitted to practice dentistry in the State.” N. C. Gen. Stat. Ann. §90–22(a) (2013).
- To further that end, the legislature created the North Carolina State Board of Dental Examiners “as the agency of the State for the regulation of the practice of dentistry in th[e] State.” §90–22(b).
- The legislature specified the membership of the Board. §90–22(c). It defined the “practice of dentistry,” §90–29(b), and it set out standards for licensing practitioners, §90–30. The legislature also set out standards under which the Board can initiate disciplinary proceedings against licensees who engage in certain improper acts. §90–41(a).
- The legislature empowered the Board to “maintain an action in the name of the State of North Carolina to perpetually enjoin any person from . . . unlawfully practicing dentistry.” §90–40.1(a). It authorized the Board to conduct investigations and to hire legal

ALITO, J., dissenting

counsel, and the legislature made any “notice or statement of charges against any licensee” a public record under state law. §§ 90–41(d)–(g).

- The legislature empowered the Board “to enact rules and regulations governing the practice of dentistry within the State,” consistent with relevant statutes. §§90–48. It has required that any such rules be included in the Board’s annual report, which the Board must file with the North Carolina secretary of state, the state attorney general, and the legislature’s Joint Regulatory Reform Committee. §93B–2. And if the Board fails to file the required report, state law demands that it be automatically suspended until it does so. *Ibid.*

As this regulatory regime demonstrates, North Carolina’s Board of Dental Examiners is unmistakably a state agency created by the state legislature to serve a prescribed regulatory purpose and to do so using the State’s power in cooperation with other arms of state government.

The Board is not a private or “nonsovereign” entity that the State of North Carolina has attempted to immunize from federal antitrust scrutiny. *Parker* made it clear that a State may not “give immunity to those who violate the Sherman Act by authorizing them to violate it, or by declaring that their action is lawful.” *Ante*, at 7 (quoting *Parker*, 317 U. S., at 351). When the *Parker* Court disapproved of any such attempt, it cited *Northern Securities Co. v. United States*, 193 U. S. 197 (1904), to show what it had in mind. In that case, the Court held that a State’s act of chartering a corporation did not shield the corporation’s monopolizing activities from federal antitrust law. *Id.*, at 344–345. Nothing similar is involved here. North Carolina did not authorize a private entity to enter into an anticompetitive arrangement; rather, North Carolina created a state agency and gave that agency the power to regulate a particular subject affecting public health and

safety.

Nothing in *Parker* supports the type of inquiry that the Court now prescribes. The Court crafts a test under which state agencies that are “controlled by active market participants,” *ante*, at 12, must demonstrate active state supervision in order to be immune from federal antitrust law. The Court thus treats these state agencies like private entities. But in *Parker*, the Court did not examine the structure of the California program to determine if it had been captured by private interests. If the Court had done so, the case would certainly have come out differently, because California conditioned its regulatory measures on the participation and approval of market actors in the relevant industry.

Establishing a prorate marketing plan under California’s law first required the petition of at least 10 producers of the particular commodity. *Parker*, 317 U. S., at 346. If the Commission then agreed that a marketing plan was warranted, the Commission would “select a program committee from among nominees chosen by the qualified producers.” *Ibid.* (emphasis added). That committee would then formulate the proration marketing program, which the Commission could modify or approve. But even after Commission approval, the program became law (and then, automatically) only if it gained the approval of 65 percent of the relevant producers, representing at least 51 percent of the acreage of the regulated crop. *Id.*, at 347. This scheme gave decisive power to market participants. But despite these aspects of the California program, *Parker* held that California was acting as a “sovereign” when it “adopt[ed] and enforc[ed] the prorate program.” *Id.*, at 352. This reasoning is irreconcilable with the Court’s today.

III

The Court goes astray because it forgets the origin of the

ALITO, J., dissenting

Parker doctrine and is misdirected by subsequent cases that extended that doctrine (in certain circumstances) to private entities. The Court requires the North Carolina Board to satisfy the two-part test set out in *California Retail Liquor Dealers Assn. v. Midcal Aluminum, Inc.*, 445 U. S. 97 (1980), but the party claiming *Parker* immunity in that case was not a state agency but a private trade association. Such an entity is entitled to *Parker* immunity, *Midcal* held, only if the anticompetitive conduct at issue was both “clearly articulated” and “actively supervised by the State itself.” 445 U. S., at 105. Those requirements are needed where a State authorizes private parties to engage in anticompetitive conduct. They serve to identify those situations in which conduct *by private parties* can be regarded as the conduct of a State. But when the conduct in question is the conduct of a state agency, no such inquiry is required.

This case falls into the latter category, and therefore *Midcal* is inapposite. The North Carolina Board is not a private trade association. It is a state agency, created and empowered by the State to regulate an industry affecting public health. It would not exist if the State had not created it. And for purposes of *Parker*, its membership is irrelevant; what matters is that it is part of the government of the sovereign State of North Carolina.

Our decision in *Hallie v. Eau Claire*, 471 U. S. 34 (1985), which involved Sherman Act claims against a municipality, not a State agency, is similarly inapplicable. In *Hallie*, the plaintiff argued that the two-pronged *Midcal* test should be applied, but the Court disagreed. The Court acknowledged that municipalities “are not themselves sovereign.” 471 U. S., at 38. But recognizing that a municipality is “an arm of the State,” *id.*, at 45, the Court held that a municipality should be required to satisfy only the first prong of the *Midcal* test (requiring a clearly articulated state policy), 471 U. S., at 46. That municipalities

are not sovereign was critical to our analysis in *Hallie*, and thus that decision has no application in a case, like this one, involving a state agency.

Here, however, the Court not only disregards the North Carolina Board's status as a full-fledged state agency; it treats the Board less favorably than a municipality. This is puzzling. States are sovereign, *Northern Ins. Co. of N. Y. v. Chatham County*, 547 U. S. 189, 193 (2006), and California's sovereignty provided the foundation for the decision in *Parker, supra*, at 352. Municipalities are not sovereign. *Jinks v. Richland County*, 538 U. S. 456, 466 (2003). And for this reason, federal law often treats municipalities differently from States. Compare *Will v. Michigan Dept. of State Police*, 491 U. S. 58, 71 (1989) (“[N]either a State nor its officials acting in their official capacities are ‘persons’ under [42 U. S. C.] §1983”), with *Monell v. City Dept. of Social Servs., New York*, 436 U. S. 658, 694 (1978) (municipalities liable under §1983 where “execution of a government’s policy or custom . . . inflicts the injury”).

The Court recognizes that municipalities, although not sovereign, nevertheless benefit from a more lenient standard for state-action immunity than private entities. Yet under the Court’s approach, the North Carolina Board of Dental Examiners, a full-fledged state agency, is treated like a private actor and must demonstrate that the State actively supervises its actions.

The Court’s analysis seems to be predicated on an assessment of the varying degrees to which a municipality and a state agency like the North Carolina Board are likely to be captured by private interests. But until today, *Parker* immunity was never conditioned on the proper use of state regulatory authority. On the contrary, in *Columbia v. Omni Outdoor Advertising, Inc.*, 499 U. S. 365 (1991), we refused to recognize an exception to *Parker* for cases in which it was shown that the defendants had

ALITO, J., dissenting

engaged in a conspiracy or corruption or had acted in a way that was not in the public interest. *Id.*, at 374. The Sherman Act, we said, is not an anticorruption or good-government statute. 499 U. S., at 398. We were unwilling in *Omni* to rewrite *Parker* in order to reach the allegedly abusive behavior of city officials. 499 U. S., at 374–379. But that is essentially what the Court has done here.

III

Not only is the Court's decision inconsistent with the underlying theory of *Parker*; it will create practical problems and is likely to have far-reaching effects on the States' regulation of professions. As previously noted, state medical and dental boards have been staffed by practitioners since they were first created, and there are obvious advantages to this approach. It is reasonable for States to decide that the individuals best able to regulate technical professions are practitioners with expertise in those very professions. Staffing the State Board of Dental Examiners with certified public accountants would certainly lessen the risk of actions that place the well-being of dentists over those of the public, but this would also compromise the State's interest in sensibly regulating a technical profession in which lay people have little expertise.

As a result of today's decision, States may find it necessary to change the composition of medical, dental, and other boards, but it is not clear what sort of changes are needed to satisfy the test that the Court now adopts. The Court faults the structure of the North Carolina Board because "active market participants" constitute "a controlling number of [the] decisionmakers," *ante*, at 14, but this test raises many questions.

What is a "controlling number"? Is it a majority? And if so, why does the Court eschew that term? Or does the Court mean to leave open the possibility that something less than a majority might suffice in particular circum-

stances? Suppose that active market participants constitute a voting bloc that is generally able to get its way? How about an obstructionist minority or an agency chair empowered to set the agenda or veto regulations?

Who is an "active market participant"? If Board members withdraw from practice during a short term of service but typically return to practice when their terms end, does that mean that they are not active market participants during their period of service?

What is the scope of the market in which a member may not participate while serving on the board? Must the market be relevant to the particular regulation being challenged or merely to the jurisdiction of the entire agency? Would the result in the present case be different if a majority of the Board members, though practicing dentists, did not provide teeth whitening services? What if they were orthodontists, periodontists, and the like? And how much participation makes a person "active" in the market?

The answers to these questions are not obvious, but the States must predict the answers in order to make informed choices about how to constitute their agencies.

I suppose that all this will be worked out by the lower courts and the Federal Trade Commission (FTC), but the Court's approach raises a more fundamental question, and that is why the Court's inquiry should stop with an examination of the structure of a state licensing board. When the Court asks whether market participants control the North Carolina Board, the Court in essence is asking whether this regulatory body has been captured by the entities that it is supposed to regulate. Regulatory capture can occur in many ways.⁶ So why ask only whether

⁶See, *e.g.*, R. Noll, *Reforming Regulation* 40-43, 46 (1971); J. Wilson, *The Politics of Regulation* 357-394 (1980). Indeed, it has even been

ALITO, J., dissenting

the members of a board are active market participants? The answer may be that determining when regulatory capture has occurred is no simple task. That answer provides a reason for relieving courts from the obligation to make such determinations at all. It does not explain why it is appropriate for the Court to adopt the rather crude test for capture that constitutes the holding of today's decision.

IV

The Court has created a new standard for distinguishing between private and state actors for purposes of federal antitrust immunity. This new standard is not true to the *Parker* doctrine; it diminishes our traditional respect for federalism and state sovereignty; and it will be difficult to apply. I therefore respectfully dissent.

charged that the FTC, which brought this case, has been captured by entities over which it has jurisdiction. See E. Cox, "The Nader Report" on the Federal Trade Commission vii–xiv (1969); Posner, Federal Trade Commission, *Chi. L. Rev.* 47, 82–84 (1969).

