AMENDED OPEN AGENDA
Missouri State Board of Embalmers and Funeral Directors

March 27-29, 2007
Isle of Capri Event Center
Boonville, Missouri

Tuesday, March 27, 2007 – 12:00 p.m.

Call to Order

Roll Call

1. Approval of Agenda

Closed Meeting. The Board may move into closed session pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 620.010.14 Subsection (8) for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 620.010.14 Subsection (5) RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the open minutes of previous meetings.

Wednesday, March 28, 2007 – 3:00 p.m.

2. 3:00 p.m. – Ted Foster/Ted Foster & Sons Funeral Home – Probation Violation Hearing

3. 3:30 p.m. – Sheldon-Goodrich Funeral Home – Probation Violation Hearing

Closed Meeting. The Board may move into closed session pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged...
communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 620.010.14 Subsection (8) for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 620.010.14 Subsection (5) RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the open minutes of previous meetings.

Thursday, March 29, 2007 – 9:00 a.m.

Call to Order

Roll Call

4. Approval of Minutes
   - November 21, 2006 Open Conference Call Meeting Minutes
   - November 27, 2006 Open Conference Call Meeting Minutes
   - December 3-5, 2006 Open Meeting Minutes
   - December 8, 2006 Open Mail Ballot Meeting Minutes
   - December 11, 2006 a.m. Open Conference Call Meeting Minutes
   - December 11, 2006 p.m. Open Conference Call Meeting Minutes
   - December 13, 2006 Open Conference Call Meeting Minutes
   - December 18, 2006 Open Mail Ballot Meeting Minutes
   - December 21, 2006 Open Mail Ballot Meeting Minutes
   - December 28, 2006 Open Mail Ballot Meeting Minutes
   - January 12, 2007 Open Mail Ballot Meeting Minutes
   - January 19, 2007 Open Mail Ballot Meeting Minutes
   - January 24, 2007 Open Mail Ballot Meeting Minutes
   - February 9, 2007 Open Mail Ballot Meeting Minutes
   - March 1, 2007 Open Conference Call Meeting Minutes
   - March 5, 2007 Open Mail Ballot Meeting Minutes
   - March 8, 2007, Open Mail Ballot Meeting Minutes

5. Executive Director’s Report

6. Financial Update (Sherry Hess-Division)

7. Legal Counsel Report (Kim Grinston)

8. Rules and Regulations
   - Rules printed in Missouri Register 3/1/2007
   - Pending
   - New
9. Legislation
   - HB825 – Chapter 436
   - SB659 – Chapter 436 and Right of Sepulcher/Next of Kin
   - SB222 – Fee Funds
   - SB455 – Fee Funds
   - HB777 – Crematory/Reverse side of Death Certificate
   - SB525 – Crematory/Reverse side of Death Certificate
   - HB655 – Reorganization
   - SB164 – Reorganization
   - HB568 – Income Tax Credit for Funeral Services
   - HB1076 – Tax Compliance
   - Others

10. Ethics Commission/Financial Disclosures

11. Examination Pass/Fail Results

12. Letter to Licensees relating to Entity/DBA (Chapter 417.210)

13. Provider/Seller Registration Report

14. Josh Slocum

15. Missing in American Program (Linda Smith)

16. News Releases
   - Vincent T. Dungey – Consumer Alert
   - State Board of Embalmers and Funeral Directors reaches agreement with FTC
   - Missouri Funeral Regulators Agree to Settle FTC Antitrust Charges
   - Others

17. Conferences

18. Election of Officers (To become effective April 1, 2007)

19. Future Meeting Dates

20. Web Registration System/Ivra Cross

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

Closed Meeting. The Board may move into closed session pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant
for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 620.010.14 Subsection (8) for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 620.010.14 Subsection (5) RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the open minutes of previous meetings.

Adjournment
January 25, 2007

Theodore V. Foster  
Foster & Sons, Inc.  
Ted Foster and Sons Funeral Home  
3737 Olive Street  
St. Louis, MO  63108

CERTIFIED MAIL:  7004 1350 0003 1344 4359

Dear Mr. Foster:

Enclosed is a copy of the Notice of Probation Violation Hearing as issued by the State Board of Embalmers and Funeral Directors.

Please make a note of the date, time and place of this hearing. The board has asked that I express the importance of your attendance at this hearing. It is in your best interest and the board encourages you to attend.

As with all appearance before the board, you may elect to have private legal counsel represent you at your expense. The board will be represented by legal counsel and the hearing will be recorded.

Please complete and return the enclosed post card verifying your attendance.

If you have any questions, please contact our office at (573)751-0813.

Sincerely,

Becky Dunn  
Executive Director

This letter is being sent both certified and first class mail.
BEFORE THE
STATE BOARD OF EMBALMERS & FUNERAL DIRECTORS
STATE OF MISSOURI

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS
3605 Missouri Blvd.
P.O. Box 423
Jefferson City, MO 65102

Petitioner,

vs.

Case No. 03-0229 EM

Foster & Sons Inc.
Dba Ted Foster & Sons Funeral Home
Home and Theodore V. Foster
A Missouri Corporation
3737 Olive Street
St. Louis, MO 63108

Respondent.

NOTICE OF PROBATION VIOLATION HEARING

PLEASE TAKE NOTICE that the Missouri State Board of Embalmers and Funeral Directors shall
hold a hearing for the purpose of determining the truth of the allegations set forth in the attached
Complaint and, if the allegations are true, whether or not disciplinary action should be taken. The hearing
will be held on Wednesday, March 28, 2007 at 3:00 p.m. or as soon thereafter as the matter may be
heard, at the Isle of Capri Casino and Hotel, Event Center, 100 Isle of Capri Blvd, Boonville,
Missouri, phone number 1-800-941-4753. Please be advised that your failure to appear at the hearing
at the above-noted time and place will result in the hearing being held in your absence.

All parties have the right to be represented by legal counsel and to a full, fair and open hearing as

MISSOURI STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

Seal

By: Becky Dunn
Executive Director

Dated: January 25, 2007
BEFORE THE
MISSOURI BOARD OF EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS
3605 Missouri Boulevard
P.O. Box 423
Jefferson City, MO 65102-0423

Petitioner,

v.

FOSTER & SONS, INC.
d/b/a TED FOSTER AND SONS FUNERAL
HOME, a Missouri Corporation
3737 Olive Street
St. Louis, MO 63108

Respondent.

PROBATION VIOLATION COMPLAINT

COMES NOW the Petitioner, State Board of Embalmers and Funeral Directors, and
for its Complaint against Respondent Foster & Sons, Inc. states as follows:

1. The State Board of Embalmers and Funeral Directors ("Board") is an agency
of the state of Missouri created and established pursuant to § 333.151, RSMo, for the purpose
of executing and enforcing the provisions of Chapter 333 and portions of Chapter 436,
RSMo.

2. Respondent Foster & Sons, Inc. d/b/a Ted Foster and Sons Funeral Home
("Foster & Sons"), a Missouri corporation in good standing, holds funeral establishment
license No. 2397 to operate a funeral establishment at 3737 Olive Street in St. Louis, Missouri.

3. On or about January 4, 2005, the Board issued its Findings of Fact, Conclusions of Law and Disciplinary Order (the "Order"). Pursuant to the Order, the Board placed Foster & Sons' funeral establishment, license No. 2397, on probation for a period of two years commencing January 4, 2005.

4. A true and accurate copy of the Order is attached hereto as Exhibit 1.

5. Pursuant to the terms of the Order, Foster & Sons is required to submit written reports to the Board by no later than January 1 and July 1 during each year of probation stating truthfully whether there has been compliance with all terms and conditions of the Order.

6. Foster & Sons failed to provide compliance reports to the Board on or before July 1, 2005; January 1, 2006; and July 1, 2006, as required by the terms of the Order.

7. Foster & Sons' conduct, as described herein, is in violation of the probation imposed by the Order, thus subjecting Foster & Sons to further disciplinary action by the Board.

WHEREFORE, Petitioner respectfully requests that this Board conduct a hearing for the purposes of determining whether Foster & Sons has violated the terms of probation and, if the Board determines that Foster & Sons has violated probation, that the Board impose such additional discipline as the Board deems just and proper under the premises.

-2-
Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

Michael E. Bushmann
Assistant Attorney General
Missouri Bar No. 33162

7th Floor, Broadway State Office Building
221 West High Street
P.O. Box 899
Jefferson City, MO 65102
Telephone: (573) 751-5406
Telefax: (573) 751-5660

Attorneys for Petitioner
BEFORE THE
STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS,

Petitioner,

v.

TED FOSTER & SONS FUNERAL
HOME and THEODORE V. FOSTER,

Respondents.

Case No. 03-0229 EM

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DISCIPLINARY ORDER

Findings of Fact

1. The Administrative Hearing Commission is an agency of the State of
Missouri created and established pursuant to § 621.015, RSMo, for the purpose of
conducting hearings and making findings of fact and conclusions of law in cases in which
disciplinary action may be taken against a licensee or certificate holder by certain
agencies, including the Missouri State Board of Embalmers and Funeral Directors.

2. On June 29, 2004, the Administrative Hearing Commission of the State of
Missouri issued its Consent Order in the case of State Board of Embalmers and Funeral
Directors v. Theodore Foster, and Ted Foster & Sons Funeral Home, Case No. 03-0229
EM. In its Consent Order, the Administrative Hearing Commission found that
Respondents are subject to discipline action by this Board for violation of Sections
333.121.2(5), (6), (12), and (13), RSMo.
3. This Board has received the record of the proceedings before the Administrative Hearing Commission and the Consent Order. The Findings of Fact and Conclusions of Law issued by the Administrative Hearing Commission in Case No. 03-0229 EM are incorporated herein by reference as if fully set forth in this document.

4. This Board set this matter for disciplinary hearing and served notice of the disciplinary hearing upon Respondents by certified mail in a proper and timely fashion.

5. Pursuant to notice and § 621.110, RSMo and § 333.121.3, RSMo, this Board held a hearing at the Lodge of Four Seasons, Executive Boardroom, Horseshoe Bend Parkway, Lake Ozark, Missouri, on August 25, 2004, for the purpose of determining the appropriate disciplinary action against Respondents’ license. Respondents were present for the hearing and were represented by counsel, Gloria McCollum. The Board was represented by Assistant Attorney General Sharon Euler. Assistant Attorney General Loretta Schouten served as the Board’s legal advisor.

6. Each member of this Board who participated in this decision certified on the record that he or she read the Administrative Hearing Commission’s Findings of Fact and Conclusions of Law. All the members of this Board except Joy Gerstein and Kenneth McGhee were present throughout the hearing and participated in the Board’s deliberations, vote and order.

7. Respondent, Theodore V. Foster, Sr. ("Foster"), a natural person, holds funeral director license, number 890, embalmer license number 5469. Such licenses expired on May 31, 2002, and were reactivated on June 17, 2002.
8. Respondent Foster & Sons, a Missouri corporation in good standing, is a funeral establishment, license number 002397. Such license expired on December 31, 2001, and was reactivated on January 22, 2002.

9. Respondent Foster is designated as the funeral director in charge of Ted Foster & Sons Funeral Home ("Foster & Sons") and is responsible for the general management, control and supervision of Foster & Sons.

Conclusions of Law

10. This Board has jurisdiction over this proceeding pursuant to § 621.110, RSMo.

11. Respondents' licenses are subject to disciplinary action by this Board pursuant to 333.121.2(5), (6), (12), and (13), RSMo.

ORDER

THEREFORE, having fully considered all evidence before this Board, and giving full weight to the Findings of Fact and Conclusions of Law of the Administrative Hearing Commission, it is the ORDER of this Board that upon the effective date of this Order the funeral director and embalmer licenses of Foster are hereby SUSPENDED for a period of 7 days to be followed by a two-year period of PROBATION ("the Disciplinary Period"). The funeral establishment license, numbered 002397, located at 10192 Halls Ferry Road, St. Louis, Missouri 63136 ("Halls Ferry") is hereby placed on PROBATION for a period of two years. During the period of suspension, Foster & Sons shall not be entitled to operate as a funeral establishment as defined in Chapter 333, RSMo. During Foster &
Sons probation, it shall be entitled to operate as a funeral establishment, provided it adheres to all the terms stated herein.

12. **Terms and conditions of the Disciplinary Period.** Terms and conditions of the Disciplinary Period are as follows:

   A. Theodore Foster shall keep the Board apprised at all times in writing of his current address and telephone number at each place of residence and business. Foster and Sons shall keep the Board apprised at all times in writing of their current address and telephone number at each place of business. Licensees shall notify the Board within ten days of any change in this information.

   B. Licensees shall timely renew their licenses and timely pay all fees required for license renewal and comply with all other requirements necessary to maintain their licenses in a current and active state.

   C. If, at any time within the Disciplinary Period, Foster & Sons changes their residence from the state of Missouri, ceases to be currently licensed under the provisions of Chapter 333, or fails to keep the Board advised of all current places of residence and business, the time of absence, or unlicensed status or unknown whereabouts, shall not be deemed or taken as any part of the Disciplinary Period.

   D. If, at any time within the Disciplinary Period, Foster & Sons changes their business from the state of Missouri, ceases to be currently licensed under the provisions of Chapter 333, or fails to keep the Board advised of all current places
of business, the time of absence, or unlicensed status or unknown whereabouts, shall not be deemed or taken as any part of the Disciplinary Period.

E. Foster & Sons shall comply with all provisions of Chapters 333 and 436, RSMo; all rules and regulations of the Board; and all federal and state laws, rules and regulations related to the funeral business. "State" as used herein refers to the State of Missouri and all other states and territories of the United States.

F. Foster & Sons shall appear before the Board or its representatives for a personal interview upon the Board’s request.

G. Foster & Sons shall accept and cooperate with unannounced visits from the Board's duly authorized representatives to monitor its compliance with these terms and conditions.

H. Foster & Sons shall submit written reports to the Board by no later than January 1 and July 1 during each year of the Disciplinary Period stating truthfully whether there has been compliance with all terms and conditions of this Order.

13. Upon the expiration and successful completion of the Disciplinary Period, Licensees' licenses shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Licensees have violated any term or condition of this Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke, or otherwise lawfully discipline Licensees.
14. No order shall be entered by the Board pursuant to the preceding paragraph of this Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

15. If the Board determines that Licensees have violated a term or condition of this Agreement, which violation would also be actionable in a proceeding before the AHC or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Agreement in its determination of appropriate legal actions concerning such violation.

16. If any alleged violation of this Agreement occurred during the Disciplinary Period, the parties agree that the Board may choose to conduct a hearing before it either during the Disciplinary Period, or as soon thereafter as a hearing can be held, to determine whether a violation occurred and, if so, may impose further disciplinary action. Licensees agree and stipulate that the Board has continuing jurisdiction to hold a hearing to determine if a violation of this Agreement has occurred.

17. This Order of the Board shall be maintained as an open and public record of the Board as provided in Chapters 333, 610 and 620, RSMo.

IT IS SO ORDERED.

Entered this 29th day of December, 2004.

Becky Dunn, Executive Director
State Board of Embalmers
and Funeral Directors
Matt Blunt  
Governor  
State of Missouri  

David T. Broeker, Division Director  
Douglas M. Ommen, Director  

DIVISION OF PROFESSIONAL REGISTRATION  

STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS  
3605 Missouri Boulevard  
P.O. Box 423  
Jefferson City, MO  65102-0423  
http://pr.mo.gov  

Charles Sheldon  
Sheldon-Goodrich Funeral Home  
3rd & Market Street  
P.O. Box 384  
Osceola, MO  64776  

Becky Dunn  
Executive Director  

March 5, 2007  

CERTIFIED MAIL 7004 1350 0003 1344 4410  

Dear Mr. Sheldon:  

Enclosed is a copy of the Notice of Hearing and Complaint as issued by the State Board of Embalmers and Funeral Directors.  

Please make note of the date, time and place of this hearing. The board has asked that I express the importance of your attendance at this hearing. Please complete and return the enclosed postcard in confirmation of your attendance. It is in your own best interest and the board encourages you to attend. The Board will be represented by legal counsel and the hearing will be recorded. You may elect to have counsel represent you at your expense. If you need directions to the hearing location, please contact the Board office and we will assist you with this process.  

If you have any questions, please do not hesitate to contact the office at 573/751-0813.  

Sincerely,  

Becky Dunn  
Executive Director  

Enclosures  

This letter and notice has been sent certified mail and first class mail.
BEFORE THE
STATE BOARD OF EMBALMERS & FUNERAL DIRECTORS
STATE OF MISSOURI

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS
3605 Missouri Blvd.
P.O. Box 423
Jefferson City, MO 65102

Petitioner,

vs.

Sheldon-Goodrich
Funeral Home

Respondent.

Case No. BEM 090605 SGFH

NOTICE OF PROBATION VIOLATION HEARING

PLEASE TAKE NOTICE that the Missouri State Board of Embalmers and Funeral Directors shall hold a hearing for the purpose of determining the truth of the allegations set forth in the attached Complaint and, if the allegations are true, whether or not disciplinary action should be taken. The hearing will be held on Wednesday, March 28, 2007 at 3:30 p.m. or as soon thereafter as the matter may be heard, at the Isle of Capri Casino and Hotel, Event Center, 100 Isle of Capri Blvd, Boonville, Missouri, phone number 1-800-941-4753. Please be advised that your failure to appear at the hearing at the above-noted time and place will result in the hearing being held in your absence.

All parties have the right to be represented by legal counsel and to a full, fair and open hearing as provided for in Chapter 536, RSMo 2000 and 620.153, RSMo 2000.

MISSOURI STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

By: [Signature]

Dated: March 5, 2007

Becky Dunn
Executive Director
BEFORE THE STATE BOARD OF
EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI

STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS
3605 Missouri Boulevard
P.O. Box 423
Jefferson City, MO 65102

Petitioner,

v.

SHELDON-GOODRICH
FUNERAL HOME

Respondent.

PROBATION VIOLATION COMPLAINT

Comes now the State Board of Embalmers and Funeral Directors, Petitioner, by
and through the Attorney General of Missouri, and states for its cause of action against
Sheldon-Goodrich Funeral Home, Respondent, the following:

Facts

1. The State Board of Embalmers and Funeral Directors ("the Board") is an
agency of the state of Missouri created and existing pursuant to § 333.111, RSMo, for the
purpose of licensing embalmers and funeral directors and of executing and enforcing the
provisions of Chapter 333, RSMo.

2. Sheldon-Goodrich Funeral Home ("Funeral Home") holds a Missouri
funeral establishment license, No. 002618, and is both a Function A and Function C Funeral Establishment. At all times relevant herein, Funeral Home’s establishment license was current and active.

3. Charles R. Sheldon ("C. Sheldon") holds a Missouri holds an embalmer’s license, No. 005564. At all times relevant herein, Sheldon’s embalmer’s license was current and active.

4. C. Sheldon also holds an embalmer’s license, No. 03018. At all times relevant herein, Sheldon’s embalmer’s license was current and active.

5. Deborah J. Sheldon, ("D. Sheldon") holds a Missouri funeral director’s license, No. 006273. At all times relevant herein, D. Sheldon’s license was current and active.

6. C. Sheldon and D. Sheldon are both employees of Funeral Home.


8. Section II, paragraph one (1) of the Agreement, suspends Funeral Home’s Establishment License for three (3) days; stating that “[d]uring the period of suspension, Funeral Home may not practice as a funeral home defined in Chapter 333, RSMo, nor receive an compensation as such.”

1 Section II, paragraph one (1) is found on page twelve (12) of the Agreement.
9. On December 14, 2006, the Board sent Funeral Home a Suspension Notification Letter ("Letter")\(^2\), informing Funeral Home that its license was suspended from December 24 through 26, 2006.

10. On December 16, 2006, Funeral Home received the Board's Letter.\(^3\)

**Violations of Agreement**

**Count 1**

11. On December 24, 2006, Funeral Home conducted a funeral service for Catherine Williams ("Williams"), wherein Williams was cremated. D. Sheldon served as the funeral director.

12. Funeral Home was paid one thousand six hundred ninety-five dollars ($1,695.00) for Williams' funeral and the container for her remains.

**Count 2**


**Conclusions of Law**

14. Section 333.011(4) defines "funeral establishment" as:

[A] building, place or premises devoted to or used in the care and preparation for burial or transportation of the human dead and includes every building, place or premises maintained for that purpose or held out to the public by advertising or otherwise to be used for that purpose[.]

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\(^2\) Sent Certified Mail, Number 7005-0390-0000-0980-0049.

\(^3\) D. Sheldon received and signed for the Letter.
15. Practicing funeral directing or embalming at a funeral establishment constitutes “practice as a funeral home” by the terms of the Agreement.

16. Section 333.011(7) defines “practice of funeral directing” as:

[Engaging by an individual in the business of preparing, otherwise than by embalming, for the burial, disposal, or transportation out of this state of, and the directing and supervising of the burial or disposal of, dead human bodies or engaging in the general control, supervision or management of the operations of a funeral establishment.]

17. The conduct described in paragraphs eleven (11) and twelve (12) constitutes the practice of funeral directing; thus it violates the terms of the Agreement.

18. The conduct described in paragraphs eleven (11) and twelve (12) constitutes receiving compensation for acting as a funeral establishment; thus it violates the terms of the Agreement.

19. Section 333.011(6) defines “practice of embalming” as:

[The work of preserving, disinfecting and preparing by arterial embalming, or otherwise, of dead human bodies for funeral services, transportation, burial or cremation, or the holding of oneself out as being engaged in such work.]

20. The conduct described in paragraph thirteen (13) constitutes the practice as of embalming, and preparation of a human body for burial; thus it violates the terms of the Agreement.

21. Funeral Home’s conduct violated the terms and conditions of the
Agreement, thus entitling the Board to impose further discipline upon Funeral Home's establishment license.

22. Jurisdiction and venue are proper before the Board in this matter pursuant to § 620.153. RSMo Cum. Supp. 2006.

Wherefore, the Board prays that the The State Board of Embalmers and Funeral Directors hold a hearing to determine whether or not Funeral Home has violated the terms of the Agreement, and, if such violation has occurred, to impose such additional discipline as the Board deems appropriate.

Respectfully submitted,

JEREMIAH W. (JAY) NIXON
Attorney General

[Signature]
Rex Patrick Fennessey
Assistant Attorney General
Missouri Bar No. 58925

Broadway State Office Building
P.O. Box 899
Jefferson City, MO 65102
(573) 751-5064
(573) 751-5660 Facsimile
Rex.Fennessey@ago.mo.gov
OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors
Conference Call

November 21, 2006
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Tuesday, November 21, 2006 – 10:00 a.m.
The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to
order via conference call by Kenneth McGhee, Chairman, at 10:00 a.m. on Tuesday,
November 21, 2006, at the Division of Professional Registration, 3605 Missouri Boulevard,
Jefferson City, Missouri.

Board Members Present via conference call
Kenneth McGhee, Chairman
Marcia Shadel, Vice-Chairman
James Reinhard, Member
Martin Vernon, Member
Gary Fraker, Member
Joy Gerstein, Secretary and Public Member

Staff Present
Becky Dunn, Executive Director
Pamela Schmieders, Administrative Assistant
Lori Hayes, Inspector
Kim Grinston, Division's Legal Counsel
David Barrett, Division's Legal Counsel
Jane Rackers, Chief Counsel, Office of Attorney General's Office
Sharon Euler, Assistant Attorney General

Approval of Agenda
Motion was made by Joy Gerstein and seconded by Marcia Shadel to approve the open
agenda. Motion carried with Marcia Shadel, James Reinhard, Martin Vernon, Gary Fraker
and Joy Gerstein voting in favor with no votes in opposition.

Closed Meeting
Motion was made by Joy Gerstein and seconded by Marcia Shadel to move into closed
session and that all records and votes, to the extent permitted by law, pertaining to and/or
resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and
620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores
and/or complaints and/or audits and/or investigative reports and/or other information
pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for
discussing general legal actions, causes of action or litigation and any confidential or
privileged communications between this agency and its attorney. Motion carried with Marcia
Shadel, James Reinhard, Martin Vernon, Gary Fraker and Joy Gerstein voting in favor with
no votes in opposition.
Adjournment
A motion was made by James Reinhard and seconded by Joy Gerstein to adjourn. Motion carried with Marcia Shadel, James Reinhard, Martin Vernon, Gary Fraker and Joy Gerstein voting in favor with no votes in opposition. The meeting adjourned at 11:40 a.m. on Tuesday, November 21, 2006.

Executive Director: ____________________________

Approved by the Board on: ____________________________
OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors
Conference Call

November 27, 2006
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Monday, November 27, 2006 – 1:30 p.m.
The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order via conference call by Kenneth McGhee, Chairman, at 1:40 p.m. on Monday, November 27, 2006, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Board Members Present via conference call
Kenneth McGhee, Chairman
Marcia Shadel, Vice-Chairman (joined meeting 2:48 p.m. - 3:00 p.m)
James Reinhard, Member (left meeting at 3:30 pm)
Martin Vernon, Member
Gary Fraker, Member
Joy Gerstein, Secretary and Public Member

Staff Present
Becky Dunn, Executive Director
Pamela Schnieders, Administrative Assistant
Lori Hayes, Inspector
Kim Grinstein, Division's Legal Counsel
David Barrett, Division's Legal Counsel
William Stuart, past Chairman (left meeting at 2:40 pm)
Jerry Griffin, past Chairman (left meeting at 2:40 pm)

Approval of Agenda
Motion was made by Joy Gerstein and seconded by Gary Fraker to approve the open agenda. Motion carried with Martin Vernon, Gary Fraker and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel and James Reinhard were absent from this portion of the meeting.

Closed Meeting
Motion was made by Joy Gerstein and seconded by Gary Fraker to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with Martin
Vernon, Gary Fraker and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel and James Reinhard were absent from this portion of the meeting.

Adjournment
A motion was made by Joy Gerstein and seconded by Martin Vernon to adjourn. Motion carried with Martin Vernon, Gary Fraker and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel and James Reinhard were absent for this portion of the meeting. The meeting adjourned at 3:35 p.m. on Monday, November 27, 2006.

Executive Director: ___________________________

Approved by the Board on: __________________
December 3-5, 2006 Board Meeting Minutes are incomplete.
Open Minutes  
Missouri State Board of Embalmers and Funeral Directors  
December 8, 2006  
3605 Missouri Boulevard, Suite 370  
Jefferson City, Missouri  

MAIL BALLOT  

Board Members  
Kenneth McGhee, Chairman  
Marcia Shadel, Vice-Chairman  
James Reinhard, Member  
Martin Vernon, Member  
Gary Fraker, Member  
Joy Gerstein, Secretary and Public Member  

Closed Session  
The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure.  

Executive Director ________________________  

Approved by Board on ____________________
OPEN MEETING MINUTES
Missouri State Board of Embalmers and Funeral Directors
Conference Call

December 11, 2006
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Monday, December 11, 2006 – 10:45 a.m.
The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order via conference call by Kenneth McGhee, Chairman, at 10:45 a.m. on Monday, December 11, 2006, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Board Members Present via conference call
Kenneth McGhee, Chairman
Marcia Shadel, Vice-Chairman
James Reinhard, Member
Martin Vernon, Member
Gary Fraker, Member
Joy Gerstein, Secretary and Public Member

Staff Present
Becky Day, Executive Director
Pamela Stangel, Administrative Assistant
Kim Grinstein, Division's Legal Counsel
Jane Racock, Chief Counsel, Office of Attorney General's Office, via conference call
Sharon Euler, Assistant Attorney General, via conference call

Approval of Agenda
Motion was made by Joy Gerstein and seconded Marcia Shadel to approve the open agenda. Motion carried with Marcia Shadel, James Reinhard, Martin Vernon, Gary Fraker and Joy Gerstein voting in favor with no votes in opposition.

Closed Meeting
Motion was made by Joy Gerstein and seconded by Marcia Shadel to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with Marcia Shadel, James Reinhard, Martin Vernon, Gary Fraker and Joy Gerstein voting in favor with no votes in opposition.
Adjournment
A motion was made by Martin Vernon and seconded by Joy Gerstein to adjourn. Motion carried with Marcia Shadel, James Reinhard, Martin Vernon, Gary Fraker and Joy Gerstein voting in favor with no votes in opposition. The meeting adjourned at 12:05 p.m. on Monday, December 11, 2006.

Executive Director: __________________________

Approved by the Board on: __________________________
OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors
Conference Call

December 11, 2006
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Monday, December 11, 2006 – 6:00 p.m.
The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to
order via conference call by Kenneth McGhee, Chairman, at 6:00 p.m. on Monday,
December 11, 2006, at the Division of Professional Registration, 3605 Missouri Boulevard,
Jefferson City, Missouri.

Board Members Present via conference call
Kenneth McGhee, Chairman
Marcia Shadel, Vice-Chairman
James Reinhard, Member
Martin Vernon, Member
Gary Fraker, Member
Joy Gerstein, Secretary and Public Member

Staff Present
Becky Dunn, Executive Director
Pamela Schnieders, Administrative Assistant
Kim Grinston, Division’s Legal Counsel
Jane Rackers, Chief Counsel, Office of Attorney General’s Office, via conference call
Sharon Euler, Assistant Attorney General, via conference call

Approval of Agenda
Motion was made by Joy Gerstein and seconded Gary Fraker to approve the open agenda.
Motion carried with Marcia Shadel, James Reinhard, Martin Vernon, Gary Fraker and Joy
Gerstein voting in favor with no votes in opposition.

Closed Meeting
Motion was made by Joy Gerstein and seconded by Gary Fraker to move into closed session
and that all records and votes, to the extent permitted by law, pertaining to and/or resulting
from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and
620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores
and/or complaints and/or audits and/or investigative reports and/or other information
pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for
discussing general legal actions, causes of action or litigation and any confidential or
privileged communications between this agency and its attorney. Motion carried with Marcia
Shadel, James Reinhard, Martin Vernon, Gary Fraker and Joy Gerstein voting in favor with
no votes in opposition.
Adjournment
A motion was made by Joy Gerstein and seconded by Gary Fraker to adjourn. Motion carried with Marcia Shadel, James Reinhard, Martin Vernon, Gary Fraker and Joy Gerstein voting in favor with no votes in opposition. The meeting adjourned at 6:15 p.m. on Monday, December 11, 2006.

Executive Director: ____________________

Approved by the Board on: ____________________
OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors
Conference Call

December 13, 2006
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Wednesday, December 13, 2006 – 10:00 a.m.
The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to
order via conference call by Kenneth McGhee, Chairman, at 10:00 a.m. on Wednesday,
December 13, 2006, at the Division of Professional Registration, 3605 Missouri Boulevard,
Jefferson City, Missouri.

Board Members Present via conference call
Kenneth McGhee, Chairman
Marcia Shadel, Vice-Chairman
James Reinhard, Member
Martin Vernon, Member
Gary Fraker, Member
Joy Gerstein, Secretary and Public Member

Staff Present:
Becky Dunn, Executive Director
Pamela Schmieders, Administrative Assistant
Lori Hayes, Inspector
David Barrett, Division’s Legal Counsel – joined at 10:10 a.m.
Jane Rackers, Chief Counsel, Office of Attorney General’s Office (via conference call)
Sharon Euler, Assistant Attorney General (via conference call)

Approval of Agenda
Motion was made by Joy Gerstein and seconded by Gary Fraker to approve the open agenda.
Motion carried with Marcia Shadel, James Reinhard, Martin Vernon, Gary Fraker and Joy
Gerstein voting in favor with no votes in opposition.

Closed Meeting
Motion was made by Joy Gerstein and seconded by Gary Fraker to move into closed session
and that all records and votes, to the extent permitted by law, pertaining to and/or resulting
from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and
620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores
and/or complaints and/or audits and/or investigative reports and/or other information
pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for
discussing general legal actions, causes of action or litigation and any confidential or
privileged communications between this agency and its attorney. Motion carried with Marcia
Shadel, James Reinhard, Martin Vernon, Gary Fraker and Joy Gerstein voting in favor with
no votes in opposition.
Adjournment
A motion was made by Joy Gerstein and seconded by Marcia Shadel to adjourn. Motion carried with Marcia Shadel, James Reinhard, Martin Vernon, Gary Fraser and Joy Gerstein voting in favor with no votes in opposition. The meeting adjourned at 10:28 a.m. on Wednesday, December 13, 2006.

Executive Director: __________________________

Approved by the Board on: __________________________
Open Minutes
Missouri State Board of Embalmers
and Funeral Directors
December 18, 2006
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members
Kenneth McGhee, Chairman
Marcia Shadel, Vice-Chairman
James Reinhard, Member
Martin Vernon, Member
Gary Fraker, Member
Joy Gerstein, Secretary and Public Member

Closed Session
The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure.

Executive Director ______________________________

Approved by Board on _____________________
Open Minutes
Missouri State Board of Embalmers
and Funeral Directors
December 21, 2006
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members
Kenneth McGhee, Chairman
Marcia Shadel, Vice-Chairman
James Reinhard, Member
Martin Vernon, Member
Gary Fraker, Member
Joy Gerstein, Secretary and Public Member

Closed Session
The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney.

Executive Director ______________________

Approved by Board on ___________
Open Minutes
Missouri State Board of Embalmers and Funeral Directors
December 28, 2006
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members
Kenneth McGhee, Chairman
Marcia Shadel, Vice-Chairman
James Reinhard, Member
Martin Vernon, Member
Gary Fraker, Member
Joy Gerstein, Secretary and Public Member

Closed Session
The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; and Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney.

Executive Director ____________________________

Approved by Board on ________________________
Open Minutes
Missouri State Board of Embalmers and Funeral Directors
January 12, 2007
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members
Kenneth McGhee, Chairman
Marcia Shadel, Vice-Chairman
James Reinhard, Member
Martin Vernon, Member
Gary Fraker, Member
Joy Gerstein, Secretary and Public Member

Closed Session
The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure.

Executive Director ______________________

Approved by Board on ____________________
Open Minutes
Missouri State Board of Embalmers
and Funeral Directors
January 19, 2007
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members
Kenneth McGhee, Chairman
Marcia Shadel, Vice-Chairman
James Reinhard, Member
Martin Vernon, Member
Gary Fraker, Member
Joy Gerstein, Secretary and Public Member

Closed Session
The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney.

Executive Director _______________________

Approved by Board on ____________________
Open Minutes
Missouri State Board of Embalmers and Funeral Directors
January 24, 2007
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members
Kenneth McGhee, Chairman
Marcia Shadel, Vice-Chairman
James Reinhard, Member
Martin Vernon, Member
Gary Fraker, Member
Joy Gerstein, Secretary and Public Member

Closed Session
The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure.

Executive Director ____________________________

Approved by Board on ____________________________
Open Minutes
Missouri State Board of Embalmers
and Funeral Directors
February 9, 2007
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members
Kenneth McGhee, Chairman
Marcia Shadel, Vice-Chairman
James Reinhard, Member
Martin Vernon, Member
Gary Fraker, Member
Joy Gerstein, Secretary and Public Member

Closed Session
The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney.

Executive Director __________________________

Approved by Board on ____________________
OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors
Conference Call

March 1, 2007
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Thursday, March 1, 2007 – 2:00 p.m.
The meeting of the Missouri State Board of Embalmers and Funeral Directors was called to order via conference call by Kenneth McGhee, Chairman, at 2:00 p.m. on Thursday, March 1, 2007, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

Board Members Present via conference call
Kenneth McGhee, Chairman (in person at Board Office)
James Reinhard, Member – joined at 2:20 p.m.
Martin Vernon, Member – left meeting at 3:25 p.m.
Gary Fraker, Member
Joy Gerstein, Secretary, and Public Member

Board Members Absent
Marcia Shadel, Vice Chairperson

Staff Present
Becky Dunn, Executive Director
Pamela Schneiders, Administrative Assistant
Lori Hayes, Inspector
Kimberly Grinston, Division’s Legal Counsel

Approval of Agenda
Motion was made by Joy Gerstein and seconded Gary Fraker to approve the open agenda. Motion carried with Martin Vernon, Gary Fraker and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel and James Reinhard were absent for this portion of the meeting.

Closed Meeting
Motion was made by Gary Fraker and seconded by Joy Gerstein to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney. Motion carried with Martin Vernon, Gary Fraker and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel and James Reinhard were absent for this portion of the meeting.
Adjournment
A motion was made by Gary Fraker and seconded by James Reinhard to adjourn. Motion carried with James Reinhard, Gary Fraker and Joy Gerstein voting in favor with no votes in opposition. Marcia Shadel and Martin Vernon were absent for this portion of the meeting. The meeting adjourned at 3:50 p.m. on Thursday, March 1, 2007.

Executive Director: ______________________

Approved by the Board on: ______________________
Open Minutes
Missouri State Board of Embalmers and Funeral Directors
March 5, 2007
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members
Kenneth McGhee, Chairman
Marcia Shadel, Vice-Chairman
James Reinhard, Member
Martin Vernon, Member
Gary Fraker, Member
Joy Gerstein, Secretary and Public Member

Closed Session
The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney.

Executive Director ______________________

Approved by Board on ___________________
Open Minutes
Missouri State Board of Embalmers
and Funeral Directors
March 8, 2007
3605 Missouri Boulevard, Suite 370
Jefferson City, Missouri

MAIL BALLOT

Board Members
Kenneth McGhee, Chairman
Marcia Shadel, Vice-Chairman
James Reinhard, Member
Martin Vernon, Member
Gary Fraker, Member
Joy Gerstein, Secretary and Public Member

Closed Session
The Chairperson declared the meeting be closed pursuant to Section 610.021 Subsection (14) and 620.010.14 Subsection (7) RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney.

Executive Director ______________________

Approved by Board on ___________________
## Board of Embalmers

### Financial Statement

**as of January 31, 2007**

<table>
<thead>
<tr>
<th></th>
<th>Year-To-Date</th>
<th>Projected</th>
<th>Remaining</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FY 2007 Beginning Fund Balance</strong></td>
<td>1,421,679.49</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Revenue</strong></td>
<td>118,714.40</td>
<td>155,249.00</td>
<td>36,534.60</td>
</tr>
<tr>
<td><strong>Expense and Equipment</strong></td>
<td>35,745.58</td>
<td>149,634.00</td>
<td>113,892.42</td>
</tr>
<tr>
<td><strong>Total Transfers</strong></td>
<td>238,298.60</td>
<td>512,738.28</td>
<td>274,439.68</td>
</tr>
<tr>
<td><strong>Ending Fund Balance</strong></td>
<td>1,266,383.71</td>
<td>914,406.41</td>
<td></td>
</tr>
</tbody>
</table>

### FY 2007 OA Cost Allocation

**Board Cost:**

<table>
<thead>
<tr>
<th>OA Expenditures</th>
<th>Auditor Expenditures</th>
<th>Governor Expenditures</th>
<th>Lt. Governor Expenditures</th>
<th>Sec of State Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>$902.00</td>
<td>$0.00</td>
<td>$93.60</td>
<td>$21.00</td>
<td>$477.00</td>
</tr>
<tr>
<td><strong>Attorney General Expenditures</strong></td>
<td>$0.00</td>
<td>$1,420.00</td>
<td>$58.00</td>
<td>$490.00</td>
</tr>
</tbody>
</table>

**Division Cost:**

<table>
<thead>
<tr>
<th>OA Expenditures</th>
<th>Auditor Expenditures</th>
<th>Governor Expenditures</th>
<th>Lt. Governor Expenditures</th>
<th>Sec of State Expenditures</th>
</tr>
</thead>
<tbody>
<tr>
<td>$183.90</td>
<td>$0.00</td>
<td>$18.91</td>
<td>$4.33</td>
<td>$97.17</td>
</tr>
<tr>
<td><strong>Attorney General Expenditures</strong></td>
<td>$0.00</td>
<td>$289.35</td>
<td>$13.85</td>
<td>$0.00</td>
</tr>
</tbody>
</table>

**FY 2007 Total Cost:**

$4,478.51
End of Comment Period

Fri 3/30/2007 9:00 AM
Fri 3/30/2007 9:30 AM
Tentative

(none)

Not yet responded

Clarkston, Connie; Dunn, Becky

Embalmers and Funeral Directors

20 CSR 2120-1.010 General Organization
20 CSR 2120-1.040 Definitions
20 CSR 2120-2.010 Embalmer's Registration and Apprenticeship
20 CSR 2120-2.040 Licensure by Reciprocity
20 CSR 2120-2.050 Miscellaneous Rules
20 CSR 2120-2.060 Funeral Directing
20 CSR 2120-2.070 Funeral Establishments
20 CSR 2120-2.071 Funeral Establishments Containing a Crematory Area
20 CSR 2120-2.090 Preparation Rooms/Embalming Room
20 CSR 2120-2.100 Fees
making this determination premium shall not include any amounts in excess of an insurer’s filed rate resulting from the consent to rate provisions of section 383.035.7, RSMo Supp. 2006.

(4) The insurer’s rate filing shall provide adequate support to demonstrate that the return on investment for the owners or shareholders will not exceed the return of other similar investments. The insurer shall not use its losses in other states or losses in other activities to offset or reduce its return on investment in Missouri.


PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on April 2, 2007. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on April 2, 2007. Written statements shall be sent to Tamara A. Wallace, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans with Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 500—Property and Casualty
Chapter 5—Professional Malpractice

PROPOSED RULE

20 CSR 500-5.027 Determination of Unfairly Discriminatory Rates

PURPOSE: This rule effectuates the provisions of section 383.206, RSMo Supp. 2006, regarding determinations of whether a base rate for medical malpractice insurance is unfairly discriminatory.

(1) The provisions of this rule apply only to the determination of whether a rate charged for medical malpractice insurance is unfairly discriminatory and, if so, what actions are required by the insurer.

(2) Rates are unfairly discriminatory if they fail to reasonably reflect material differences in expected losses and expenses between risks, and include the following:
   (A) The application of unequal charges, consent to rate charges or credits or the use of unequal rates for risks having essentially the same hazards, expected losses and expenses; and
   (B) The application of equal charges, consent to rate charges or credits or the use of equal rates for risks having measurably different hazards, expected losses or expenses.

(3) Risks may be grouped by classifications, by rating schedules or by any other reasonable methods, for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(4) The insurer’s rate filing shall provide adequate support to demonstrate that insurer’s rates and rating plan are not unfairly discriminatory.

(5) If a rate or rating plan discriminates on the basis of race, religion, creed, or national origin, such rate or rating plan is unfairly discriminatory.


PUBLIC COST: This proposed rule will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed rule will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE OF PUBLIC HEARING AND NOTICE TO SUBMIT COMMENTS: A public hearing will be held on this proposed rule at 10:00 a.m. on April 2, 2007. The public hearing will be held at the Harry S Truman State Office Building, Room 530, 301 West High Street, Jefferson City, Missouri. Opportunities to be heard at the hearing shall be afforded to any interested person. Interested persons, whether or not heard, may submit a written statement in support of or in opposition to the proposed rule, until 5:00 p.m. on April 2, 2007. Written statements shall be sent to Tamara A. Wallace, Department of Insurance, Financial Institutions and Professional Registration, PO Box 690, Jefferson City, MO 65102.

SPECIAL NEEDS: If you have any special needs addressed by the Americans with Disabilities Act, please notify us at (573) 751-6798 or (573) 751-2619 at least five (5) working days prior to the hearing.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2120—State Board of Embalmers and Funeral Directors
Chapter 1—Organization and Description of Board

PROPOSED AMENDMENT

20 CSR 2120-1.010 General Organization. The board is proposing to amend sections (2), (4), (5), and (7), add new language in section (8) and renumber the remaining section.

PURPOSE: This amendment clarifies examination meetings and adds examination scheduling requirements.

(2) The board is a unit of the Division of Professional Registration [in the Department of Economic Development].

(4) The board has at least two (2) regularly scheduled business meetings each year and such other meetings as determined by the board. [The board has at least two (2) regularly scheduled examination meetings each year and such other examination meetings as determined by the board.] The time and location for all
board meetings [and examinations] may be obtained by contacting the board office at PO Box 423, Jefferson City, MO 65102-0423.

(5) [All board meetings will be governed by Roberts’ Rules of Order.] The meetings of the board shall be conducted in accordance with Roberts’ Rules of Order, Newly Revised, 10th Edition, so far as it is compatible with the laws of Missouri governing this board or the board’s own resolutions as to its conduct.

(7) Members of the public may obtain information from the board, or make submissions to the board, by writing the board’s executive director at PO Box 423, Jefferson City, MO 65102-0423 or by visiting http://pr.mo.gov/embalmers.asp.

(8) Examinations. After verification and approval by the board, application, scheduling, administration and payment for any examination required for licensure from the board shall be made to the board’s testing service, currently the International Conference of Funeral Service Examining Boards, Inc. The testing service shall approve applications upon the board’s verification and approval.

(A) Notification of intent to take an examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination, unless otherwise stated in a specific regulation. At its discretion, the board may waive such notice requirement for examination candidates for good cause, provided that no waiver can be provided by the board that may violate the rules of the testing service. If a reexamination is required or requested, there is a mandatory thirty (30)-day waiting period between each Missouri reexamination date.

(B) All Missouri examinations may be provided in a computer-based testing format, except oral examination. Oral examinations will be held at the location designated by the board. Other examinations shall be held at the locations designated by the testing service. A complete listing of the conference’s examination sites is at http://www.cfseb.org or is available at the board’s office.

(II) (9) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.


PUBLIC COST: This proposed amendment will reduce the State Board of Embalmers and Funeral Directors’ Fund by approximately five thousand two hundred seventy-five dollars ($5,275) annually for the life of the rule. It is anticipated that the total savings will recur annually for the life of the rule, may vary with inflation and are expected to increase at the rate projected by the Legislative Oversight Committee.

PRIVATE COST: This proposed amendment will cost private entities an increase of approximately four thousand one hundred thirty dollars ($4,130) annually for the life of the rule. It is anticipated that the total cost will recur annually for the life of the rule, may vary with inflation and is expected to increase at the rate projected by the Legislative Oversight Committee.
PROPOSED AMENDMENT

20 CSR 2120-1.040 Definitions. The board is proposing to amend sections (1), (2), and (8), delete section (9), renumber the remaining sections accordingly, amend section (19) and add a new section (21).

PURPOSE: This amendment will allow currently licensed Missouri funeral directors who have passed the Missouri Funeral Service Arts examination to qualify for an embalmer’s license without unnecessary delay or additional retaking the Missouri Funeral Service Arts examination.

(1) Apprentice embalmer—an individual who is being trained as an embalmer under the immediate direction and personal supervision of a Missouri licensed embalmer for the “practice of embalming,” the work of preserving, disinfecting and preparing by arterial embalming, or otherwise, of dead human bodies or the holding of oneself out as being engaged in such work and has met the requirements for registration pursuant to sections 333.041 and 333.042, RSMo and [4 CSR 120-2.010] 20 CSR 2120-2.010.

(2) Apprentice funeral director—an individual who is being trained as a funeral director in a Missouri licensed funeral establishment under the supervision of a Missouri licensed funeral director in the “practice of funeral directing,” the business of preparing, otherwise than by embalming, for the burial, disposal or transportation out of this state of, and the directing and supervising of the disposal of, dead human bodies or engaging in the general control, supervision or management of the operations of a Missouri licensed funeral establishment and has met the requirements for registration pursuant to [4 CSR 120-2.060] 20 CSR 2120-2.060.

(8) Embalmer examination—an examination consisting of the following:

(B) In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the board may accept successful completion of an examination administered by another state, territory or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination;

(9) Embalming log—a written record or log kept in the preparation/embalming room of a Missouri licensed funeral establishment available at all times in full view for a board inspector, which shall include the following:

(A) The name of deceased to be embalmed;
(B) The Missouri licensed funeral establishment location;
(C) The date and time the dead human body arrived at the funeral establishment;
(D) The date and time the embalming took place;
(E) The name and signature of the Missouri licensed embalmer;
(F) The Missouri licensed embalmer’s license number; and
(G) The name of the Missouri licensed funeral establishment, or other that was in charge of making the arrangements if from a different location.)

(10) Executive director—executive secretary of the board.

(11) Function—the purpose for which a physical location may be used.

(12) Funeral ceremony—a religious service or other rite or memorial ceremony for a decedent.

(13) Funeral director—an individual holding a funeral director license issued by the State Board of Embalmers and Funeral Directors.

(14) Funeral director examination—an examination consisting of the following:

(A) Missouri Law Examination; and
(B) Missouri Funeral Service Arts Examination developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board; or
(C) National Board Funeral Service Arts Examination developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board.

(15) Funeral director-in-charge—an individual licensed as a funeral director by the State Board of Embalmers and Funeral Directors responsible for the general management and supervision of a Missouri licensed funeral establishment in the state of Missouri. Each Missouri licensed funeral establishment shall have a Missouri licensed funeral director designated as the funeral director-in-charge.

(16) Funeral establishment—a building, place or premises licensed by the Missouri State Board of Embalmers and Funeral Directors devoted to or used in the care and preparation for burial, cremation or transportation of the human dead and includes every building, place or premises maintained for that purpose or held out to the public by advertising or otherwise to be used for that purpose.

(17) Funeral service—any service performed in connection with the care of a dead human body from the time of death until final disposition including, but not limited to:

(A) Removal;
(B) Entering into contractual agreements for the provision of funeral services;
(C) Arranging, planning, conducting and/or supervising visitations and funeral ceremonies;
(D) Interment;
(E) Cremation;
(F) Disinterment;
(G) Burial; and
(H) Entombment.

(18) Intermment—burial in the ground or entombment of dead human remains.

(19) Limited license—allows a person to work only in a funeral establishment which is licensed for only cremation including transportation of dead human bodies to and from the funeral establishment.

(20) Preparation room—refers to the room in a Missouri licensed funeral establishment where dead human bodies are embalmed, bathed, and/or prepared for [cremation] final disposition.

(21) Reciprocity examination—shall consist of the Missouri Law Examination.

(22) Register log—a written record or log kept in the preparation/embalming room of a Missouri licensed funeral establishment available at all times in full view for a board inspector, which shall include the following:
(A) The name of the deceased;
(B) The date and time the dead human body arrived at the
funeral establishment;
(C) The date and time the embalming took place, if applicable;
(D) The name and signature of the Missouri licensed
embalmer, if applicable;
(E) The name and signature of the Missouri registered appren-
tice embalmer, if any;
(F) The Missouri licensed embalmer’s license number, if
applicable;
(G) The Missouri apprentice embalmer registration number, if
any; and
(H) The name of the licensed funeral establishment, or other
that was in charge of making the arrangements if from a differ-
ent location.

AUTHORITY: sections 333.011 and 333.111, RSMo 2000. This rule
originally filed as 4 CSR 120-1.040. Original rule filed Dec. 31,
2003, effective July 30, 2004. Moved to 20 CSR 2120-1.040, effect-

PUBLIC COST: This proposed amendment will not cost state agen-
cies or political subdivisions more than five hundred dollars ($500)
in the aggregate.

PRIVATE COST: This proposed amendment will save private entities
approximately one thousand dollars ($1,000) annually for the life of
the rule. It is anticipated that the total savings will recur annually for
the life of the rule, may vary with inflation and are expected to
increase at the rate projected by the Legislative Oversight
Committee.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in
support of or in opposition to this proposed amendment with the State
Board of Embalmers and Funeral Directors. Becky Dunn, Executive
Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO
65102, by facsimile at (573) 751-1155 or via email to
embalm@pr.mo.gov. To be considered, comments must be received
within thirty (30) days after publication of this notice in the Missouri
Register. No public hearing is scheduled.
Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2120—State Board of Embalmers and Funeral Directors
Chapter 2—General Rules

PROPOSED AMENDMENT

20 CSR 2120-2.010 Embalmer’s Registration and Apprenticeship. The board is amending sections (1), (3), (4), (7), (8), (10)-(16), (22), (24) and (25).

PURPOSE: This amendment will allow currently licensed Missouri funeral directors who have passed the Missouri Funeral Service Arts examination to qualify for an embalmer’s license without unnecessary delay or additional retaking the Missouri Funeral Service Arts examination.

(1) Every person desiring to enter the profession of embalming dead human bodies within Missouri, and who is enrolled in an accredited institution of mortuary science, must shall complete a practicum as required by the accredited institution of mortuary science education.

(3) After registration with the board as a practicum student in an accredited institution of mortuary science education, the student may assist in a Missouri licensed funeral establishment preparation room only under the direct supervision of a Missouri licensed embalmer and may assist in the direction of funerals only under the direct supervision of a Missouri licensed funeral director. Each person desiring to be a practicum student shall register with the board as a practicum student on the form provided by the board in accordance with the requirements of the accredited institution of mortuary science prior to beginning the practicum. Applications must shall be accompanied by the applicable fee.

(4) During the period of the practicum, the certificate of registration issued to the practicum student shall be displayed, at all times, in a conspicuous location accessible to the public at each funeral establishment where the practicum student is working.

(7) After graduating from an accredited institution of mortuary science education, the applicant then must shall file, with the board, an official transcript of his/her embalming school grades showing s/he is a graduate of that school. In addition, the applicant shall ensure that his/her official copy of the national board examination results are provided to the board in writing by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board.

(8) Effective June 1st July 30, 2004 the Missouri State Board embalmers’ examination shall consist of the National Board Funeral Service Arts section, the National Board Funeral Service Science section, and Missouri Law section. Application, and payment, scheduling and administration for the national board examinations will be made directly through the International Conference of Funeral Service Examining Boards, Inc., or other designee of the board. Application and administration fees for the Missouri Law section shall be made directly to the board. Scheduling and payment for the Missouri Law section will be made directly to the International Conference of Funeral Service Examining Boards, Inc., or designee of the board.

An applicant must shall be exempt from the requirement of successful completion of the Missouri Law section if the applicant has successfully completed the Missouri Law section for another license within twelve (12) months of the date that the board receives the new application.

In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination results will be accepted, or the board may accept successful completion of an examination administered by another state, territory or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination.

(10) An applicant must shall submit proof of having satisfied the requirements of the National Board Funeral Service Arts section and the National Board Funeral Service Science section of the examination by having his/her official copy of the scores from the International Conference of Funeral Service Examining Boards, Inc., or designee of the board transmitted to the board from the Conference. In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the board may accept successful completion of an examination administered by another state, territory or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination.

(11) Those applicants achieving seventy-five percent (75%) on each of the three (3) sections of the embalming examination will be deemed to have passed the board’s embalming examination. Any applicant who scores less than seventy-five percent (75%) on any section of the embalming examination may retake the failed section, upon application and payment of the administration and reexamination fees. On any reexamination of a single failed section, the applicant must shall score at least seventy-five percent (75%) to pass.

(12) After the applicant has made a passing grade on the National Board Funeral Service Arts section and the National Board Funeral Service Science section of the embalming examination s/he then may apply for registration as an apprentice embalmer. In lieu of the National Board Funeral Service Arts examination, successful completion of the Missouri Funeral Service Arts examination will be accepted, or the board may accept successful completion of an examination administered by another state, territory or province of the United States that is substantially equivalent or more stringent than the Missouri Funeral Service Arts examination. This application must shall contain the name(s) of the Missouri licensed embalmer(s) under whom s/he will serve. Each supervisor must be licensed and registered with and approved by the board. Any change in supervisor shall also be registered and approved within ten (10) business days after the change has been made. Applications must shall be submitted on the forms provided by the board and must shall be accompanied by the applicable fee. Application forms are available from the board office or the board’s website at http://pr.mo.gov/embalmers.asp.

(13) Each apprentice embalmer shall provide to the board, on the application provided by the board, the name(s), location(s) and license number(s) of the Missouri licensed funeral establishment(s) where s/he is serving as an apprentice. If the apprentice embalmer begins work at any other Missouri licensed funeral establishment during the period of apprenticeship, the apprentice embalmer shall notify the board, on the form provided by the board, within ten (10) business days after the change has been made.

(14) The period of apprenticeship under this rule must shall be at least twelve (12) consecutive months. The apprentice embalmer must shall devote at least thirty (30) hours per week to his/her duties as an apprentice embalmer. During the period of the apprenticeship, the certificate of registration issued to the apprentice shall be displayed, at all times, in a conspicuous location accessible to the public at each funeral establishment where the apprentice is working.
(15) Prior to completion of the period of apprenticeship, the apprentice embalmer [must] shall achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam [administered by the board]. This exam may be taken any time after graduating from an accredited institution of mortuary science, but [must] shall be successfully completed prior to appearing before the board for oral examination. The Missouri Law exam covers knowledge of Chapter 333, RSMo and the rules governing the practice of embalming, funeral directing and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition and transportation of dead human bodies. The Missouri Law section also contains questions regarding Chapter 436, RSMo relating to pre-need statutes and Chapters 193 and 194, RSMo relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations and Occupational Safety and Health Administration (OSHA) requirements as they apply to Missouri licensees. Notification of intent to take this section of the examination [must] shall be received by the board at least forty-five (45) working days prior to the date of the next regularly scheduled examination. No public hearing is scheduled.

(16) An affidavit provided by the board, signed by both the apprentice and the supervisor(s) verifying that the applicant has successfully completed the embalming of twenty-five (25) dead human bodies, [must] shall be submitted to the board at the time of completion of the apprenticeship period and prior to the oral examination.

(22) A Missouri licensed embalmer has the ongoing obligation to keep the board informed if the licensee has been finally adjudicated or found guilty of, or entered a plea of guilty or nolo contendere, in criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under Chapter 333, RSMo, for any offense an essential element of which is fraud, dishonesty, or any act of violence, or for any offense involving moral turpitude[,] whether or not sentence was imposed. This information [must] shall be provided to the board within thirty (30) days of being finally adjudicated or found guilty.

(24) Should an individual desire to obtain a Missouri embalmer’s license after his/her license has become void under section 333.081.3, RSMo, the individual shall be required to make application, obtain a passing grade on the embalmer examination and shall be required to complete a six (6) consecutive month period of apprenticeship during which time s/he shall be required to embalm at least twelve (12) dead human bodies under the supervision of a Missouri licensed embalmer. The applicant shall be required to pay the current applicable apprenticeship/, and application/, administration and examination/ fees to obtain a new embalmer’s license under this section. No previous apprenticeship, application or examination will be considered for a new application under this section. However, the successful examination results of the National Board Funeral Service Arts section and the National Board Funeral Service section will be accepted.

(25) [All documents filed with the board under this rule shall become a part of its permanent files.] After successful completion of the embalmer’s examination and the embalmer apprenticeship as provided in these rules, the embalmer applicant shall appear for the oral examination at a location specified by the board. To arrange for the oral examination, the embalmer applicant shall submit an application of a form supplied by the board and pay the applicable fees to the board. Applicants shall successfully pass the oral examination administered by the board for licensure.
International Conference of Funeral Service Examining Boards, Inc., or designee of the board, if applying for only a funeral director license; and

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

(3) If the reciprocity applicant holds a license as an embalmer or funeral director in another state or territory with requirements less than those of this state, they may seek licensure in this state by [submitting to] meeting the following requirements of the board [the following]:

(A) [A copy of his/her original license by the other state board:] An official certification from another state or territory which verifies that the licensee holds a valid, unrevoked and unexpired funeral director or embalmer license in the other state or territory;

(B) A copy of his/her original funeral director or embalmer license from the other state or territory in which the applicant is licensed;

[IB/][C] (C) Proof of his/her educational and professional qualifications;

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

[D/][E] Evidence that the reciprocity applicant has successfully completed the reciprocity examination with a score of seventy-five percent (75%) or better either within twelve (12) months prior to application or within twenty-four (24) months after the board's receipt of the reciprocity application;

(5) Applications [must] for reciprocity licensure shall be completed and received by the board at least [forty-five (45)] thirty (30) days prior to the date [of the next regularly scheduled] the candidate plans to sit for the examination and [must] shall be accompanied by the applicable [administration] fee. [Scheduling payment for the examination will be made directly through the International Conference of Funeral Service Examining Boards, Inc., or designee of the board.] Applications are deemed complete upon submission of any and all requisite forms required by the board, payment of requisite fees, and submission of all materials required by this rule or supplemental materials requested by the board. Application forms can be obtained from the board office or the board's website at http://prr.mo.gov/embalmers.asp.


PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102, by facsimile at (573) 751-1155 or via email to embalm@prr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2120—State Board of Embalmers and Funeral Directors
Chapter 2—General Rules

PROPOSED AMENDMENT

20 CSR 2120-2.050 Miscellaneous Rules. The board is proposing to amend sections (1) and add a new section (3).

PURPOSE: This amendment clarifies that all documents filed with the board under this rule shall become part of the board’s permanent files.

(1) All licensees may be represented [themselves before the board without an attorney] before the board by an attorney. If the licensee desires to be represented by an attorney, the attorney [must] shall be licensed to practice law in Missouri or meet the requirements of the Supreme Court with respect to nonresident attorneys.

(3) All documents filed with the board shall become a part of its permanent files.


PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102, by facsimile at (573) 751-1155 or via email to embalm@prr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2120—State Board of Embalmers and Funeral Directors
Chapter 2—General Rules

PROPOSED AMENDMENT
PROPOSED RULES

March 1, 2007
Vol. 32, No. 5

20 CSR 2120-2.071 Funeral Establishments Containing a Crematory Area. The board is proposing to amend sections (1), (3) and (5), delete section (8), renumber the remaining sections accordingly, amend the newly renumbered sections (9) and (12), delete section (17), and add a new section (16).

PURPOSE: This amendment provides clarification relating to cremation containers.

(1) Definitions.

(B) Cremation—the technical heating process which reduces remains to bone fragments through heat and evaporation; [the] a final disposition of dead human remains.

(D) Cremation chamber—the total functioning mechanical unit for the actual cremation process.

(3) Each Missouri licensed funeral establishment that contains a crematory area shall maintain permanent records which shall include:

(B) Information regarding the cremation which shall include:

1. The full name of the deceased;
2. The last place of residence of the deceased;
3. The place of death of the deceased;
4. The place of birth of the deceased;
5. The date and place of the funeral;
6. The name of the Missouri licensed funeral director, other than a limited license funeral director, with whom the arrangements were made;
7. The name of the person(s) who made the arrangements with the Missouri licensed funeral director and the relationship to the deceased;
8. The date and time when cremation was begun;
9. The name and address of the person to whom the cremated remains were released or the location where the cremated remains were placed; and
10. If the cremated remains were delivered or placed other than by an employee of the Missouri licensed funeral establishment, the name of the person who made the delivery or placement or the name of the business by which the cremated remains were shipped along with the receipt number.

(5) All records required to be maintained by this rule shall be maintained on the premises of the Missouri licensed funeral establishment for [a minimum of the current calendar year and the preceding calendar year] two (2) years from the date the record was created. All documents required to be maintained by this rule may be maintained electronically, but all documents shall be stored in such a manner to allow access by the board, or its assignee, and so the board, or its assignee, may easily and timely obtain hard copies or electronic copies in a format easily readable by the board, or its assignee.

[(8) If a Missouri licensed embalmer proceeds to embalm a body under the provisions in accordance with the provisions of 4 CSR 120-2.070(21)]

[(9) (8) The cremation chamber shall be completely functioning at all times and shall be constructed specially to withstand high temperatures and protect the surrounding structure. A Function B establishment shall not be in violation of this rule if the cremation chamber is completely restored to functioning capacity within one hundred twenty (120) days from the date the cremation chamber ceases to be in compliance with this section. However, if there are extenuating circumstances and the cremation chamber could not be repaired, documentation of such shall be pro-
vided to the board for review and approval. Cremation chambers shall be maintained in proper working order and in compliance with all applicable Missouri Department of Health and Senior Services statutes, rules and regulations, Missouri Department of Natural Resources, statutes, rules and regulations, and all other applicable federal, city, county, and municipal statutes, rules and regulations.

(A) If a Function B has only one (1) cremation chamber and that chamber is not functioning, written notification shall be made to the board within ten (10) business days after the cremation chamber stops functioning.

(B) A Function B establishment that has a nonfunctioning cremation chamber may arrange for cremation at another licensed establishment, if the use of an alternate establishment for purposes of cremation is disclosed to the person making the arrangements on the cremation authorization form.

[(10)] (9) The crematory area shall include a work center area equipped with forced air ventilation adequate to protect the health and safety of the operator and any other person(s) present.

[(11)] (10) No person shall be permitted in the crematory area while any dead human body is in the crematory area awaiting cremation or being cremated or while the cremation remains are being removed from the cremation chamber except the Missouri licensed funeral director, employees of the Missouri licensed funeral establishment in which the body is being cremated, members of the family of the deceased and persons authorized by the members of the family of the deceased or any other person authorized by law.

[(12)] (11) When there is no Missouri licensed funeral establishment employee in the crematory area, the crematory area shall be secure from entry by persons other than Missouri licensed funeral establishment employees.

[(13)] (12) Each body [shall be] delivered to the crematory, if not already in a cremation container, plastic pouch, cardboard cremation container, casket made of wood or wood product or metal, shall be placed in such a pouch, container or casket. If a metal container or casket is used the purchaser must, the person making the arrangements shall be informed by the Missouri licensed funeral director with whom the arrangements are made of the disposition of the metal container or casket after cremation, if not placed in the reftor. The cremation container shall be composed of a combustible, nonexplosive, opaque material which is adequate to assure protection to the health and safety of any person in the crematory area. The casket or container shall be leak resistant if the body enclosed is not embalmed or if death was caused by a contagious disease.

[(14)] (13) The Missouri licensed funeral director with whom the arrangements are made shall make inquiry to determine the presence or existence of any body prosthesis, bridgework or similar items.

[(15)] (14) No body shall be cremated with a pacemaker in place. The Missouri licensed funeral director with whom the arrangements are made shall take all steps necessary to ensure that any pacemakers are removed prior to cremation.

[(16)] (15) No body shall be cremated until after a completed death certificate has been filed with the local registrar as required by section 193.175, RSMo.

[(17)] (16) Each cremation container or casket into which a body is placed shall be placed into the cremation chamber with the body and be cremated and each cremation box or urn into which the cremated remains are placed after removal from the cremation chamber shall be labeled clearly with the full name of the deceased and the name of the Missouri
licensed funeral establishment with whom the arrangements were made.]

(16) Except for metal containers or caskets, each cremation container or casket into which a body is placed shall be placed into the cremation chamber with the body and be cremated. If a metal container or casket is used, the purchaser shall be informed by the funeral director at the time that the arrangements are made of the disposition of the metal container or casket after cremation, if the container or casket is not to be placed in the retort. Each cremation box or urn into which the cremated remains are placed after removal from the cremation chamber shall be labeled clearly with full name of the deceased and the name of the Missouri licensed funeral establishment with whom the arrangements were made.

[(18)](17) The remains of only one (1) body shall be in the cremation chamber at one (1) time unless simultaneous cremation has been authorized in writing by the person(s) entitled to custody or control of each body.

[(19)](18) Following the completion of the cremation process, all residual of the cremation process including the cremated remains and any other matter shall be thoroughly removed from the cremation chamber prior to placing another body in the cremation chamber.

[(20)](19) If the cremated remains do not fill the interior of the cremation box adequately, the extra space may be filled with shredded paper or clean absorbent cotton.

[(21)](20) If the cremated remains will not fit within the receptacle designated in the arrangements, the remains shall be placed in a separate receptacle or, if written permission is obtained from the person entitled to custody or control of the body, disposed of in some other manner.

[(22)](21) The cremation box shall be composed of rigid materials which shall be sealed in order to prevent the leakage of cremated remains or the entry of foreign objects.

[(23)](22) If the cremated remains are to be shipped, the cremation box shall be packed securely in a corrugated cardboard box which is securely closed with tape acceptable to the shipper.

[(24)](23) Cremated remains shall be shipped only by a method which has an internal tracing system available and which provides a receipt signed by the person accepting delivery.

[(25)](24) Each urn into which cremated remains are placed shall be made of a durable material which shall enclose the cremated remains entirely.

[(26)](25) Each Missouri licensed funeral establishment which comes into possession of cremated remains, whether or not it is the Missouri licensed funeral establishment at which the cremation occurred, shall retain the cremated remains until they are delivered, placed or shipped pursuant to the instructions of the person(s) entitled to custody or control of the body. However, nothing in this rule shall prohibit a Missouri licensed funeral establishment from disposing of cremated remains in another fashion if the Missouri licensed funeral establishment has obtained written permission for other disposition contingent upon the Missouri licensed funeral establishment attempting to dispose of the cremated remains according to instructions but being unable to do so through no fault of the Missouri licensed funeral establishment and provided that other disposition shall not occur prior to thirty (30) days after cremation.

[(27)](26) Nothing in this rule shall be construed to prohibit a Missouri licensed funeral establishment which contains a crematory area from establishing more restrictive standards for its own operation.

[(28)](27) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.


PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102, by facsimile at (573) 751-1155 or via email to embalm@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.

Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2120—State Board of Embalmers and Funeral Directors
Chapter 2—General Rules

PROPOSED AMENDMENT

20 CSR 2120-2.090 Preparation Rooms/Embalming Room. The board is proposing to amend section (3), delete section (5), renumber the remaining sections accordingly, and amend the newly renumbered sections (6)–(11).

PURPOSE: This amendment provides clarification relating to plumbing in the embalming room.

(3) Floors, Walls and Ceilings. All preparation room floor surfaces [must] shall be smooth, nonabsorbent materials and so constructed as to be kept clean easily. Floor drains [must] shall be provided where the floor is to be subjected to cleaning by flooding. All walls and ceilings [must] shall be easily cleanable and light colored, and [must] shall be kept and maintained in good repair. All walls shall have washable surfaces.

(4) Plumbing.
(A) All plumbing must be sized, installed and maintained so as to carry adequate quantities of water throughout the Missouri licensed funeral establishment, prevent contamination of the water supply, properly convey sewage and liquid waste from the preparation room to the sewage disposal system and prevent creation of an unsanitary condition or nuisance.
(B) All plumbing must be sized, installed and maintained in accordance with local plumbing laws and ordinances. Where local codes are not in force, the Missouri licensed funeral director shall contact the International Code Council (ICC), Chicago District Office, or designee of the board, 4051 West Flossmoor Road, Country Club Hills, IL 60478-5795 or current address, for additional requirements.

(6) (5) Sewage and Liquid Waste Disposal.

(A) All sewage and water-carried wastes from the entire Missouri licensed funeral establishment, including the preparation room, must be disposed of in a public sewage system or an approved disposal system which is constructed, operated and maintained in conformance with the minimum standards of the Department of Health and Senior Services.

(B) The following aspirators are approved for preparation rooms:

1. Electric aspirators;

2. Water-operated aspirators. All water-operated aspirators shall be protected from back siphonage by the minimum of an atmospheric vacuum breaker approved by the American Society of Sanitary Engineering or by the Uniform Plumbing Code and installed a minimum of twelve inches (12") above the maximum possible height of the embalming table; and

3. Water-controlled unit. All water-controlled units shall be installed and maintained according to the Uniform Plumbing Code, and properly protected from back siphonage with a backflow prevention device approved by the American Society of Sanitary Engineering or the Uniform Plumbing Code.

(11) (6) Solid Waste Disposal.

(A) Refuse, bandages, cotton and other solid waste materials must be kept in leakproof, nonabsorbent containers which must shall be covered with tight-fitting lids prior to disposal.

(B) All waste materials, refuse, and used bandage and cotton must be destroyed by reducing to ashes through incineration or must be sterilized and buried. Sterilization may be accomplished by soaking for thirty (30) minutes in a solution of five percent (5%) formaldehyde, one (1) pint of formalin to seven (7) pints of water.

(17) (7) Disposal of Body Parts. Human body parts not buried within in the casket must shall be disposed of by incineration in a commercial or industrial-type incinerator or buried to a depth which will insure a minimum of three feet (3') of compacted earth cover (over-lay).

(18) (8) A mechanical exhaust system is required. Care must be taken to prevent the discharge of exhaust air into an area where odors may create nuisance problems.

(10) (9) All preparation rooms and all articles stored in them must shall be kept and maintained in a clean and sanitary condition. All embalming tables, hoppers, sinks, receptacles, instruments and other appliances used in embalming or other preparation of dead human bodies must shall be so constructed that they can be kept and maintained in a clean and sanitary condition. The following minimum standards shall apply:

(A) An eye wash kit (bank) or suitable facilities for quick drenching or flushing of the eyes shall be provided within the area for immediate emergency use;

(B) Facilities must exist for the proper disinfection of embalming instruments and the embalming table;

(C) Facilities for the proper storage of embalming instruments must be maintained. At a minimum, a chest or cabinet must shall be used for the storage of embalming instruments;

(D) All types of blocks used in positioning a dead human body on an embalming table must shall be made of nonabsorbent material. All wooden blocks must shall be sealed and painted with enamel; and

(E) When not in use, embalming tables must shall be cleaned, disinfected and covered with a sheet.

(11) (10) Food and Beverages.

(A) There may be no direct opening between the preparation room and any room where food and beverages are prepared or served.

(B) The Department of Health and Senior Services sanitation laws and rules governing food sanitation apply to the operation, construction and sanitation of food service facilities, where provided for the comfort and convenience of a funeral party; provided, however, that coffee service utilizing single-service cups and spoons and a coffee maker of easily cleanable construction shall be deemed acceptable where this service is the only food service offered.

(C) A Missouri licensed funeral home providing coffee service utilizing single-service items and coffee makers of easily cleanable construction must shall provide a water supply faucet at a suitable sink of easily cleanable construction for the filling and cleaning of this equipment in an area separate from the preparation room and restrooms.

(11) (11) A separate wash sink (separate from slop drain sink) must shall be present or in close proximity to the preparation room for a personal hand wash facility for Missouri licensed embalmers and the disinfecting of embalming equipment. If the wash sink is not present in the preparation room, it shall be in a location close to the preparation room which is not accessible to the public and it shall be at a distance of no further than ten feet (10') from the door of the preparation room.

(11) (12) Preparation rooms shall contain only the articles, instruments, and items that are necessary for the preparation, embalming, and final disposition of dead human bodies.

(11) (13) Preparation rooms shall be secured with a functional lock so as to prevent entrance by unauthorized persons.

(11) (14) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.


PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Besty Dunn, Executive Director, 3605 Missouri Boulevard, PO Box 423, Jefferson City, MO 65102, by facsimile at (573) 751-1155 or via email to embalm@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.
Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2120—State Board of Embalmers and Funeral Directors
Chapter 2—General Rules

PROPOSED AMENDMENT

20 CSR 2120-2.100 Fees. The board is proposing to amend section (1).

PURPOSE: This amendment eliminates examination administration fees.

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

[(IB) Embalmer State Board Examination Administration Fee $25.00]
[(IC) (B) Embalmer Application Fee $200]
[(ID) (C) Embalmer Oral Examination Fee $125]
[(IE) (D) Embalmer Reciprocity Application Fee $300]
[(IF) (E) Embalmer Biennial Renewal Fee $200]
[(IG) Missouri Law Examination Administration Fee $25.00]
[(IH) (F) Funeral Director Application Fee $200]
[(II) (G) Funeral Director Limited License Application Fee $200]
[(I) Funeral Director Missouri Funeral Service Arts Section Examination Administration Fee $25.00]
[(IK) (H) Funeral Director Reciprocity Application Fee $300]
[(IL) (I) Funeral Director Biennial Renewal Fee $200]
[(IM) (J) Reactivation Fee (up to one (1) year after lapse) $100]
[(IN) (K) Reactivation Fee (up to two (2) years after lapse) $200]
[(IO) (L) Establishment Application Fee $300]
[(IP) (M) Amended Establishment Application Fee $ 25]
[(IQ) (N) Establishment Biennial Renewal Fee $250]
[(IR) (O) Reciprocity Certification Fee $ 10]
[(IS) Reciprocity Examination Administration Fee $25.00]
[(IT) (P) Duplicate Wallhanging Fee $ 10]
[(IU) (Q) Collection Fee for Bad Checks $ 25]
[(IV) (R) Law Book Requests $ 5*]
[(IW) (S) Examination Review Fee $ 25]
[(IX) (T) Background Check Fee (amount determined by the Missouri State Highway Patrol)

*This fee will not apply to the initial copy of the law book which is automatically mailed to all applicants for licensure and to educational institutions of mortuary science. Furthermore, this fee will not be charged to licensees or any other individual, for additions or corrections to the law book after the initial copy is mailed.


PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.
Title 20—DEPARTMENT OF INSURANCE, FINANCIAL INSTITUTIONS AND PROFESSIONAL REGISTRATION
Division 2120—State Board of Embalmers and Funeral Directors
Chapter 2—General Rules

PROPOSED AMENDMENT

20 CSR 2120-2.060 Funeral Directing. The board is proposing to amend sections (1)-(3), (5), (10), (11), (16) and (17), add new language in section (18), renumber the remaining sections accordingly, amend sections (24), (26) and (28), and add new language in section (29).

PURPOSE: This amendment provides clarification relating to the practice of funeral directing.

(1) Every person who desires to enter the profession of funeral directing in Missouri and who is not entitled to a license under section 333.051, RSMo shall provide the following to the board:
   (A) Proof of being at least eighteen (18) years of age;
   (B) Proof of possession of a high school diploma or equivalent;
   (C) Evidence of being a person of good moral character;
   (D) Proof of satisfactory completion of each section of the funeral director's examination;
   (E) Affidavit of completion of a twelve (12) consecutive month apprenticeship; or official transcript and documentation indicating s/he is a graduate of an institute of mortuary science accredited by the American Board of Funeral Service Education or any successor organization recognized by the United States Department for Funeral Service Education; or has successfully completed a course in funeral directing offered by a college accredited by a recognized national, regional or state accrediting body and approved by the State Board of Embalmers and Funeral Directors; or proof of being a Missouri licensed embalmer;
   (F) Completed application form provided by the board;
   (G) Proof of successful completion of the National Board Funeral Service Arts examination, if applicable;
   (H) Payment of all applicable fees;
   (I) Satisfactory criminal history background check as provided to the board by the Missouri State Highway Patrol. Applicants shall submit to the board the applicable fee for the criminal history background check as determined by the Missouri State Highway Patrol; and
   (J) Any other information the board may require.

(2) Every person who desires to enter the profession of funeral directing in Missouri and who is not entitled to a license under section 333.051, RSMo, shall make application with the board for a Missouri funeral director license on the forms provided by the board and shall pay the funeral director application [and the administration] fee[s
for the Missouri Law examination and Missouri Funeral Service Arts examination] directly to the board. [The scheduling and payment of the examinations will be made through the International Conference of Funeral Service Examining Boards, Inc., or designee of the board.] If the applicant has successfully completed the National Board Funeral Service Arts examination, no Missouri Funeral Service Arts examination is required. [and no Missouri Funeral Service Arts examination fee may be applicable.] Application forms can be obtained from the board office or the board’s website at http://pr.mo.gov/embalmers.asp.

(3) Effective [June 1] July 30, 2004 the funeral director examination developed and administered by the [board] International Conference of Funeral Service Examining Boards, Inc., or designee of the board, shall consist of the Missouri Law section and the Missouri Funeral Service Arts section [developed and furnished by the International Conference of Funeral Service Examining Boards, Inc., or designee of the board]. In lieu of the Missouri Funeral Service Arts examination, successful completion of the National Board Funeral Service Arts examination results will be accepted.

(4) To serve as an apprentice funeral director, the applicant shall file with the board a completed funeral director application on the form prescribed by the board and also shall complete an application to be registered as an apprentice funeral director on the form prescribed by the board and pay all applicable fees. Application forms and a list of fees can be obtained from the board office or on the board’s website at http://pr.mo.gov/embalmers.asp.

(5) Upon registration and payment in full of all applicable fees, the board shall issue the apprentice funeral director applicant a funeral director apprentice registration. This registration authorizes the apprentice registrant to engage in the practice of funeral directing under the supervision of a Missouri licensed funeral director. The funeral director apprentice registration, or a copy thereof, shall be displayed, at all times, in a conspicuous location accessible to the public at each establishment where the apprentice is working.

(6) The funeral director apprentice registration authorizes the registrant to engage in the practice of funeral directing only during the period of apprenticeship. Once the apprenticeship is successfully completed as defined in this rule, the funeral director apprentice registration shall become null and void. Any Missouri licensed funeral director who allows a former apprentice who has completed his/her apprenticeship to engage in the practice of funeral directing before that apprentice is fully licensed shall be subject to discipline for misconduct under section 333.121.2, RSMo.

(7) Each registered funeral director apprentice shall provide to the board, on the application prescribed by the board, the name(s), location(s) and license number(s) of each funeral establishment(s) where they are serving as an apprentice. The funeral director apprenticeship may be served at a funeral establishment licensed by a state,
other than Missouri, upon submission of proof to the board that the out-of-state funeral home is licensed for the care and preparation for burial and transportation of human dead in this state or another state which has established standards for admission to practice funeral directing equal to, or more stringent than, the requirement for admission to practice funeral directing in this state. If the funeral director apprentice changes funeral establishments during the course of the apprenticeship, the apprentice shall notify the board, on the form prescribed by the board, of the name(s), location(s) and funeral establishment(s) license number of the new apprenticeship location within ten (10) business days after the change has been made.

(8) Successful completion of a funeral director apprenticeship shall consist of the following:
(A) Completed service as an apprentice funeral director for a period consisting of at least twelve (12) consecutive months in a Function C funeral establishment; and
(B) Filing with the board a notarized affidavit(s) signed by the apprentice and his/her supervisor(s) that s/he has arranged for and conducted a minimum of ten (10) funeral ceremonies under the supervision of a Missouri licensed funeral director.

(9) An apprentice will be eligible to take the funeral director examination after completion of the twelve (12) consecutive month period of apprenticeship.

(10) An applicant will be deemed to have successfully completed the funeral director examination when a score of seventy-five percent (75%) or better is achieved on each section. If the applicant fails a section of the examination, the applicant shall be permitted to retake that section of the examination. 

(11) All notifications for the funeral director’s examination [must] shall be in writing and received by the board at least fifteen (15) working [forty-five (45)] days prior to the date the candidate plans to sit for the [of the next regularly scheduled] examination [and must be accompanied by all applicable fees].

(12) A college accredited by a recognized national, state, or regional accrediting body may seek the approval of the State Board of Embalmers and Funeral Directors for a course of study in funeral directing by submitting a description of the program, the college catalog listing the course of study and evidence that the program has been approved to be offered in that institution by the administration of the college and the Missouri Coordinating Board for Higher Education.

(13) An applicant shall be exempt from the requirement of successful completion of the Missouri Law examination if the applicant has successfully completed the Missouri Law examination for another license within twelve (12) months of the date that the board receives the new application.
(14) It shall be considered misconduct in the practice of funeral directing for a Missouri licensed funeral director to permit any unlicensed person to engage in, or take charge of, the activities for which a license is required by law.

(15) A Missouri licensed funeral director shall be present and personally [must] shall supervise or conduct each funeral ceremony conducted by or from a Missouri licensed funeral establishment. A violation of this section will be considered misconduct in the practice of funeral directing.

(16) Unless otherwise authorized by law, [A] a Missouri licensed funeral director shall be present and personally [must] shall supervise any disinterment, interment, entombment, or cremation as defined in [4 CSR 120-1.040] 20 CSR 2120-1.040. If the disinterment does not require legal notification to the county coroner or medical examiner, a funeral director’s presence may not be required. A violation of this section shall be deemed misconduct in the practice of funeral directing. Once the body has been delivered to a cemetery for the purpose of interment or to a crematory for the purpose of cremation and after any funeral ceremonies have been completed, the Missouri licensed funeral director is not required to stay with the body. Nothing in this rule shall be interpreted as requiring the Missouri licensed funeral director to leave the cemetery before disposition is complete. Furthermore, nothing in this rule shall be interpreted as relieving the Missouri licensed funeral director of any responsibilities s/he has under his/her contract with the person(s) having the right to control the incidents of burial.

(17) An unlicensed person [may] transporting dead human bodies from the place of death to another location in the State of Missouri, or [may] transporting dead human bodies out of this state, shall do so [if these services are performed] under the direction of a Missouri licensed funeral establishment unless otherwise authorized by law.

(18) A funeral director or funeral establishment licensed in another state that enters the state of Missouri solely for the purpose of transporting a dead human body through Missouri to another state, country or territory, shall not be deemed to be in the practice of funeral directing or required to obtain a license from the board. This regulation does not exempt any person or entity from complying with any applicable statutes or regulations governing the transportation of dead human bodies, including, but not limited to, Chapters 193 and 194, RSMo.

(19) No person other than a Missouri licensed funeral director shall be allowed to make the following at-need arrangements with the person having the right to control the incidents of disposition:

(A) Removal of a dead human body, arrangements for final disposition, supervision of visitation and memorial ceremony, grave attendance, cremation, entering into a contractual relationship for performance of any other funeral services; and

(B) Embalming, cremation, care, preparation, shipment or transportation of a dead human body
(C) Nothing in this subsection shall be construed to apply to persons exempt from Chapter 333, RSMo.

[(19)] (20) The taking of preliminary information by an unlicensed person will not be construed as the making of at-need funeral arrangements under this rule.

[(20)] (21) Whenever an unlicensed person makes other than at-need funeral arrangements on behalf of a Missouri licensed funeral director or Missouri licensed funeral establishment, the unlicensed person shall be under the supervision and control of a Missouri licensed funeral director at all times.

[(21)] (22) No temporary Missouri funeral director license authorized under section 333.041.7, RSMo will be issued until the board has been advised as to the location of the Missouri licensed funeral establishment at which the temporary funeral director’s license will be used. The holder of the temporary license shall be authorized to only work at the Missouri licensed funeral establishment(s) where the deceased and/or disabled Missouri licensed funeral director was authorized to work. Violation of this rule will be deemed unauthorized practice of funeral directing.

[(22)] (23) The business and practice of funeral directing may be conducted only from a fixed place or establishment which has been licensed by the board.

[(23)] (24) Limited License.

(A) A person holding a limited license shall only be allowed to work [only] in a funeral establishment that is licensed [only] as a Function B [funeral] establishment (cremation only). [It shall be lawful for a limited licensee to engage in any act of funeral directing at a function B funeral establishment including transportation of dead human bodies to and from the funeral establishment.] A limited funeral director shall only engage in the activities of funeral directing authorized for a function B funeral establishment.

(B) Every person desiring a limited license shall provide the following to the board:

1. Proof of being at least eighteen (18) years of age;
2. Proof of possession of a high school diploma or its equivalent;
3. Evidence of being a person of good moral character;
4. Proof of successful completion by achieving a score of seventy-five percent (75%) or better on the Missouri Law examination;
5. Completed application form as provided by the board;
6. Payment of applicable fees;
7. Payment of any fee charged by the Missouri Highway Patrol for a criminal history background check; and
8. Any other information the board may require.

(C) Every limited licensee shall provide the board with the name, location and license number of each Function B funeral establishment where she/he is employed.

(D) A limited licensee shall be obligated to comply with all Missouri laws governing funeral directors subject to the limitations imposed by this rule and section 333.042.2, RSMo.
(E) If a limited licensee desires to obtain a full funeral director's license, the licensee shall be required to complete an apprenticeship consisting of at least twelve (12) consecutive months as required by section 333.042.2, RSMo, and accompanying regulations OR fulfill the education requirements set forth in section 333.042.3, RSMo. The limited licensee shall also provide to the board proof of successful completion of the remaining sections of the funeral director examination as required by these regulations. [The limited licensee shall not be required to retake the Missouri Law examination.] The applicant shall be exempt from the requirement of successful completion of the Missouri Law section if the applicant has successfully completed the Missouri Law section within twelve (12) months of the date that the board receives the new application.

[(24)] (25) All certificates, registrations, and licenses, or duplicate copies thereof, issued by the State Board of Embalmers and Funeral Directors shall be displayed at all times in a conspicuous location accessible to the public in each office(s) or place(s) of business where they work, for inspection by any duly authorized agent of the board.

[(25)] (26) Should an individual desire to obtain a Missouri funeral director's license after his/her license has become void under section 333.081.3, RSMo, the individual shall be required to make new application and pay all applicable fees to the board. No previous apprentice, application or examination will be considered for the new application. However, the board shall accept the successful completion of the National Board Funeral Service Arts examination for new application.

[(26)] (27) A Missouri licensed funeral director may engage in the practice of funeral directing in the state of Missouri only in Missouri licensed funeral establishments. Each Missouri licensed funeral director shall inform the board in writing, in a timely manner, of each Missouri licensed funeral establishment name(s), location(s) and license number(s) where the Missouri licensed funeral director is engaged in funeral directing.

[(27)] (28) A Missouri licensed funeral director has the ongoing obligation to keep the board informed if the licensee has been finally adjudicated or found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, [for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty, or an act of violence, or for any offense involving moral turpitude,] whether or not sentence was imposed. This information [must] shall be provided to the board within thirty (30) days of being finally adjudicated or found guilty.

(29) Person Deemed to be Engaged in the Practice of Funeral Directing.
   A. No person shall be deemed by the board to be engaged in the practice of funeral directing or to be operating a funeral establishment if the person prepares, arranges or carries out the burial of the dead human body of a member of one's own family or next of kin as provided by section
194.119, RSMo., provided that the activity is not conducted as a business or for business purposes.

B. The board shall not deem a person to be engaged in the practice of funeral directing or to be operating a funeral establishment if the person prepares, arranges or carries out the burial of a dead human body pursuant to the religious beliefs, tenets or practices of a religious group, sect or organization, provided that the activity is not conducted as a business or for business purposes.

[(28)] (30) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.


PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS:Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, P.O. Box 423, Jefferson City, MO 65102, by facsimile at (573) 751-1155 or via email to: embalm@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.
PROPOSED AMENDMENT

20 CSR 2120-2.070 Funeral Establishments. The board is proposing to amend sections (1)-(3), (7)-(10), (13), (16), (18), (20), (22), (23), (25) and (26), add new language in sections (27) and (29) and renumber the remaining sections accordingly.

PURPOSE: This amendment provides clarification relating to register log.

(1) Application for a Missouri licensed funeral establishment license shall be made on the forms provided by the board and [must] shall be accompanied by the appropriate fee. Applications are available from the board’s office or the board’s website at http://pr.mo.gov/embalmers.asp. Each application [must] shall indicate which license classification is being sought.

(2) There shall be the following license classifications:
   (A) Function A establishments shall have authority to embalm dead human bodies and to transport dead human bodies to and from the funeral establishment. An establishment licensed only as a function A establishment is prohibited from the care and preparation of dead human bodies other than by embalming, and shall also be prohibited from making funeral arrangements or embalming arrangements with any unlicensed person, cremating, conducting visitations and funeral ceremonies, and furnishing any funeral service in connection with the disposition of dead human bodies, or selling of funeral merchandise.
   (B) Function B establishments shall have authority to cremate dead human bodies and to transport dead human bodies to and from the funeral establishment. This establishment [must] shall have [an operating] a functioning cremation chamber[,] except as otherwise provided by Chapter 333, RSMo, and the rules of the board. An establishment licensed only as a function B establishment is prohibited from the care and preparation of dead human bodies other than by cremating, and shall also be prohibited from embalming, making funeral arrangements or cremation arrangements with any unlicensed person, conducting visitations and funeral ceremonies, and furnishing any funeral service in connection with the disposition of dead human bodies or selling funeral merchandise.
   (C) Function C establishments shall have authority for the care and preparation of dead human bodies, other than by embalming or cremating, authority to transport dead human bodies to and from the funeral establishment, make funeral arrangements, and furnish any funeral services in connection with the disposition of dead human bodies or the sale of funeral merchandise.
(D) Function D establishments shall have authority to conduct visitations and funeral ceremonies only. A Function D license is dependent upon and must shall be operated under the supervision and ownership of a Function C establishment.

(3) If a Missouri licensed funeral establishment wishes to change or add to its classification, it shall file a new application for a Missouri licensed funeral establishment indicating its new classification. If a Missouri licensed funeral establishment desires to eliminate one (1) of its functions, other than a Function C, it must shall notify the board in writing of its intention to surrender the function, but is not required to file a new application for a new Missouri licensed funeral establishment.

(4) A Missouri licensed funeral establishment shall not be used for any other business purpose other than as a Missouri licensed funeral establishment. It shall be permissible for a Missouri licensed funeral establishment to be in the same building as another business so long as the Missouri licensed funeral establishment has a separate entrance and a separate street address.

(5) A Missouri licensed funeral establishment shall be used only for the function for which it is licensed.

(6) Each application for a funeral establishment shall be made in the name of the person or business entity authorized to conduct business in Missouri. No license shall be issued to an establishment that has no legal recognition.

(7) A funeral establishment application shall indicate the name and license number of the Missouri licensed funeral director-in-charge, as defined by [4 CSR 120-1.040] 20 CSR 2120-1.040. When the Missouri licensed funeral director-in-charge changes for a period of more than thirty (30) days, the new Missouri licensed funeral director-in-charge and the former Missouri licensed funeral director-in-charge, jointly or individually, shall notify the board of the change within thirty (30) days of the date when the change first occurs. Failure to notify the board shall be considered a violation of this rule on the part of each Missouri funeral director licensee and on the part of the Missouri licensed funeral establishment. A change in the Missouri licensed funeral director-in-charge does not require a new Missouri licensed funeral establishment license.

(8) Within thirty (30) days after an application for a Missouri licensed funeral establishment has been received in the board's office, the board shall cause the establishment to be inspected. The board shall act on the application and, within thirty (30) days after the application was received in the board's office, the applicant will be advised whether the license is granted or denied. If an applicant determines the establishment will not meet the qualifications for inspection or licensure within the thirty (30)-day application period, up to two (2) thirty (30)-day extensions of the application may be requested by the applicant in writing to the board before the
application expires. Each request for an extension [must] shall be received by the board prior to the expiration of the application or extension period.

(9) The establishment license issued by the board is effective for a fixed place or establishment and for a specific name of a person or entity authorized to conduct business in Missouri and may include one (1) “doing business as” name. The license issued by the board shall be displayed in a conspicuous location accessible to the general public at that location. Whenever the ownership, location or name of the Missouri licensed establishment is changed, a new license [must] shall be obtained. If the Missouri licensed funeral establishment maintains a chapel, preparation room or other facility in a building or portion physically separated from and located at a place designated by an address differing from the office, chapel or other facilities of the applicant, the chapel, preparation room or other funeral facility otherwise located shall be deemed to be a separate funeral establishment. Nothing contained in this rule shall be construed or interpreted to require a separate registration for a building if it is joined or connected by a private passage, walk or driveway existing between the registered establishment and the other building.

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

(B) A corporation is considered by law to be a separate person. If a corporation owns a Missouri licensed funeral establishment, it is not necessary to obtain a new establishment license or to file an amended application for an establishment license if the owners of the stock change. However, as a separate person, if a corporation begins ownership of a Missouri licensed funeral establishment or ceases ownership of a Missouri licensed funeral establishment, a new establishment license [must] shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

(10) The professional business and practice of funeral directing shall be conducted only from a fixed place or establishment that has been licensed by the board except as permitted by section 333.071, RSMo. The Missouri licensed funeral establishment physical facility shall be under the general management and supervision of the Missouri licensed funeral director-in-charge. Every Missouri licensed funeral establishment [must] shall provide and allow access to any member or duly authorized agent of the board for the purpose of inspection as provided by sections 333.061 and 333.101, RSMo. If any representative of the Missouri licensed funeral establishment fails or refuses to provide or allow access, it shall be considered a violation of this rule by the Missouri licensed funeral establishment and by the Missouri licensed funeral director-in-charge of the Missouri licensed funeral establishment. Additionally, if the Missouri licensed funeral establishment representative who fails or refuses to provide or allow access holds any license or registration issued by this board, that person shall be in violation of this rule.
(11) No one licensed by this board may be employed in any capacity by an unlicensed funeral establishment. Violation of this section will be deemed misconduct in the practice of embalming or funeral directing.

(12) Only one (1) license will be issued by this board for any physical facility that is considered to be a Missouri licensed funeral establishment as defined by statute and rule. If a Missouri funeral establishment licensed by this board is destroyed by fire or some other disaster or act of God, the board, in its discretion, for a period of not more than six (6) months, may allow the Missouri licensed funeral establishment to continue its operation from another Missouri licensed funeral establishment or from a facility that has not been licensed as a funeral establishment if the facility meets the minimum requirements for the functions outlined in section (2) of this rule.

(13) A Missouri licensed funeral establishment may use only its registered name in any advertisement or holding out to the public.
(A) All signs, stationery and any advertising in newspapers, publications or otherwise, [must] shall include the name(s) of the Missouri licensed funeral establishment registered with the board. Advertisements that do not comply with this section shall be deemed misleading for the purposes of section 333.121, RSMo.
(B) It shall not be deemed to be misleading if a listing appears in a telephone directory or national directory if the name of the Missouri licensed funeral establishment changes after the listing has been placed, but before a new directory is published.

(14) The interior and exterior of the Missouri licensed funeral establishment physical plant shall be kept free and clean of litter, dirt, debris and clutter or other objects or conditions which present a potential or actual hazard to the health, safety or welfare of the public.

(15) The interior and exterior of the Missouri licensed funeral establishment physical plant shall be maintained in a manner that does not present a potential or actual hazard to the health, safety or welfare of the public.

(16) Each Missouri licensed funeral establishment used solely or partially for embalming shall contain a preparation room that shall be devoted to activities incident or related to the preparation or the embalming, or both, of dead human remains and shall be equipped and maintained as described in [4 CSR 120-2.090] 20 CSR 2120-2.090.

(17) No person shall be permitted in a preparation room during the course of embalming a dead human body except the employees of the Missouri licensed funeral establishment in that the human body is being embalmed, members of the family of the deceased, and persons authorized by the members of the family of the deceased, or any person otherwise authorized by law.
(18) Each Missouri licensed funeral establishment which is used solely or partially for cremations shall be equipped and maintained as described in [4 CSR 120-2.071] 20 CSR 2120-2.071.

(19) Each Function C establishment shall contain a separate area for the care and custody of dead human remains and a separate area for confidential conferences to arrange funeral services. The Function C establishment shall have on-site equipment necessary for arranging funeral services including tables or desks and chairs for funeral service arrangement conferences and file cabinets for the confidential storage of funeral records.

(20) Each Function C or Function D establishment shall contain a restroom, available drinking water, and an area where funeral ceremonies or visitations may be conducted. The establishment [must] shall be equipped with seating for visitations or funeral ceremonies, casket bier, register book stand, officiate stand, flower display stands and music-producing equipment.

(21) According to section 333.121.2(17), RSMo, the State Board of Embalmers and Funeral Directors may impose disciplinary action for failure to obtain authorization to embalm from the person entitled to custody or control of the body, if the body is embalmed. If the body is not embalmed, a Missouri licensed funeral establishment shall not hold the unembalmed body for any longer than twenty-four (24) hours unless the unembalmed body is refrigerated in a cooling unit at a temperature of forty degrees Fahrenheit (40° F) or cooler or encased in an airtight metal or metal-lined burial case, casket or box that is closed and hermetically sealed. If the deceased gave written authorization to embalm and did not revoke the authorization, the authorization shall satisfy this requirement. If the deceased did not give written authorization to embalm, the next of kin of the deceased may give authorization to embalm. Authorization to embalm may be given by the next of kin prior to the death of the person whose body is to be embalmed. Authorization to embalm given prior to death may be in any written document, including a preneed contract.

(A) The next of kin, for purposes of this rule, shall be as defined in section 194.119.2, RSMo.

(B) Any person or friend who assumes responsibility for the disposition of the deceased’s remains if no next of kin assumes such responsibility may authorize to embalm the deceased;

(C) The county coroner or medical examiner pursuant to the provisions of Chapter 58, RSMo may authorize to embalm the deceased;

(D) If the body is required to be buried at public expense, the body shall be disposed of according to the terms of section 194.150, RSMo;

(E) If the Missouri licensed funeral establishment receives no authorization to embalm from any of the persons identified in subsections (21)(A), (B), or (C) of this rule, the Missouri licensed funeral establishment may proceed with embalming if it has attempted to locate a person from whom authorization to embalm may be obtained for at least six (6) hours and it has a written statement from city, county, or state law enforcement officials that they have assisted the
Missouri licensed funeral establishment in attempting to locate such a person. However, the Missouri licensed embalmer may proceed to embalm sooner if the condition of the body is such that waiting for six (6) hours would substantially impair the ability to effectively embalm the body or if the deceased died as a result of a communicable disease, was subject to isolation at the time of death; and

(F) If a Missouri licensed embalmer proceeds to embalm a body under the provisions of subsection (21)(E), the Missouri licensed funeral establishment which employs the Missouri licensed embalmer shall not require payment for the embalming unless the funeral arrangements that are subsequently made authorized the embalming.

(22) Each Missouri licensed funeral establishment shall maintain documentation of the following information regarding authorization to embalm a body which is embalmed by or on behalf of the Missouri licensed funeral establishment:

(A) When authorization to embalm is given in writing—
1. The name and signature of the person who is authorizing embalming;
2. The relationship of that person to the deceased;
3. The time and date authorization to embalm was given; and
4. The name and title of the person receiving authorization to embalm on behalf of the Missouri licensed funeral establishment; and

(B) Authorization to embalm [must] shall be given in writing if the person authorizing embalming is present in the Missouri licensed funeral establishment or in the physical presence of the person receiving authorization to embalm on behalf of the Missouri licensed funeral establishment. If verbal authorization to embalm is given, the Missouri licensed funeral establishment shall document—
1. The name of the person who is actually authorizing embalming, if different from the person who is verbally communicating authorization to embalm to the Missouri licensed funeral establishment;
2. The relationship of that person to the deceased;
3. The name of the person who is verbally communicating authorization to embalm and that person’s relationship to the person who is actually authorizing embalming;
4. The time and date authorization to embalm was given; and
5. The name and title of the person receiving authorization to embalm on behalf of the Missouri licensed funeral establishment.

(23) Each Function C funeral establishment shall maintain on the Missouri premises the following documents:
(A) General price list;
(B) Purchase contracts which have been cancelled or fulfilled;
(C) Purchase agreements; and
(D) Authorizations to embalm or cremate.

(24) Each Function A funeral establishment licensed for embalming shall maintain on the premises in the preparation room an embalming log.
(25) Each Function B establishment licensed for cremation shall maintain on the premises a completely functioning cremation chamber, as defined by 20 CSR 2120-2.071(1)(D), and maintain on the premises in the cremation area a cremation log. A function B establishment shall not be in violation of this rule if the cremation chamber is completely restored to functioning capacity within one hundred (120) days from the date the cremation chamber ceases to be in compliance with this section. However, if there are extenuating circumstances, and the cremation chamber could not be repaired, documentation of such shall be provided to the board for review and approval. Cremation chambers shall be maintained in proper working order and in compliance with all applicable Missouri Department of Health and Senior Services statutes, rules and regulations; Missouri Department of Natural Resources, statues, rules and regulations; and all other applicable federal, city, county, and municipal statutes, rules and regulations.

(A) If a function B establishment has only one (1) cremation chamber, and that chamber is not functioning, notification from the establishment shall be made to the board within ten (10) business days after the cremation chamber stops functioning.

(B) A function B establishment that has a non-functioning cremation chamber may arrange for cremation at another licensed establishment, if the use of an alternate establishment for purposes of cremation is disclosed to the third party making the arrangements on the cremation authorization form.

(26) All documents required by this rule to be maintained, [must] shall be maintained on the premises [for a minimum of the current calendar year and the previous calendar year] of the Missouri licensed funeral establishment for two (2) years from the date the record was created. All documents required to be maintained by this rule may be maintained electronically, but all documents shall be stored in such a manner to allow access by the board and so the board, or its assignee, may easily and timely obtain hard copies or electronic copies in a format easily readable by the board, or its assignee.

(27) Each funeral establishment shall maintain a register log, as defined by 20 CSR 2120-1.040(9). The log shall be kept in the preparation or embalming room of the Missouri licensed funeral establishment at all times and in full view for a board inspector. If the funeral establishment does not contain a preparation or embalming room, the log shall be kept on the premises of the licensed funeral establishment and shall be easily accessible and in full view for a board inspector. A register log shall contain the information required by 20 CSR 2120-1.040(9).

[(27)] (28) No dead human body shall be buried, disinterred, interred, or cremated within this state or removed from this state, unless the burial, disinterment, interment, cremation, removal, or other authorized disposition, is performed under the direction of a Missouri licensed funeral establishment or Missouri licensed funeral director,
unless otherwise authorized by law. If the disinterment does not require legal notification to the county coroner or medical examiner, a funeral director's presence may not be required.

(29) A licensee shall be prohibited from knowingly using, placing, or including any false, misleading, deceptive or materially incorrect information, or assisting or enabling any person to provide such information, on a death certificate filed in the State of Missouri.

[(28)] (30) Whenever a dead human body is donated to a medical or educational institution for medical and/or scientific study and arrangements for return of the body to the legal next of kin have not been made, then delivery of the body to the medical or educational institution shall constitute final disposition. If, however, arrangements for return of the body to the legal next of kin have been made, then final disposition shall be the burial, interment, cremation, or removal of the body out of this state, after the medical or educational institution has returned the body.

[(29)] (31) The rules in this division are declared severable. If any rule, or section of a rule, is held invalid by a court of competent jurisdiction or by the Administrative Hearing Commission, the remaining provisions shall remain in full force and effect unless otherwise determined by a court of competent jurisdiction or by the Administrative Hearing Commission.


PUBLIC COST: This proposed amendment will not cost state agencies or political subdivisions more than five hundred dollars ($500) in the aggregate.

PRIVATE COST: This proposed amendment will not cost private entities more than five hundred dollars ($500) in the aggregate.

NOTICE TO SUBMIT COMMENTS: Anyone may file a statement in support of or in opposition to this proposed amendment with the State Board of Embalmers and Funeral Directors, Becky Dunn, Executive Director, 3605 Missouri Boulevard, P.O. Box 423, Jefferson City, MO 65102, by facsimile at (573) 751-1155 or via email to: embalm@pr.mo.gov. To be considered, comments must be received within thirty (30) days after publication of this notice in the Missouri Register. No public hearing is scheduled.
4 CSR 120-2.060

(17) An unlicensed person may transport dead human bodies from the place of death to another location on behalf of a Missouri licensed funeral establishment or may transport dead human bodies out of this state on behalf of a Missouri licensed funeral establishment if these services are performed under the direction and supervision of the licensed funeral establishment.

(18) A Missouri licensed funeral director shall be present and personally must supervise any disinterment, interment, entombment or cremation as defined in 4 CSR 120-1.040. However, once the body has been delivered to a cemetery for the purpose of interment or to a crematory for the purpose of cremation and after any funeral ceremonies have been completed, the Missouri licensed funeral director is not required to stay with the body. If the disinterment does not require legal notification to the county coroner or medical examiner, a funeral director's presence may not be required. A violation of this section shall be deemed misconduct in the practice of funeral directing. Nothing in this rule shall be interpreted as requiring the Missouri licensed funeral director to leave the cemetery before disposition is complete nor shall this rule be construed to require the presence of a licensed funeral director if the person(s) having the right to control the incidents of burial request or determine otherwise. Furthermore, nothing in this rule shall be interpreted as relieving the Missouri licensed funeral director of any responsibilities s/he has under his/her contract with the person(s) having the right to control the incidents of burial.

4 CSR 120-2.060

(27) No dead human body shall be buried, disinterred, interred, or cremated within this state or removed from this state, unless the burial, disinterment, interment, cremation, removal, or other authorized disposition, is performed under the direction of a Missouri licensed funeral establishment or Missouri licensed funeral director, unless otherwise authorized by law. If the disinterment does not require legal notification to the county coroner or medical examiner, a funeral director's presence may not be required. Nothing in this rule shall be interpreted to require the use of a Missouri licensed funeral establishment or director if the person(s) having the right to control the incidents of burial request or determine otherwise, provided that this provision does not exempt any person from licensure as required by Chapter 333, RSMo.
Summary of the Introduced Bill

HB 825 -- Preneed Funeral Contracts

Sponsor: Meadows

This bill changes the laws regarding preneed funeral contracts. In its main provisions, the bill:

(1) Requires providers of funeral services who sell preneed funeral contracts to collect and administer payments made under a contract;

(2) Requires providers to file a detailed list with the State Board of Embalmers and Funeral Directors within the Department Insurance, Financial Institutions, and Professional Registration which contains the name, contract number, and amount of each preneed contract;

(3) Requires providers to give written notice within 30 days to all purchasers of their intention to dispose of assets and cease doing business;

(4) Requires sellers of preneed contracts to keep adequate records of all money paid by purchasers;

(5) Authorizes the Office of the Attorney General to order investigations to determine compliance of the provisions of the bill by licensees;

(6) Requires all preneed contracts sold after August 28, 2007, to maintain at least 90% of the amount paid in a trust;

(7) Requires all money received by the seller to be deposited into a trust fund within 60 days of the receipt of the money;

(8) Requires the seller upon cancellation of the contract by the purchaser to pay the purchaser an amount equal to all payments made plus interest less the actual expenses;

(9) Requires purchasers who receive public assistance to file a copy of the contract with the appropriate state or federal agency;

(10) Allows purchasers to redesignate the provider any time prior to the final disposition of the contract; and

(11) Requires all complaints to the board to be in writing.

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Missouri House of Representatives
94th General Assembly, 1st Regular Session
Last Updated March 8, 2007 at 3:59 pm
FIRST REGULAR SESSION

HOUSE BILL NO. 825

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES MEADOWS (Sponsor), HARRIS (23), KUESSNER, FRAME, YAEGER, KOMO, WITTE, HARRIS (110), OXFORD, CASEY, BROWN (50), LOW (39), FALLERT, SCHOMENHIL, SWINGER, KRATKY, YOUNG, LIESE, GEORGE, LeVOTA, HAYWOOD, TALBOY, SCAVUZZO, HOLSMAAN, LAMPE, LOWE (44), QUINN (9), SPRENG, McCLANAHAN, NASHEED, WALSH, BOWMAN, SALVA, TODD, SCHIEFFER, RUCKER, BLAND, DRILL, DARROUGH, DONNELLY, BAKER (25) AND SHIVELY (Co-sponsors).

Read 1st time February 8, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1820L.021

AN ACT

To repeal sections 436.005, 436.007, 436.011, 436.015, 436.021, 436.027, 436.031, 436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 436.055, 436.061, 436.063, 436.067, 436.069, and 436.071, RSMo, and to enact in lieu thereof twenty-one new sections relating to preneed funeral contracts, with a penalty provision.

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

Section A. Sections 436.005, 436.007, 436.011, 436.015, 436.021, 436.027, 436.031, 436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 436.055, 436.061, 436.063, 436.067, 436.069, and 436.071, RSMo, are repealed and twenty-one new sections enacted in lieu thereof, to be known as sections 436.005, 436.007, 436.011, 436.015, 436.021, 436.027, 436.031, 436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 436.055, 436.061, 436.063, 436.067, 436.069, 436.071, and 436.072, to read as follows:

436.005. As used in sections 436.005 to [436.071] 436.072, unless the context otherwise requires, the following terms shall mean:

1. "Beneficiary", 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;

2. "Division", the division of professional registration of the department of [economic development] insurance, financial institutions and professional registration;

3. "Funeral merchandise", caskets, grave vaults, or receptacles, and other personal property incidental to a funeral or burial service, and such term shall also include grave lots, grave space, grave markers, monuments,
tombstones, crypts, niches or mausoleums if, but only if, such items are sold:

(a) By a companion agreement which is sold in contemplation of trade or barter for grave vaults or funeral or burial services and funeral merchandise; or

(b) At prices, in excess of prevailing market prices, intended to be offset by reductions in the costs of funeral or burial services or facilities which are not immediately required;

(4) "Person", any individual, partnership, corporation, cooperative, association, or other entity;

(5) "Preneed contract", any contract or other arrangement which requires the current payment of money or other property in consideration for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral merchandise, where such disposition, services, facilities or merchandise are not immediately required, including, but not limited to, an agreement providing for a membership fee or any other fee having as its purpose the furnishing of burial or funeral services or merchandise at a discount, except for contracts of insurance, including payment of proceeds from contracts of insurance, unless the preneed seller or provider is named as the owner or beneficiary or assignee in the contract of insurance;

(6) "Preneed trust", a trust established by a seller, as grantor, to receive deposits of, administer, and disburse payments received under preneed contracts by such seller, together with income thereon;

(7) "Provider", the person obligated to provide the disposition and funeral services, facilities, or merchandise described in a preneed contract;

(8) "Purchaser", the person who is obligated to make payments under a preneed contract;

(9) "Seller", the person who sells a preneed contract to a purchaser and who is obligated to collect and administer all payments made by the purchaser under such preneed contract;

(10) "State board", the Missouri state board of embalmers and funeral directors;

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

436.007. 1. Each preneed contract made after August 13, 1982, shall be void and unenforceable unless:

(1) It is in writing;

(2) It is executed by a seller who is in compliance with the provisions of section 436.021;

(3) It identifies the contract beneficiary and sets out in detail the final disposition of the dead body and funeral services, facilities, and merchandise to be provided;

(4) It identifies the preneed trust or financial institution into which contract payments shall be deposited, including the name and address of the trustee or financial institution thereof;

(5) The terms of such trust and related agreements among two or more of the contract seller, the contract provider, and the trustee of such trust are in compliance with the provisions of sections 436.005 to [436.071] 436.072;

(6) It contains the name and address of the seller and the provider.

2. If a preneed contract does not comply with the provisions of sections 436.005 to [436.071] 436.072, all payments made under such contract shall be recoverable by the purchaser, his the purchaser's heirs, or legal representative, from the contract seller or other payee thereof, together with interest at the rate of ten percent per annum and all reasonable costs of collection, including attorneys' fees.

3. Each preneed contract made before August 13, 1982, and all payments and disbursements under such
contract shall continue to be governed by sections 436.010 to 436.080, as those sections existed at the time the contract was made; but, the provisions of subsection 2 of section 436.035 may be applied to all preneed contracts which are executory on August 13, 1982.

4. Subject to the provisions of subdivision (5) of section 436.005, the provisions of sections 436.005 to [436.071] 436.072 shall apply to the assignment of proceeds of any contract of insurance for the purpose of funding a preneed contract or written in conjunction with a preneed contract. Laws regulating insurance shall not apply to preneed contracts, but shall apply to any insurance sold with a preneed contract.

5. No preneed contract shall become effective unless and until the purchaser thereof has placed his or her signature in a space provided on such contract, or application therefor, and the purchaser has received a copy of such contract signed by the seller.

6. The seller and the provider of a preneed contract may be the same person.

436.011. 1. Any seller who designates a person as a provider in a preneed contract and any provider who designates a person as a seller without a contractual relationship with such person is in violation of the provisions of sections 436.005 to [436.071] 436.072.

2. Any person who knowingly permits a seller to sell a preneed contract designating him as the provider or as one of two or more providers who will furnish the funeral merchandise and services described in the preneed contract shall provide the funeral merchandise and services described in the preneed contract for the beneficiary. Any person who knowingly permits a provider to sell a preneed contract designating such person as the seller who is obligated to collect and administer all payments made under such preneed contract shall be obligated for all such payments made by the purchaser under such preneed contract. Failure of any such person to do so shall be a violation of the provisions of sections 436.005 to [436.071] 436.072 and shall be cause for suspension or revocation of that person's license under the provisions of section 333.061, RSMo. Any seller who fails to notify the board, division, or attorney general's office of known or probable failure of compliance with a provider acting as an agent of the seller is violating sections 436.005 to 436.072.

3. If a provider has knowledge that a seller is designating him or her as the provider of funeral merchandise and services under any preneed contract and fails within thirty days after first obtaining such knowledge to take action to prevent the seller from so designating him or her as the provider, the provider shall be deemed to have consented to such designation. If a seller has knowledge that a provider is designating such seller as the seller of any preneed contract and, within thirty days after first obtaining such knowledge, fails to take action to prevent the provider from so designating such seller as the seller, the seller shall be deemed to have consented to such designation.

436.015. 1. No person shall perform or agree to perform the obligations of, or be designated as, the provider under a preneed contract unless, at the time of such performance, agreement or designation:

(1) Such person is licensed by the state board as a funeral establishment pursuant to the provisions of section 333.061, RSMo, but such person need not be licensed as a funeral establishment if [he] such person is the owner of real estate situated in Missouri which has been formally dedicated for the burial of dead human bodies and the contract only provides for the delivery of one or more grave vaults at a future time and is in compliance with the provisions of chapter 214, RSMo; and
(2) Such person is registered with the state board and files with the state board a written consent authorizing the state board and attorney general's office to order an examination and if necessary an audit by the staff of the division of professional registration or the attorney general's office who are not connected with the board of its books and records which contain information concerning preneed contracts sold for, in behalf of, or in which he or she is named as provider of the described funeral merchandise or services. The state board and attorney general's office may also order an investigation to determine compliance with this chapter.

2. Each provider under one or more preneed contracts shall:

(1) Furnish the state board in writing with the name and address of each seller authorized by the provider to sell preneed contracts in which the provider is named as such within fifteen days after the provider signs a written agreement or authorization permitting the seller to sell preneed contracts designating or obligating the provider as the "provider" under the contract. This notification requirement shall include a provider who, itself, acts as seller;

(2) File annually with the state board a report which shall contain:

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

(b) The name and address of each seller with whom it has entered into a written agreement since last filing a report and a detailed list including the name and contract number and amount of each preneed contract written with each seller since the last filing report;

(c) The name and address of the custodian of its books and records containing information about preneed contract sales and services;

(3) Cooperate with the state board, the office of the attorney general of Missouri, and the division in any investigation, examination or audit brought under the provisions of sections 436.005 to [436.071] 436.072;

(4) At least thirty days prior to selling or otherwise disposing of its business assets, or its stock if a corporation, or ceasing to do business, give written notification to the state board and to all sellers with whom it has one or more preneed contracts of its intent to engage in such sale or to cease doing business. In the case of a sale of assets or stock, the written notice shall also contain the name and address of the purchaser. Upon receipt of such written notification, the state board [may] shall take reasonable and necessary action to determine that any preneed contracts which the provider is obligated to service will be satisfied at the time of need. The state board may waive the requirements of this subsection, or may shorten the period of notification whenever in its discretion it determines that compliance with its provisions are not necessary. [Failure of the state board to take action regarding such sale or termination of business within thirty days shall constitute such a waiver] Written notice shall be provided by the provider to all purchasers within thirty days of the establishment selling or otherwise disposing of its business assets, or its stock if a corporation, or ceasing to do business and indicating what establishment will be assuming responsibility for the preneed contracts.

3. It is a violation of the provisions of sections 436.005 to 436.071 and subdivision (3) of section 333.121, RSMo, for any person to sell, transfer or otherwise dispose of the assets of a provider without first complying with the provisions of subdivision (4) of subsection 2 of this section. This violation shall be in addition to the provisions of section 436.061.
4. If any licensed embalmer, funeral director or licensed funeral establishment shall knowingly allow such licensee's name to be designated as the provider under, or used in conjunction with the sale of, any preneed contract, such licensee shall be liable for the provider's obligations under such contract.

5. With respect to a provider or seller licensed under the provisions of chapter 333, RSMo, any violation of the provisions of sections 436.005 to 436.071 shall constitute a violation of subdivision (3) of section 333.121, RSMo.

436.021. 1. No person, including without limitation a person who is a provider under one or more preneed contracts, shall sell, perform or agree to perform the seller's obligations under, or be designated as the seller of, any preneed contract unless, at the time of that sale, performance, agreement, or designation, that person shall:

(1) Be an individual resident of Missouri or a business entity duly authorized to transact business in Missouri;

(2) Have established, as grantor, a preneed trust or trusts with terms consistent with sections 436.005 to [436.071] 436.072; except for contracts of insurance and contracts with moneys held in joint accounts;

(3) Have registered with the state board and is licensed by the state board as a funeral preneed seller under this chapter.

2. Each seller under one or more preneed contracts shall:

(1) Maintain adequate records of all such contracts and related agreements with providers and the trustee of preneed trusts or financial institution holding moneys of joint accounts regarding such contracts, including copies of all such agreements. The seller shall maintain adequate records of all such moneys paid in by purchasers and shall be obligated to collect and administer all payments made under such contracts and agreements under section 436.005;

(2) Notify the state board in writing of the name and address of each provider who has authorized the seller to sell one or more preneed contracts under which the provider is designated or obligated as the contract's "provider";

(3) File annually with the state board a signed and notarized report on forms provided by the state board. Such a report shall only contain:

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

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

(c) The total number of preneed contracts sold in Missouri since the filing of the last report and a detailed list including the name and contract number and amount of each preneed contract written with each seller since the last filing report;

(d) The total face value of all preneed contracts sold in Missouri since the filing of the last report;

(e) The name and address of the financial institution in Missouri in which it maintains the trust accounts or joint accounts required under the provisions of sections 436.005 to [436.071] 436.072 and the account numbers of such trust accounts or joint accounts;

(f) A consent authorizing the state board and attorney general's office to order an examination and if necessary an audit by staff of the division of professional registration or attorney general's office who are not connected with the board of the trust account or joint accounts, designated by depository and account number. The state board or attorney general's office may also order an investigation to determine compliance with this chapter. The staff of the division of professional registration or attorney general's office in conducting the audit shall
not release a detailed accounting of the trust account or joint accounts to the board unless there exist circumstances indicating that the [account does] accounts do not comply with the requirements of sections 436.005 to [436.071] 436.072, but shall provide the board with a summary of the examination or audit showing general compliance with the provisions of sections 436.005 to [436.071] 436.072;

(4) File with the state board a consent authorizing the state board and attorney general's office to order an examination and if necessary an audit by staff of the division of professional registration or attorney general's office who are not connected with the board of its books and records relating to the sale of preneed contracts and the name and address of the person designated by the seller as custodian of these books and records. The staff of the division of professional registration or attorney general's office in conducting the audit shall not release a detailed accounting of the trust account or joint accounts to the board unless there exist circumstances indicating that the [account does] accounts do not comply with the requirements of sections 436.005 to [436.071] 436.072, but shall provide the board and attorney general's office with a summary of the examination or audit showing general compliance with the provisions of sections 436.005 to [436.071] 436.072;

(5) Cooperate with the state board, the office of the attorney general, and the division in any investigation, examination or audit brought under the provisions of sections 436.005 to [436.071] 436.072.

3. Prior to selling or otherwise disposing of a majority of its business assets, or a majority of its stock if a corporation, or ceasing to do business as a seller, the seller shall provide written notification to the state board of its intent to engage in such sale at least sixty days prior to the date set for the closing of the sale, or of its intent to cease doing business at least sixty days prior to the date set for termination of its business. The written notice shall be sent, at the same time as it is provided to the state board, to all providers who are then obligated to provide funeral services or merchandise under preneed contracts sold by the seller. Upon receipt of the written notification, the state board [may] shall take reasonable and necessary action to determine that the seller has made proper plans to assure that the trust assets or joint accounts of the seller will be set aside and used to service outstanding preneed contracts sold by the seller. The state board may waive the requirements of this subsection or may shorten the period of notification whenever in its discretion it determines that compliance with its provisions are not necessary. [Failure of the state board to take action regarding such sale or termination of business within sixty days shall constitute such a waiver] Written notice shall be provided by the seller to all purchasers within thirty days of the seller selling or otherwise disposing of its business assets, or its stock if a corporation, or ceasing to do business and indicating what seller will be assuming the responsibility for the preneed contracts.

4. It is a violation of the provisions of sections 436.005 to [436.071] 436.072 for any person to sell, transfer or otherwise dispose of the assets of a seller without first complying with the provisions of subsection 3 of this section.

436.027. For each preneed contract sold after August 28, 2007, the seller may retain as his or her own money, for the purpose of covering his or her selling expenses, servicing costs, and general overhead, the initial [funds] moneys so collected or paid until [he] the seller has received for his or her use and benefit an amount not to exceed [twenty] ten percent of the total amount agreed to be paid by the purchaser of such prepaid funeral benefits as such total amount is reflected in the contract. At least ninety percent of the total amount paid by the purchaser of the prepaid funeral benefits as such total is reflected in the contract shall be placed and held in trust. Contracts
funded by joint accounts shall have held and placed one hundred percent of the amount paid by the purchaser of the total amount agreed to be paid by the purchaser of such prepaid funeral benefits as such total amount is reflected in the contract.

436.031. 1. 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 by the seller of a preneed contract and shall hold, administer, and distribute such deposits, in trust, as trust principal, pursuant to the provisions of sections 436.005 to [436.071] 436.072. Payments regarding two or more preneed contracts may be deposited into and commingled in the same preneed trust, so long as the trust's grantor is the seller of all such preneed contracts and the trustee maintains adequate records of all payments received.

2. All property held in a preneed trust, including principal and undistributed income, shall be invested and reinvested by the trustee thereof. The trustee shall exercise such judgment and care under circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their [funds] moneys, considering the probable income therefrom as well as the probable safety of their capital. 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. Each individual preneed contract sold after August 28, 2007, shall be placed and held in trust an amount equal to at least ninety percent of the total amount paid by the purchaser of the prepaid funeral benefits as such total is reflected in the contract.

3. The seller of a preneed contract shall be entitled to all income, including, without limitation, interest, dividends, and capital gains, and losses generated by the investment of preneed trust property regarding such contract, and the trustee of the trust may distribute all income, net of losses, to the seller at least annually; but no such income distribution shall be made to the seller if, and to the extent that, the distribution would reduce the aggregate market value on the distribution date of all property held in the preneed trust, including principal and undistributed income, below the sum of all deposits made to such trust pursuant to subsection 1 of this section for all preneed contracts then administered through such trust.

4. All expenses of establishing and administering a preneed trust, including, without limitation, trustee's fees, legal and accounting fees, investment expenses, and taxes, shall be paid or reimbursed directly by the seller of the preneed contracts administered through such trust and shall not be paid from the principal of a preneed trust.

5. The trustee of a preneed trust shall maintain adequate books of account of all transactions administered through the trust and pertaining to the trust generally. The trustee shall assist seller who established the trust or its successor in interest in the preparation of the annual report described in subdivision (3) of subsection 2 of section 436.021. The seller shall furnish to each contract purchaser, within fifteen days after receipt of the purchaser's written
request, a written statement of all deposits made to such trust regarding such purchaser's contract.

6. All payments made by the purchaser of a preneed contract shall be paid to the seller and moneys deposited into the trust account or joint account within sixty days of receiving it under the provisions set forth in section 436.027. The seller shall notify the provider of all payments within thirty days of receipt of such payments made by the purchaser. Purchasers who choose to make payments with cash and/or pay to the provider shall sign a statement showing receipt of moneys paid to the provider. The provider shall provide a copy of receipt to the purchaser and a copy shall be submitted to the seller with the payment of moneys.

7. The trustee of a preneed trust shall, from time to time, distribute trust principal as provided by sections 436.005 to [436.071] 436.072.

7.] 8. A preneed trust shall terminate when trust principal no longer includes any payments made under any preneed contract, and upon such termination the trustee shall distribute all trust property, including principal and undistributed income, to the seller which established the trust.

436.035. 1. At any time before the final disposition of the [dead body] beneficiary, or before funeral services, facilities, or merchandise described in a preneed contract are provided by the provider designated in the preneed contract, the purchaser may cancel the contract without cause by delivering written notice thereof to the seller and the provider. Within fifteen days after its receipt of such notice, the seller shall pay to the purchaser a net amount equal to all payments made into trust under the contract. Upon delivery of the purchaser's receipt for such payment to the trustee, the trustee shall distribute to the seller from the trust an amount equal to all deposits made into the trust for the contract. At the same time the seller makes payment to the purchaser, the seller shall notify the provider in writing of the payment made to the purchaser, including the date and the amount of the payment made. Each preneed contract made after August 28, 2007, cancelled by the purchaser, the seller shall pay to the purchaser an amount equal to all payments made by the purchaser and interest less actual expenses to establish and administer such contract.

2. Notwithstanding the provisions of subsection 1 of this section, if a purchaser or beneficiary is eligible, becomes eligible, or desires to become eligible, to receive public assistance under chapter 208, RSMo, or any other applicable state or federal law, the purchaser may irrevocably waive and renounce his right to cancel the contract pursuant to the provisions of subsection 1 of this section, which waiver and renunciation shall be made in writing and delivered to the contract seller; but the purchaser may designate and redesignate the provider in the irrevocable agreement or plan [where applicable by the terms of the contract]. If a purchaser or beneficiary is eligible, becomes eligible, or desires to become eligible to receive public assistance under chapter 208, RSMo, or any other applicable state or federal law, a copy of the preneed funeral contract shall be provided to the appropriate qualifying state or federal agency. Notwithstanding, at any time before the final disposition of the beneficiary or before the funeral services, facilities, or merchandise described in the preneed contract are provided by the provider designated in the preneed contract, the purchaser may designate and redesignate the provider without cause by delivering written notice thereof to the provider and the seller. Within fifteen days after its receipt of such notice, the seller shall notify the newly designated provider of the purchaser's request. Written consent from the newly designated provider shall be attached to the preneed contract to reflect such change. The seller
shall notify the purchaser and the previous provider of the redesignated provider's consent of obligation being named the new provider.

3. Notwithstanding the provisions of subsection 1 of this section, any purchaser, within thirty days of receipt of the executed contract, may cancel the contract without cause by delivering written notice thereof to the seller and the provider, and receive a full refund of all payments made on the contract. Notwithstanding, at any time before the final disposition of the beneficiary or before the funeral services, facilities, or merchandise described in the preneed contract are provided by the provider designated in the preneed contract, the purchaser may designate and redesignate the provider without cause by delivering written notice thereof to the provider and the seller. Within fifteen days after its receipt of such notice, the seller shall notify the newly designated provider of the purchaser's request. Written consent from the newly designated provider shall be attached to the preneed contract to reflect such change. The seller shall notify the purchaser and the previous provider of the redesignated provider's consent of obligation being named the new provider. Notice of this provision and the appropriate addresses for notice of cancellation shall be so designated on the face of the contract.

436.038. If the death of the beneficiary occurs outside the general area served by the provider designated in a preneed contract, then the seller shall either provide for the furnishing of comparable funeral services and merchandise by a licensed mortuary selected by the next of kin of the purchaser or, at the seller's option, shall pay over to the purchaser in fulfillment of all obligations under the contract, an amount equal to all sums actually paid in cash by the purchaser under the preneed contract together with interest [to be provided for in the contract]. Upon seller's full performance under the provisions of this section, the trustee of the preneed trust for the contract shall distribute to the seller from the trust an amount equal to all deposits made into the trust for the contract.

436.041. The seller shall be obligated for the collection, administering, and oversight of all payments made under such contract. If the payments payable under a preneed contract shall be more than three months in arrears, the seller may cancel the contract by delivering written notice thereof within thirty days to the purchaser and the provider. Written notice to the purchaser and provider shall allow the purchaser to have thirty days to pay into trust those payments in arrears. If such payments are not received by the seller within thirty days of notice, the seller may cancel the contract by delivering final written notice to the purchaser and the provider, and by making payment to the purchaser of a net amount equal to all payments made [into trust under the contract] by the purchaser under section 436.027. Upon delivery of the purchaser's receipt of such payment to the trustee, the trustee shall distribute to the seller from the trust an amount equal to all deposits made into the trust for the contract.

436.045. Within thirty days after a provider and a witness shall certify in writing to the seller that the provider has provided the final disposition of the [dead body] beneficiary, and funeral services, facilities, and merchandise described in the contract, or has provided alternative funeral arrangements or benefits for the beneficiary pursuant to special arrangements made with the purchaser as detailed in the written statement of charges under section 333.145, RSMo, the seller shall pay to the provider a net amount equal to all payments required to be made pursuant to the written agreement between the seller and the provider or all payments [made under the contract] by the purchaser under section 436.027. Upon delivery to the trustee of the provider's receipt for such payment, the trustee shall distribute to the seller from the trust an amount equal to all deposits made into the trust for the contract.
436.048. If a seller shall fail to make timely payment of an amount due a purchaser or a provider pursuant to the provisions of sections 436.005 to [436.071] 436.072, the purchaser or provider, as appropriate, shall have the right, in addition to other rights and remedies against such seller, to make demand upon the trustee of the preneed trust for the contract to distribute to the purchaser or provider from the trust, as damages for its breach, an amount equal to all deposits made into the trust for the contract.

436.051. Upon the death or legal incapacitation of a purchaser, all rights and remedies granted to the purchaser pursuant to the provisions of sections 436.005 to [436.071] 436.072 shall be enforceable by and accrue to the benefit of the purchaser's legal representative or [his] the purchaser's successor designated in such contract, and all payments otherwise payable to the purchaser shall be paid to that person.

436.053. 1. Notwithstanding the provisions of sections 436.021 to 436.048, the provider and the purchaser may agree that one hundred percent of all [funds] moneys paid the provider by the purchaser shall be deposited with financial institutions chartered and regulated by the federal or state government authorized to do business in Missouri in an account in the joint names and under the joint control of the provider and purchaser. [If the purchaser has irrevocably waived and renounced his right to cancel the agreement between the provider and the purchaser pursuant to subdivision (5) of this subsection, such agreement may provide that all funds held in the account at the beneficiary's death shall be applied toward the purchase of funeral or burial services or facilities, or funeral merchandise, selected by the purchaser or the responsible party after the beneficiary's death, in lieu of the detailed identification of such items required by subdivision (3) of subsection 1 of section 436.007. The agreement between] The contract between the seller, provider and purchaser shall include all applicable information outlined in section 436.027 and shall provide that:

(1) The total consideration to be paid by the purchaser under the contract shall be made in one or more payments into the joint account, including the name and address of the financial institution which holds such moneys and the account numbers of such moneys, at the time the agreement is executed or, thereafter within five days of receipt, respectively;

(2) The financial institution shall hold, invest, and reinvest the deposited [funds] moneys in savings accounts, certificates of deposit or other accounts offered to depositors by the financial institutions, as the [agreement] contract shall provide;

(3) [The income generated by the deposited funds shall be used to pay the reasonable expenses of administering the agreement, and the balance of the income shall be distributed or reinvested as provided in the agreement] All preneed funeral contracts with moneys held in joint accounts written after August 28, 2007, shall provide that the income generated by the deposited moneys shall be used to pay the actual expenses of administering the agreement, and the balance of the income shall be reinvested in such preneed account;

(4) At any time before the final disposition, or before funeral services, facilities, and merchandise described in a preneed contract are furnished, the purchaser may cancel the contract without cause by delivering written notice thereof to the provider and the financial institution, and within fifteen days after its receipt of the notice and with certification of consent from the funeral provider and purchaser, the financial institution shall distribute the deposited [funds] moneys to the purchaser and shall provide written notification to the provider of the amount of moneys and the
date moneys were distributed to the purchaser;

(5) Notwithstanding the provisions of subdivision (4) of this subsection, if a purchaser is eligible, becomes eligible, or desires to become eligible to receive public assistance under chapter 208, RSMo, or any other applicable state or federal law, the purchaser may irrevocably waive and renounce his or her right to cancel such [agreement] contract. The waiver and renunciation must be in writing and must be delivered to the provider and the financial institution and a copy of the preneed contract shall be provided to the appropriate qualifying state or federal agency;

(6) If the death of the beneficiary occurs outside the general area served by the provider, then the provider shall either provide for the furnishing of comparable funeral services and merchandise by a licensed mortuary selected by the purchaser or, at the provider's option, shall pay over to the purchaser in fulfillment of the obligation of the preneed contract, an amount equal to the sums actually paid in cash by such purchaser under such preneed contract together with interest [to be provided for in the contract] as outlined in this section, in which event the financial institution shall distribute the deposited [funds] moneys to the provider;

(7) Within fifteen days after a provider and a witness certifies in writing to the financial institution that he or she has furnished the final disposition, or funeral services, facilities, and merchandise described in a contract, or has provided alternative funeral arrangements or benefits for the beneficiary pursuant to special arrangements made with the purchaser as detailed in the written statement of charges under section 333.145, RSMo, if the certification has been approved by the purchaser, then the financial institution shall distribute the deposited [funds] moneys to the provider.

2. There shall be a separate joint account as described in subsection 1 of this section for each preneed contract sold or arranged under this section. The seller and financial institution shall, within fifteen days after receipt of the purchaser's written request, furnish to each contract purchaser a written statement of all deposits made to such joint account regarding such purchaser's contract.

[3. If the total face value of the contracts sold by a provider operating solely under the provisions of this section does not exceed thirty-five thousand dollars in any one fiscal year, such a provider shall not be required to pay the annual reporting fee for such year required under subsection 1 of section 436.069.]

436.055. 1. All complaints received by the state board shall be made in writing and shall fully identify the complainant by name and address. Complaints may be made on forms which are provided by the board and available upon request. Oral or telephone communications shall not be considered or processed as complaints, but the person making such communications shall be provided with a complaint form and requested to complete and return it to the board in written form. Any member of the administrative staff of the board may make and file a complaint based upon information and belief in reliance on oral, telephone or written communications received by the board, unless such communications are believed by such staff member to be false. Such complaints which allege a registrant's noncompliance with the provisions of sections 436.005 to [436.071] 436.072 shall be forwarded to the division of professional registration and attorney general's office for investigation, except minor complaints which the state board can mediate or otherwise dispose of by contacting the parties involved. A copy of each such complaint shall be forwarded to the subject registrant, except that each complaint in which the
complainant alleges under oath that a registrant has misappropriated preneed contract payments may be forwarded to the division of professional registration and attorney general's office without notice to the subject registrant. This section shall not be construed to limit the board's authority to file a complaint with the administrative hearing commission charging a licensee of the board with any actionable conduct or violation, regardless of whether such complaint exceeds the scope of acts charged in a preliminary public complaint filed with the board and whether any public complaint has been filed with the board. The board shall interpret such requirement to exist for the benefit of those members of the public who submit complaints to the board and for those persons or entities within the legislative and executive branches of government having supervisory or other responsibilities or control over the professional licensing boards. This section shall not be construed to protect or ensure to the benefit of those licensees, permit holders, registrants, or other persons against whom the board has instituted or may institute administrative or judicial proceeding concerning possible violations of sections 436.005 to 436.072.

2. The division and attorney general's office shall investigate each complaint forwarded from the state board using staff who are not connected with the state board. The division and attorney general's office shall cooperate in their investigation and shall forward the results of such investigation to the subject registrant [and to the attorney general for evaluation] . The board or attorney general's office may also order an investigation to determine compliance with this chapter. If the attorney general, after independent inquiry using staff of the attorney general's office who have not represented the board, determines that there is no probable cause to conclude that the registrant has violated sections 436.005 to 436.071 436.072, the division, the registrant and the state board shall be so notified and the complaint shall be dismissed; but, if the attorney general determines that there is such probable cause the registrant shall be so notified and the results of such evaluation shall be transmitted to the state board for further action as provided in sections 436.061 and 436.063.

436.061. 1. Each person, including the officers, directors, partners, agents, or employees of such person, who shall knowingly and willfully violate or assist or enable any person to violate any provision of sections 436.005 to 436.071, and any officer, director, partner, agent, or employee of such person involved in such violation] 436.072 by incompetence, misconduct, gross negligence, fraud, misrepresentation, or dishonesty is guilty of a class D felony. Each violation of any provision of sections 436.005 to 436.071 436.072 constitutes a separate offense and may be prosecuted individually.

2. Any violation of the provisions of sections 436.005 to 436.071 436.072 shall constitute a violation of the provisions of section 407.020, RSMo. In any proceeding brought by the attorney general for a violation of the provisions of sections 436.005 to 436.071 436.072, the court may, in addition to imposing the penalties provided for in sections 436.005 to 436.071 436.072, order the revocation or suspension of the registration of a defendant seller.

436.063. Whenever the state board or attorney general's office determines that a registered seller or provider has violated or is about to violate any provision of sections 436.005 to 436.071 436.072 following a meeting at which the registrant is given a reasonable opportunity to respond to charges of violations or prospective violations, it may [request the attorney general to apply for the revocation or suspension of] revoke or suspend the seller's or provider's registration or [the imposition of] impose probation upon terms and conditions deemed appropriate by the state board in accordance with the procedure set forth in sections 621.100 to 621.205, RSMo. Use of the procedures set out in this
section shall not preclude the application of the provisions of subsection 2 of section 436.061.

436.067. No information given to the board, the division or the attorney general pursuant to the provisions of sections 436.005 to [436.071] 436.072 shall, unless ordered by a court for good cause shown, be produced for inspection or copying by, nor shall the contents thereof be disclosed to, any person other than the seller, or the provider who is the subject thereof, the authorized employee of the board, the attorney general or the division, without the consent of the person who produced such material. However, under such reasonable conditions and terms as the board, the division or the attorney general shall prescribe, such material shall be available for inspection and copying by the person who produced such material or any duly authorized representative of such person. The state board, the division or the attorney general, or his duly authorized assistant, may use such documentary material or copies thereof in the enforcement of the provisions of sections 436.005 to [436.071] 436.072 by presentation before any court or the administrative hearing commission, but any such material which contains trade secrets shall not be presented except with the approval of the court, or the administrative hearing commission, in which the action is pending after adequate notice to the person furnishing such material. No documentary material provided the board, the division or the attorney general pursuant to the provisions of sections 436.005 to [436.071] 436.072 shall be disclosed to any person for use in any criminal proceeding.

436.069. 1. After [July 16, 1985] August 28, 2007, each seller shall remit an annual reporting fee in an amount [of two dollars] to be determined by the board for each preneed contract sold in the year since the date the seller filed its last annual report with the state board. This reporting fee shall be paid annually and may be collected from the purchaser of the preneed contract as an additional charge or remitted to the state board from the [funds] moneys of the seller.


3. The reporting fee authorized by subsections 1 and 2 of this section are in addition to the fees authorized by section 436.071.

436.071. 1. Each application for registration under the provisions of section 436.015 or 436.021 shall be accompanied by a preneed registration fee as determined by the board pursuant to the provisions of subsection 2 of section 333.111, [subsection 2] RSMo.

2. The board shall establish the amount of the fees authorized in this chapter and required by rules promulgated thereunder. Such fees shall be set at a level to produce revenue which does not substantially exceed the cost and expense of administering this chapter.

3. The board shall promulgate and enforce rules for the transaction of its business and for standards of service and practice to be followed for the registration of providers and sellers deemed necessary for the public good and consistent with the laws of this state. The board may prescribe a standard of proficiency as to the qualifications and fitness of those engaging in the practice of the preneed industry.

4. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536,
RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be invalid and void.

436.072. The board or a designated member thereof or any agent authorized by the board or attorney general's office may enter the office, premises, establishment, or place of business of any preneed seller or provider of funeral service contracts licensed in this state, or any office, premises, establishment, or place where the practice of selling and/or providing preneed funerals is carried on, or where such practice is advertised as being carried on for the purpose of inspecting such office, premises, establishment, or place and for the purpose of inspecting the license and registration of any licensee or inspection of preneed contracts.

*
SB 659 - This act provides that an attorney-in-fact under a durable power of attorney that expressly refers to granting the right of sepulcher shall be included in the term "next-of-kin" for purposes of determining who has the right to choose and control the burial, cremation, or other final disposition of a dead human body. The act also removes from the term "next-of-kin" any person designated by the deceased to act as such pursuant to a designation of right of sepulcher, and removes provisions that described the designation of such right.

The act also decreases the amount that may be retained by the seller of any preneed contract sold after August 28, 2007, to cover selling expenses, servicing costs, and overhead from 20 percent of the total amount agreed to be paid to 5 percent of such amount. Additionally, the act provides that all funds above the initial 5 percent shall be placed and held in trust, and that contracts funded by joint accounts shall have held and placed 100 percent of the total amount agreed to be paid by the purchaser, as reflected in the preneed contract.

The act also provides that on all preneed contracts sold after August 28, 2007, the income from any investment of preneed trust property, less losses and expenses, may be distributed to the seller at least annually, but only upon receipt of certification that the provider has provided the final disposition of the dead body, funeral services, facilities and merchandise described in the contract, or has provided alternative funeral benefits pursuant to purchaser arrangement.

The act also provides that all enumerated expenses, including management fees, shall be paid from the income of a preneed trust and not from the principal thereof.

ALEXA PEARSON
FIRST REGULAR SESSION

SENATE BILL NO. 659

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOUFFER.

Read 1st time March 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 194.119, 436.027, 436.031, RSMo, and to enact in lieu thereof three
new sections relating to final disposition of a dead human body.

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

Section A. Sections 194.119, 436.027, and 436.031, RSMo, are repealed
and three new sections enacted in lieu thereof, to be known as sections 194.119,
436.027, and 436.031, 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, RSMo,
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 under a durable power of attorney that
expressly refers to granting the right of sepulcher;

(2) The surviving spouse;

(3) 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 of the child unless such
child's legal or natural guardian was subject to an action in dissolution from the
deceased. In such event the person or persons who may serve as next-of-kin shall

EXPLANATION–Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is
intended to be omitted in the law.
serve in the order provided in subdivisions (3) to (8) of this subsection;

[(3)] (4) (a) Any surviving parent of the deceased; or
(b) If the deceased is a minor, a surviving parent who has custody of the
minor; or
(c) If the deceased is a minor and the deceased's parents have joint
custody, the parent whose residence is the minor child's residence for purposes
of mailing and education;

[(4)] (5) Any surviving sibling of the deceased;
[(5) Any person designated by the deceased to act as next-of-kin pursuant
to a valid designation of right of sepulcher as provided in subsection 8 of this
section.]

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

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

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

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

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

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

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

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

[8. Any person may designate an individual to be his or her closest
next-of-kin, regardless of blood or marital relationship, by means of a written
instrument that is signed, dated, and verified. Such designation of right of
sepalcher shall be witnessed by two persons, and shall contain the names and
last known address of each person entitled to be next-of-kin but for the execution
of the designation of right of sepulcher and who are higher in priority than the
person so designated.]

436.027. For each preneed contract sold after August 28, 2007,
the seller may retain as his own money, for the purpose of covering his selling
expenses, servicing costs, and general overhead, the initial funds so collected or
paid until he has received for his use and benefit an amount not to exceed
[twenty] five percent of the total amount agreed to be paid by the purchaser of
such prepaid funeral benefits as such total amount is reflected in the
contract. All funds above the initial five percent shall be placed and
held in trust. Contracts funded by joint accounts shall have held and
placed one hundred percent of the amount paid by the purchaser of the
total amount agreed to be paid by the purchaser of such prepaid
funeral benefits as such total amount is reflected in the contract.

436.031. 1. 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 by the seller of a
preneed contract and shall hold, administer, and distribute such deposits, in
trust, as trust principal, pursuant to the provisions of sections 436.005 to
436.071. Payments regarding two or more preneed contracts may be deposited
into and commingled in the same preneed trust, so long as the trust's grantor is
the seller of all such preneed contracts and the trustee maintains adequate records of all payments received.

2. All property held in a preneed trust, including principal and undistributed income, shall be invested and reinvested by the trustee thereof. The trustee shall exercise such judgment and care under circumstances then prevailing which men of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. 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.

3. The seller of a preneed contract shall be entitled to all income, including, without limitation, interest, dividends, and capital gains, and losses generated by the investment of preneed trust property regarding such contract, and the trustee of the trust may distribute all income, net of losses and expenses, to the seller at least annually; but no such income distribution shall be made to the seller if, and to the extent that, the distribution would reduce the aggregate market value on the distribution date of all property held in the preneed trust, including principal and undistributed income, below the sum of all deposits made to such trust pursuant to subsection 1 of this section for all preneed contracts then administered through such trust. On all contracts between purchaser and seller sold after August 28, 2007, such net income may only be distributed upon receipt of the certification from the provider as set out in section 436.045.

4. All expenses of establishing and administering a preneed trust, including, without limitation, trustee’s fees, legal and accounting fees, management fees, investment expenses, and taxes, shall be paid [or reimbursed
directly by the seller of the preneed contracts administered through such trust]
from the income from said preneed trust and shall not be paid from the
principal of said preneed trust.

5. The trustee of a preneed trust shall maintain adequate books of account
of all transactions administered through the trust and pertaining to the trust
generally. The trustee shall assist seller who established the trust or its
successor in interest in the preparation of the annual report described in
subdivision (3) of subsection 2 of section 436.021. The seller shall furnish to each
contract purchaser, within fifteen days after receipt of the purchaser’s written
request, a written statement of all deposits made to such trust regarding such
purchaser’s contract.

6. The trustee of a preneed trust shall, from time to time, distribute trust
principal as provided by sections 436.005 to 436.071.

7. A preneed trust shall terminate when trust principal no longer includes
any payments made under any preneed contract, and upon such termination the
trustee shall distribute all trust property, including principal and undistributed
income, to the seller which established the trust.
SB 222 - Requires the balance of all state funds to be transferred and credited to the state General Revenue Fund if state revenue does not increase by more than 2 percent.

Sponsor: Gross
LR Number: 1197S.01I
Committee: Ways & Means
Last Action: 2/19/2007 - Hearing Conducted S Ways & Means Committee
Title: 
Effective Date: Emergency Clause

Current Bill Summary

SB 222 - This act requires the State Treasurer to deposit all moneys received under any state fund or administratively created fund into the state general revenue fund from January 1st to June 30th of the current fiscal year if the state’s net general revenue collections did not increase by two percent or more over the past fiscal year. If state’s net general revenues do increase by more than two percent, the State Treasurer shall deposit such moneys into the statutorily or administratively created fund. The provisions of this act shall not apply to any fund created by the constitution, funds for the payment of interest and principal for any bonded indebtedness, funds that receive constitutionally created taxes and fees, and funds created in order to receive and disburse federal funds.

This act contains an emergency clause.

This act is similar to SCS/SB 917 (2006) and SB 208 (2007).

JIM ERTLE
SB 455

Requires the balance of all state funds in excess of 200 percent be transferred to the state General Revenue Fund every two years

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**Current Bill Summary**

SB 455 - This act requires the state treasurer to transfer the balance of any fund in excess of 200% of the previous fiscal year's expenditures into the state general revenue fund. This act applies to all state funds created by statute or administratively created by the office of administration.

This act does not apply to certain constitutionally created funds, special trust funds created by statute, funds for the payment of bonded indebtedness, and funds created to receive federal funds. Further, this act does not apply to any fund that is subject to current fund sweeps. For any fund in which statutory limitations allow the fund to accumulate balances equal to or greater than 200% of the previous year's expenditures, the act shall apply to the extent necessary to transfer any balance in excess of 200%.

JIM ERTLE
Summary of the Introduced Bill

HB 777 -- Endowed Care Cemeteries and Crematoriums

Sponsor: Wasson

This bill requires operators of endowed care cemeteries, as a condition of license renewal, to file a trust fund report with the Division of Professional Registration within the Department of Insurance, Financial Institutions, and Professional Registration.

The definition of "funeral establishment" is expanded to include a crematory.

The daily per diem for members of the State Board of Embalmers and Funeral Directors is increased from $50 to $70, and the board is authorized to hire any necessary personnel.

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Missouri House of Representatives
94th General Assembly, 1st Regular Session
Last Updated March 8, 2007 at 3:59 pm
FIRST REGULAR SESSION

HOUSE BILL NO. 777
94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WASSON.

Read 1st time February 7, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 214.275, 214.340, 333.011, 333.121, and 333.221, RSMo, and to enact in lieu thereof five new sections relating to crematoriums.

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

Section A. Sections 214.275, 214.340, 333.011, 333.121, and 333.221, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 214.275, 214.340, 333.011, 333.121, and 333.221, to read as follows:

214.275. 1. No endowed care or nonendowed care cemetery shall be operated in this state unless the owner or operator thereof has a license issued by the division and complies with all applicable state, county or municipal ordinances and regulations.

2. It shall not be unlawful for a person who does not have a license to care for or maintain the cemetery premises, or to fulfill prior contractual obligations for the interment of human remains in burial spaces.

3. Applications for a license shall be in writing, submitted to the division on forms prescribed by the division. The application shall contain such information as the division deems necessary and be accompanied by the required fee.

4. Each license issued pursuant to sections 214.270 to 214.516 shall be renewed prior to the license renewal date established by the division. The division shall issue a new license upon receipt of a proper renewal application, trust fund report as required by section 214.340, and the required renewal fee. The required renewal fee shall be fifty dollars, plus an assessment for each interment, inurnment or other disposition of human remains at a cemetery for which a charge is made, as the division shall by rule determine, not to exceed ten dollars per such disposition in the case of an endowed care cemetery, and six dollars for such disposition in the case of a nonendowed care cemetery. The
division shall mail a renewal notice to the last known address of the holder of the license prior to the renewal date. The holder of a license shall keep the division advised of the holder's current address. The license issued to the owner or operator of a cemetery which is not renewed within three months after the license renewal date shall be suspended automatically, subject to the right of the holder to have the suspended license reinstated within nine months of the date of suspension if the person pays the required reinstatement fee. Any license suspended and not reinstated within nine months of the suspension shall expire and be void and the holder of such license shall have no rights or privileges provided to holders of valid licenses. Any person whose license has expired may, upon demonstration of current qualifications and payment of required fees, be reregistered or reauthorized under the person's original license number.

5. The division shall grant or deny each application for a license pursuant to this section within ninety days after it is filed, and no prosecution of any person who has filed an application for such license shall be initiated unless it is shown that such application was denied by the division and the owner was notified thereof.

6. Upon the filing of a completed application, as defined by rule, the applicant may operate the business until the application is acted upon by the division.

7. Within thirty days after the sale or transfer of ownership or control of a cemetery, the transferor shall return his or her license to the division. A prospective purchaser or transferee of a cemetery shall file an application for a license at least thirty days prior to the sale or transfer of ownership or control of a cemetery and shall be in compliance with sections 214.270 to 214.516.

214.340. 1. Each operator of an endowed care cemetery shall maintain at an office in the cemetery or, if the cemetery has no office in the cemetery, at an office within a reasonable distance of the cemetery, the reports of the endowed care fund's operation for the preceding seven years. Each report shall contain, at least, the following information:

(1) Name and address of the trustee of the endowed care fund and the depository, if different from the trustee;
(2) Balance per previous year's report;
(3) Principal contributions received since previous report;
(4) Total earnings since previous report;
(5) Total distribution to the cemetery operator since the previous report;
(6) Current balance;
(7) A statement of all assets listing cash, real or personal property, stocks, bonds, and other assets, showing cost, acquisition date and current market value of each asset;
(8) Total expenses, excluding distributions to cemetery operator, since previous report; and
(9) A statement of the cemetery's total acreage and of its developed acreage.

2. Subdivisions (1) through (7) of the report described in subsection 1 above shall be certified to under oath as complete and correct by a corporate officer of the trustee. Subdivision (8) of such report shall be certified under oath as complete and correct by an officer of the cemetery operator. Both the trustee and cemetery operator or officer shall be subject to the penalty of making a false affidavit or declaration.

3. The report shall be placed in the cemetery's office within ninety days of the close of the trust's fiscal year. A copy of this report shall be filed by the cemetery operator with the division of professional registration [within ninety
days of the close of the trust fund's fiscal year] as condition of license renewal as required by subsection 4 of section 214.275. The report shall not be sent to the state board of embalmers and funeral directors.

4. Each cemetery operator who establishes a segregated account pursuant to subsection 1 of section 214.385 shall file with the report required under subsection 1 of this section a segregated account report that shall provide the following information:

(1) The number of monuments, markers and memorials that have been deferred for delivery by purchase designation;

(2) The aggregate wholesale cost of all such monuments, markers and memorials; and

(3) The amount on deposit in the segregated account established pursuant to section 214.385, and the account number.

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

(1) "Board", the state board of embalmers and funeral directors created by this chapter;

(2) "Embalmer", any individual licensed to engage in the practice of embalming;

(3) "Funeral director", any individual licensed to engage in the practice of funeral directing;

(4) "Funeral establishment", a building, place, crematory, or premises devoted to or used in the care and preparation for burial or transportation of the human dead and includes every building, place or premises maintained for that purpose or held out to the public by advertising or otherwise to be used for that purpose;

(5) "Person" includes a corporation, partnership or other type of business organization;

(6) "Practice of embalming", the work of preserving, disinfecting and preparing by arterial embalming, or otherwise, of dead human bodies for funeral services, transportation, burial or cremation, or the holding of oneself out as being engaged in such work;

(7) "Practice of funeral directing", engaging by an individual in the business of preparing, otherwise than by embalming, for the burial, disposal or transportation out of this state of, and the directing and supervising of the burial or disposal of, dead human bodies or engaging in the general control, supervision or management of the operations of a funeral establishment.

333.121. 1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

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

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a
criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;

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

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

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

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

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

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

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

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

(12) Failure to display a valid certificate or license if so required by this chapter or any rule promulgated hereunder;

(13) Violation of any professional trust or confidence;

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

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

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

(17) Obtaining possession of or embalming a dead human body without express authority to do so from the person entitled to the custody or control of the body;

(18) Failure to execute and sign the [reverse side of a] death certificate on a body embalmed by, or under the personal supervision of, a licensee;

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

(20) Willfully and through undue influence selling a funeral;
(21) Refusing to surrender a dead human body upon request by the next of kin, legal representative or other person entitled to the custody and control of the body.

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

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

2. The board may employ such board personnel, [as defined in subdivision (4) of subsection 16 of section 620.010, RSMo, as is necessary for the administration of this chapter] as may be necessary to carry out the provisions of this chapter. Board personnel shall include an executive secretary or comparable position, inspectors, investigators, attorneys, and secretarial support staff for these positions. The board may retain legal services by agreement with other agencies, including the attorney general, by employment of such personnel, or by agreement with private parties.
SB 525

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<th>Scott</th>
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Missouri State Senate

*Senate Committee Substitute*

SCS/SB 525 - This act modifies funeral director and embalmer licenses.

The act adds crematory to the definition of funeral establishment. The act updates a reference to death certificates that were previously two-sided but are currently one-sided.

CHRIS HOGERTY

[RETURN TO MAIN BILL PAGE]
AN ACT

To repeal sections 333.011, 333.121, and 333.221, RSMo, and to enact in lieu thereof three new sections relating to embalmers and funeral directors.

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

Section A. Sections 333.011, 333.121, and 333.221, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 333.011, 333.121, and 333.221, to read as follows:

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

1. "Board", the state board of embalmers and funeral directors created by this chapter;
2. "Embalmer", any individual licensed to engage in the practice of embalming;
3. "Funeral director", any individual licensed to engage in the practice of funeral directing;
4. "Funeral establishment", a building, place, crematory, or premises devoted to or used in the care and preparation for burial or transportation of the human dead and includes every building, place or premises maintained for that purpose or held out to the public by advertising or otherwise to be used for that purpose;
5. "Person" includes a corporation, partnership or other type of business organization;
6. "Practice of embalming", the work of preserving, disinfecting and preparing by arterial embalming, or otherwise, of dead human bodies for funeral services, transportation, burial or cremation, or the holding of oneself out as

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

(7) "Practice of funeral directing", engaging by an individual in the business of preparing, otherwise than by embalming, for the burial, disposal or transportation out of this state of, and the directing and supervising of the burial or disposal of, dead human bodies or engaging in the general control, supervision or management of the operations of a funeral establishment.

333.121. 1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

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

   (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

   (3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;

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

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

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

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

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

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

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

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

(12) Failure to display a valid certificate or license if so required by this chapter or any rule promulgated hereunder;

(13) Violation of any professional trust or confidence;

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

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

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

(17) Obtaining possession of or embalming a dead human body without express authority to do so from the person entitled to the custody or control of the body;

(18) Failure to execute and sign the [reverse side of a] death certificate on a body embalmed by, or under the personal supervision of, a licensee;

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

(20) Willfully and through undue influence selling a funeral;
(21) Refusing to surrender a dead human body upon request by the next of kin, legal representative or other person entitled to the custody and control of the body.

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

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

2. The board may employ such board personnel, as defined in subdivision (4) of subsection 16 of section 620.010, RSMo, as is necessary for the administration of this chapter] as may be necessary to carry out the provisions of this chapter. Board personnel shall include an executive secretary or comparable position, inspectors, investigators, attorneys, and secretarial support staff for these positions. The board may retain legal services by agreement with other agencies, including the attorney general, by employment of such personnel, or by agreement with private parties.
Summary of the Introduced Bill

HB 655 -- Department of Insurance, Financial and Professional Regulation

Sponsor: Yates

The Governor's Executive Order 06-04 transferred all authority, powers, duties, functions, records, personnel, property, contracts, budgets, matters pending, and other pertinent vestiges of the Division of Finance, State Banking Board, Division of Credit Unions, and Division of Professional Registration from the Department of Economic Development to the Department of Insurance creating the Department of Insurance, Financial Institutions, and Professional Registration. This bill revises the laws to reflect the change and renames the agency to the Department of Insurance, Financial and Professional Regulation. The bill also:

(1) Establishes the Division of Insurance Company Regulation to perform the functions of insurance company admissions and financial supervision and the Division of Insurance Market Regulation to perform the function of rate and form regulation (Section 374.075, RSMo);

(2) Creates the Department of Insurance, Financial and Professional Regulation Administrative Fund to administer the laws under the jurisdiction of the department and to provide goods and services related to the administration of these laws (Section 374.155); and

(3) Requires the Division of Consumer Affairs to handle complaints and inquiries related to insurance producers and any other persons licensed by or registered with the department, excluding those licensed by the divisions of Finance, Credit Unions, or Professional Registration or any boards assigned to or within those divisions (Section 375.085).

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Missouri House of Representatives
94th General Assembly, 1st Regular Session
Last Updated March 8, 2007 at 3:59 pm
SB 164 - This act modifies various statutes to implement the Governor's executive order creating the Department of Insurance, Financial and Professional Regulation.

IMPLEMENTATION OF EXECUTIVE ORDER - The act addresses numerous statutory provisions which place duties and responsibilities on the Department of Insurance or upon the three divisions that have been transferred to the Department of Insurance, Financial and Professional Regulation by executive order. The act establishes that the department of insurance created by Missouri Constitution will operate under the name "Department of Insurance, Financial and Professional Regulation." The proposed act changes the department name to implement the executive order and makes several important structural changes within the Missouri statutes.

DIVISION OF PROFESSIONAL REGISTRATION TRANSFER AND REORGANIZATION UNDER DEPARTMENT OF INSURANCE, FINANCIAL AND PROFESSIONAL REGULATION - Under the act, the Division of Professional Registration is transferred from the Department of Economic Development in Section 620.010, RSMo, to new provisions contained in Chapter 324, RSMo. The act repeals all of the powers exercised by the division of professional registration that are found in Sections 620.105 to 620.154, RSMo, and transplants them to sections in Chapter 324 to denote that the division is no longer contained in the Department of Economic Development. Under the act, authority for either the Attorney General or the new department to provide legal services is clarified. Under the act, boards and commissions may retain legal services as authorized by law or by agreement with the Attorney General or with the director of the department, who may employ such personnel or make agreement with private counsel. The act authorizes the director of the Division of Professional Registration to establish by regulation the per diem compensation amount for all board and commission members (Section 324.005).

COMMUNITY-BASED HMO ANNUAL REPORT - Under the act, the current duty of department director to prepare an annual report on community-based HMO's in Section 374.456 is moved into the appropriate Chapter 354, RSMo, with community-based HMO provisions (Section 354.637).

DIVISION OF FINANCE AND STATE BANKING BOARD - Under the act, the Division of Finance and the State Banking Board are assigned by type III transfer to the Department of Insurance, Financial and
Professional Organization. The statutes denote this change by moving references from Department of Economic Development chapter (Section 620.010) to sections in Chapter 361, RSMo.

DIVISION OF CREDIT UNIONS - Under the act, the Division of Credit Unions is assigned by by type III transfer to the Department of Insurance, Financial and Professional Regulation. The statutory references are moved from the Department of Economic Development chapter (Chapter 620) to sections contained in Chapter 370, RSMo.

ADMINISTRATIVE FUND - The act establishes the creation of an administrative fund known as the "Department of Insurance, Financial, and Professional Regulation Administrative Fund" to handle expenses allocated to various divisions with separate funding sources (Section 374.155).

STEPHEN WITTE
Summary of the Introduced Bill

HB 568 -- Income Tax Credit for Funeral Services

Sponsor: Portwood

Beginning January 1, 2007, this bill authorizes an income tax credit for the donation of services to prepare the bodies of organ donors for cremation or burial. The maximum amount of the tax credit will be $750 per cremation or $2,500 per burial. The tax credit may be taken against any individual or corporate income tax liability by any funeral establishment or individual licensed to practice funeral directing. The tax credit is not refundable or transferable.

The provisions of the bill will expire six years from the effective date.

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Missouri House of Representatives
94th General Assembly, 1st Regular Session
Last Updated March 8, 2007 at 3:58 pm
FIRST REGULAR SESSION

HOUSE BILL NO. 568
94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES PORTWOOD (Sponsor), LEMBKE, WOOD, WALLACE AND SILVEY (Co-sponsors).

Read 1st time January 24, 2007 and copies ordered printed.

1275L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapter 135, RSMo, by adding thereto one new section relating to a tax credit for providing funeral services.

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

Section A. Chapter 135, RSMo, is amended by adding thereto one new section, to be known as section 135.672, to read as follows:

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

(1) "Funeral establishment", a building, place, or premises devoted to or used in the care and preparation for burial, cremation, or transportation of the human dead, and includes every building, place, or premises maintained for that purpose or held out to the public by advertising or otherwise to be used for that purpose;

(2) "Practice of funeral directing", engaging by an individual in the business of preparing for the burial, cremation, disposal, or transportation, and the directing and supervising of the burial, cremation, or disposal of, dead human bodies or engaging in the general control, supervision, or management of the operations of a funeral establishment;

(3) "Tax credit", a credit against the tax otherwise due under chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo;

(4) "Taxpayer", any funeral establishment or individual licensed to engage in the practice of funeral directing that is subject to the tax imposed in chapter 143, RSMo, excluding withholding tax imposed by sections 143.191 to 143.265, RSMo.

2. For all taxable years beginning on or after January 1, 2007, a taxpayer shall be allowed a tax credit for donating services to cremate or bury the bodies of organ donors. The tax credit amount shall be equal to seven
hundred fifty dollars for each body prepared for cremation and cremated, and two thousand five hundred dollars for each body prepared for burial and buried. The amount of the tax credit issued shall not exceed the amount of the taxpayer's state tax liability for the tax year for which the credit is claimed. No amount of credit that the taxpayer is prohibited by this section from claiming in a tax year shall be refundable, nor shall any tax credit granted under this section shall be transferred, sold, or assigned.

3. The department of revenue may promulgate rules to implement the provisions of this section. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be invalid and void.

4. Under section 23.253, RSMo, of the Missouri Sunset Act:

(1) The provisions of the new program authorized under this section shall automatically sunset six years after the effective date of this section unless reauthorized by an act of the general assembly; and

(2) If such program is reauthorized, the program authorized under this section shall automatically sunset twelve years after the effective date of the reauthorization of this section; and

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

*
AN ACT

To repeal section 324.010, RSMo, and to enact in lieu thereof five new sections relating to professional licenses, with a penalty provision.

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

Section A. Section 324.010, RSMo, is repealed and five new sections enacted in lieu thereof, to be known as sections 324.005, 324.006, 324.007, 324.008, and 324.009, to read as follows:

324.005. As used in sections 324.005 to 324.009, the following terms mean:

1) "Director", the director of revenue;

2) "License", a license, certificate, registration, or authorization issued by a licensing authority under sections 209.319 to 209.339, RSMo, sections 256.010 to 256.453, RSMo, section 375.014, RSMo, and chapters 324 to 340, RSMo, and chapters 344 to 346, RSMo, granting a natural person a right or privilege to engage in an occupation or profession that is subject to suspension, revocation, forfeiture, or termination by the licensing authority. Any new requirement to license a profession assigned to the division of professional registration after August 28, 2007, shall be included in the definition of a license;

3) "Licensee", any person who holds a license;

4) "Licensing authority", any department, division, board, agency, or instrumentality of this state that issues a license under sections 209.319 to 209.339, RSMo, sections 256.010 to 256.453, RSMo, section 375.014, RSMo, and chapters 324 to 340, RSMo, and chapters 344 to 346, RSMo. Any board or commission assigned to the division of professional registration after August 28, 2007, shall be included in the definition of a licensing authority;

5) "Payment plan", a written plan signed by the taxpayer and approved by the director that
incorporates an arrangement for periodic payment of state taxes owed;

(6) "Tax compliance letter", a letter issued by the director that states the taxpayer is in compliance for all of the tax years in which the taxpayer was determined to be delinquent in payment of state taxes or the filing of tax returns.

324.006. 1. The director shall send, via first class mail, a notice to any taxpayer who is the subject of the transmission of data from the licensing authority to the director under section 324.008 and who is delinquent on any state taxes or has failed to file state income tax returns for any of the three years immediately preceding the license renewal. The notice shall state that the taxpayer's license shall be suspended within one hundred twenty days from the date of the notice unless, within such time, the taxpayer presents to the appropriate licensing authority a tax compliance letter.

2. The notice shall include the following information:

(1) A statement that the taxpayer is delinquent in payment of state taxes owed or has failed to file state income tax returns;

(2) The date that the suspension shall go into effect, which shall be within one hundred twenty days from the date the notice was issued;

(3) A conspicuous statement as follows: "NOTICE TO TAXPAYER: IN ORDER TO PREVENT YOUR LICENSE SUSPENSION FROM GOING INTO EFFECT, YOU ARE RESPONSIBLE FOR PRESENTING A TAX COMPLIANCE LETTER FROM THE MISSOURI DEPARTMENT OF REVENUE TO YOUR LICENSING ENTITY PRIOR TO THE DATE OF SUSPENSION CITED IN THIS NOTICE."

(4) A conspicuous statement as follows: "NOTICE TO TAXPAYER: YOU ARE ENTITLED TO A REVIEW OF THE NOTIFICATION PROCESS WITH THE DIRECTOR OF REVENUE. ANY REQUEST FOR REVIEW MUST BE FILED IN WRITING WITHIN THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE AT THE FOLLOWING ADDRESS: ............ (INSERT ADDRESS)."

(5) A conspicuous statement as follows: "NOTICE TO TAXPAYER: IF YOU DO NOT OBTAIN A TAX COMPLIANCE LETTER OR SEEK REVIEW UNDER SECTION 143.778, RSMo, YOUR LICENSE SHALL BE SUSPENDED BY OPERATION OF LAW EFFECTIVE THE DATE OF SUSPENSION CITED IN THIS NOTICE."

3. A tax compliance letter shall be issued by the director to the taxpayer if the taxpayer:

(1) Files any delinquent state tax return and pays the entire amount of delinquent state taxes, interest, and additions due; or

(2) Enters into and complies with a payment plan. If the taxpayer fails to comply with the terms of a payment plan, the director may issue a notice informing the licensing authority of the defaulted payment plan. Upon receipt of payment plan default notice, the licensing authority shall issue a notice informing the taxpayer that the license shall be suspended by operation of law as of the date of the notice.

4. The notice required under subsection 1 of this section shall be sent to the last known address supplied to the director unless no such address has been provided, whereupon the notice shall be sent to the last known address supplied to the licensing authority.
5. The notice shall apply only to the license that is the subject of the transmission of data from the licensing authority to the director under section 324.008.

6. Within fifteen business days of the date of the notice required under subsection 1 of this section, the licensing authority shall send a letter to the taxpayer indicating that the license is subject to automatic suspension by operation of law as of the date provided in the notice required under subsection 1 of this section, unless the taxpayer provides the licensing authority a copy of a tax compliance letter by the date provided in the notice required under subsection 1 of this section.

324.007. 1. Within thirty days of the date of the notice, the taxpayer may file with the director at the address provided in the notice, a written request for review of the notice required under subsection 1 of section 324.006, stating the grounds upon which the taxpayer claims the notice was not proper.

2. Upon timely receipt of a request for review from a taxpayer, the director shall review the notice and mail the director’s determination to the taxpayer by certified or registered mail within thirty days of receipt of the request. Such determination shall set forth briefly the director’s findings of fact, and the basis of the decision and information regarding the taxpayer’s right to appeal.

3. The issues that may be determined in a review under this section shall be limited to:
   (1) The identity of the taxpayer;
   (2) Whether the director has properly applied any credits or payments by the taxpayer; and
   (3) Whether the director sent the notice to the proper address under subsection 4 of section 324.006.

4. The determination of the director, after a review under this section, shall be a final agency decision and shall be subject to appeal to the administrative hearing commission under chapter 621, RSMo.

5. A taxpayer shall appeal under chapter 621, RSMo, by filing a petition within thirty days of the date of the director’s determination.

6. Suspension of a taxpayer’s license shall be automatically stayed pending the appeal under chapter 621, RSMo.

7. A determination made by the director under this section is independent of any action imposed by the licensing authority.

324.008. 1. All state licensing authorities subject to sections 324.005 to 324.009 shall provide specified information, in a format agreed upon by the director and the licensing authorities, to the director within thirty days following the date of the receipt of an application for licensure or at least thirty days after the required renewal date of a licensee’s license. Such information shall include, but is not limited to, the following:
   (1) Name;
   (2) Address of record;
   (3) Social Security number;
   (4) Type of license.

2. For licensees who are not residents of this state, the licensing authority shall include in the application and renewal forms a method allowing the nonresident licensee to indicate that they received no Missouri source income within the applicable three-year period. The licensing authority shall transmit this information to the
director in a mutually agreed upon manner.

3. The director shall promulgate rules necessary for the administration of sections 324.005 to 324.009. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2007, shall be invalid and void.

324.009. 1. With regard to any licensee who has been issued a notice under section 324.006, the licensing authority shall enter a suspension of the applicable license on the effective date set out in the notice, unless the licensee has presented a tax compliance letter, or has timely filed for review in the administrative hearing commission as provided under section 324.007.

2. The suspension shall be processed by the licensing authority without any additional review or hearing by such licensing authority.

3. The suspension shall continue until a tax compliance letter is issued by the director of the department of revenue.

4. If a license is suspended under sections 324.005 to 324.009, any funds paid by the licensee to the licensing authority for costs related to issuance, renewal or maintenance of a license shall not be refunded to the licensee.

5. During any period of suspension imposed under sections 324.005 to 324.009, the licensee shall continue to pay all license or license renewal fees and obtain all continuing education hours as required by the licensing authority’s statutes and regulations.

6. A licensee who continues to engage in the business, occupation, profession or other licensed activity while the license is suspended under sections 324.005 to 324.009, is guilty of a class A misdemeanor. The licensing authority may refer the licensee to the appropriate prosecuting or circuit attorney or the attorney general for prosecution under this section, in addition to any other remedy provided by law for engaging in a licensed activity without a license or while a license is suspended.

7. The licensing authority shall be exempt from liability to the licensee for activities conducted under sections 324.005 to 324.009.

8. The licensing authority shall not modify, remand, reverse, vacate or stay a suspension; except that, if the director of revenue certifies that an error has been made by the department or if an error is made by the licensing authority, the licensing authority may expunge the suspension from the licensee’s permanent record.

[324.010. All governmental entities issuing professional licenses, certificates, registrations, or permits pursuant to sections 209.319 to 209.339, RSMo, sections 214.270 to 214.516, RSMo, sections 256.010 to 256.453, RSMo, section 375.014, RSMo, sections 436.005 to 436.071, RSMo, and chapter 317, RSMo, and chapters 324 to 346, RSMo, shall provide the director of revenue with the name and Social Security number of each applicant for licensure with or licensee of such entities within one month of the date the application is filed or at least one month prior to the anticipated]
renewal of a licensee's license. If such licensee is delinquent on any state taxes or has failed to file state income tax returns in the last three years, the director shall then send notice to each such entity and licensee. In the case of such delinquency or failure to file, the licensee's license shall be suspended within ninety days after notice of such delinquency or failure to file, unless the director of revenue verifies that such delinquency or failure has been remedied or arrangements have been made to achieve such remedy. The director of revenue shall, within ten business days of notification to the governmental entity issuing the professional license that the delinquency has been remedied or arrangements have been made to remedy such delinquency, send written notification to the licensee that the delinquency has been remedied. Tax liability paid in protest or reasonably founded disputes with such liability shall be considered paid for the purposes of this section.]
Re: Corrected Personal Financial Disclosure Statement

Due to an error at the printers, field number 25 on page 4 was inadvertently omitted from the statement. Enclosed is the corrected statement (MO 300-0652 (9-06)). You MUST return a completed statement that is numbered 1 through 25. If you do not return the correct version of the statement you are subject to possible penalties.

The completed statement must be received in this office no later than 5:00pm on May 1, 2007.

Sincerely,
Missouri Ethics Commission
## Fiscal Year 07

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| TOTALS | 60 | 50 | 110 |
| TOTALS | 24 | 26 | 50 |
February 21, 2007

«FDIC_First_Names» «FDIC»
«Funeral_Home»
«Dba»
«Address»
«City», «State» «Zip»

««GreetingLine»»

In verifying the registered establishment name as you are licensed with the State Board of Embalmers and Funeral Directors, we have found a possible discrepancy with your entity and/or DBA name for your firm.

The Board’s application for your firm reflects:
    Entity Name: «Funeral_Home»
    DBA Name: «Dba»

The Office of the Secretary of State reflects that the entity name registered is:
«What_SOS_shows_registered»

A corporation is considered by law to be a separate person. If a corporation owns a Missouri licensed funeral establishment, it is necessary to obtain a new establishment license or to file an amended application for an establishment license if the owners of the stock have changed. 333.061 (5) states, “The establishment complies with all applicable state, county or municipal zoning ordinances and regulations.”

Please contact our office within the next thirty days to verify what steps are necessary for your firm to take with regards to your registered name with the Board. Please contact Lori Hayes at 573-751-0816 with regards to this matter.

Thank you for your attention and cooperation in this matter.

Sincerely,

Becky Dunn
Executive Director

This letter has been sent both certified and first class mail.
February 21, 2007

«FDIC_First_Name» «FDIC»
«Funeral_Home»
«Dba»
«Address»
«City», «State» «Zip»

««GreetingLine»»

In verifying the registered establishment name as you are licensed with the State Board of Embalmers and Funeral Directors, we have found a possible discrepancy with your entity and/or DBA name for your firm. 333.061 (5) states; “The establishment complies with all applicable state, county or municipal zoning ordinances and regulations.”

The Board’s application for your firm reflects:
   Entity Name: «Funeral_Home»
   DBA Name: «Dba»

The Office of the Secretary of State reflects that the doing business name (dba) registered is: «What_SOS_shows_registered»

If you choose to change the d.b.a. name that is registered with the board, you must complete an amended funeral establishment application and pay the fee of $30.

Please verify, in writing, with our office within the next thirty (30) days indicating this matter has been resolved. If you have any questions, please do not hesitate to contact Lori Hayes at 573-751-0816.

Thank you for your attention and cooperation in this matter.

Sincerely,

Becky Dunn
Executive Director

This letter has been sent both certified and first class mail.
March 2, 2007

«FDIC_First_Names» «FDIC»
«Funeral_Home»
«Dba»
«Address»
«City», «State» «Zip»

«GreetingLine»

In verifying the registered establishment name as you are licensed with the State Board of Embalmers and Funeral Directors, we have found a possible discrepancy with your «Entity_dba» name for your firm.

The Board’s application for your firm reflects:
   Entity Name: «Funeral_Home»
   DBA Name: «Dba»

According to the Secretary of State’s website (http://www.sos.mo.gov/business/corporations/) the above named firm has not been registered. 333.061 (5) states; “The establishment complies with all applicable state, county or municipal zoning ordinances and regulations.”

Please verify, in writing, to our office within the next thirty (30) days indicating this matter has been resolved. If you have any questions, please do not hesitate to contact Lori Hayes at 573-751-0816.

Thank you for your attention and cooperation in this matter.

Sincerely,

Becky Dunn
Executive Director

This letter has been sent both certified and first class mail.
Missouri Revised Statutes

Chapter 417
Trademarks, Names and Private Emblems
Section 417.210

August 28, 2006

Registration, when and how--contents--cancellation of fictitious name--ownership reflected in registration, when--registration effective and expiration dates--renewals, contents, effective date.

417.210. 1. Every person, general partnership, corporation, or other business organization who engages in business in this state under a fictitious name or under any name other than the true name of such person, general partnership, corporation, or other business entity shall within five days after the beginning or engaging in business under such fictitious name file a format as prescribed by the secretary of state. The execution of the filing required in this section ** shall be subject to the penalties of making a false declaration pursuant to section 575.060, RSMo, that the facts stated therein are true and that all parties concerned are duly authorized to execute such document and are otherwise required to file such document pursuant to this section.

2. A fictitious name shall not contain any word or phrase that indicates or implies that it is any governmental agency or that is seriously misleading.

3. This registration shall state:

(1) The fictitious name;

(2) The physical business address;

(3) The name or names and the residence or business address of every party owning any interest or part in the business.

4. If the business or owner's or owners' interest ceases to exist or change within five days of such change, it shall be required to file a cancellation of the fictitious name in a format prescribed by the secretary of state and if desired may file a new registration of a new fictitious name as prescribed in this section.

5. If the interest of any owner of a business conducted under a fictitious name registered as provided in this section is such that such owner may claim not to be jointly and severally liable to third parties with respect to debts and obligations incurred by such business, the registration relating to such business shall reflect the respective exact ownership interests of each owner of such business. In the case of any other business registered as provided in this section, disclosure of the respective exact ownership interests shall be optional.

6. For purposes of this section, a partnership or other entity formed for the practice of a licensed
profession shall not be deemed to be engaged in the conduct of business, notwithstanding the transaction by such entity of business ancillary to the practice of such licensed profession.

7. All fictitious name registrations filed on or after August 28, 2004, shall be governed by the provisions of this section and shall remain active on the record of the secretary of state for a period of five years. Such registered fictitious name filing shall expire at the end of the five-year period unless a renewal is filed under subsection 9 of this section.

8. All active fictitious name registrations filed prior to August 28, 2004, shall remain active on the record of the secretary of state for a period of five years. Such registered fictitious name filing shall expire at the end of the five-year period unless a renewal is filed under subsection 9 of this section.

9. A renewal filing shall be filed in a format prescribed by the secretary of state within six months prior to the expiration date of the fictitious name registration. Such renewal filing shall state:

(1) The fictitious name and assigned charter number;

(2) The physical business address;

(3) The name or names and the residence or business address of every party owning any interest or part in the business.

10. A renewal filing continues the effective registration of the fictitious name for five years after the date the effective registration would otherwise expire.

11. Fictitious name registrations filed before August 28, 2004, shall be inactivated by the secretary of state on or after August 28, 2009, unless a renewal filing is filed under subsection 9 of this section.

12. The secretary of state may remove from its active records the registration of a fictitious name filing whose registration has been withdrawn, cancelled, or has expired.


*Word "shall" appears in original rolls.

**Word "and" appears in original rolls.

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Missouri General Assembly

http://www.moga.mo.gov/statutes/C400.499/4170000210.HTM
Fictitious names to be registered.

417.200. That every name under which any person shall do or transact any business in this state, other than the true name of such person, is hereby declared to be a fictitious name, and it shall be unlawful for any person to engage in or transact any business in this state under a fictitious name without first registering same with the secretary of state as herein required.

(RSMo 1939 § 15466)

Prior revisions: 1929 § 14342; 1919 § 13276

CROSS REFERENCE:

Corporate names, reservation of, exclusive use, RSMo 351.110, 351.115

(1957) Failure to register fictitious name is not a defense to action to enjoin use of confusing similar name in absence of claim of bad faith or other wrong. Better Business Bureau v. Chappeli (A.), 307 S.W.2d 510.

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Missouri General Assembly
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Dunn, Becky

From: Joshua Slocum [joshua@funerals.org]
Sent: Friday, December 22, 2006 12:02 PM
To: Dunn, Becky
Subject: Re:

Dear Ms. Dunn,

Thanks very much for writing. I know this is a busy time of year, and I'll look forward to resuming this potential project when your Board has time to take it up in the new year. Please keep me apprised.

Also, I'd be happy to receive your board packets electronically, if possible. That will save you the paper, the time, and the postage, and will help me keep my desk cleaner.

With my best wishes for the holidays,

Joshua Slocum
Executive Director
Funeral Consumers Alliance, Inc.
33 Patchen Road
South Burlington, VT 05403
800-765-0107
www.funerals.org

----- Original Message -----
From: Dunn, Becky
To: Joshua Slocum
Sent: Thursday, December 21, 2006 6:03 PM
Subject: RE:

Mr. Slocum:

I did not want you to think I have forgotten about you. The Board has been busy with many matters recently and I have not had an opportunity to respond to you regarding the consumer pamphlet.

I will continue to work with the Board regarding this matter.

Thank you for your assistance and Happy Holidays to you.

Becky Dunn

-----Original Message-----
From: Joshua Slocum [mailto:joshua@funerals.org]
Sent: Monday, November 06, 2006 3:04 PM
To: Dunn, Becky
Subject: Re:

Dear Ms. Dunn,

Thank you for continuing to keep me informed. I'm pleased to know these changes have been made, and that more are
in the works.

Yes, I would be interested in working with the board to develop a consumer rights pamphlet on all aspects of funerals and burials for Missouri citizens. I'd be glad to work with some of our local volunteers to draft something; I'd just like to know if this is something the board would be interested in before I begin. May I ask you to propose that to the board at their December meeting?

Thank you,

Joshua Slocum
Executive Director
Funeral Consumers Alliance, Inc.
33 Patchen Road
South Burlington, VT 05403
800-765-0107
www.funerals.org

----- Original Message -----
From: Dunn, Becky
To: Joshua Slocum
Sent: Thursday, November 02, 2006 5:47 PM

Mr. Slocum,
I wanted to update you on some of the matters of interest to you relating to the MO Board.

Section 28 that we referenced previously (below emails) is now in the rulemaking process, which will take about 8 months to complete.

2.060 Funeral Directing (went into effect on October 1, 2006)
No person other than a Missouri licensed funeral director shall be allowed to make the following at-need arrangements with the person having the right to control the incidents of disposition:
(A) Removal of a dead human body, arrangements for final disposition, supervision of visitation and memorial ceremony, grave attendance, cremation, entering into a contractual relationship for performance of any other funeral services; and
(B) Embalming, cremation, care, preparation, shipment or transportation of dead human body
(C) Nothing in this subsection shall be construed to apply to persons exempt from Chapter 333, RSMo.

One of the topics that you had previously expressed an interest in was guidance on private disposition. The Board has not yet addressed this process, but you did note that you like what KS and CA has done. If you have something you would like me to include in the upcoming December agenda, I will be pleased to do so.

We have rule proposals on the December agenda, I will provide a copy of our open agenda to you prior to the meeting.

If there is anything else that I can assist you with, please do not hesitate to let me know.

Becky Dunn

-----Original Message-----
From: Joshua Slocum [mailto:joshua@funerals.org]
Sent: Wednesday, April 12, 2006 9:41 AM
To: Dunn, Becky  
Cc: Grinston, Kimberly; Euler, Sharon; Bev McGill  
Subject: Re: per your request

Thanks very much Becky. I really like the draft language.

Josh Slocum

----- Original Message -----
From: Dunn, Becky  
To: 'Joshua Slocum'  
Cc: Euler, Sharon ; Grinston, Kimberly  
Sent: Tuesday, April 11, 2006 2:16 PM  
Subject: per your request

Josh, the board approved the following draft language (along with other changes) at the March meeting, which has now been submitted to the Division of Professional Registration for their review. When the division has reviewed these proposed changes, I will send out a copy of all of the revisions that the Board approved at this meeting to you.

(28) No person shall be deemed by the Board to be engaged in the practice of funeral directing or to be operating a funeral establishment if one prepares, arranges or carries out the burial of the dead human body of a member of one's own family or next of kin as provided by Section 194.119, RSMo., provided that the activity is not conducted as a business or for business purposes.

(29) The Board shall not deem a person to be engaged in the practice of funeral directing or to be operating a funeral establishment if the person prepares, arranges or carries out the burial of a dead human body pursuant to the religious beliefs, tenets or practices of a religious group, sect or organization, provided that the activity is not conducted as a business or for business purposes.

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

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No virus found in this incoming message.  
Checked by AVG Free Edition.  
Version: 7.5.432 / Virus Database: 268.15.26/594 - Release Date: 12/20/2006 3:54 PM
No one left behind

Patriot Guard Riders, pictured above, and below, outside the funeral for Marine Lance Cpl. Leon Derupi, may be best known for their work at services for military personnel. The group has a new program to inter the cremated remains of forgotten veterans.

Patriot Guard Riders intend to inter cremated remains of forgotten veterans

Missing in America project will provide a funeral with full military honors

By Angie Hotchkiss
angie@womeninhouse.com

Patriot Guard Riders can be seen at the funeral services of veterans across the country standing by their motorcycles holding American flags to support the families. Now, through a new project, Missing in America (MIA), the group once again is reaching out to bring honor to fallen veterans whose unclaimed remains have been forgotten.

The purpose of the MIA project is to identify and inter the unclaimed cremated remains of veterans, according to Linda Smith, Missouri coordinator. The remains are given a funeral with full military honors in either a local veterans cemetery or the one remaining National Cemetery in Missouri, Jefferson Barracks in St. Louis.

"We will ask the funeral home to provide us with a name and Social Security number from all unclaimed remains," Smith said.

"We will then e-mail this information to the Veterans Affairs in Washington, D.C., to run through their database. Any veteran that comes back a veteran will then receive a full military honors ceremony."

Marieanne Bittner, a Patriot Guard member and Army veteran, is one of the 19 volunteers statewide. She said she signed up as a volunteer for MIA in November when the program first began in Illinois.

"I was interested in supporting the dead — no matter who they are," Bittner said. "We need to make every effort to make sure these people are respected properly."

So far there have been 600 positive identifications made and 4,000 results are pending. One veteran in Missouri has been identified after cremated remains were found at a private home.

Dr. Orin diagnosis of the Missouri Funeral Directors Association said that this is an honorable project that he feels many funeral homes across the state will be happy to take part. If the state law allows.

"Currently, Missouri law states that unclaimed remains may only be cremated to the extent of the family. If the ashes are left for an unspecified amount of time, the funeral home must then allow the family member to go and choose the ashes themselves."

Contact the family member again by certified letter and or publish notice in the local newspaper and wait 90 days for a family member to claim the remains. If no one responds in 60 days, the funeral home may scatter the ashes at a designated site. The law does not allow the remains or information regarding them to be released to a third party.

"Currently, the family only gives you two options of what to do with the unclaimed remains and you are sticking possibly breaking the laws and even going against family wishes to the deceased person's wishes by doing anything else," Orin said.

Photos: via MIA, p. 8

MIA: Regulations probably will change

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Conti...
Dunn, Becky

From: Linda Smith [sailormom@windstream.net]
Sent: Thursday, February 08, 2007 7:11 PM
To: Dunn, Becky
Subject: Re:

Thanks you for the fast response. I have put it on my calendar and will attend.

Linda Smith

-------Original Message-------

From: Dunn, Becky
Date: 02/08/07 17:18:11
To: Sailormom@patriotguard.org
Cc: Lenzini, Tabatha; Hayes, Lori; Schnieders, Pam

Ms. Smith,
The State Board of Embalmers and Funeral Directors will be meeting on March 29, 2007 at the Isle of Capri in Boonville, Missouri, starting at 9:00 am.

This is the open session of the Board and all public is invited. You will have the opportunity to talk with the board membership of 6, as well as the members of the public and the industry that attend the meeting, regarding your inquiry and concerns. This will be the best forum to discuss this matter.

Thank you.

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

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-------Original Message-------

From: J R Smith [mailto:joelinda2470@windstream.net]
Sent: Thursday, February 08, 2007 4:13 PM
To: PR.Embalm
Subject: Missing in America Program.

Sirs and/or madams:

My name is Linda Smith and I have recently been appointed Missouri State Coordinator for the Missing in America Program.

2/9/2007
This program is a joint effort between the Patriot Guard Riders, Veterans Administration National Cemeteries and other national organizations.

The mission of the MIAP is to locate, identify and intern the unclaimed cremated remains of veterans through the joint efforts of private, state and federal organizations. To provide honor and respect to those who have served this country by securing a final resting place for these forgotten heroes. This is a massive nation-wide effort with almost 100 veterans found so far.

The first "must-do" is to set up a meeting with the Board of Embalmers and Funeral Directors to discuss Missouri laws concerning unclaimed remains and the best way to approach each funeral home etc.

Any Thursday or Friday would be perfect for us if it is convenient for you. Please let me know the date and time you could meet with us.

Looking forward to your participation in this very worthwhile project.

Linda Smith
Missouri State Coordinator, MIAP
Patriot Guard Rider
E-mail: Sailormom@patriotguard.org
Phone: 573-528-6930

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

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2/9/2007
FOR IMMEDIATE RELEASE
Tuesday, January 23, 2007

Consumer Alert: Verify your funeral director’s licensure
Reports of unlicensed activity have recently surfaced in the St. Louis area

JEFFERSON CITY, MO - The Missouri State Board of Embalmers and Funeral Directors alerts all consumers of an unlicensed funeral director that may be illegally operating in the St. Louis area.

The board has received reports that an individual identified as “Vincent T. Dungey,” “Vincent Dungey,” or “Kevin” is allegedly offering to provide funeral services at a discounted price through a funeral establishment identified as “St. Louis Mortuary Company.” Dungey reportedly received payment for the funeral of one Missouri resident, but allegedly abandoned the body in a casket in a neighborhood cemetery.

The board has no records indicating Dungey has ever been a licensed funeral director in the state of Missouri, and no record of St. Louis Mortuary Company ever being licensed as a funeral establishment. In 2003, at the board’s request, a Missouri court issued an injunction against an individual identified as Vincent T. Dungey to prohibit him from practicing as an unlicensed funeral director. At this time, the board cannot confirm if the individual currently representing himself as Vincent Dungey is the same individual previously enjoined by the court.

Consumers should not agree to pay for any funeral services offered by or on behalf of Dungey or St. Louis Mortuary Company and should immediately contact the board at (573) 751-0813 if they have any information regarding Dungey’s involvement in funeral arrangements.

All funeral directors and funeral establishments in this state are required to have a license from the board. The board strongly advises consumers to verify the licensure of funeral directors, embalmers and funeral establishments in this state. Consumers may call the board or visit the board’s website at http://pr.mo.gov/embalmers.asp to check the status of a license.

“The board takes its mission to protect the public very seriously,” board chairman Kenneth McGhee said. “We do not want consumers taken advantage of during what may be a very difficult time.”

About the Missouri Department of Insurance, Financial Institutions & Professional Registration
The Missouri Department of Insurance, Financial Institutions and Professional Registration (DIFP) is responsible for consumer protection through the regulation of financial industries and professionals. The department's seven divisions work to maintain consumer confidence by examining and monitoring industries and professions and by establishing coherent and evolving policies. DIFP works to enforce state regulations both efficiently and effectively while encouraging a competitive environment for industries and professions to ensure consumers have access to quality products.
FOR IMMEDIATE RELEASE
Wednesday, March 7, 2007

State Board of Embalmers, Funeral Directors reaches agreement with Federal Trade Commission

JEFFERSON CITY, MO - The Missouri State Board of Embalmers and Funeral Directors today announced that it has reached a voluntary agreement with the Federal Trade Commission to protect the public and enhance consumer education. The agreement reiterates a Missouri law that has been in place since 1965, which specifically authorizes private individuals to sell caskets and other funeral merchandise without a license from the board.

Specifically, §333.251, provides:

Nothing in [Chapter 333, RSMo, governing the practice of funeral directing]...shall apply to nor in any manner interfere with the duties of any officer of local or state institutions, nor shall this chapter apply to any person engaged simply in the furnishing of burial receptacles for the dead, but shall only apply to persons engaged in the business of embalming or funeral directing.

"Section 333.251 has been in place for over 40 years," said Kenneth McGhee, chairman of the state board. "To the extent there may be confusion about whether private individuals may sell funeral merchandise in this state, the agreement clarifies the board’s position."

The agreement is part of an ongoing effort by the board to resolve this issue without further expense to Missourians. In January 2006, the six-member board voted to unanimously amend its regulations to incorporate §333.251. In an attempt to educate the public, the board had multiple public meetings to discuss §333.251 and the public’s right to sell funeral merchandise.

"The agreement with the FTC was a product of extensive discussion and clearly provides that the board has not been found in violation of any state or federal law," McGhee said. "Our goal is to ensure Missourians make informed decisions when organizing final arrangements for their loved ones."

About the Missouri Department of Insurance, Financial Institutions & Professional Registration

The Missouri Department of Insurance, Financial Institutions and Professional Registration (DIFP) is responsible for consumer protection through the regulation of financial industries and professionals. The department’s seven divisions work to maintain consumer confidence by
examining and monitoring industries and professions and by establishing coherent and evolving policies. DIFP works to enforce state regulations both efficiently and effectively while encouraging a competitive environment for industries and professions to ensure consumers have access to quality products.
Missouri Funeral Regulators Agree to Settle FTC Antitrust Charges

Will Not Adopt Rules to Block Retail Casket Sales

Missouri funeral regulators have agreed to settle antitrust charges by the Federal Trade Commission, affirming that they will not prohibit or discourage the sale or rental of caskets, services, or other funeral merchandise by persons not licensed as funeral directors.

According to a draft FTC complaint, the Missouri State Board of Embalmers and Funeral Directors illegally restrained competition by defining the practice of funeral directing to include selling funeral merchandise to consumers on an at-need basis. The six-member Board, which included five funeral directors, ended the restriction last year. Under the settlement, the Board will not adopt such anticompetitive regulations in the future.

According to the complaint, the Board's regulation deterred competitive entry in the retail sale of caskets because only licensed funeral directors could sell caskets to consumers on an at-need basis. The regulation discouraged non-licensed persons from selling caskets, deprived consumers of the benefits of price competition among casket retailers, and reduced consumer choice in selecting caskets. The complaint alleges, all in violation of Section 5 of the FTC Act.

Under the proposed settlement, the Board must include in its newsletter and Web site the consent order and a statement that its rules and regulations "do not prohibit persons not licensed as funeral directors or embalmers from selling caskets, burial receptacles or other funeral merchandise to the public in the State of Missouri." Also, in half-page ads in Missouri Funeral Director's Association Magazine, the Board must announce the agreement, including a statement that, "Persons may offer for retail sale caskets and other funeral merchandise to customers in Missouri without obtaining a license from the Board."

The Commission vote to approve the consent order was 5-0. The order will be subject to public comment for 30 days, until April 6, 2007, after which the Commission will decide whether to make it final. Comments should be sent to: FTC, Office of the Secretary, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.


NOTE: A consent agreement is for settlement purposes only and does not constitute an admission of a law violation. When the Commission issues a consent order on a final basis, it carries the force of law with respect to future actions. Each violation of such an order may result in a civil penalty of $11,000.

Copies of the complaint, consent order, and an analysis to aid public comment are available from the FTC's Web site at http://www.ftc.gov and from the FTC's Consumer Response Center, Room 130, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC's Bureau of Competition seeks to prevent business practices that restrain competition. The Bureau carries out its mission by investigating alleged law violations and, when appropriate, recommending that the Commission take formal enforcement action. To notify the Bureau concerning particular business practices, call or write the Office of Policy and Coordination, Room 394, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Ave, N.W., Washington, D.C. 20580, Electronic Mail: anti-trust@ftc.gov; Telephone (202) 326-3300. For more information on the laws that the Bureau enforces, the Commission has published "Promoting Competition. Protecting Consumers: A Plain

http://www.ftc.gov/opa/2007/03/misouriboard.htm

MEDIA CONTACT:

Frank Dorman,  
Office of Public Affairs  
202-326-2874

STAFF CONTACT:

Mark D.S. Peterson, Joel Christie, or Grace Kwon  
Bureau of Competition  
202-326-3731, -3297, or -2560

(FTC File No. 061-0026)

(http://www.ftc.gov/opa/2007/03/missouriboard.htm)
The Federal Trade Commission voted to approve the consent order 5-0. The order will be subject to public comment for 30 days, until April 6, 2007, after which the Commission will decide whether to make it final. Comments should be sent to: FTC, Office of the Secretary, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.
In the Matter of

MISSOURI BOARD OF EMBALMERS AND
FUNERAL DIRECTORS

Docket No. _____

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

AGREEMENT CONTAINING CONSENT ORDER

The Federal Trade Commission ("Commission"), having initiated an investigation of certain acts and practices of the Missouri Board of Embalmers and Funeral Directors ("Respondent" or "the Board"), and it now appearing that the Board is willing to enter into an Agreement Containing Consent Order ("Consent Agreement") to cease and desist from certain acts and practices, and providing for other relief with respect to such practices:

IT IS HEREBY AGREED by and between Respondent, by its duly authorized officers and attorneys, and counsel for the Commission that:

1. Respondent Missouri Board of Embalmers and Funeral Directors is an agency that has authority to license and regulate those persons in the businesses of embalming and funeral directing in Missouri and is organized, exists, and transacts business under and by virtue of the laws of the State of Missouri, with its principle office and place of business located at 3605 Missouri Boulevard, Jefferson City, Missouri, 65102-0423.

2. Respondent admits all the jurisdictional facts set forth in the draft Complaint here attached.

3. Respondent waives:

   (a) any further procedural steps;

   (b) the requirement that the Commission’s Decision and Order, here attached and made a part hereof, contain a statement of findings of fact and conclusions of law;

   (c) all rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Consent Agreement; and

   (d) any claim under the Equal Access to Justice Act.
4. This Consent Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Consent Agreement is accepted by the Commission it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of thirty (30) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Consent Agreement and so notify Proposed Respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and Decision and Order, in disposition of the proceeding.

5. This Consent Agreement is for settlement purposes only and does not constitute an admission by Proposed Respondent that the law has been violated as alleged in the draft Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.

6. This Consent Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34 (2004), the Commission may, without further notice to Respondent, (1) issue and serve its Complaint corresponding in form and substance with the draft Complaint here attached, (2) issue and serve its Decision and Order to cease and desist in disposition of the proceeding, and (3) make information public in respect thereto. When final, the Decision and Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Decision and Order shall become final upon service. Delivery of the Complaint and Decision and Order to Respondent by any means specified in Commission Rule 4.4(a), 16 C.F.R. § 4.4(a) (2004), shall constitute service. Respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Decision and Order, and no agreement, understanding, representation, or interpretation not contained in the Decision and Order or the Consent Agreement may be used to vary or contradict the terms of the Decision and Order.

7. Respondent has read the draft Complaint and Decision and Order contemplated hereby. By signing this Consent Agreement, Respondent represents that the full relief contemplated by this Consent Agreement can be accomplished. Respondent understands that once the Decision and Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Decision and Order. Respondent agrees to comply with the terms of the Decision and Order from the date it signs this Consent Agreement. Respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Decision and Order after it becomes final.
Signed this ___ day of _______ 2006:

Missouri Board of Embalmers and Funeral Directors

By:

________________________
Kenneth McGhee
Chairman

________________________
Sharon K. Euler
Assistant Attorney General
Missouri Bar No. 42950
Counsel for Missouri Board of Embalmers and Funeral Directors

________________________
Jane Rackers
Assistant Attorney General
Missouri Bar No. Xxxxx
Counsel for Missouri Board of Embalmers and Funeral Directors

Signed this ___ day of _______ 2006:

Federal Trade Commission
Bureau of Competition
By:

________________________
Mark D.S. Peterson
Grace Kwon
Joel Christie
Attorneys
Bureau of Competition

Approved:

________________________
Sean Gates
Deputy Assistant Director
Bureau of Competition

________________________
Geoffrey Oliver
Assistant Director
Bureau of Competition

________________________
Kenneth L. Glazer
Deputy Director
Bureau of Competition

________________________
Jeffrey Schmidt
Director
Bureau of Competition
061 0026

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

In the Matter of

MISSOURI BOARD OF EMBALMERS AND
FUNERAL DIRECTORS

Docket No. C-

DECISION AND ORDER

The Federal Trade Commission ("Commission") having initiated an investigation of certain acts
and practices of the Missouri Board of Embalmers and Funeral Directors (the "Board"), hereinafter
sometimes referred to as "Respondent," and Respondent having been furnished thereafter with a copy
of the draft Complaint that the Bureau of Competition presented to the Commission for its consideration
and which, if issued by the Commission, would charge Respondent with violations of Section 5 of the
Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondent, its attorneys, and counsel for the Commission having voluntarily executed an
Agreement Containing Consent Order ("Consent Agreement"), containing an admission by Respondent
of all the jurisdictional facts set forth in the aforesaid draft Complaint, a statement that the signing of the
Consent Agreement is for settlement purposes only and does not constitute an admission by Respondent
that the law has been violated as alleged in the aforementioned Complaint, or that the facts as alleged in
such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required
by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason
to believe that Respondent has violated the said Act, and that a Complaint should issue stating its
charges in that respect, and having accepted the executed Consent Agreement and placed such Consent
Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public
comments, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R.
§ 2.34 (2004), the Commission hereby makes the following jurisdictional findings and issues the
following Decision and Order ("Order"):
1. Respondent, the Missouri Board of Embalmers and Funeral Directors, is an industry regulatory board established by the State of Missouri with its principal office and place of business located at 3605 Missouri Boulevard, Jefferson City, Missouri 65102-0423.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that for the purposes of this Order, the following definitions shall apply:

A. "Responder" or "Board" means the Missouri Board of Embalmers and Funeral Directors, its officers, members, employees, consultants, agents, successors and assigns.

B. "Licensee" means any person licensed to practice as an embalmer and/or funeral director in the State of Missouri.

C. "Person" means both natural persons and artificial persons, including, but not limited to, corporations, unincorporated entities, and governments.

II.

IT IS FURTHER ORDERED that Respondent, in connection with its activities in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. § 44, shall forthwith cease and desist from prohibiting, restricting, impeding or discouraging any person from engaging in the sale or rental to the public of funeral merchandise or burial receptacles for the dead, directly or indirectly, or through any rule, regulation, policy, or other conduct authorized by Mo. Rev. Stat. § 333.251 (2005).

III.

IT IS FURTHER ORDERED that Respondent shall:
Publish in the Newsletter of the Board of Embalmers and Funeral Directors the full text of

Mo. Rev. Stat. § 333.251 (2005), this Order, and an accompanying statement that: "The Rules and Regulations of the Board of Embalmers and Funeral Directors do not prohibit persons not licensed as funeral directors or embalmers from selling caskets, burial receptacles or other funeral merchandise to the public in the State of Missouri," with such prominence as
is given to regularly featured articles, and distribute such Newsletter to all Licensees within one hundred and twenty (120) days after the date this Order becomes final. Respondent shall similarly publish the full text of Mo. Rev. Stat. § 333.251 (2005) and an accompanying statement that: "The Rules and Regulations of the Board of Embalmers and Funeral Directors do not prohibit persons not licensed as funeral directors or embalmers from selling caskets, burial receptacles or other funeral merchandise to the public in the State of Missouri" in subsequent issues of such Newsletter, which shall be distributed to all Licensees at least once each calendar year, for the years 2007, 2008 and 2009; Display an advisory on its public website (http://pr.mo.gov/embalmers.asp) that: "The

2. Federal Trade Commission and the Board Have Agreed to Settle FTC Allegations Regarding Restrictions and Prohibitions on the Sale of Funeral Merchandise or Caskets." Such advisory shall link to a new web page on the Board's website that contains the full text of Mo. Rev. Stat. § 333.251 (2005), a statement that: "The Regulations of the Board of Embalmers and Funeral Directors do not prohibit persons not licensed as funeral directors or embalmers from selling caskets, burial receptacles or other funeral merchandise to the public in the State of Missouri," a link to Mo. Code Regs. Ann. tit. 20, § 2120-2.060 (2006), and a link to this Order. Respondent shall modify its website as described above no later than ten (10) business days after the date the Order becomes final, and shall display such modifications for no less than ninety (90) days from the date this Order becomes final. The advisory and this Order shall remain publicly accessible through common search terms and archives on the website for five (5) years from the date this Order becomes final, except in the event that the Missouri Office of Administration changes the structure or functionality of the Board’s public website, in which case the Board shall notify the Commission and propose alternative means of access to the advisory, the information on the new web page and this Order; Publish notice of this Order in three consecutive issues of Missouri Funeral Director’s

3. Association Magazine, beginning with the next available placement opportunity for the Board to include its notice in the magazine following publication of this Order on the Board’s website. For purposes of this provision, such notice will be deemed satisfactory if it includes the following language: "The Missouri Board of Embalmers and Funeral Directors (the "Board") announces agreement with the Federal Trade Commission regarding the FTC’s allegations of restrictions and prohibitions on the sale of funeral merchandise or caskets. Persons may offer for retail sale caskets and other funeral merchandise to customers in Missouri without obtaining a license from the Board. Full details of the settlement are posted on the Board's website at www.pr.mo.gov/embalmers.asp.” The minimum size of such notice shall be one-half of one page in Missouri Funeral Director’s Association Magazine; Publish the statement: "The Missouri Board of Embalmers and Funeral Directors (the

4. “Board”) has settled antitrust allegations by the FTC regarding restrictions and prohibitions on the sale of funeral merchandise or caskets. Persons may offer for retail sale caskets and other funeral merchandise to customers in Missouri without obtaining a license from the Board. Full details of the settlement are posted on the Board's website at
www.pr.mo.gov.embalmers.asp,” on Page 1 in the next version of the Missouri State Board of Embalmers and Funeral Directors Rules and Regulations, Chapters 333, 436, 193, 194, which shall be provided to all Licensees within one (1) year from the date this Order becomes final; and,

Notify the Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue N.W., Washington, D.C. 20580, at least thirty (30) days prior to: a) filing with the Missouri Secretary of State any Proposed Order of Rulemaking concerning the Board’s rules or regulations; or b) proposing any change in Respondent; if such proposed change may affect compliance obligations arising out of this Order.

IV.

IT IS FURTHER ORDERED that Respondent shall file a written report within six (6) months of the date this Order becomes final, and annually on the anniversary date of the original report for each of the five (5) years thereafter, and at such other times as the Commission may require by written notice to Respondent, setting forth in detail the manner and form in which it has complied with this Order.

V.

IT IS FURTHER ORDERED that this Order shall terminate ten (10) years from the date on which this Order was issued by the Commission.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED:
COMMISSIONERS: Deborah Platt Majoras, Chairman
Pamela Jones Harbour
Jon Leibowitz
William E. Kovacic
J. Thomas Rosch

In the Matter of

MISSOURI BOARD OF EMBALMERS AND FUNERAL DIRECTORS

Docket No. C-

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Missouri Board of Embalmers and Funeral Directors has violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues this complaint stating its charges as follows:

NATURE OF THE CASE

This case involves Respondent Missouri Board of Embalmers and Funeral Directors (the “Board”), which is the sole licensing authority for the practices of embalming and funeral directing in Missouri. The Board is composed of six members, five of whom must be licensed embalmers or funeral directors. At the time it adopted the regulation at issue in this matter, the Board included five licensed funeral directors. Funeral directors compete in the sale of funeral caskets at-need to consumers in Missouri. Respondent is authorized to promulgate, adopt and enforce rules that it deems necessary for the public good and consistent with the laws of the State of Missouri. The Missouri statute that created and empowered Respondent to regulate the professions of embalming and funeral directing includes a provision stating that its licensing qualifications and conditions (Mo. Rev. Stat. Chapter 333 (2005)) shall not apply “to any person
engaged simply in the furnishing of burial receptacles for the dead.” Mo. Rev. Stat. § 333.251 (2005). The Board promulgated a regulation that defined the practice of funeral directing to include selling funeral merchandise on an at-need basis to consumers in the State of Missouri. This regulation deterred competitive entry into the retail sale of funeral caskets.

RESPONDENT

1. The Board is an agency of the State of Missouri, established and existing pursuant to Mo. Rev. Stat. § 333.151, for the purpose of administering and enforcing Chapter 333 and portions of Chapter 436, Mo. Rev. Stat., and the regulations promulgated thereunder. It has authority to license and regulate those persons in the businesses of embalming and funeral directing in Missouri.

2. The Board’s principal office and place of business is located at 3605 Missouri Boulevard, Jefferson City, Missouri, 65102-0423.

3. The Board is comprised of six members; one public member and five members that hold a license in either funeral directing or embalming, or both. Each member is appointed by the governor with the advice and consent of the state senate.

4. Except to the extent that competition has been restrained as alleged below, and depending on their geographic location, licensed funeral directors in Missouri compete with each other and with funeral director members of the Board in, among other activities, the sale of funeral caskets at-need to the public.

5. The Board is the sole licensing authority for those who engage in the business of embalming and funeral directing in Missouri. It is unlawful for an individual to practice or offer to practice embalming or funeral directing in Missouri unless he or she holds a current license to practice.

6. Under Mo. Rev. Stat. § 333.241 (2005), the Board is empowered to seek a court order to enjoin any person from engaging or offering to engage in any act that would require a license from the Board.

7. The unlicensed practice of embalming or funeral directing in Missouri may be prosecuted as a class A misdemeanor under Mo. Rev. Stat. § 333.261 (2005).

JURISDICTION

8. The Board is a state agency and is a “person” within the meaning of Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45.

9. The acts and practices of the Board, including the acts and practices alleged herein, have been or are affecting “commerce” within the meaning of Section 4 of the Federal Trade Commission
Act, as amended, 15 U.S.C. § 44. In particular, funeral directors in Missouri purchase and receive funeral caskets and other funeral merchandise that are shipped across state lines by manufacturers and suppliers in other locations, transfer substantial sums of money that cross state lines in payment for that merchandise, perform funerals for residents of other states, and receive substantial sums of money that cross state lines in payment for funeral services and merchandise including funeral caskets. Furthermore, the regulation at issue deterred competitors in other states from selling funeral caskets to Missouri consumers at need, and affected interstate commerce in funeral merchandise in neighboring states.

10. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondent, and the proceeding is in the public interest.

THE CHALLENGED CONDUCT

11. The "practice of funeral directing" is defined in Mo. Rev. Stat. § 333.011(7) (2005) as "[E]ngaging by an individual in the business of preparing, otherwise than by embalming, for the burial, disposal or transportation out of this state of, and the directing and supervising of the burial or disposal of, dead human bodies or engaging in the general control or supervision or management of the operations of a funeral establishment."

12. Mo. Rev. Stat. § 333.251 (2005) states that: "Nothing in this chapter shall apply to nor in any manner interfere with the duties of any officer of local or state institutions, nor shall this chapter apply to any person engaged simply in the furnishing of burial receptacles for the dead, but shall only apply to persons engaged in the business of embalming or funeral directing."

13. Beginning on or about June 30, 1998, and continuing through approximately July 29, 2004, Regulation 4 CSR 120-2.060(18) stated that: "No person other than a duly licensed and registered funeral director may make the following at-need arrangements with the person having the right to control the incidents of burial: . . . (C) For the sale or rental to the public of funeral merchandise, services or paraphernalia from a funeral establishment."

14. Prior to July 30, 2004, Regulation 4 CSR 120-2.060 (18) prohibited the sale of at-need funeral merchandise "from a funeral establishment" by anyone other than a licensed funeral director.

15. Beginning on or about July 30, 2004, and continuing through approximately September 29, 2006, 4 CSR 120-2.060(18) stated that: "No person other than a Missouri licensed funeral director shall be allowed to make the following at-need arrangements with the person having the right to control the incidents of disposition: . . . (C) Sale or rental to the public of funeral merchandise, services or paraphernalia."
16. During the process leading up to the amendment of 4 CSR 120-2.060 that took effect in July 2004, the Board sought to amend other portions of the regulation but not 4 CSR 120-2.060(18)(C).

17. After the period for public comments for amending 4 CSR 120-2.060 was completed, the Board amended subsection 4 CSR 120-2.060(18)(C) by deleting the phrase “from a funeral establishment.”

18. Regulation 4 CSR 120-2.060(18)(C) as amended was published in the Missouri Register on June 1, 2004. This amended regulation, which was in effect beginning on or about July 30, 2004, and continuing through approximately September 29, 2006, is hereinafter referred to as the “Regulation at Issue.”

19. Funeral directors in Missouri sell funeral caskets and provide funeral services to consumers.

20. Non-licensed persons who market and sell funeral caskets to consumers in Missouri compete with funeral directors for those sales.

21. Adoption and publication of the Regulation at Issue had the effect of restraining competition and injuring consumers in the following ways, among others:

   A. discouraging non-licensed persons from selling funeral caskets to the public at-need in Missouri;

   B. depriving consumers of the benefits of price competition that could have been offered by retail sellers of funeral caskets who were not licensed funeral directors; and

   C. reducing consumer choices in Missouri concerning the purchase of funeral caskets.

22. The Board filed an amended order of rulemaking on February 16, 2006 to initiate the process for rescinding the Regulation at Issue. After receiving public comment on a proposed amendment, the Board voted unanimously to rescind the Regulation at Issue on May 10, 2006. The amended regulation, published at 20 CSR 2120-2.060(18)(C), became effective on September 30, 2006.

VIOLATION

23. The combination, conspiracy, acts and practices described above constitute anticompetitive and unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45. Such combination, conspiracy, acts, and practices or the effects thereof,
continued for approximately two years and may recur in the absence of the relief herein requested.

WHEREFORE, THE PREMISES CONSIDERED, the Federal Trade Commission on this _____ day of ______, 2007, issues its Complaint against Respondent Missouri Board of Embalmers and Funeral Directors.

By the Commission.

Donald S. Clark
Secretary

SEAL
ANALYSIS OF AGREEMENT CONTAINING
PROPOSED CONSENT ORDER TO AID PUBLIC COMMENT
In The Matter of Missouri Board of Embalmers and Funeral Directors, File No. 061-0026

The Federal Trade Commission has accepted for public comment an Agreement Containing Consent Order with the Missouri Board of Embalmers and Funeral Directors ("the Board" or "Respondent"). The agreement settles charges that the Board violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, through particular acts and practices described below. The Agreement has been placed on the public record for thirty (30) days for receipt of comments from interested members of the public. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed Order final.

The purpose of this analysis is to facilitate comment on the proposed consent Order. This analysis does not constitute an official interpretation of the agreement and proposed Order, and does not modify the terms in any way. Further, the proposed consent Order has been entered into for settlement purposes only, and does not constitute an admission by the proposed Respondent that it violated the law or that the facts alleged in the Complaint against the Respondent (other than jurisdictional facts) are true.

I. The Respondent

Respondent is the sole licensing authority for the practices of funeral directing and embalming in the State of Missouri. It is authorized to promulgate, adopt and enforce rules and regulations governing and defining those practices. Respondent is able to seek a court order to enjoin any person from engaging or offering to engage in any act that requires a license from the Board. The unlicensed practice of funeral directing or embalming in Missouri may be prosecuted as a class A misdemeanor.

At the time it adopted the regulation at issue in the proposed complaint, the Board was composed of five (5) licensed funeral directors, all of whom competed in the sale of at-need funeral caskets to consumers in Missouri.

II. The Conduct Addressed by the Proposed Consent Order

The proposed Complaint alleges that Respondent violated Section 5 of the Federal Trade Commission Act by unlawfully restraining competition in the retail funeral casket market in the State of Missouri by promulgating a regulation that defined the practice of funeral directing to include selling at-need funeral merchandise.

The at-issue regulation stated: "No person other than a duly licensed and registered funeral director may make the following at-need arrangements with the person having the right to control the incidents of burial: . . . (C) sale or rental to the public of funeral merchandise,"
services or paraphernalia. Under the laws of the State of Missouri, however, licensing qualifications and conditions for persons practicing or offering to practice funeral directing and embalming do not apply to anyone engaged simply in the furnishing of at-need burial receptacles to the public.

The proposed Complaint alleges that the Board’s regulation had anticompetitive effects by discouraging non-licensed persons from selling funeral caskets to the public in Missouri, depriving consumers of the benefits of price competition, and reducing consumer choices concerning the purchase of funeral caskets.

The Commission has previously found that funeral director conduct that limits entry by non-licensed casket sellers harms competition. In its 1994 review of the Funeral Rule, the Commission found that funeral-director-imposed “casket handling fees” excluded competition from third-party casket sellers, and the record evidence indicated that the fees “prevent[ed] potential price competition and reduce[d] consumer choice.” The Commission further found that “the long-term effect of [banning these fees] will be increased competition in the casket market such that prices will eventually go down and all consumers will pay less.”

The courts have likewise found that state laws prohibiting the sale of caskets by non-licensed persons harm competition. The Sixth Circuit concluded that a Tennessee state law forbidding anyone but state licensed funeral directors from selling caskets imposed “a significant barrier to competition in the casket market” and “harm[ed] consumers in their pocketbooks.” A district court in Oklahoma found that “[a]s long as independent sellers stay in the market, casket sales from independent sources ... place downward pressure on casket prices as a result of increased competition.” A district court reviewing a similar statute in Mississippi also

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1 4 CSR 120-2.060(18).
3 The FTC’s Funeral Rule, which was promulgated by the Commission in 1982 and revised in 1994, requires providers of funeral goods and services to give consumers itemized lists of funeral goods and services that not only provide price and descriptions, but also contain specific disclosures. The Funeral Rule removed the primary industry restraint on consumer choice (package-only funeral goods and service pricing) and makes clear that consumers may select and purchase only the goods and services they want. See 59 Fed. Reg. 1592 (1994).
6 Craigmiles v. Giles, 312 F.3d 220, 222, 228 (6th Cir. 2002).
concluded that such requirements result in less price competition and consumer choice in selecting a casket.\footnote{Casket Royale, Inc. v. Mississippi, 124 F.Supp. 2d 434, 440 (S.D. Miss. 2000).}

The Missouri statute that created the Board and grants it the authority to act was not intended to displace competition in the sale of funeral merchandise with regulation. Indeed, it appears that Missouri intended to preserve price competition with respect to the retail sale of funeral caskets by excepting from application of the at-need funeral statute “\textit{any person engaged simply in the furnishing of burial receptacles for the dead.”}  

III. Terms of the Proposed Consent Order

The Board has signed a consent agreement containing the proposed consent Order. The proposed Order would prevent the Board from prohibiting, restricting, impeding or discouraging any person from engaging in the sale or rental to the public of funeral merchandise or burial receptacles for the dead, directly or indirectly, or through any rule, regulation, policy, or conduct.

The proposed Order requires the Board to publish in the Newsletter of the Board of Embalmers and Funeral Directors, the full text of Mo. Rev. Stat. § 333.251 (2005), the Order, and an accompanying statement that: “The Rules and Regulations of the Board of Embalmers and Funeral Directors do not prohibit persons not licensed as funeral directors or embalmers from selling caskets, burial receptacles or other funeral merchandise to the public in the State of Missouri.”

The proposed Order also requires the Board to display an advisory on its public website stating that it has settled FTC allegations regarding restrictions and prohibitions on the sale of funeral merchandise or caskets, and to provide a link to the Board’s website that contains the full text of Mo. Rev. Stat. § 333.251 (2005), a link to Mo. Code Regs. Ann. tit. 20, § 2120-2.060 (2006), and a link to this Order. The proposed Order further requires the Board to publish notice of the Order and settlement in three consecutive issues of Missouri Funeral Directors’ Association Magazine and in the Missouri State Board of Embalmers and Funeral Directors Rules and Regulations, Chapters 333, 436, 193, 194, which shall be provided to all licensees within one (1) year from the date the Order becomes final.

The proposed Order includes requirements that the Board notify the Commission at least thirty (30) days prior to any filing with the Missouri Secretary of State of any Proposed Order of Rulemaking concerning the Board’s rules or regulations, or prior to proposing any change in Respondent that may affect compliance obligations. The proposed Order contains standard provisions requiring the filing of regular written reports of the Board’s compliance with the terms of the Order for each of the next five years. The Order will expire in ten (10) years.

\footnote{Mo. Rev. Stat. § 333.251 (2005).}
Mark Your Calendars
for CLEAR's 2007 Annual Conference and Training Programs

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September 4-5  National Certified Investigator/Inspector Training (NCIT)
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September 5  Board Member Training (open to all conference attendees)

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Convention News

- Two keynote speakers just announced
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29-30 (May 1-2) Tri-State Convention - Overland Park, Kansas
Tentative Meeting Date
State Board of Embalmers and Funeral Directors
Board Meeting

August 27-29, 2007
Country Club Hotel and Spa
HH & Carol Roads
Lake Ozark, Missouri

Notice and Agenda to be posted at a later date.