BOARD MEETING 4/10/2008

BOARD OF EMBALMERS AND FUNERAL DIRECTORS
STATE OF MISSOURI

BOARD MEETING

April 10, 2008
Missouri Professional Registration
3605 Missouri Boulevard
Jefferson City, MO 65102

BEFORE: James Reinhard, Chairman
Martin Vernon, Vice-Chairman
Gary Fraker, Secretary
Todd Mahn
Joy Gerstein

PRESENT: Becky Dunn, Executive Director
Pamela Schnieders, Admin. Assistant
Kimberly Grinston, Legal Counsel
Connie Clarkston, Director of Budget
Sandy Sebastian, Director of Personnel
Douglas Ommen, Board of Insurance
David Broeker, Division Director

PUBLIC: Kenneth McGhee
Chris Follis
Jen Jernigan
Don Otto
John McCulloch
Bill Stalter
DJ Gross
Barbara Newman w/State Rep. Meadows
Bob Hedgpeth
Charles Pasentino
Randy Singer
Robert Baker
Steve Pierce
Richard Dowden
Kaiene Summerville

REPORTED BY:
MINDY VISLAY, CCR
MIDWEST LITIGATION SERVICES
3432 West Truman Blvd.
Suite 207
Jefferson City, MO 65109
PROCEEDINGS

CHAIRMAN REINHARD: Gentleman and ladies,

we do have a court reporter here, and they are going
to record the minutes.

I'm going to call the meeting to order. I'm going
to call the roll of the board. Martin Vernon?

MR. VERNON: Here.

CHAIRMAN REINHARD: Gary Fraker?

MR. FRAKER: Here.

CHAIRMAN REINHARD: Todd Mahn?

MR. MAHN: Here.

CHAIRMAN REINHARD: Joy Gerstein?

MS. GERSTEIN: Here.

CHAIRMAN REINHARD: Okay.

MS. DUNN: Present in the room with us
today is Becky Dunn, Executive Director; Pam
Schnieders, Administrative Assistant; Lori Hayes,
Inspector; Kimberly Grinston, board's legal counsel;
Sandy Sebastian, Director of Personnel and also
Director of 416 for the Division. We also have Doug
Ommen, Director of the Department of Insurance.

And at this time I'm not sure if anyone else is
joining us in the office here -- I understand that
Kenneth McGhee may be joining us as well.

CHAIRMAN REINHARD: We need approval of the
BOARD MEETING 4/10/2008

1 agenda, and we need a board motion for this.
2
3  MR. MAHN: I'll make a motion.
4
5 CHAIRMAN REINHARD: Todd Mahn made the
6 motion. Who seconds?
7
8 MR. FRAKER: I'll second.
9
10 CHAIRMAN REINHARD: Gary Fraker seconded
11 the motion. I'm going to call the role. Martin
12 Vernon?
13
14 MR. VERNON: Yes.
15
16 CHAIRMAN REINHARD: Joy Gerstein?
17 MS. GERSTEIN: Yes.
18
19 CHAIRMAN REINHARD: Now, everybody on this
20 conference call, you have to identify yourself by name
21 so the court reporter can take it in the minutes. So
22 when you speak just, you know, say, "Bob Hedgpeth" and
23 then say what you want to say. Okay?
24
25 MS. DUNN: Now this is Becky Dunn talking.
26
27 We apologize to everyone on the phone today that
28 joined us. Because we had been at a three-day board
29 meeting, and so we didn't have the opportunity to get
30 the comments on the Chapter 436 revised in the time
31 frame that we could get this faxed out to all the
32 attendees today.
33
34 So, what we will do is briefly discuss some of the
35 chapter changes that we have suggested. We will get
everyone a copy of what we are discussing after the
meeting today.

And the process that we're suggesting is, if you
have comments to what the board is suggesting, if you
would fax your comments to area code 573-751-0878,
that's Connie Clarkston's fax number, she's the
Director of Budget and Legislation.

And also, Connie has something to add to that.

MS. CLARKSTON: You can also e-mail.

MS. DUNN: Did everyone get Connie's e-mail
earlier? If you prefer, you can e-mail your comments
to Connie.

And then, also, they can contact the sponsor. Is
that correct or not?

MS. CLARKSTON: Not yet, because we haven't
found a sponsor for this portion of it. Once that's
identified we'll let them know.

MS. DUNN: So, you can either fax or e-mail
Connie with your comments.

MS. CLARKSTON: I am the Director of Budget
and Legislation for the Division of Professional
Registration.

MS. DUNN: Kenneth McGhee has joined the
meeting now.

Board Members; Martin, Gary, Todd and Joy, do you
have a copy of the legislation in front of you today?

MS. GERSTEIN: Yes.

MR. FRAKER: Yes.

MR. VERSON: Yes.

MR. MAHN: I only got 20 of the 30 pages.

Send the last ten.

CHAIRMAN REINHARD: Kim Grinstone is our attorney, and we're going to go through the bill.

MS. GRINSTONE: Good morning, Board. What you have before you is a conglomerate bill that I think merges several portions of Kuesner's bill, several portions of Representative Meadows' bill, some recommendations that were given to the board, as well as some language that the board members themselves reviewed and suggested -- and the Department of Insurance.

What we can do is go through the bill by page to see if there's any concerns that the board members may have with the proposed language.

And for the benefit of the public that may be sitting in, I will do a general description of what the change is. Is that okay?

MS. DUNN: Can everyone hear okay?

MS. GRINSTONE: The first change that I think we looked at was the definition of the word
"person."

In the main definition section of 436.005, that was changed to acquire or to define a person as any individual or, essentially, an entity registered with the Secretary of State's office.

Subsection 5; Preneed contract. That definition was amended to specifically provide that a contract may be funded by any mechanism authorized by this chapter including cash payment or whole or credit life insurance.

I think those are all the changes on Page 1.

Board members, do you have any questions or concerns?

MR. FRAKER: No.

MS. GRINSTON: Hearing none, I'll move on to Page 2.

And I do need to apologize to members of the public.

To members of the public, during this conference call we will need to go into closed for a certain portion of time, and we'll tell you when that is, and then a time when you can rejoin the board on an open conference call. But we'll tell you when that happens or when that may occur.

On Page 2, looking at Section 436.007, Subsection .1, Subsection 4, was amended to provide that a
preneed contract must identify either the preneed
trust that will hold funds, the insurance company that
will be used to fund any preneed contracts, or the
joint account where the funds will be held.

I believe it was the board's intention here to
make sure you include all of the different mechanisms
for handling 436 contracts.

If there are no questions from the board?
436.072; I believe a lot of this language was
cleanup language and probably clarification language
that really doesn't substantially change what we have
right now.

436.011; the changes in this provision -- and I'll
do this generally. Currently, we require a
contractual relationship between a seller and a
provider and that those obligations are not
reciprocated on providers.

So I believe that the changes to 436.011 will
require two things; that any seller who designates a
provider in a contract must have a contractual
relationship, and vice versa.

The second paragraph does the same thing. It
basically imposes the obligation -- that is currently
on sellers -- on providers. It adds language that
says if the provider allows themselves to be
designated in a preneed contract they will be
obligated for providing -- I'm sorry. Phone call.
(Phone interruption.)
If a person allows themselves to be named as a
seller, they will be obligated for any payments made
under the contract.
I think that's the last provision on Page 3.
Board members, do you have any questions?

MS. GERSTEIN: No.
MR. VERNON: No.
MR. FRAKER: No.
MS. GRINSTON: On Page 4, I think that the
language you see in red is language that may have been
included, I believe, in Representative Meadows' bill.
The last sentence that has the strike-through in
it, I believe was language that was in Representative
Meadows' bill that I believe the board did not want
included in this version of the bill if possible.
Subsection 3, on Page 4, does the exact same thing
that we talked about earlier. If a seller allows a
provider to name them as a seller, and fails to take
action to stop that designation, the seller is going
to be deemed to have consented to the designation.
Now, this is the same obligation that is currently on
providers.
436.015.1. Sub 1, this language is from, I believe, Representative Meadows' bill. Right now, to be a provider, you have to be licensed as a funeral establishment unless you are essentially a cemetery and your sales are limited to grave vaults.

The proposal was to add language that would also exempt a person if they were only engaged in the retail sale of funeral merchandise. Therefore, people that were engaged in funeral retail sales would still be required to register as providers; however, they wouldn't need a full funeral establishment license.

Subsection 2, on Page 4 -- and before I turn over, board members, are there any questions on Page 4?

Ms. Gerstein: No.

Mr. Vernon: I'm trying to figure it out.

I may have missed it.

Because I went through and marked up my copy that I had kind of worked on trying to look at some stuff, when we had just looked at a lot of the different ones. I'm trying to figure out where that is and what section it's in.

Ms. Grinstein: The retail sale of funeral merchandise section?

Mr. Vernon: One second, you know how all these numbers go to running together.
MS. DUNN: Just give us the section number first, Martin. Like, 436 point --

MR. VERNON: Actually, I'm going to jump back for just a second. Under 436.007, I guess it is, in point four of that. And I guess I need to look at the new one to make sure that's the same place as that is.

MS. DUNN: Can you read the beginning of that section that you are referring to?

MR. VERNON: I can tell you -- while I'm looking to make sure -- I can tell you what the --
good grief. Okay. It's going to be on Page 3. It's Section 4 on that.

MS. DUNN: Read the first word.

MR. VERNON: On Page 3, point four, from the top coming down, under that section it says: Subject to the provisions of Subdivision 5 of Section 436.005, the provisions of -- all those numbers -- 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.

My question goes back to is this section -- I just need some definition, I guess, here.

Is this section referred to when an individual
just comes in with a life insurance policy, where it's
maybe a small amount or whatever, and all it's doing
is just changing the assignment of the policy to where
you might not be actually issuing a preneed contract
with the specification of guaranteeing merchandise?
Is that point four affecting that, or is it not?
Because I'm just catching the words “assignment of
proceeds of any contract of insurance.” Key word
"any."

MS. GRINSTON: I'm looking at it, Martin.
Well, this is current language, and it refers back
to the definition of what a preneed contract is. And
so, to the extent that there's an assignment that
doesn't necessarily fall under the definition of
preneed contract -- "specifically requiring the
current payment of money or other property in
consideration for the final disposition" -- it may not
apply to those assignments.

MR. VERNON: The key word of this
assignment is payment of money?

MS. GRINSTON: I believe so, as required
under 436.005, Subdivision 5.

MR. HEDGEPETH: May I make a suggestion?

This is Bob Hedgpeth with the public.

When you are referring to this -- I got this 436
off the internet, and I don't know about the page
numbers, but I can follow if you mention the section
numbers and all that. Could you please do that?

MS. GRINSTON: Sure. I definitely can for
you.

Martin, does that answer your question?

MR. VERNON: The key of where I was missing
it was the payment of money.

MS. GRINSTON: Okay. We are going to be
looking now at 436.015.1, Subparagraph 2, Subsection
2.

And I believe in one of the proposals that's been
filed there was a proposal that the Attorney General's
Office be given coexistive regulatory authority, I
guess, with the board in matters of 436.

The recommendation that is before the board now
would leave the regulatory authority in the hands of
the state board and would not extend that to the
Attorney General's Office. Are there any questions on
that?

Let's go to 436.015.2, same section. I think the
changes are in Subparagraph 1(b) which requires in the
report the name and address of each seller with whom
it entered into a written agreement.

The recommendation; the changes would require that
the provider also include in their annual report the
name, contract number and amount of each preneed
contract written, along with all payments that were
collected by the preneed provider for the seller, that
that would be included in the annual report.
I believe those are all the changes on Page 5.

Any questions or concerns?

Moving onto our Page 6, but what will be
436.015.2, Subparagraph 4. It begins by reading: At
least 30 days prior to selling or otherwise disposing
of its business assets --

Board members, on your Page 6, there was language
there that would require the board to take reasonable
and necessary action to basically make sure
obligations were going to be met.

The board amended that language from "shall" to
"may" and also added language that said that the
actions could include an examination of books and
records or an audit with costs that could be assessed
against the seller or to the seller at the discretion
of the board.

MS. DUNN: Members, this is Becky Dunn
speaking. On the page prior to this, at the bottom,
which was parenthesis 3, we're removing reference that
would include the Attorney General in this process.
Because, as Kim mentioned earlier, it said: State
board and/or Attorney General's Office. On
parenthesis 3, at the bottom of five, we missed one of
those. So as the public receives a copy of the bill,
there may be a change in that.

MS. GRINSTON: In that same section, we
removed the current language that provides that
failure of the state board to take action within
30 days constitutes a waiver of its authority, and we
added a requirement that written notice must be
provided by the provider to the board and to all
purchasers within 30 days of ceasing business and that
notice must indicate what establishment will be
assuming responsibility for the preneed contracts.

And again, there's language that would allow the
board to conduct an examination of books and records
to ensure compliance with the requirements of that
section.

Moving on to 436.021.1, Subsection 2. And this is
on Page 6 and 7 for the board members.
One thing that has been amended in this draft is
the requirement that all sellers have a trust. It
would be amended to read that you would not be
required to have a trust if you certified to the board
that all of your preneed contracts are funded solely
by insurance or are placed in joint accounts.

MR. OTTO: This is Don Otto. You might
want to check that paragraph. It says that the
preneed funds will be placed "in a joint."

MS. GRINSTON: Okay.

MR. OTTO: I don't know if that's prudent
investing. It might be.

MS. GRINSTON: I'll do that, Don. I will.

Subsection 3. There Representative Kuessner, I
believe, suggested that we add as a condition to being
a seller you have to register with the state board and
you must also be licensed by the state board as a
funeral preneed seller.

Now, this is pretty much the way we treated
registration now. But to the extent there was a
confusion about a registration versus a license, that
clarification was included to specifically call it a
registration and a license.

Subparagraph 2 -- actually, we will be doing some
amendments on that. And for the board members, this
paragraph will read -- and I'm just going to read how
it will be as amended because we have to take off the
first half of that section.

It should read: In lieu of a trust the applicant
for registration may petition the board for exemption
for this requirement. In the petition for exemption
the applicant shall certify to the board that all
preneed contracts are to be funded solely by insurance
or that preneed funds are to be placed in a joint
account.

And that's account, Don. I've got it added in
there.

MR. OTTO: Okay.

MS. GRINSTON: And again, we removed the
language that previously suggested that a provider
would have to prove an undue hardship.

Under Section 3 of that section --

MR. VERNON: Did you say that you took out
the undue hardship?

MS. GRINSTON: Yes.

MR. VERNON: Because it's printed in on 2
here, right?

MS. GRINSTON: It is. In the beginning of
2 it is printed. I think we overlooked that and meant
2 to bring it out.

MR. VERNON: So, that will not be in there?

MS. GRINSTON: That's correct.

Subsection 3, Subparagraph 1, requires the seller
to maintain adequate records of their contracts and
trust arrangements.
We also thought that the section should include records of the joint accounts as well. We echoed the language in the definition section for the seller to clearly provide that the seller is obligated to collect and administer all payments made under contract or arrangement. And again, that language is in .005 already.

And that is Page 7. Board members, do you have any questions?

Moving on, we have got point three, Subdivision 3, Paragraph C. In a provider's report it would require them also to -- a seller's report -- include the name and contract number of each preneed contract written with each seller. I'm sorry I'm getting these confused. This is the provider's report.

They would have to report the total number of contracts, the name and contract number, and amount of each preneed contract written with each seller.

And I think the changes on Page 8, generally, up until Paragraph F, basically include language that we are referencing trust, moneys placed in joint accounts, and also insurance funded preneed contracts.

Subparagraph F, on the bottom of Page 8, talks about the consent that is currently required for a seller and a provider to allow the board to order an
examination.

I believe the board requested to remove the language that would require the detailed process of going to the Attorney General's Office two or three times and to the Division two or three times before processing a 136 complaint.

Instead, much like the 333 process, the board will be able to review the complaint, request an independent audit, and then make a decision or whether the complaint should be referred for disciplinary action. And so, you'll see the language relating to the Division and the Attorney General's Office removed from that page.

Are there any questions?

Page 9. Subparagraph 4, we see the same changes: File with the state board a consent authorizing the state board to order an investigation.

Again, the language regarding the AG's office and the Division have been removed from that portion of the bill.

Subparagraph 6 would be a new requirement on the bill, and it would essentially say that sellers can only allow or authorize a funeral director or an apprentice funeral director to sell a preneed contract.
And then, again, I think, to finish Page 9, we have some language regarding joint accounts. Are there any questions on that language?

MR. MAHN: No.

MR. VERNON: I'm fine.

MR. FRAKER: No.

MS. GERSTEIN: No.

MS. GRINSTON: Looking at Page 10. Again, we are looking at the provisions that govern a cease of business by providers, new language that requires them to notify the board and all purchasers within 30 days of what establishment will be assuming responsibility to any preneed contracts.

Again, the thought is that when a funeral establishment closes -- it stops doing business -- we want the purchasers to know, as well as the board, where they should go to honor the outstanding contracts.

Moving on to 436.027. This is the requirement that currently talks about the allocation of funds. I believe the board included language that required that 100 percent of all funds collected on a preneed contract must either be placed in trust, in a joint account, or used to buy or purchase an insurance contract.
Again, this would be 100 percent trusting requirement, if you will.

CHAIRMAN REINHARD: I have a question about that. Now, that's on a joint account or all accounts?

MS. GRINSTON: All accounts.

CHAIRMAN REINHARD: What about a 95/5? I think at one time the association may have -- you might chime in on this, Don.

MR. OTTO: Well, several years ago our position I believe was, while in a perfect world we think 100 percent is best, that we certainly understand that some people are paid by commissions and that 5 percent might be better for many funeral homes.

CHAIRMAN REINHARD: Any board members or other people have a comment?

MR. MCGHEE: This is Ken McGhee. I'm just curious to how they figured in what we would do about administrative costs? Because that's what that 20 percent was set aside for.

And my only concern would be, as a seller, is how are you going to recoup or cover your administrative costs in selling and transacting your preneed sales?

That was just a comment.

CHAIRMAN REINHARD: Noted.
MR. MCCULLOCH: This is John McCulloch. If you go to 100 percent, it will put us out of business tomorrow if this passes. Obviously, I'm not for that.

MR. VERNON: What would you be for, John?

MR. MCCULLOCH: I don't see anything wrong with the current 80/20.

MR. McGHEE: This is Ken McGhee again. I agree. I think the problem wasn't so much with the percentage as much as it was with people entrusting the money that they were supposed to trust.

MR. MCCULLOCH: Just because you have people -- you know, you can make this 90 percent or 95 or 100 percent, that's not going to stop the problems you are having.

MR. GROSS: This is DJ Gross. And one thing I'm at, that may help with that, whether it's 100 percent or 55 percent, or the 80 percent or whatever that it stays, is it necessarily so much a problem of underfunded or that it's when a purchaser cancels and wants to go from one funeral home to another?

Could there be something in there on portability for that, where the funds could be transferred from one to another without the consumer being penalized for that 5 or 20 percent?
MS. DUNN: With all the comments that were stated just now, if you would ensure to put those in writing to Connie or the fax number that we gave you, we would certainly appreciate those.

MS. GRINSTON: 436.027.2 would require that funds received must be trusted within 45 days of receipt.

MR. MAHN: Can I say something on that?

Back up just to that 80/20.

MS. GRINSTON: Yes.

MR. MAHN: I understand the circumstances that we're under, what's going on here in the state right now.

I think one of the reasons this percentage came up is we asked ourselves, if we were to ask the public how much they thought their trust was being funded -- or their preneed was being funded -- we feel like they would say, "Well, we certainly think the whole 100 percent is."

And under these circumstances, what's went on, I don't think, representing the public, we can ask for anything much less than that, just due to what's went on.

I think the public is going to be very upset. They are going to be very upset. And I think, at this
POINT, they're going to expect anybody representing them to ask for the best for them.

CHAIRMAN REINHARD: Thank you, Todd.

Kim, do you want to continue?

MS. URINSTON: Yes, 436.031 would be our next section. This has some substantial revisions.

Number one, it would require that the trustee be a state or federally chartered financial institution -- which it requires now -- but it would prevent controlled relationships, relationships where the financial institution is controlled by or under the common control of the seller. And it has some definitions to accomplish that.

I believe this is modeled after what is currently in the Department of Insurance's provisions. I believe that is where a lot of this language may have come from.

Subsection 2 is being amended to delete the possibility or the availability of using an independent financial advisor. Under the portions that are being deleted, the trustee would be responsible for the trust and also investment of the trust.

So, in Subsection 4, all the provisions that relate to a qualified assessment provider have been
deleted. And again, the 100 percent trusting
requirement is included in that as well.
Moving on to Page 12, Subparagraph 3, this is new
language.
And board members, I'm sorry, do you have any
questions about anything that was on Page 11?
MS. GERSTEIN: No.
MR. VERNON: No.
MS. GRINSTON: Subparagraph 3 basically
says that investments of trust money must be designed
to increase the value of the preneed funds, and it
would prohibit any investment that doesn't have the
potential to increase the value of the funds.
And I believe that's our last change on Page 12.
MS. GROSS: May I ask a question on that to
clarify?
CHAIRMAN REINHARD: Yes.
MS. GROSS: On No. 3 -- and going back to
if someone brings in a policy and assigns it to the
funeral home and it is with a preneed contract -- is
that going to be effective? That's not talking about
that private policy that they are bringing in and
you're assigning?
MS. GRINSTON: DJ, I'm sorry, could you say
that again?
MS. GROSS: On that section that you were just talking about, in the instances where consumers bring in, say, an Old American policy of 4,000 and assign it -- or whatever it would be -- and that's tied to a preneed contract, in exchange for an assignment or being made beneficiary, will that be affected by the language of this?

MS. GRINSTON: I don't believe it will.

Moving on to Page 13, and again, we are still in Subsection 436.031.

There's a new Subsection 7 which would require, again, that funds be deposited in trust or joint accounts within 45 days of receiving them, the seller would be required to notify the provider within 30 days of receiving a payment, anyone who pays in cash would have to sign a receipt and must receive a copy of that receipt.

And I believe that language may have come from Representative Kuessner's bill.

The next change we have is on Section 436.035. For board members, that's Page 14.

Subsection 1 would be amended to provide that the seller has to notify the provider in writing of payments made to the purchaser on a cancellation.

It says that if it's cancelled an amount equal to
all payments made by the purchaser must be refunded.
And so, 100 percent of what the purchaser paid would have to be refunded on the contract.
Subsection 2 is being amended to provide that if the preneed contract is being purchased for purposes of spend-down that a copy of the contract would have to be given to the appropriate state authority. Which would not be the board, by the way.

MR. MCGHEE: Would that be specified then?
I just think that also creates a gray area if we don't specify what department or what state agency that should be.

MR. VERNON: Could we insert in that, where it says that it has to be sent, just the words "if requested," where it's not you have to just mail one to them? Because, like Ken said, where's it going?

MS. DUNN: And I think that Ken may have said the appropriate state agency because, the transition in state government -- or government agencies or federal agencies -- that name may change.

So, I guess we could state what it is now or "designee." But we try to put language that would build for the future.

MS. GRINSTON: And this is actually Kuesner's language, I believe, as well.
MR. MCGHEE: The reason I mention that is, as a lot of you know, like Martin said as well, usually if there's a department or, you know -- someone from the agency usually contacts the funeral home to ensure that the person has a prearranged irrevocable plan with the funeral home or the seller. It's requested of us by them because they are doing a scenario case on that individual beneficiary. So, I think, in line with what Martin was saying, it's kind of hard to say who is the appropriate person that you would have to report to, because most times they come asking you for the information. However, I do feel that it would be very important for the beneficiary of the contract to be made aware that if he does sign the contract, and signs it being irrevocable, and he's not receiving any state assistance, that he or she is also aware that that would not hinder them from seeking a refund if they never qualified for that assistance. Do you understand what I'm saying? Because a lot of people are under the impression that when they sign a prearranged contract, when they are 45-years-old, or whatever, and they sign it being irrevocable, but they never actually went onto any kind of public assistance, then a lot of them believe that they can't
get the refund of the money that they spent because
they signed an irrevocable waiver although they never
received any public assistance.

Do you follow where I'm going?

MS. DUNN: Ken, could you put your comments
in writing?

MR. McGHEE: I will.

MS. DUNN: Okay. We just want to make sure
that we have all the comments for the record.

MS. GRINSTON: And Martin, would you like
me to amend that language to just simply say that a
copy must be provided if requested?

MR. VERNON: I think that's fine, because
the "if requested" eliminates the whole -- the way
it's written right now, the burden is on -- if
somebody has a state assistance contract, we, as a
funeral director, are required to send a contract to
somebody; right?

MS. GRINSTON: That is correct.

MR. VERNON: Why, if the state agency isn't
particularly wanting it, why are we going to put that:
burden on us?

MS. GRINSTON: Martin, we can make that
change for you.

Chairman, do you want to take a motion and a vote
on that?

Martin is suggesting that we change the language
to provide that the contract only needs to be provided
if requested. And I can do that if that's a request
of the board.

CHAIRMAN REINHARD: Let's take a motion on
it, or we'll entertain a motion.

MR. MAHN: I'll make the motion.

CHAIRMAN REINHARD: And a second?

MS. GERSTEIN: Second.

CHAIRMAN REINHARD: Okay. Gary?

MR. FRAKER: Yes.

CHAIRMAN REINHARD: Martin?

MR. VERNON: Yes.

MS. GRINSTON: That's everyone then. I'll
make the change.

Subsections 2 and 3 essentially say that the
purchaser has the right to redesignate the provider,
and once that designation is made the seller should
notify the newly designated provider and the old
provider of the request for a change. And that's Page
15.

436.041 on Page 16 --

MR. OTTO: This is Don Otto. If you don't
want me to mention this just tell me to keep quiet.
The first paragraph on Page 14, 436.035.1, the statement was made that this would require 100 percent refund to the customer?

MS. GRINSTON: Yes.

MR. OTTO: The problem with that is the word "net" in the middle of that paragraph. That means you've taken something out of the whole.

And the way this is worded in the current law is the seller pays to the purchaser the net amount and then turns around and the trustee pays to the seller all the amount, which indicates that the seller is getting something more out of the trust than the purchaser got.

MS. GRINSTON: I understand, Don. That's noted.

MR. OTTO: It's not an issue if it's 100 percent trusting, perhaps, but if you shift that to 95 or something then it gets very complicated.

CHAIRMAN REINHARD: Board, we need to probably delete that, the word "net." Thank you, Don, for pointing that out.

MR. VERNON: I will make the motion.

CHAIRMAN REINHARD: I need a second.

MR. FRAKER: Second.

MS. GERSTEIN: Yes.
MR. MAHN: Yes.

MS. GRINSTON: Looking at 436.041, it echoes the requirement that the seller is obligated for collecting administrative oversight of all payments and changes the provisions for cancelling a contract for nonpayment. It essentially will provide that the purchaser must be given written notice.

Sixty days after that written notice is delivered the seller can then cancel the contract as long as final written notice is given to the purchaser at the time of cancellation.

436.045 was some language that was suggested, and I think the most important thing is that for payment, under .045, it would now require a certified copy of the death certificate.

MR. VERNON: I have a question. In some situations currently we do have to provide a certified copy of a death certificate as a funeral director. I wish someone would tell me why that is totally important. Because I'm open to the idea of it, but at the same token, I'm wondering if that is somehow going to hinder it.

I do understand that it does leave the door open just a little bit for somebody just creating a death certificate. But I don't think in all situations
currently, now, it does require a certified copy to
get money out of a trust, or whatever, as long as it
would read "a copy of a death certificate." But that
kind of, in a way, might be a problem, too, because of
copying a death certificate.

I'm not sure I have a total recommendation on it,
but I see a little bit of an issue that it causes. It
also causes the family to have to purchase a death
certificate, unless that's going to be the problem of
the funeral director.

MS. GRINSTON: Are you moving that we
strike the death certificate language?

MR. VERNON: I'd really like to hear some
comments from someone else. Just because I raised the
issue, I'm not totally confident in myself that that's
what needs to be done. But I do see some problems.

CHAIRMAN REINHARD: Any board members or
the public?

MR. OTTO: This is Don Otto. The Newman
Funeral Home situation in Unionville, Missouri. One
of the criticisms that was made back then was that 436
did not require a death certificate which made it
easier for him to send in false death claims. For
what that's worth.

I would also note that there's a difference
between 436.045 -- dealing with certifying -- that you
did a funeral under a trust arrangement and the
provisions dealing with joint accounts.
Under joint accounts, the purchaser or their
successor has to sign the statement. Under this
section, any witness can sign the statement.
So, it's my understanding that in the Newman
funeral Home situation he was signing the certificate,
and he just had anybody that was standing around sign
as a witness, and so the purchaser wasn't required to
sign.
I know that was an issue with that particular
situation.

MS. DUNN: Don, would you provide that
comment to us in writing?

MR. OTTO: I certainly will.

MS. GROSS: This is DJ Gross. And I don't
know if it could be done, but with cremations, where
cremations cannot occur unless a doctor is going to
sign and give consent for that, could there be
something in lieu of a certified death certificate? A
statement from a doctor that he is going to sign on
the death certificate? We fax those to our doctors
and they sign them or we hand deliver them for the
crematory.
Could that be a possibility, where you know then the death has actually occurred, the doctor will be signing, but it would save on the families having to purchase an additional death certificate or the time wait for a death certificate to get certified?

MR. McGHEE: I think isn't that more of an at-need issue than a preneed issue?

MS. GROSS: For the doctor signing on a cremation?

MR. McGHEE: Because he can't sign the cremation until the death takes place, so you're actually talking about an at-need contract as opposed to a preneed contract.

MS. GROSS: This would be at-need as well.

MR. OTTO: I think the ultimate problem is what if it takes you 90 days to get a death certificate because you can't get the doctor to sign it?

MA. VERNON: I know what you are saying.

For 99 percent of the funeral homes, I think it would be great if we didn't have to file a death certificate.

And I think, under the circumstances we are under, again, what we've been put under in this state, if we redo this whole law and it doesn't require a certified
death certificate, and the next business comes along, and that's how they loophole through, and it ends up there being a problem, and we are addressing that problem just because we left out certify. And I know what you're saying. And yeah, most of us would just file it like it is, right. And again, I think we are trying to protect the public in all directions. And as far as -- I agree with Kenny McGhee -- the doctor signature for a cremation, I don't think we are going to start calling doctors to send a written notice over so we can get paid quicker. I don't think they're going to go for that.

CHAIRMAN REINHARD: I think that any funeral director that wants his money is going to get the death certificate signed, and especially after we have the electronic death certificate in place. It will be a lot quicker for everybody.

MR. McGHEE: That was a great point, Jim. And I know that whe. I was at the last meeting and spoke of these death certificates being filed online, perhaps maybe when they are filed online, maybe the actual trustee or the person that's responsible for releasing the money should have some kind of way to electronically go in and get confirmation through the
electronic filing process without having to actually request a hardcopy from the person filing the claim.

CHAIRMAN REINHARD: Gentleman, I think we are done on that one. Move along, Kim.

MS. GRINSTON: And 436.048, I think that was just amended to correct some section numbers. The same thing with 436.051.

On .053, this deals with joint accounts. Once again, it has a 100 percent deposit requirement for all moneys received.

I'm going to also add language that says that a contract written for funds that are going into adjoining accounts must comply with all the other requirements of 426.027 for all other preneed contracts.

Sub 1, of 436.051, is being amended to require the name and address of the financial institution where the joint account will be.

Going to Sub 3, there was language that was added. I think this is Representative Kuessner's language that just says that monies held in joint accounts shall provide that the income generated by the monies will be used to pay the actual expenses of administering the agreement, and the balance of the income must be reinvested in a preneed account.
Subparagraph 4 talks about cancellation of the contract, and it says to honor cancellation before payment is issued they should get -- there should be evidence that notice was given to the funeral provider and the purchaser.

Subparagraph 5 again has that language that talks about the copy of the contract on a spend-down arrangement being sent to the appropriate agency. Martin, would it be your request that we add the 'if requested' here as well?

MR. VERNON: Yes. Just amend my motion to both places.

MS. GRINSTON: Is there a second consent to the amendment?

CHAIRMAN REINHARD: We need a second.

MS. GERSTEIN: I'll second.

CHAIRMAN REINHARD: Todd?

MR. MAHN: Yes.

CHAIRMAN REINHARD: Gary?

MR. FRAKER: Yes.

CHAIRMAN REINHARD: Thank you. Continue.

MS. GRINSTON: On Page 19, this is Subparagraph 2 of 436.052.2, it says it would require the seller to give a written statement of all deposits made to a joint account within 15 days after the
purchaser makes a request.

434.054 basically talks about and limits investments or insurance contracts used to fund a preneed contract to a whole life insurance policy. It requires notification to the purchaser that the funds are going to be used to purchase life insurance.

And if the insurance portion of the contract is sold by an agent who is an employee or an agent of the seller, that relationship would also have to be disclosed.

And of course, insurance agents would be -- amended language -- would simply be required to comply with all insurance laws governing the sale of the policy.

Rewritten from the bill were some disclosure requirements that were in, I believe, Representative Meadows' bill.

Subsection 2 was a new section. It would essentially say that, except for purposes of spend-down, the purchaser of the contract must be the owner of the life insurance policy and would be the only person who would be able to make changes. In no event would the owner of the policy be allowed to be the preneed seller.

Moving on to Page 21, this is a new Subsection 3.
It says: In no event shall the seller collect from
the purchaser more than what is needed to fund the
insurance policy.

436.055 once again streamlines the current review
process by the board and basically says that the board
is the entity that will review the complaint, send it
cut for outside audit, and then make a decision on
whether to refer for disciplinary action.

Any questions on that so far?

MS. GERSTEIN: No.
MR. VERNON: No.
MR. FRAKER: No.
MR. MAHN: No.

MS. GRINSTON: Subsection 3, which is a new
subsection, basically allows the board to do a random
or targeted examination of audit, an independent
audit, and would allow the board to assess the costs
of the examination, audit or investigation against the
licensee in the Board's discretion.

436.059, that you see there, is a work in
progress. What we were asked to do is draft language
that will allow the board to suspend a license if we
are aware of a shortage or a misappropriation from a
trust account.

There's still some language that I need to work on
with .059 just to accomplish that purpose, but I think the goal of that is to have the language simply read that the board may suspend the license without going through the current AHC process if we are aware of a certain shortage of funds or a misappropriation of preneed funds.

MS. GERSTEIN: Do we need a motion on that?

MS. GRINSTON: Not right now, Joy, I don't believe so.

I think that will address a situation where there's an identified shortage the board right now cannot go in and suspend the licensee, it has generally no authority to do so, and it would have to go through the AHC process. This would automatically give the board the authority to reach those licenses.

We have a new section, 436.059.2, which would require good moral character for any preneed registration, registrant or an applicant for registration, or any officer, owner, partner of any entity that is going to be a preneed registrant.

I need to back up. Before that, for the mandatory suspension language that is in the bill, the board would have the authority to waive the mandatory suspension if there's evidence that a person has been rehabilitated and the board deems that the license
should be issued.

436.061 changes the criminal provisions of the bill. It now says that the criminal felony language that is currently applicable in 436 would only apply if the violation of 436 was by incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty. And the Attorney General would have concurrent jurisdiction with any local prosecutor to prosecute under this section.

And then what you'll see in, I think, the next set of major changes -- and this is something that we are going to have to add back in -- the bill also had language that would allow for disciplinary action against a licensee for someone who has failed to renew or denying an applicant for many of the reasons currently in 333.

Of course, we removed language that would be applicable only to funeral directors, but it would standardize the language for preneed registrants so that we could discipline someone for fraud, misconduct and for things that are outside of what is specifically spelled out in 436.

And again, that language pretty much mirrors Chapter 333 and would require a hearing before the Administrative Hearing Commission.
Finally, on Page 26. The confidentiality language of 436 has been changed. Right now, under 436.067, there are very intricate provisions on what is confidential and what is not confidential. The new language would simply provide that everything is closed unless otherwise authorized by statute or an order of the court.

Finally, 436.068 would allow the board to have rulemaking authority under 436, and that would include establishing any fees and also establishing qualifications for the fitness of a registrant.

436.069, which is on Page 27. The fees in 436.069 would be amended to do two things; first, that section would allow the board to set fees as determined by rule.

Until such time as the board establishes a fee, the annual reporting fee for sellers would be a change to 55 for each preneed contract. And for providers, the annual reporting fee would be $40 or an amount to be determined by the board by rule.

436.072 would allow the board access to any premises for the purposes of inspection of any place where preneed providers and sellers are operating. Board, those are the changes.

CHAIRMAN REINHARD: Board, we probably need
to readdress one section here since we had some public
comments that were concerned about the percentage.

Would anybody entertain the motion to, say, like,
90/10?

MR. FRAKER: I would make that motion.

CHAIRMAN REINHARD: Do I have a second?

MR. VERNON: I'll second.

CHAIRMAN REINHARD: Joy?

MS. GERSTEIN: Yes.

CHAIRMAN REINHARD: Todd?

MR. MAHN: Yes.

CHAIRMAN REINHARD: Thank you. That at
least corrects that so we can correct that in the
bill.

MS. DUNN: This is Becky Dunn. I want to
make sure everyone knew that our "registration" is
going to be changed to "licensed." And that if you
have any comments, those need to be provided to the
e-mail or the phone number that we provided to you
earlier by noon tomorrow.

The board will make every attempt to have an open
meeting at nine o'clock on Monday so that we can
finalize and have all your recommendations or comments
reviewed by the board and adjusted in this language.

Also, if anyone's in Jeff City it would be very
helpful if you could come to the office instead of
conference call.

And if you want to be on our conference call on
Monday at 9 a.m., please e-mail that information to
the state board, and you can e-mail it to me or to the
general e-mail address. And we need your phone number
and your name.

And as you can tell, we are working extensively on
this, so be patient with us as we try to get out these
revisions to you.

MR. OTTO: I just had a question. Is there
some intention to try to file this this year?

MS. DUNN: Yes, Don.

MR. OTTO: I mean, the filing deadline just
passed.

MS. CLARKSTON: That is correct, the filing
deadline just passed. There are two bills out --

MR. OTTO: Are you thinking substitute
amendment?

MS. CLARKSTON: Yes, I'm exactly thinking
that. I have contacted a couple members of the
General Assembly and they're waiting on this draft,
and they are very much interested in filing that
substitute.

CHAIRMAN REINHARD: Any questions?
MR. STALTER: This is Bill Stalter. Did you say you need the comments by noon tomorrow?

MS. DUNN: Correct.

MR. STALTER: One other question. You went to 100 hundred percent and now we're down to 90/10, but the section about the accrual of income or the distribution of income has stayed the same; is that correct?

MS. GRINSTON: Can you ask that again?

MR. STALTER: The section that allows the seller to withdraw income currently -- which is .031 but used to be point three, but now is point four on Page 12 -- it doesn't look to be changed except for that slight change.

MS. GRINSTON: That's correct.

MS. DUNN: Kim, the board voted when you stepped out to go 90 instead of 100. And I think what Bill is concerned about is that we would adjust any sections that reflected that. Is that correct, Bill?

MR. STALTER: I just wanted to clarify that the seller can still take out income currently.

MS. GRINSTON: No, I don't think it changes -- that this draft would change any other income allowances.

MR. STALTER: And one other question that
had to do with definitions.

And now we're looking at what the definition of funeral merchandise is. And it looks to be that there's a deletion that would pull grave spacers, markers and monuments into the definition where it used to be that they were only pulled in if there was a companion agreement?

MS. GRINSTON: I believe that is correct.

I think that language may have come from Representative Kuessner's bill, if I'm not mistaken -- one of the bills that's currently filed. But I do think that is correct.

CHAIRMAN REINHARD: Any other questions?

MR. OTTO: Was there going to be a definition of apprentice funeral director?

MS. CLARKSTON: Is that defined in 333?

We'll just copy it over.

MS. GRINSTON: I think we can pull the definition from 333.

MR. OTTO: I'm not sure there's a good definition in 333.

MS. DUNN: Well, there isn't a definition. I believe that there's a reference of an apprentice funeral director working for a funeral director. Now, we don't have a definition, it's a reference in the
rule.

MS. GRINSTON: I don't have 330 in front of me.

Don, we can pull over whatever language is used in either the rules or 333 and maybe narrow that down, because it probably would be good to clarify that.

MR. OTTO: I don't think there is a good definition in 333, to be honest with you. There's some references to it.

MS. GRINSTON: We'll take a look at it, Don.

CHAIRMAN REINHARD: We note that, Don, thank you.

Any other comments? If not, we appreciate the members making comments. We need a motion to go into closed.

The board will move into closed section pursuant to Section 6.0021, Subsection 1, of the Revised Statutes of Missouri.

MR. VERNON: Somebody was asking about a point, in the background there, and I'm not sure if it was Representative Meadows' office.

MS. KENNAN: I'm innocent. I was just taking notes.

MR. VERNON: I just heard a female voice.
MS. SUMMERVILLE: This is Kalene, and I have questions. There's a gentleman there that is alluding to what is going on in the state. Would you discuss that point?

Kalene Summerville with the Summerville Funeral Home.

MS. GRINSTON: Are you asking a member of the public what they may have been referring to? I don't know who made the comment.

CHAIRMAN REINHARD: We didn't hear anybody mention anything.

MS. SUMMERVILLE: The gentleman was referring to what has been going on in the state in the last few weeks. Didn't he make a comment on that?

MS. GRINSTON: I don't know what the gentleman that made the comment may have been referring to.

PUBLIC MEMBER: I heard the same comment, and I would like to hear it. I think, if I'm not mistaken, it might have been Todd. But the comment was --

MS. SUMMERVILLE: And it was with the 100 percent funding, and he made the comment: With what we've been faced with in the state the last couple weeks we wanted to make sure that people are
secure.

And we would like to know what's going on.

MR. MAHN: Kim, this is Todd. Do you want
to answer, or do you want me to?

MS. DUNN: I think that Kim will answer.

MS. GRINSTON: I don't know if the
gentleman caller was talking about the press release
issued by the board and what issue may have occurred
in the last couple weeks.

One thing we do know is that there was a press
release issued by the board in regards to NPS. A
memorandum of understanding has been entered with NPS
and the board to temporarily suspend all sales of
preneed contracts in the State of Missouri. The board
is currently reviewing some concerns with NPS, and
that memorandum of understanding was entered into
yesterday.

Now, I don't know if that's what the reference was
too, but that's the only thing I can think of.

MR. MAHN: That's exactly what it was to,

Kim.

MS. SUMMERVILLE: How do we know how to
proceed if we have money with NPS and what is going
on?

CHAIRMAN REINHARD: I think that would be
up to your funeral home and how you handle business
with NPS.

MS. GRINSTON: And the other thing, I guess
putting on my legal hat now, the purpose of the open
call with the open agenda was to discuss the
legislation
I would suggest that if you have any questions
about that would you please contact the Board’s office
or the press representative for the department, and
we’ll be able to assist in any way that we can, but I
think that for right now we should probably restrict
our comments to the legislation and/or the motion to
close if we are still proceeding with that.

CHAIRMAN REINHARD: Martin, you made a
motion to go into close?

MR. VERNON: I make that motion.

MR. MAHN: Second.

CHAIRMAN REINHARD: Joy?

MS. GERSTEIN: Yes.

CHAIRMAN REINHARD: Gary?

MR. FRAXER: Yes.

CHAIRMAN REINHARD: Once again, thank you,
members of the public, and we’ll talk to you Monday.

(WHEREIN, the recorded portion of the meeting was
concluded.)
I, Mindy Vislay, Certified Court Reporter with the firm of Midwest Litigation Services, and Notary Public within and for the State of Missouri, do hereby certify that I was personally present at the proceedings had in the above-entitled cause at the time and place previously described; that I then and there took down in Stenotype the proceedings had; and that the foregoing is a full, true and correct transcript of such Stenotype notes so made at such time and place.

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Notary Public (County of Cole)
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