MISSOURI STATE BOARD OF EMBALMEERS
AND FUNERAL DIRECTORS

CHAPTER 436 LEGISLATION MEETING

MISSOURI COUNCIL OF SCHOOL ADMINISTRATORS
3550 AMAZONAS DRIVE
JEFFERSON CITY, MISSOURI 65109

SEPTEMBER 4, 2008
9:30 A.M. - 12:55 P.M.
CHAIRMAN: Have you already taken roll call? Well, we're missing Joy, Becky, and Todd. I mean, and John.

MS. DUNN: John is here.

MR. McCULLOCH: Here.

CHAIRMAN: John? Oh, you're in the office?

MR. MCCULLOCH: Yes.

CHAIRMAN: Okay. oo, the only one we're missing is Joy. All right. We're going to go ahead and discuss 436 legislation.

MS. DUNN: Chairman, would it be okay if we identify who's on the call and who's in the room?

CHAIRMAN: Oh, that would be wonderful, Becky. Do the room first.

(Members in attendance introduce themselves.)

MS. DUNN: Okay. Chairman, if you would like to have everyone on the phone introduce themselves.

(Members on phone introduce themselves.)

MS. DUNN: Okay. And then Martin Vernon is here, Todd Mahn; correct?
MR. MAHN: Yes.

MS. DUNN: Jim Reinhard?

CHAIRMAN: Yes.

MS. DUNN: Gary Fraker?

MR. FRAKER: Yes.

MS. DUNN: Jim, Linda Bohrer from the Department of Insurance has joined us, as well.

CHAIRMAN: Oh, good.

MS. DUNN: So, you can go ahead and start. Did you want to give Mr. Lindley the opportunity to talk first?

CHAIRMAN: Yes. Scott, would you like to take this opportunity to address the committee? Scott?

MR. LINDLEY: Yes.

CHAIRMAN: You know, if you could limit it to about ten minutes, and then I've got to drop off the call here eventually, so, Martin, if you'll take over.

MR. VERNON: All right.

MR. LINDLEY: I want to thank the Board for the opportunity to speak in behalf of our members today, and I want to also thank all of the people that spent all summer working on this. Trust me, I know what those
meetings are like, how gut-wrenching they are, and then have to get in the car and then drive three or four hours somewhere. And I commend you for your efforts and your tenacity in regards to the issue because it's certainly a difficult time in funeral service not only from the standpoint of the consumers, in particular, but also for the industry as a whole. And what the industry represents to the State of Missouri is a $300-billion industry, so we appreciate your time and effort. Our presentation today is just really to highlight and thank people that have been working in behalf of the consumers in regards to this issue. In particular, the first piece of the puzzle is trying to figure out what happened. The second part of it is trying to get and make sure that NOGA, which represents the consumer in the issue and which also that the consumer paid for that protection, and duly his right, he is going to get that, and that's a good thing in this process. And we'd like to thank all those people publicly that took the time and the effort to get that done and particularly the national organization,
MOGA, and in respect to locally, Mr. Chuck Renn, who has been -- (inaudible) -- effort in this and I know. In regards to where we kind of go from here with that piece of the puzzle, and our group feels that, like most people that understand time value of money and understand the issue, that there needs to be something in regards to ongoing process going forward, and it has to be done in order for this to be a reality. I think one of the things that Chuck Renn and people all across the state want to make sure that doesn't happen is that we get five to seven years into this plan and that there has particular problems in regards to delivering these services to the consumer, which is a real issue that needs to be addressed, and our group kind of calls that the total fix. We think that the issues in regard to 436 are fine, but we don't think that until we have the fix of this problem, that we need to be going forward, because how can you not fix the problem unless you have it right, the new law is not going to make much difference in respect to what's going on. I'm sure there
will be some people that will take issue with
that, but when you stop and look at it, I
think that that's a viable point and it's a
difficult point, and I'm sure that that's some
of the reasons why that point hasn't actually
been gone over. And we would like, in
particular, the State Board and their members
that represent the consumers and the funeral
homes to take a very, very hard look at that
in going forward and try and pass that on to
the Joint Committee over in the general
assembly. We have some particular ideas that
were hatched last spring in our relationships
in talking with the general assembly in
regards to that part of the puzzle. We think
that it's -- you know, we hear about the words
"bail out" and all that kind of stuff. Well,
it has nothing to do with that, and nobody in
this room should feel, in particular, that
they failed. 436 in 1983, I believe, when we
did that senate bill, the third-party sellers
and the large funeral homes in the state of
Missouri wanted a qualified investment
counselor to be part of the process. We, as
the Missouri Funeral Directors Association, at
that time, the group that I lobbied for, were against that, and their attorney, Harvey Tettlebaum. A compromise came out of that was that it's very simple. If the seller doesn't pay the provider, the trustee must pay the provider so that the consumer gets his part of the fiduciary contract. It was a three-legged stool. We, in the funeral business, and the consumers had nothing to do with the third leg falling off. And that is the short and the narrow of this. End of statement. We need to fix that. We need to fix it for these 50,000 consumers. Our group not only has tried to think of it in a rationale of the 50,000 here, but the 200,000 in all the other states, and we've been working hard to try and do that, have consented to do lots of things. Everybody knows about the process and it's a very difficult time to what is the best way of doing this. But in liquidation in the state of Texas, everybody that provides these funeral services are a fifth-class claim. You can't sue your way out of it, you can't -- there is no way that on a level five that you're ever going to receive that money. We
have to get above that and something beyond that, and it has to be creative. There are things in this current statute that allow that to happen. There have been similar issues in this state involving other entities that it has happened to. Language is permissive, language allows people to work their way out of it, and language that allows the consumer to be fixed by the industry. I think that's where we need to focus, and I think we need to do that before we go forward with any kind of legislation, or they should be dual tracked and be done that way so that these consumers get what they bargained for. And I appreciate the time today and I know our time is short. I know there are other people that have issues. I'll be glad to try to answer any questions that I can. And I want you to also know that through our negotiations of our group with certain parties, that these funeral homes, while this is going on through NOGA, that we have a situation we believe worked out as late as Saturday, and we're waiting for some documentation so that these funeral homes can catch up their cash flow and be paid and
be paid every 30 days while this is going on, 
and I think that's going to be coming out in
the next day or two. Also, in regards to
this, whatever goes forward, we're also
working on a plan, and we think it's very
viable, in conjunction with other members of
this and regulators, to where the actual
nonies going forward for the part of the
puzzle that we talked about to make sure that
this time-value-of-money thing works out five
to seven years down the road, that we, as
funeral homes, will, in turn, garner something
that will take care of that deficit and
actually pay it all back. Basically, we are
looking for a bridge till that time that comes
and a way that we can do that. We think we
have some viable ideas on that, and we need
the Board's support for those. I appreciate
your time today. I'll be glad to answer any
questions that I can at this time, and I thank
you. Thanks, Becky. Thanks, Jimmy.

CHAIRMAN: You're welcome. Anybody
have any questions of Scott? Hearing none, I
want to go ahead and let Kim Grinston, our
attorney, will facilitate the meeting.
MS. GRINSTON: Thank you, Jim. Good morning, Board and everyone. Becky and the court reporter have asked that if you are going to speak, we ask that you announce your name, especially the people on the phone call because we're not going to know who you are, and we want to make sure that we have it adequately recorded for the record. This morning, we have a couple of things still left to go through, and I hope everyone got copies of the latest drafts that were sent out. I understand that you received multiple copies. We did a lot of changes and, initially, I think we sent out a track-changes draft. And if you looked at the track-changes draft, it was very hard to track changes because there were so many changes in it. So, then we sent out a cleaner draft that, hopefully, just had everything together and didn't have all the colors, but if you need it, still want to look at the track-changes draft, that was there, as well. Then we sent out a third copy because, as we began to do some final reviews for today, we realized that we needed to change a couple of provisions that we wanted you all to
see, so there's another three-page document.

If you don't have it, please let me know --

members on the phone, as well -- but there's

another three-page document with a few changes

on that, too. Not anything substantial, but

just a few changes we wanted the working group

to take a look at. I think we got all of

your comments. Thank you to everybody who met

Friday's deadline. We really appreciated it.

It allowed us -- it gave us some time to do

what we needed to do in-house. As you can

see, we went back and did some editing, we did

some reviewing of votes. I thank you for

everybody who -- you guys were able to correct

our memory when we had areas where we thought

the vote was one way and you all remembered it

another, and for those places where we were

able to verify, we did go back in and make

those adjustments in the text of the document.

For the comments that came in, most of the

comments that related specifically to the

draft or that may not have been echoed as part

of the general discussion, we tried to

incorporate as many of those as were

submitted. Some of the comments, I think,
were probably geared for working-group participants which is the reason why we sent out all of the comments to you all electronically, as well, so that you could see what other people were commenting on. What I would like to do today, if possible, I would like to go through some of the areas that I think we still have yet to resolve, and they are, I think, very few, and we can probably move very quickly. I would also like to take comments on any comments or concerns about the recommendations or about the draft or about your comments that are reflected, also, as well, because I want to make sure that we do this accurately and correctly. Connie will be here a little bit later -- that's Connie Clarkston, our budget and legislative director. She will have information for us on the hearings that are coming up next week. Oh, David is going to do it, so we're going to our Division director, David Broeker to tell us a little bit of information about what's going to happen next week, and that will help shape what we do today. Mr. Broeker?

MR. BROECKER: Thank you, Kim. Next
week, the veto session will be held on
Wednesday, September the 10th. On Tuesday,
September the 9th, at 10:00 a.m. in the senate
lounge, the Joint Committee on preneed
funeral-service plans will be holding their
first hearing. We understand they are
planning more than just this hearing,
obviously. What their plans are for this
particular hearing is to receive the testimony
from this particular group, as well as from
the Guaranty Association. They're not
planning on any public testimony at this first
hearing. That will be coming at some of the
additional hearings that they are planning on
having. The members of the Joint Committee on
the senate side is Delbert Scott, Tom Dempsey,
Bill Stouffer, Carl Vogel, Maida Coleman,
Jolie Justus, and Wes Shoemyer. On the
representative side, the house members are Jay
Wasson, Mike McGhee, Jason Smith, Bryan Pratt,
Tim Meadows, Curt Dougherty, and Steve Hodges,
and Senator Delbert Scott is chairing the
Joint Committee. I do have a listing that
I'll pass out to everyone here before you
leave that gives the committee members' names
again and where it will be held and at what
time. Do you have any questions? Kim?

MS. GRINSTON: Thank you, Mr. Brosker.
If that's the case, I'd like to jump into the
draft, if we can. Before we do that, I would
like to open the floor, Mr. chairman, for any
general comments -- before we get into the
specifics of the language, any general
comments that any of the working-group members
would like to share on the draft or on the
hearing or anything else at this time. Okay.

Hearing none. I think that we probably -- I
tried to highlight the areas that I thought
that I still had questions on, and if we could
walk through those and then possibly take a
look at the document as a whole again.

Actually, why don't we do this. Why don't we
start on page 11, which is the first page of
the recommendation sheet, and it's under the
topic "General Regulatory Authority." I don't
know which draft you may be looking at, but if
you're looking at the clean draft, it should
be on page 11. Does anyone in the room need
a copy? We've got extras on the front table.
We're still picking up extras. All right. If
everyone has got a copy, on page 11, are there
any comments or suggestions on page 11 that we
may have forgotten, incorrect, or need to add?

Mr. Otto?

MR. OTTO: Well, we included this in
our comments, and perhaps you put it somewhere
else, but I didn't see it.

MS. GRINSTON: Okay.

MR. OTTO: And I -- to be honest with
you, I don't know if you took a formal vote
on this or not.

MS. GRINSTON: Sure.

MR. OTTO: But this is Don Otto,
Missouri Funeral Directors Association --
I'm sorry. It was our belief that at one point
in time very early on, perhaps even the first
meeting, we discussed the State Board coming
up with a list of standard disclosures that
covered things like portability, cancellation,
all of that, that would be signed by the
consumer that would be required to be given to
the consumer. And I, frankly, don't know if
we went around the table and took a vote on
that, but it's my belief that everyone was in
favor of that. And I didn't see that
reflected in the first draft, and that's why we put that comment here when we put our comments in.

MS. GRINSTON: Sure. And, Don, you're correct. It wasn't reflected in the first draft, and I think our notes match yours, that we had that as an approved recommendation, as well. If you look at page 38 on the draft that went out yesterday, the very first one—and these are not going to be bullet pointed, they're going to be numbered in the final report, because, Don, we did miss that when we did the first draft. It should be under the consumer reporting/notifications. Does that cover what the working group suggested?

MS. DUNN: Under comments, Don.

MR. OTTO: Oh, okay.

MS. DUNN: Well, the second comment area, I think; right?

MS. GRINSTON: Yeah. It should be -- well, no. It's the first bullet point on the page.

MS. DUNN: Oh, okay. I'm sorry.

MS. ERICKSON: This is Mary Erickson with the Department, and I agree with Don's
recollection. We did discuss it and I, myself, don't recall at this moment if we had a formal vote, but I do believe that there was quite a bit of agreement amongst industry and consumer advocates that a disclosure would be helpful for everyone, industry, as well as consumers, and to insert that comment here would be appropriate. Thank you.

MR. OTTO: I guess the only -- my only issue on that is was it -- this is pretty -- we can't do this on every one, but wasn't that unanimous? Did we have anybody that opposed that?

MS. GRINSTON: Yes, that was unanimous. It was.

MR. OTTO: I mean, I think that's something that we would like to highlight as unanimous.

MS. GRINSTON: Good point, Don.

Anyone else from the working group have anything on that? I think that is correct, that it probably should be listed as a unanimous recommendation. Okay. If we could flip back to page 11. Any other comments on page 11? Hearing none, let's move to page 12.
This is one of the areas where we didn't discuss it much, but this is -- but we need to discuss it. And a lot of you all sent in comments on the definition of funeral merchandise and the incorporation of 214. We've been meeting with the 214 -- for those who don't know 214, it's the cemetery-operators law both endowed care and nonendowed care. We have the room the executive director for the Office of Endowed Care Cemeteries, as well. That group is doing a legislative review. And one of the things that I think we briefly discussed, but never really had any in-depth conversation on was how to coincide 436 with 214. I can tell you one of the regulatory concerns that we had. Under 214, the sale of monuments and markers are supposed to be in a segregated account that is governed by 214. Under the definition of funeral merchandise, even though there is some exemption language that is very, very unclear, it could be argued that that same money should also be trusted under 436. The barter-trade language that is currently in 436, to be quite frank, is just very
confusing, and we really haven't been able to
get our hands around how do you separate or
where is the line between 214 and 436. For
those who don't know, under 214, endowed-care
cemeteries are required to do a segregated
account for monuments and markers, and then an
endowed-care trust fund -- right now, it's
just called an endowed-care fund, but it
really is an endowed-care trust fund -- for
sales that are happening on the cemetery side.
One of the recommendations that has been
tossed around but not finally agreed to was
that for under 436, if you are selling -- if
it is a cemetery operator selling a monument
or marker, and it's supposed to be in a
segregated account under 214, then you follow
214 rules. However, if you mix that cemetery
contract or endowed-care contract, if you mix
that with any other element of 436, or if you
include any services that can only be provided
by a funeral director or a funeral
establishment, then it becomes a 436 contract.
And so, to recap, the thought and the idea
that was sort of circulated, but not finally
agreed on, it was, again, if you are a
cemetery operator, you are governed by 214
unless you sell something outside of a
monument or a marker, or you sell something
that includes or would require a funeral
director's services. I'd like to open the
floor to the working group for a discussion on
your thoughts on how we should clarify 436 and
214's overlap. I think this definitely will
relate to the definition of funeral
merchandise that we've got a lot of comments
on, and I'd like to open the floor. Mr. Otto?

MR. OTTO: I stayed quiet for a
second, gave everybody a chance. Don Otto.
Our big concern is that people be treated
equally that are doing the same thing. And it
would not be fair, for example, for a cemetery
-- I don't know what 214 will turn out to be.
But it would not be fair for a cemetery
operator to be able to sell a vault, a marker,
and only have to trust, say, 60 percent, while
a funeral director that sells the exact same
thing has to trust 90 percent or 100 percent,
or something like that. That's just not fair.
And you'll see people trying to get around the
law by setting up a separate company that owns
a cemetery and does it that way. So, I don't
know how to do it while 214 is going on
simultaneously, but our concern is that if I'm
selling a vault as a funeral director, how
that is treated should be the same way as if
a cemetery sells a vault on a preneed basis
or, you know, a marker or whatever it is.
The rules ought to be the same for everybody,
whatever those rules are.

MR. STALTER: This is Bill Stalter.
I'll speak on this issue, too. Part of --
there's going to be a slight disparity between
funeral homes and cemeteries in that when the
cemetery sells certain items of preneed, they
can be delivered before death, which means
they can't use insurance. So, when the
trusting gets too high, I mean, they're
foreclosed from doing preneed sales. But the
cemetery side needs to provide substantially
similar protections, trusting, whatever. And
at this point, it doesn't exist under 387 --
214, 387. So, the 214 committee really has
some issues to deal with, and I think they
ought to bring it back to the funeral side at
some point to kind of hash things out.
MS. GRINSTON: Anyone on the phone?

MR. MEIERHOFFER: This is Michael Meierhoffer. I agree with Bill and there are different situations that apply to the cemetery. Typically, cemeteries, especially stand-alone cemeteries that are doing this work on much smaller margins and don't have the additional income that a cemetery with a funeral home might have, as well. So, there are some specific issues that need to be looked at there.

MS. GRINSTON: As we go through on the legislative side, I think if Connie was here, she would tell you that the intention of the Division, to the extent that we can possibly do so, is to possibly keep 436 and 214 separate as far as proposals go. Now, of course, we have no control over what happens once it gets across the street, and they will probably marry them anyway. But I think the thought was that we would discuss 436 separately from 214 because there are different issues that relate to each one. And from an educational standpoint, it is just very hard to help, you know, legislators or
representatives who don't deal with this on an everyday basis, help them understand the difference between a preneed trust and an endowed-care trust. That becomes much harder. Hello, Representative Meadows. That becomes much harder when those concepts are merged into one bill. And so, again, what I'd like to throw out there, because I think what we may need -- what I'm hearing is that we probably need to have some input on the 214 side. But for purposes of 436, am I -- what would be the working group's thought on writing something that says that if you are a cemetery operator and the contract or the goods -- the monument, marker, or the goods you are selling are required to be in an endowed-care trust fund or in an endowed-care segregated account, if they are required to be there under 214, then you are not subject to 436 for those items only. But if you cross over into anything else, it becomes a preneed contract, and you have to fully comply with 436. Is that thought --

MR. MEIERHOFFER: Kim, this is Michael Meierhoffer. I agree with that statement.
MS. GRINSTON: Anyone else have any thoughts on that? Don?

MR. OTTO: Well, that pretty matches what our comment was, is that we should do it the other way. Instead of trying in 436 to say this is what's not included, just say if 214 makes this an exclusive thing for 214, then it's not included in 436. Do it the backwards way.

MS. GRINSTON: I'll tell you, for me, it's just the cleaner thing because, right now, I am concerned that if you read the statutes technically, there may be some items that are being regulated by two different offices and are required to be in two different places. Now, I understand the industry has probably worked that out, but to the extent we can remedy that, I think that might be a good idea. If that's the case, Mr. Chairman, I'd like to take a vote of the working group or an approval of the working group to proceed with that concept. Once again, if it's under 214, in an account or trusted under 214, you don't have to comply with 436. If you cross the line, though, into
436 territory, you have to comply with 436.

Mr. Chairman? He has a service at 10:00.

Mr. Vernon?

MR. VERNON: He's here.

MS. GRINSTON: Okay. If that's the case, Mr. Vice Chairman.

MR. VERNON: There you go.

MS. GRINSTON: I'd like to open that up for the working group's approval.

MR. VERNON: Somebody make a motion.

MR. MAHN: Kim, I've got a question, first. This is Todd. Are you saying that cemeteries that sell headstones and vaults and other merchandise, that 436 does or does not cover that?

MS. GRINSTON: Well -- Bill?

MR. STALTER: Yeah. You know, Todd, I think -- this is Bill Stalter. I mean, depending on how these operators sell, they can be under 436 or probably should be under 436. And the issue is here is should there be a similar trusting mechanism for preneed under 214 that would govern only the cemeteries?

MR. MAHN: Are we sure that 214, that
we talked to Tom -- this is Todd again. We talked to Tom. Are we sure that 214 is cleaning this up because I own a cemetery and I will tell you that this is the next biggest nightmare that's going to pop on the scene because you have these cemeteries who are not putting a dime back selling all this stuff, preselling the headstones and everything else, and they're not even setting the headstones, and this is going to be a mess. So, I think, you know, we need to know if Tom over the endowed care is going to -- I agree with Don. Is this going to coincide with what we require? And I know you mentioned about Representative Meadows being confused a little bit on the endowed care and the other. It's pretty simple. The endowed care is percentages of grave lots and mausoleum crypts -- okay -- that are sold, that go into endowed care. But we're talking about cemeteries selling merchandise and I will just mention now that that's going to be another side of the coin that we find out on NPS with their cemeteries that they went and tried to funnel as much as they could to the cemetery because
there was lesser laws there about what they
had to retain. And we're going to find --
when we get a little closer, we're going to
find a big mess. And this is being done in
other places, also. So, I think we need to
be real careful here on how this goes down.

MR. STALTER: And you're exactly on
point. And the issue is that, you know, there
are gaps between the two chapters as far as
preneed, you know, and the 214 side needs to
address it. I mean, if nothing else, we need
to clarify how markers are sold. If vaults
are -- you know, it's an overlapping sale in
terms of vaults and whether, you know, it
should be under 436. Right now, we say vaults
should be under 436, but if 214 will fortify
those trusting requirements, then should
cemeteries be able to just comply with 214?

MR. MAHN: Let me just pose a
scenario. You go into a cemetery. They've
sold 100 graves. That's a low number. That's
a low number. They've sold 100 vaults with
them, 100 grave openings, and 100 headstones,
and all that money is gone; okay -- again.

MS. GRINSTON: And, Todd, Tom is in
the room. He's in the back of the room, 
probably hiding. We've been meeting with the 
214 group, and, Tom, I don't know if you 
wanted to address this or if you want me to, 
because we've also been facilitating on the 
214 side. This is also the same 
recommendation that was made to the 214 side. 
My understanding is that our last discussion, 
everyone was pretty much in agreement. It 
hasn't been finalized yet, but they also 
agreed that that line needed to be drawn. I 
think they were in favor of -- in fact, the 
ACM also recommended that if it's just what is 
required to be trusted under 214, if it's 
listed in 214, it's not in 436. If they 
cross the line, they switch over to 436 
trusting. Right now, they are considering 
raising the trusting requirements for 
segregated accounts because they understood 
the gap, you know, and that there may be a 
drive for people to then convert to a 
nonendowed/endowed-care cemetery just so that 
they, you know, evade the 436 trusting 
requirements. They are recommending raising 
those trusting requirements. In fact, they've
had considerable discussion on matching what
is in 436 to 214 even though I don't know if
an exact match is probably proper given the
nature of the industries, but they are looking
at raising that trusting amount. My
understanding is that right now -- and, again,
this has to be finalized -- that the 214 group
does support the same approach generally
because they do want to clarify what happens
with monuments and markers. They also believe
that should be the same thing with grave
spaces. When a cemetery operator is selling a
grade space, if it's under 214, then let's
keep it under 214 unless they cross the line
into 436. So, that effort is happening. And,
of course, as we walk this through, even
though we would like to keep these two
concepts separate, I think it would be a good
idea for everyone -- the 214 working group
will be meeting again -- I don't remember the
date right now, and I'm looking at Tom.
They're going to be meeting again -- to please
track what's happening on the 214 side because
214, again, is looking to match 436's
requirements so that we can seal this hole.
MR. MAHN: So, Kim, just real quick, you say Tom is there. Can Tom tell us, are they going to put vaults, headstones, and grave openings in a lockbox -- I'll sound like Al Gore here -- in a lockbox or what? I mean, can you address that, because I think that's a concern of Don and myself and probably other people here on the phone.

MR. STALTER: This is Bill Stalter again. You know, those are the kind of issues that were addressed away yet. I mean, that's been kicked back to the ACM, but that very issue as far as, you know, how to safeguard those funds and what -- how much goes in. So

--

MR. MAHN: I didn't hear that very well. I wasn't even sure who was talking to me or what was being said there.

MS. GRINSTON: That was Bill.

MR. STALTER: This is Bill again.

MR. MAHN: Okay. Bill, what now?

MR. STALTER: Now, those issues are what have been kicked back to the ACM.

MR. MAHN: Kicked back to what?

MR. STALTER: They have been kicked
back for another draft from the cemetery association.

    MR. MAHN: Oh, it has?
    MR. STALTER: Yes. And, basically, we know that there is some time pressures to get some language together, but, frankly, I mean, it's been kind of hard with 436 going on at the same time. But, really, kind of the objective is to get some kind of language back in place maybe by the 15th.
    MS. GRINSTON: Of September.
    MR. STALTER: Yeah.
    MR. MAHN: I'm just saying being out there in the trenches and knowing what's going on, that's a big loophole, and it's happened in a lot of places. And it's a scary thought that folks are buying these things and that it don't have to be 100 percentage of it put back.
    MS. GRINSTON: And, Tom, is there anything you wanted to say?
    MR. REICHARD: Not at this time. We will be trying to attempt to mirror the language in 436 and the percentages, though, so we should know more in the next two weeks, Todd.
MS. GRINSTON: And, Todd, did you hear Tom? Todd, did you hear Tom?

MR. MAHN: I barely heard him. I think he said it's going to try to mirror 436?

MS. GRINSTON: Yes. They are looking at mirroring 436, and, again, their recommendation is also to close this loophole. Looking -- for our purposes going forward, understanding that the 214 group is still working, and maybe that's something we can make clear as a comment that we understand that this is a -- that this is something that may need to be closely tracked. Do we have any objections to segregating or drawing that dividing line with 436 and 214? If it's required to be in a segregated account under 214 or in an endowed-care trust fund, it should be there. If not, if you cross the line, you go into 436 and you comply with everything.

MR. VERNON: What's the verbiage that's going to draw the line?

MR. MAHN: And what's the line?

MS. GRINSTON: If you look at page 14, that second paragraph 2, and we're going to
fix the numbers on this one. Under the consensus recommendations, it's highlighted. The regulation of cemetery operators, that is the general concept. And giving everybody a chance to take a look at it.

MR. OTTO: This is Don Otto. Since this is just -- these are just -- this isn't statutory language really, this is just the group's recommendations. Why don't we just drop a footnote there that says the working group is concerned that there not be any loopholes between the revisions of 436 and 214, you know, that would allow -- you know, that we do bad things.

MS. GRINSTON: Got it. "That would do bad things." That's a quote. I got it. We can do that. If the concept is agreeable --

MR. OTTO: That would expose the consumer -- that's a better one. It would expose the consumer to bad things.

MS. GRINSTON: Consumer to bad things. Got it. We could definitely do that, add a footnote that the working group is concerned about, you know, the protection of consumers in closing the loophole, as well, and that --
you know, that these two statutory changes
should be mirrored and/or considered together
-- not considered together, but they are
closely related. Hearing -- with that said,
with the comment noted, does anyone else have
any concerns with that as a recommendation?

MR. MEIERHOFER: Kim, this is Michael
Meierhoffer again.

MS. GRINSTON: Yes, sir.

MR. MEIERHOFER: Just a comment, and
that is, realize we're talking about two
different industries and they have different
objectives, different margins. I still go
back to the fact that putting 100 percent in
is a great idea if we could do it. It
doesn't make anybody more honest than putting
in 60 or 80 percent, so just remember that.
And the fact that we want to keep everybody
honest I agree with. I think we have to do
that. But it's the amount of money that we
have to work with has to be considered. And, and,
remember, there's, what, 92 or 94 endowed
cemeteries in the state of Missouri out of
thousands of cemeteries. I would acknowledge
-- I would think that Tom would probably tell
us we don't know how many cemeteries we
actually have or how many have funds. So, the
people that are actually reporting are
probably the people that are doing the best
job. Just remember that, and they can always
probably switch to a nonendowed-care cemetery
if we tighten the hatch or the ratchets down
too tight.

MS. GRINSTON: Sure. And, Bill, I
don't know if you want to address that, but
one of the things that we have had
considerable discussion about, even with the
100-percent trusting requirement or whatever
the recommendation may be, is that because of
the nature of the endowed-care side, doing an
identical match with 436 is just not going to
be. And I think I can say this pretty much
as a -- Bill is giving me the nod. I think I
can say this pretty much as an agreement of
the group. Everyone, I think, agrees that
matching those type of provisions in endowed
care would be very problematic because of the
nature of the industry. You guys generally
don't touch the principal. In a preneed
trust, you would tap in what is the
"principal." So, having said that, I think I would agree, and we can add that, also, as just a very strong note. Bill?

MR. STALTER: Yeah. My comments have always been when they say we're going to mirror, you know, I cringe because we can't really mirror, but there has to be substantial similarity, so to speak.

MR. MEIERHOFFER: Thank you.

MS. GRINSTON: Yeah. And we'll make sure that we reflect that accurately, that they're related, but -- and maybe, you know, put a note on the cautions of doing an exact mirror. Having said that, are there any objections to doing that by the working group?

MR. MAHN: I'll just say, Kim -- this is Todd, and I also own a cemetery since '98. And anybody that buys those other items, we do put into a prearrangement fund and secure the money for them 100 percent. We haven't went broke or belly-up or have any problems with it, so as much as we're told that, you know, people are going to be pinched and have problems, you know, some of these people need pinched and they do have problems with the way
they operate their business, and I'm seeing it
go on right here in St. Louis right underneath
our nose. And there's going to be a lot of
poor people out there that are going to be
left without a grave to be buried in or a
space or a vault or a headstone, and I don't
care if they get pinched; okay? They -- this
is going on, it's absurd, and, Tom, I applaud
the great job you are doing over there at
endowed care. Keep up the good work.

MS. GRINSTON: Thank you. All right.

Hearing that then, I think we're okay. I
think that may address some of our concerns
with the definition of funeral merchandise
because many of the concerns on the
funeral-merchandise definition related to
exempting and/or how do we include people
under 214. And so, I think we may have
resolved that concern. And we'll open up the
page again generally in just a moment.

Guaranteed contract is the other thing on page
12. Bill sent in a definition of guaranteed
contract that, I think, may be a little bit
closer to what the working group actually
recommended. John, on behalf of APS, also
sent in something, a comment that was
concerned about the language, and recommended
that we just didn't say, you know, as provided
in the contract, but specifically pointed out
a short in the contract or using similar
language. What you have in front of you is
the definition that Bill drafted, and I'd like
to submit that to the working group to be
included in the recommendations. Again, I
think it's a little bit stronger, but I think
it includes the recommendations -- the working
group's recommendation. And I'm opening the
floor for comments or suggested changes to the
definition of guaranteed contract. Parallel
to that would be a nonguaranteed contract
which really is just, you know, the converse
of what we put in guaranteed contracts, so
those things really go hand in hand. Are
there any objections to those definitions?
Hearing none, are there any other
recommendations on page 12? Mr. Otto?

MR. OTTO: Just because, unlike the
other sections, this is pretty close to
statutory language that somebody might cut and
paste, on the definition of funeral
merchandise --

    MS. GRINSTON: Yes.

    MR. OTTO: -- our recommendation was
that you remove funeral or burial service and
just insert final disposition of a dead human
body because that matches up to the
right-of-sepulcher law as to what somebody has
control over. And in that list of things
that's included there, like including
tombstones, crypts, niches, all that, nothing
in there really specific to cremations, and we
don't want anyone to think that, oh, I'm doing
a cremation, I'm selling an urn, therefore, I
don't have to include that because that's not
funeral merchandise because that's not listed.
So, if you just took out funeral and burial
service and inserted final disposition of a
dead human body, which matches the -- I mean,
that sounds rather crass, but that's the
phrase used other parts of the Missouri
statutes, and then just stick something in
there in that list like urns, just to make
there no one can try to skate out of this by
saying, oh, I'm not doing a funeral or burial,
I'm doing a direct cremation.
MS. GRINSTON: Got it. I think that one of the notes we had or that I had on that discussion was that if we change that definition to property incidental to the final disposition of a dead human body, that that may include things like clothes and things of that sort -- of that nature, as opposed to things that are incidental to the service and not just the disposition. And I think that that was -- I think that was discussed, but I don't think we ever voted that up or down. If we could give that to the working group on your suggestions on changing the definition of funeral merchandise to read "and other personal property incidental to the final disposition of a dead human body," and including the remainder of that sentence. Any thoughts on that?

MR. OTTO: I move we make that change.

MS. GRINSTON: Mr. Otto has moved to make that change.

MS. RUSSELL: I'll second the motion.

MS. GRINSTON: I believe Darlene has seconded it. Any other concerns or objections? Hearing none, we'll make that
change. The other change that was suggested is on cremation and urns. Do you want to just include that in the listing, Don? Just put, comma, cremation and urns?

MR. OTTO: Yeah. Just stick that in there. That way -- it's not critical, but --

MS. GRINSTON: Got it. It makes sense because that's been a question that's been raised. Any concerns with adding cremation and urns? Hearing none, I think we can move on. Page 12, preneed contract. APS -- John, on behalf of APS, suggested that we add to the end of that paragraph, and it's highlighted on page 12 --


MS. GRINSTON: Page 13. I'm sorry. I'm sorry. I'm using -- looking at a different draft. Page 13, adding the language "or at a future date" to the end of the definition of preneed contract. And I see everyone looking at it. I'll give just a second. I don't know if anyone has any concerns about that or any questions. Any concerns? Hearing none, then we'll just go ahead and add that in. Page 14, we have the
language of regulation of cemetery operators, and we're going to add the comment box that we discussed a little bit earlier. Any questions or concerns from the working group about the recommendations on page 14? Hearing none -- and please correct me if you would like to join a comment or if you would like to change a comment or anything else. And anyone else -- if there's anyone else in the room. We don't have a very large group today. If anyone else has any other comments or suggestions on that, as well. Page 15, under the preneed-contract section. On preneed contracts, what I have highlighted is the recommendation #4 on record-keeping. Originally, when we talked about record-keeping, we talked about keeping preneed records for two years. But then I think -- I forget who pointed it out. It may have been APS or, Mike, it may have been you or Bill, someone did -- that if we're going to do an audit for five years or over a five-year period, then we probably need records around for five years. I thought that made sense to me. And so, the recommendation was that we
require that preneed records be maintained for
five years because, if not, the audit would be
meaningless because the records would be gone
in two. Anybody have any comments,
suggestions, or objections to that? Hearing
none, page 16. I have subsection 6
highlighted. Bill suggested here -- this is
current language in the statute, but Bill
suggested that we mirror the
right-of-sepulcher law -- I can't talk today
-- under 194.119. Instead of just saying
accrued to the benefit of the purchaser or his
or her successor as designated in the
contract, I guess it would say "or his or her
next of kin"; is that right? As defined by
194.119.

MR. STALTER: This is Bill. I'm going
to ask a question, mostly to John. But, John,
do you see any kind of conflict if you have
somebody different named in the contract, if
there's a conflict, should you defer to the
named beneficiary or successor?

MR. MCCULLOCH: I don't know if I
understand.

MR. STALTER: Okay. You know, what
we're saying is -- what we're looking to is
who can enforce the preneed contract at the
time of need. And what -- we just said we
would look to the right-of-sepulcher law and
how it's defined as the next of kin, but could
there be a conflict with the way you've
structured your preneed contract where you may
have somebody otherwise? I mean, are you
following me?

MR. McCULLOCH: I do, but I hadn't
thought of it that way.

MR. OTTO: Yeah. Right now, that
conflict exists. I mean, that is a problem
because, right now, under 436, you can
designate somebody in your 436 contract to
accrue your rights and benefits, but that may
not be the person under 119 that is your next
of kin. So, that already is a problem. 119
just changed last week so to allow you to do
a durable power of attorney to assign
somebody, so that will help clear that up.
But you're right, current -- under the current
law, there is a potential conflict where I
bought a preneed for my mother. In my preneed
contract, I put my best friend as the guy who
goes -- who will handle this preneed contract
if I die, but when I die, it's my son that is
my next of kin. And so, now there's an
instant conflict as to who controls the funds
in that preneed contract, who can cancel, who
can get the money out. So, that problem
exists right now and your suggestion helps.

MR. STALTER: Maybe if we refer or
incorporate the right of kin or the sepulcher
law unless there's a conflict in the contract.
In other words, what -- I mean, what I always
see is where, you know, the purchaser is gone
and there was not a clear line of authority of
who can enforce the contract. So, what I'd
like to see and we'd be able to go right over
the next of kin if we don't have a conflict
in the contract. Does that make sense without
--

(Numerous people agree.)

MR. McCULLOCH: I don't think we've
ever had problems with that, but we always
refer to the person that's purchasing it; even
though it may be for someone else, we always
go back to them, but I hadn't thought of it
this way, really, that there could be a
problem.

MR. OTTO: Yeah. I've run into it once or twice where there's been a split between what was said in the 436 contract and who the legal next of kin was.

MR. MCCULLOCH: Yeah.

MS. GRINSTON: I think I was -- your last comment sort of resolved my concern. Unless otherwise designated in the contract, I think, would probably remedy some of the concerns I have. The next-of-kin language, Don, before you leave the room, does it -- and I'm sorry; I haven't memorized the new language yet, but does it still have that who is willing to accept or be -- you know, accept payment?

MR. OTTO: Yes.

MS. GRINSTON: Will that be problematic for us if we have that since we're talking about a purchaser and there really isn't -- the issue may not be an issue of who is willing to accept payment under the contract?

MR. OTTO: I don't think it's a problem if you just say that in the event of
the death or incapacity of the purchaser, the
rights will then go to the person who would be
that person's next of kin under 119 whatever
it is. I think that's nice and clean.

MS. GRINSTON: All right. Any other
concerns or objections on that from the
working group? Hearing none, then we can
incorporate that into the draft. Do we have
any other comments on page 16? Hearing none,
17, which finishes that section. Hearing
none, page 18, which begins "Preneed agents."
Any comments? I didn't have anything here
that I needed to bring to the group's
attention. Page 19 -- stop me if you need
to. Page 20. Page 21, we've got this
five-year record-keeping issue again, and I
think you guys already agreed on that. Page
22. Page 22, the one suggestion that I had
was I think you all actually discussed, which
wasn't in the first draft, and, according to
our notes, should have been. And I think that
this was -- I think APS -- someone may have
pointed this out to us. The recommendation
was someone remembered the recommendation that
sellers would be required to report the name
of the trustee to the Board and any changes
within 15 days. I thought that everyone
agreed to that, but I'm not sure. Our notes
aren't clear, so we wanted to bring that back
up to see if there are any objections to that.

MR. STALTEN: This is Bill Stalter.
The only thing I'd say about that, maybe the
15 days is a little short of a period. I
mean, I would talk 30 days on the 214 side,
and that sounds probably a little more
lenient, more flexible.

MS. GRINSTON: Sure. Bill's
recommendation is that we change that to 30
days. Anyone have any objections to 30 days
or would like to keep it at 15? Hearing no
objection to 30 days, what about incorporating
a 30-day requirement? Is that okay with the
working group? Any objections? Hearing none,
we'll change it and incorporate it as 30 days.

Page 22, any other comments on page 22? We
might as well do 22 and 23 together. Giving
them a chance to review. Okay. Hearing no
comments. Page 24, I had a note on 24 that I
wanted to raise with you. Mr. Meierhoffer
suggested under recommendation #3, the
termination of the trust, right now, the
language says that the trust should terminate
when trust principal no longer includes any
payments made under any preneed contract. Mr.
Meierhoffer suggested that this should be
changed to termination when all contracts
covered by the trust have been fulfilled. The
language, again, is on page 24, recommendation
#1. I'd like to open that up for
working-group discussion. And to the extent
that there may be some lingering interest or
anything else in the trust and there are still
contracts out there that haven't been
fulfilled, I think that it would open the
window and allow that trust to be open a
little bit longer than what it technically is
allowed to be open now. Do I have any
objections? I feel like I'm selling a car.
Okay. Fearing none, then we'll incorporate
Mr. Meierhoffer's changes or suggestions on
that one. Any other recommendations on page
24? Page 25, and this -- a lot of this is
the trustee duty and obligation language. I
need to say -- this was pointed out by the
Division of Finance. A lot of this is already
written in Chapter 469 and Chapter 456, so
some of this is duplicate language in coming
over. Some of these recommendations are from
the Department of Insurance, as well. But
just so you know, we may be highlighting those
things that are duplicated from another
Please stop me if you need to. Hearing
nothing else, then I think our next page is
page 29, which is insurance-funded preneed
plans. And the first highlight I have is on
insurance restrictions. And I want to make
sure that I have this recorded correctly
because I think we had two different
suggestions, but after we checked the notes, I
believe this is right. I believe the working
work recommended that a seller -- when we talk
about term life, I think the last discussion
we had was that you couldn't sell a term-life
policy -- a seller couldn't sell a term-life
policy to fund a preneed. However, if someone
walked into your funeral establishment with a
term-life policy that was already sold and
said I want to sign these proceeds over to the
funeral home, that wouldn't be prohibited, but
I would be prohibited from selling you the
term-life policy and the preneed policy
together because I think -- and I think -- I
know that we originally got that wrong in the
first draft, and so, we did some revisions on
that. I think the thought was, again, we
didn't want to stop someone who may be trying
to do different things or who may already have
a policy and all they need to do is assign it
over. We didn't want to say you are hereby
prohibited from assigning it over. Am I
correct about that?

MR. MEIERHOFFER: I think that's
right, Kim.

MS. GRINSTON: Okay.

MR. VERNON: Kim, this is Martin, and
I just have a question.

MS. GRINSTON: Yes, sir.

MR. VERNON: Would this be prohibited
from selling any term-life product? I don't
honestly even know anybody that's doing this,
but if a person is putting -- they used to
put credit life on the back end of a contract
years ago. Would that -- if that product was
available or anybody still did that, would
that -- because credit life, I guess, is some form of a term life. Would that prohibit that?

MS. GRINSTON: Since we don't have a definition of term life, I think -- and I'm going to turn this over to the insurance people. I believe, and I'm going to do an amateur guess, that Missouri law makes a statutory definition difference between credit life and term life. And so, I believe that credit life would not fall under the definition of term life, but that is my amateur guess and I think that's a good question to throw out to some of our insurance people.

MS. BOHRER: Well, I mean, yeah, there is a difference between credit life and term life, so I don't know that we -- I did not realize that credit life was used in a capacity to fund these contracts at any point in time. I thought that we had just --

MR. VERNON: Actually, no. I guess not funding the contract, it would just be on the -- well, how do you define that?

MR. STALTER: This is Bill Stalter. I mean, this -- they're like a supplement
coverage. If you sell the preneed contract where there's an obligation to pay, you'll see some who have used credit life to cover that, and it's usually a decreasing credit life, and that could be —

**MS. BOHRER:** So, the credit life is used as an -- meets the payment obligation as opposed to the funding mechanism for the funeral, so this is at the end of the -- for fulfillment of the contract; is that what you're saying?

**MR. STALTER:** Yeah. Yes. In other words, it's just a coverage during the pay-in period on the contract.

**MS. BOHRER:** Okay.

**MR. STALTER:** It's not the funding arrangement, it's just -- it's the fallback if there's a death during the pay-in period.

**MS. BOHRER:** Right. Right. Doing the same way that you use credit life to pay off your car loan if you miss your -- I mean, if you pass away.

**MR. MEIERHOFFER:** I might make a comment. This is Michael Meierhofer. It was used typically in the days before insurance
was even available. I'm not sure many people
do it anymore. It's a combination of
insurance and trust, is what it is.

MR. STALTER: Yeah.

MR. McCULLOCH: Well, we should leave
that option out there for us.

MR. STALTER: Yes, I think so. I
mean, the abuse on the term life is more
likely you see some of it in the South where
you have the industrial policies where you
would see -- I mean, people were paying
forever, and it might only be, like, $10 a
month, but the fact that, you know, it turned
out to be kind of an abusive arrangement
because if they stopped paying, they lost
their coverage, so -- but I'm not aware of
that being in Missouri. I've heard of that,
more or less, in Mississippi and Louisiana, to
tell the truth.

MS. BOHRER: Well, I thought the
concern with term life was that it has no
value and it has a defined period unlike whole
life that's paid in full, continue --

MR. STALTER: There's two issues
where: One is -- you know, we have talked
about how it was abused with NPS, put in the
trust. But outside of that, there's also just
-- there were some companies who sold a
term-life policy as a preneed funding
mechanism, but I'm not aware of it being in
Missouri. And I guess I think -- I don't
think anybody is standing up for it now.

MS. BOHRER: Right. I mean, I thought
that's what we were saying, we don't want that.

MR. STALTER: So, basically -- yeah.

No. I think that's true.

MS. BOHRER: Okay.

MS. EULER: This is Sharon with the
AG's office. In my experience, credit life is
currently being used by folks, but it's like
what Bill said; the credit life is being used
to pay off the preneed contract, it's not
being used as a funding mechanism for the
contract.

MR. VERNON: So, the key is in the word
"fund," and we're okay.

MS. EULER: Yeah.

MS. GRINSTON: I think so.

MS. BOHRER: Okay.

MS. EULER: Yeah, I think so.
MS. GRINSTON: If I have reflected that accurately, because I think in the first draft it was something else and you all pointed out that that wasn't correct. The other question I had was on #6, which was the same thing we talked about before for sellers. Sellers have to tell the Board what insurance companies they're using and should notify the Board within -- it said 15 days, but I think the recommendation will probably be 30 days of any changes. Any concerns with that? Any other concerns on page 29?

MR. OTTO: I just have --

MS. GRINSTON: Mr. Otto?

MR. OTTO: I have one thing. I'm sorry. We moved on while we were --

MS. GRINSTON: Sure.

MR. OTTO: It's on that term-life-insurance issue again.

MS. GRINSTON: Okay.

MR. OTTO: Just to throw it out there. If I'm an insurance agent, I have an insurance license, I can sell somebody a term-life policy, and if that person wants to designate somebody -- a funeral home as a beneficiary,
that's -- you know, that can be done.

Ms. Grinston: Right.

Mr. Otto: But, now, if I'm the
insurance agent and I work for a funeral home,
I can't do that.

Ms. Grinston: Those two things cannot
be sold together. My understanding was that
you cannot say I'm going to sell you a preneed
contract and I'm going to let you fund it
through this term-life policy together.

Mr. Otto: All I'm saying is that look
at it from the insurance -- the person with
the insurance-license perspective for a second.

Ms. Grinston: Okay.

Mr. Otto: If I don't work for a
funeral home, I can sell somebody a term
policy, that then he can go then take to the
funeral home and assign to them to pay for
preneed.

Ms. Grinston: Correct.

Mr. Otto: If I work for a funeral
home, I'm still the insurance agent, I've
still got the license, I can't do that.

Mr. Moore: Is that restriction of
trade?
MR. OTTO: That's kind of my concern
is that you're --

MS. GRINSTON: I'm sorry? Who was
that on the restriction-of-trade question?

MR. STALTER: Who asked the question
on the phone?

MR. MOORE: John Moore. We've been
throwing around restriction of trade forever
and how we can answer that, so --

MR. OTTO: That was my only concern is
that you're telling an insurance agent -- and
perhaps we need the insurance folks back in
here. You're telling an insurance agent if
you work for John's insurance company, you can
sell this policy. If you work for Joe's
funeral home, you can't.

MS. EULER: This is Sharon with the
AG's office. I don't see that distinction,
Don. I'm not sure where it is, but we
specifically made clear -- oh, it's on page 29
-- that a purchaser can assign proceeds from
the term-life insurance to pay for their
funeral, and I don't think it matters what
insurance agent sold it. It's just that the
funeral home can't --
MR. OTTO: But the funeral director has an insurance license.

MS. EULER: It's -- yes. But it's a difference between preplanning and prepaying.

You can preplan and then assign your funeral policy to the -- I'm sorry -- your term-life policy to the funeral home as beneficiary as preplanning, and it doesn't matter who sells it.

MR. MEIERHOFFER: This is Michael Meierhofer. Sharon, I agree with you wholeheartedly, and I think the difference is basically whether it would be a guaranteed or a nonguaranteed contract.

MS. EULER: Right.

MR. MEIERHOFFER: You can preplan and if it's not guaranteed and they want to use that method, they're certainly welcome to do it.

MS. EULER: Right.

MR. McCULLOCH: I've tried to make that argument to this group before and you all rejected it. You're trying to tell an insurance person they can't sell a term policy, which they can, and you're not going...
to be able to do anything about that with 436.

MR. MEIERHOFFER: Right.

MS. EULER: Right.

MR. McCULLOCH: Secondly, if a funeral home wants to accept it, I don't think you're going to be able to stop that, either, because someone is going to challenge you on it and then that will be the end of it.

MS. GRINSTON: And I think that's the recommendation. Don't stop them from accepting it. You can -- an insurance agent can sell it, but I think that the discussion was when you have someone doing term life and the preneed contract together, and that is the same entity, that I can't say here's your preneed contract, now fund this with this insurance option that will probably have no value. If you have an insurance policy and you come in and sell it, that's fine. If you buy it from an insurance agent, that's fine. But I thought that the concern was with someone being at the table and being sold preneed and term life together, knowing that that term-life product has that limited-value option. So that it really wouldn't be
restricting the insurance agent, the insurance agent just can't sell them together.

MR. OTTO: Well, then what will happen is the person comes into the funeral home on day one, buys the term-life policy from the guy who is authorized to sell it because he's an insurance agent, and they'll say come back tomorrow. You come back tomorrow and now I've got this insurance policy that I'm assigning to a preneed.

MS. EULER: But the thing is with term insurance, it's never paid in full.

MR. STALTER: Well, I think there are policies. You can buy a paid-up term. They're usually pretty expensive, but they're out there. It's just a matter of -- I think the abuse with the term in the preneed industry has been those industrial policies, but there -- I mean, there are paid-up term out there. I mean, they're just pretty expensive.

MS. GRINSTON: Again, my understanding was that your concern was with those two things being done in the same transaction by the -- you know, at the same table. And if that's not correct, let us know and we change
it to make sure we match what your
recommendation is.

MR. McCULLOCH: I wouldn't recommend
that funeral homes do this. It wouldn't make
any sense for them to take a term policy that
has an end date; okay? But that they
guarantee the price. So, I wouldn't recommend
someone doing that, but I don't know how
you're going to put this in a law. That's
going to be the problem because someone may
have a -- want to do that and they think it's
good business practice. And if that
individual -- and they may say, well, we're
not going to freeze the cost. Well, then
that's okay. Or if the term policy doesn't
pay, then we're not going to deliver our
services and merchandise. That's okay, too.
So, you could -- by contract, you could fix it
so it would protect the funeral home, but I'm
not sure we should be doing that.

MR. STALTER: Yeah, I mean -- and,
truthfully, I've drawn those contracts up like
that before where we say it all depends on
what the proceeds are at the time of death.
I mean, we'll --
MR. MCCULLOH: Exactly.

MR. STALTER: Yeah. But, you know, I guess, the future needs -- I mean, our first objective was to make sure that a trust does not invest in term insurance, and that's a given.

MS. GRINSTON: Right.

MR. STALTER: But then do we go further and say that we can't really associate a preneed program with term insurance?

MR. MCCULLOH: And I thought that was the issue. You really didn't want someone to do what NPS, we think they have done; okay? That's really the idea.

MS. EULER: Well, I think the question -- this is Sharon again, with the AG's office. If there is a term policy, it's not a paid-up term policy, and there are annual premiums, monthly premiums, quarterly premiums, but there are premiums due. If it is the purchaser's obligation to pay those premiums, and you're saying that the term policy is funding a preneed contract, the purchaser quits making the premium payments and the policy is canceled, you don't want the funeral
home to still be obligated to provide under
the preneed contract when there is no -- when
the funding mechanism hasn't been paid for.

MR. STALTER: Well, that's why I draw
the contract the way I do. I mean, basically,
you look to the -- what the proceeds will be,
you know. You don't want to commit the
funeral home to a contract that has -- or an
insurance policy it has no control over.

MS. EULER: Right. And that's why, as
a general rule, term policies are not a good
vehicle for a funding mechanism for a preneed
contract. That doesn't mean that they can't
be used for preplanning, but you can't --
you're saying it's a guaranteed contract, but
if there's no insurance, there is no provision
that the preneed contract is canceled along
with the term policy because you may not have
any way to know whether the term policy has
been paid for or not.

MR. STALTER: Well, I guess -- let me
clarify. I mean, the ones I've written are
not guaranteed contracts. They're
nonguaranteed. And the reason I advise the
client to do it, so that the consumer knows
what the funeral home's promises were, as
well. Because let's say that the death
proceeds on that term policy were $10,000 and
the funeral was only $7,000, so the consumer
had a right to know that they were going to
back the excess. So, you know, we didn't want
to take the assignment without giving a
promise.

MR. McCULLOCH: Sharon?

MS. EULER: Yes.

MR. McCULLOCH: While you're trying to
fix this to protect funeral directors, here's
what some of them do. They have a local
agent that goes out and sells a life policy
that has no growth in it whatsoever, and let's
just say it's for $10,000. They take it into
the funeral home, the funeral director, not
understanding, takes and freezes the cost, and
all they have is a $10,000 policy --

MS. EULER: Right.

MR. McCULLOCH: -- that's never going
to grow at all. So, that's kind of the same
thing.

MS. EULER: Yeah.

MR. McCULLOCH: But we're not talking
about --

MR. STALTER: And that's not even a term policy.

MR. McCULLOCH: That's not even term. That's just regular whole life or a ten pay or whatever.

MS. EULER: And that's the distinction between a preplanning with assignment of life insurance as opposed to prepaid.

MR. MEIERHOFFER: Very good.

MR. OTTO: This preplanning thing is a new thing. I mean, why would you stick in there -- I mean, if this is a concern, you know -- what we're trying to do is legislate somebody doing something that's not a good idea.

MR. McCULLOCH: Maybe Bill's idea --

MS. EULER: Preplanning is a great idea, Don.


MR. McCULLOCH: -- about not allowing the trust to invest in term.

MR. STALTER: I'm sorry. No. Go ahead, say it, John.
MR. McCULLOCH: Well, your statement is saying, really, the intent was, we don't want the trust to be able to do this and do what we think NPS did -- okay -- and cause a problem.

MR. OTTO: Well, why don't we just, to make it easier, just say that you can't use a term-life product to fund a guaranteed contract?

MR. McCULLOCH: That kind of helps the funeral directors help themselves.

MR. OTTO: Yeah. I mean, really. Just say a term product cannot be used to fund a guaranteed funeral contract.

MS. ERICKSON: And this is Mary Erickson with the department. In your experience -- and I'm throwing this out to everyone -- when you have a preneed that is funded by a term policy, is there the potential for confusion, though, by the consumer, who doesn't understand the insurance world, that they think that, you know, ten, twenty years from now, I'm still going to get my funeral, or the family members when they -- when grandma says, you know, to her children,
I'm covered, you'll be fine. Grandma dies 20 years later. They think they have a preneed policy, and then, lo and behold, it was terr. I think one of the reasons that we had talked about in our previous meeting was the potential for confusion by the consumers. How do you see that actually happening in the industry? And I think that's why we wanted to avoid the term policy -- one of the reasons, in addition to the NPS problem, et cetera.

MR. STALTER: Well, I mean, to jump ahead of that. Part of it is if we say that you can sell a term policy, but it has to be tied to a nonguaranteed contract, I mean, it goes back to the regulations about disclosures, you know. So, if the consumer knows, I mean, that, really, they're not getting any promises from the funeral home other than we're going to take your proceeds and apply them to your cost at the time of death. And I think that's the problem with the industrial life, when you look through the south, is that people would -- I mean, they may have -- they had a policy where they were paying a few dollars on it per week or per
month, and they got $2,500, and, you know, like you said, the contract was out there for 20 years and nobody was going to honor the guaranteed part of that, and that was the abuse in the south.

MS. ERICKSON: And, Bill, when you're talking about sitting down with the disclosures with the consumers, it's going to be made clear to the consumer, "This is for this period of time only. Now, if you die one day later, you have no money to fund this; do you understand?" I mean, I think that's the danger of this vehicle.

MR. OTTO: Well, that danger exists in term insurance right now.

MS. ERICKSON: Absolutely. That's why we're talking about it, whether it's the proper vehicle in preneed.

MR. OTTO: Well, for anything. I mean --

MS. ERICKSON: True. But I think there's a greater level of confusion because you have added -- you have a preneed contract, as well as the insurance backing, which the consumer may or may not understand. And,
Sharon, what do you think?

MR. VERNON: This is Martin, and I want to throw something in. I understand the term thought that Mary was just describing, but you can also draw the same parallel without the stopping of the policy because of lack of payments with the just the whole-life policy because the consumer may walk out thinking I've paid for my funeral, and when there reality is I've only got $5,000 and I'll never have more than $5,000. So, I'm a little concerned and I like the preplanning thought all the way through, but I'm a little concerned. Obviously, we're trying to -- what we're really trying to fix here is the NPS scandal, and then it's messing up a whole gamut of what could be in the other and it really is about disclaimers to the individual when they come in and do their preplanning anyway, so -- because if they don't understand it, they don't understand it.

MR. MOORE: This is John Moore, and maybe I don't understand term life. But as if we went and bought a car for $15,000, we paid $2,000 down and we buy a policy for $13,000...
difference. It covers decreasing amounts until that policy is paid when the funeral home should, at the end of the policy period, have that money in trust. So, then your trust starts growing. At that point, the term policy is expired and done. If they die before the date of the paid-in-full policy, the term policy makes up the difference in the contract. So, the term life insurance really is not anything that was used to fund any type of preneed.

MS. GRINSTON: So, is there a recommendation on what you would like to do?

MR. OTTO: Well, I -- you know, our comments on this -- this is Don Otto again -- and the comment we submitted, and this would apply to any insurance product that is sold to the consumer. I think there should -- we think there should be a separate disclosure to the consumer whenever insurance is sold to the consumer as part of a preneed planning process that specifically spells out this is what happens if you don't make your payments. This is what happens if you cancel it. This is what happens -- you know. And I know it was
said that this is all spelled out supposedly
in the insurance contracts, but we've just
said that that's a problem with people not
understanding this. So, you know, from my
perspective, if the consumer wants to purchase
term life and use that term life to -- if I
die, I've got a ten-year term-life policy that
I paid $5,000 for, and if I die in the next
ten years, I want this to go to my funeral, I
don't see any reason that that should be
prohibited as long as there is adequate
disclosures to the consumer as to what happens
when. And that should be whether it's a
whole-life policy, whether it's a term-life
policy, or whether it's some bizarre
combination -- who knows what they're going to
come up with a year from now and what they're
going to call it -- galactical term life whole
universal policies -- that -- so -- and that's
also a problem when we start saying, you know,
term, you know, they may change the
terminology a year from now. If any kind of
insurance is used to fund -- I'm not talking
about the -- you know, to fund a preneed plan,
there needs to be very specific disclosures
given to that consumer that say here's what
happens if you don't make the payments on your
insurance policy. Here's what happens if you
cancel the insurance policy, you know, things
like that. And I think that -- I mean, full
disclosure to the consumer, I think, is the
most important thing.

MR. MOORE: Are we trying to
overdisclose, though? I mean, if somebody
doesn't make their payments for 60 days and it
lapses, does it take a rocket scientist to
tell you you don't have coverage? Are we
trying to overdo?

MR. OTTO: Apparently, yes.

MR. VERNON: Should we just narrow the
focus -- this is Martin -- back to just a --
I'm probably being way too simplified here,
just to a simple statement of you can't take
trust money and buy term-life insurance
policies. That's what you're --

MR. OTTO: We've already done that
elsewhere. This is where -- this isn't where
-- the issue we're at now isn't the trust
buying insurance as their investment vehicle,
this is where just the consumer is buying an
insurance policy and the consumer has
purchased an insurance policy directly and
he's going to use the proceeds of that to pay
for their funeral.

MR. MOORE: But how many funeral-home
owners out there are going to take and be the
beneficiary or have it assigned to them, and
when it lapses and that funeral home gets
records that it lapsed, how many are going to
say, "Oh, well, I agreed to do this whether
you paid for it or not." It's a contract
with the insurance company, you're just a
beneficiary. You have no guidelines to make
you do it if they don't pay their bills.

MR. STUART: This is Bill Stuart.
Kimberly, I would like to suggest to your
committee that they just delete #5.

MS. GRINSTON: Okay. We've got a
suggestion that #5 is just deleted altogether.

UNIDENTIFIED: I agree.

MS. GRINSTON: I heard someone say,
"I agree." Who is that? Someone said it.

MR. VERNON: So, was the
recommendation a motion, Bill?

MR. STUART: Martin, I would ask your
committee -- I'm not a member of the committee
-- to just consider deleting item #5.

MR. STALTER: It never stopped you
before, Bill.

MS. GRINSTON: someone suggested that
we remove #5. Working group, what would you
like to do? Do you want to remove #5 and
include language on the disclosure side that
talks about disclosures? I told you one of my
concerns about disclosures will continue to be
that sometimes, you know, funeral
establishments or the person writing the
contract may not have a good understanding of
the insurance contract. And if they give --
tell the consumer that this -- you know, this
contract will cancel in 60 days when the
contract really says 45, we're going to have
this issue of, you know, where is the consumer
because the insurance company said one thing,
an agent of the insurance company said
something else, and it leaves us in between.

Unless we can -- I know Mark Warren, when he
was here, he suggested just using the NAIC
model disclosure law, and leaving it at that.
And I haven't gone through that -- gone back
to look at that. I've looked at it years ago, but not recently. Darlene?

MS. RUSSELL: Darlene Russell. I don't see any problem with deleting #5 as long as we assure that the trusts cannot invest in term-life insurance. That was the big problem there. And as far as disclosures for insurance policies, I think we decided that the Board, by rule-making authority, would kind of make up what those disclosures should say as far as the preneed contract. So, I'll make a motion to delete #5.

MS. GRINSTON: We've got a motion to delete #5.

MR. STALTER: Second.

MS. GRINSTON: Bill said he's in agreement. Working-group members, anybody else objecting? For purposes of this one, since we've had some considerable discussion on it, working-group members, if possible, can you please tell us yea or nay?

MS. EULER: Kim?

MS. GRINSTON: Yes, Sharon?

MS. EULER: I have a question. That if term-life insurance is used to fund a
preneed contract and the premium payments are not made and the insurance is canceled, yet there is a still a guaranteed contract out there, how do you deal with that?

MS. GRINSTON: At need?

MS. EULER: Yes. The family comes in and says, "I've got a preneed contract here signed by everybody saying that you, funeral home, are going to provide for my grandmother's services. I want you to provide."

MR. STUART: Excuse me, Kim?

MS. GRINSTON: Yes.

MR. STUART: This is Bill Stuart. Sharon, I'd like to address this just momentarily. The operative word there is fund a preneed contract, whether it be insurance of term or insurance of whole life. Most funeral homes cannot issue a contract frozen by using the word that's funded by preneed -- I mean, by insurance, when they don't control the funds.

MS. EULER: Right.

MR. STUART: And, actually, they're not doing it, most generally. I have never...
found many funeral homes that were doing it. And the intent of your all's conversation was the term life that was bought by trustees, and I think that is why we're trying -- I mean, I just don't see finding any people out there that are silly enough -- funeral directors -- to fund when the word "fund" means you have the funding. You don't have it, so I don't know of any funeral homes that would be doing this. And that's why I think this is just moot. And like they said earlier, Don Otto said, and someone else, I believe, you can't restrain the trade of an insurance agent to do whatever he wants. And then you used the word "preplanning." So, if some family chooses to buy a term life, no funeral home is going to accept and freeze their price. I mean, they can't. They don't have funding.

MS. EULER: So, what is -- if no funeral home is going to do it, what's the problem with keeping that in the law? I'm just concerned, from a regulatory point of view, that people will sell term-life insurance to fund a prensed contract and then the payments will not be made and then we will
be faced with a complaint from a consumer saying, "Grandma paid for the life insurance. I've got a contract, and now the funeral home is not complying with the contract."

MS. GRINSTON: Darlene had a comment. thereof

MS. RUSSELL: Sharon, Darlene Russell. In regards to what you're talking about, anytime I've ever seen an insurance-funded preneed contract, it specifies all those things, what you're saying as far as what happens if the purchaser stops making payments, you know, what happens if they become behind and all of that thing. I -- it's going to be all dependent upon how that insurance-funded preneed contract is written. You cannot tell a funeral home -- you would hope that most funeral homes who would take an assignment of any type of insurance, that they would look at the future and decide whether or not they were going to guarantee it or not guarantee it. I would say the majority of them, just like Bill Stalter said, they cannot guarantee the funding mechanism, so they would probably make those nonguaranteed.
MS. GRINSTON: Okay. We have a
suggestion that we remove $5 altogether. Oh,
I'm sorry. John? I'm sorry.

MR. MCCULLOCH: That's okay. That's
okay. I'm done.

MS. GRINSTON: I'm sorry. We have a
suggestion that we remove $5 on insurance
restrictions from the document, and I believe
we had a second. Is there anybody who objects
to that as a member of the working group?

MR. OTTO: I support removing $5 as
long as we understand that there needs to be
clear disclosures to the consumer as to what
happens on any insurance policy -- term, whole
life, or some combination thereof -- what
happens if they don't make the payments, what
happens if they cancel, what happens if they
take a loan against the policy and so the
proceeds aren't there at the time of death,
all that stuff.

MS. RUSSELL: All those disclosures
would, again, come under the Board's
rule-making authority on saying what
disclosures would need to be in a preneed
contract. So, I think we covered that under
the disclosures and giving the Board
rule-making authority to specify the
disclosures.

MS. GRINSTON: And maybe, Don, if it's
okay, if we could add that as a comment from
MFDEA under that section that does indicate
that language, as well. Don is giving me the
okay signal. Do I have anybody else objecting
to removing #5? Do I have anyone else who
would like to abstain from the vote? I know
the attorney general's office, because of
pending litigation, cannot vote on the
legislative proposals right now.

MS. ERICKSON: This is Mary Erickson
on behalf of the Department. My personal
inclination would be to leave #5 in, but as
Linda Bohrer is not here, I would like the
Department's formal vote to be an abstention
and that we can send comments to the Joint
committee as needed on that point.

MS. GRINSTON: Okay. We'll note that.
All right. Moving on, #6. Again -- oh, we
did that already. Any other comments on page
29? On page 30?

MR. MOORE: This is John Moore. On
MS. GRINSTON: Yes.

MR. MOORE: If we're going to have the sellers, which would be mainly the third parties, report to the Board of who is funding and what insurance companies they're using, can we not make that where they also have to inform the providers that have contracts with them the same information?

MS. GRINSTON: You want them to tell the providers what insurance companies they're using?

MR. MOORE: Yes. I think it would be beneficial to the funeral homes or the people with those prearranged contracts to also be privileged to that information.

MS. GRINSTON: So, you're talking about when an -- okay. Disclosing to the provider if the preneed contract for his funeral home is funded, who is funding the insurance, or who the insurance is written through. That's John Moore. I'd like to give that to the working group. Any comments or suggestions? Would anybody like to add any language on that point? Okay. Hearing none,
then I think as a part of the formal
recommendations of the working group, that
that probably would not be included, but we
would require the sellers to tell the Board
what insurance companies they're using.

MR. MOORE: But they don't have to
tell the funeral homes or the providers?

MS. GRINSTON: I don't think that the
working group formally considered whether
they'll be telling the providers. I'm
assuming -- I don't know. I'm assuming that
that may be in the contract with the provider
what the seller discloses. I'm not sure how
that would be worked out, but -- Bob?

MR. BAKER: Bob Baker. I think what
John is saying has merit to it if the seller
and provider are not one in the same.

MS. GRINSTON: Okay.

MR. BAKER: If you've got a funeral
home that does both, then they're going to be
aware of it. But if you've got a seller out
dere, and I think it goes back to the
question that we had talked about earlier of
the possibility of licensing the insurance
company itself as a seller for coming in, like
the scenario that we have seen recently, and
selling preneed without any knowledge of
anyone.

MS. GRINSTON: Okay. And we addressed
the written-agreement issue. But for the
working group, do you want to include a
requirement that the seller also has to tell
the provider what insurance companies they're
using?

MS. RUSSELL: I see no problem.
Darlene Russell. I seen no problem adding the
word "provider" in there.

MR. MCCULLOCH: Is he talking about --
just for clarification. This is John
McCulloch. Like a preneed seller, third-party
seller, and they would use an insurance to
fund -- that the trust would invest in? Is
that what you're referring to?

UNIDENTIFIED: Yes.

MR. MOORE: Well, I'm just stating
that if we're a trust state and, all of a
sudden, the third-party people can take the
money out of trust and buy insurance policies
with our contract money, then we should be
privileged to know how they're investing it
and with what companies -- (inaudible) -- to
act with before we all got to take this money
out of our pocket and cover it again.

MR. STALTER: John, this is Bill
Stalter. I mean, what we're talking about
here, though, are the insurance-funded
contracts. And I'm going to say, maybe there
are -- we haven't seen this kind of third
party yet, but it could happen where a third
party comes in and said we're going to act as
this -- your sales agency and we're going to
use insurance. But, you know, once they've
sold the contract for you, it's in place. I
mean, if they change insurance companies,
maybe then you would be entitled to a notice,
but, you know, for trust funding, you know,
that's a different section. What we'll be
talking about here is prospectively when they
come in and you've signed up with this third
party and he's only going to use insurance, do
you have a right to know or to be notified
when he changes insurance companies?

MR. MOORE: Correct.

MR. STALTER: Okay. I have no problem
with that part of it. I mean, that makes

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sense, but it's a different area when we talk
about trusts switching to insurance funding.

MR. MOORE: Yes.

MR. STALTER: Yeah.

MS. GRINSTON: Okay. Well, then let's
throw that out to the working group. I think
several people have said that they don't have
a problem with adding that notification to the
providers, as well. Are there any objections?

Is there anyone from the working group who
would like to abstain from the vote? Hearing
none, we'll add that change in, and that's on
page 29. Any other questions or comments on
page 29? Page 30. Page 31, I believe -- I'm
sorry. Don?

MR. OTTO: No. No. No. You're --
it's 31.

MS. GRINSTON: Okay. Page 31. Don?

MR. OTTO: Can we make, as much as
possible, everything 30 days?

MS. GRINSTON: Yes.

MR. OTTO: Please.

UNIDENTIFIED: Is that 30 calendar
days or working days?

MR. OTTO: And not in a leap year or a
full moon.

MS. GRINSTON: Representative Meadows, did you have something?

REPRESENTATIVE MEADOWS: Well, I know that -- I mean, I don't recall, and I don't know, I may have been present when we talked about this. But I had some -- I jotted down some notes, but I don't see it in here as of yet, and I'm certain it'll probably be discussed. But, you know, I just want to really keep in mind that joint accounts represented the State option for safe placement of preneed funeral contracts. To change this provision to be like a trust account is a step backwards with regards to the consumers. You know, I'm just trying to keep it consumer friendly. I just would hope that we do that. But, at any rate, I'll just hold some of my comments till later on.

MS. GRINSTON: Well, and in response to that, Representative Meadows, on the joint account, I believe -- and, working group, please correct me if I'm wrong. I believe the recommendation is to maintain the status quo on joint accounts right now, except with the
addition of two things. Again, to say that a
preneed seller can use a joint account,
because right now it just says providers. And
then also to clearly say that you don't need a
trust if you're only using a
joint-account-funded option, because that was
a question. Representative Meadows?

REPRESENTATIVE MEADOWS: Has anybody
-- and, you know, I guess that because we have
-- when you're talking about trusting, a lot
of people have said it's too costly to start a
trust. Is anybody -- and I've heard that a
lot. But how much, actually, does it cost;
does anybody know? Can anybody tell me what
that is?

MR. STALTER It'll be a little
different from institution to institution,
but, usually, they want to charge a flat fee.
Sometimes it's $500 or $750. I mean, it costs
quite a bit just to set up the trust. So --
and it really does differ from institution to
institution. It's just prohibitive for if you
say a $7,000 or $5,000 trust, then you have to
pay $500 right off the bat just to set it up.
Plus then they tend to want -- they'll want to
charge a basis fee, but, you know, for a small trust, they'll just end up charging a flat fee, you know, for that account, so --

REPRESENTATIVE MEADOWS: Well, you know, I guess one of the other options that could be out there, if a person didn't want to start their own trust, wouldn't they have the option of joining a master trust or doing shares instead?

MR. STALTER: Yeah.

REPRESENTATIVE MEADOWS: I mean, there are other options out there?

MR. STALTER: Yeah.

REPRESENTATIVE MEADOWS: Is that correct?

MR. STALTER: Yes.

REPRESENTATIVE MEADOWS: Well, all right. Well, I'll hold my comments. I'm glad to know that we're not going to get too involved in changing this a whole lot.

MS. GRINSTON: Okay. Any other comments on page 31?

MR. STUART: Kimberly?

MS. GRINSTON: Yes.

MR. STUART: Bill Stuart. Is it my
understanding that the working group will maintain the joint-account privilege of a seller -- funeral-home seller, but that they have to have no -- I mean, they have to put 100 percent in?

MS. GRINSTON: Yes. I think if they're maintaining all current requirements.

MR. STUART: Okay. I would like for the committee to, once again, consider the fact that that limits the small funeral director from competing with needs for salespeople and such, and that they should be allowed the cancellation or same amount of commission that the third party gets to compete and be on a level playing field. And the joint-account funding would stay in the local community, but it was easily, you know, sitting there with the growing interest, but the front money or the cancellation fee or whatever you want to call it should be the same as the third-party seller is allowed.

MR. MOORE: This is John Moore. I agree with that. We ought to have the same plain.

MS. GRINSTON: And this is Kim, if I
may. I think that the thought was that the
joint accounts would be utilized for people
who didn’t want to get into that competitive
environment, that those are people who are
just -- you know, if it’s a small funeral
home, larger funeral home, who just want to
set up an arrangement to allow preneed, but
they didn’t want them to get into that
competitive kind of world. And if you wanted
to do that, then you would have to go to
through a trusting option because -- and I
think that the thought was they wanted to
avoid people doing a joint account with, you
know, huge excesses of money, that that was
not what it was originally intended for. I
think that that was what my understanding was,
and, working group, I would open that to the
working group.

MR. STUART: Well, again, Bill Stuart.
That’s not -- I mean, that’s not being fair to
the director that’s caught by the third
parties that are using that front 20 percent
or whatever you arrive at. I don’t know that
you have arrived at a solid 20, 10, or
whatever. But whatever it should be, it’s
sort of like Mr. Otto just said, 30 days should be across the board on everything or whatever, and whatever you arrive at gives me the option in the small town that's competing with the preneed sales, whether it's on the Internet or a third party comes to the community, it gives me the option to pick my funding source; "insurance," "third party," or "a bank CD." It gives me that option and I'm on the level playing field, and I can pay my salesperson or pay my expenses out of that same commission that I'm currently finding myself competing with, you know, and it seems only fair to make it a level playing field.

MS. GRINSTON: And Bill and John, I don't know if this helps, but MFDEA did submit a comment that related to that, and that is also included in the draft on page 31 that says they should be subject to the same requirements. So, I think that that comment -- it has been noted in the draft, as well.

Are there any other concerns on page 31?

MR. BAKER: Kim?

MS. GRINSTON: Bob, yes?

MR. BAKER: Bob Baker. Besides John
and Bill, I have received several calls that
have the same concerns that -- and I think to
answer Representative Meadows' question as far
as establishing a trust, we're talking maybe
$15,000 to $25,000 by the time you get
attorney fees and everything with the banks,
and the banks do not want to talk to you
until, you know, you say, "I've got one
contract I want to start it with." you know,
"What's your fees?" And I think a lot of the
small funeral directors have the same concern
that if they have somebody that occasionally
they would like to have selling for them, that
we give them a way to pay a commission, but,
yet, not have the fees of establishing their
own trust or not wanting to take the money
outside of their community, and I think that's
the main concern of most people.

MS. GRINSTON: And if you would like,
I can also add that as a comment, as well,
unless the working group would like to change
the recommendation, and I'll open the floor to
the working group.

MR. OTTO: I know at our last meeting,
we suggested that -- I suggested that at our
last meeting, that whatever the rules are for
trusts on percentage trusting and cancellation
and portability, apply it equally to joint
accounts. And I note that I got voted down --

MS. GRINSTON: Yeah.

MR. OTTO: -- not unanimously, because
I didn't vote it, but --

MS. GRINSTON: It was pretty
substantial, I think.

MR. OTTO: But it was pretty
substantial. I got whooped up on that.

MS. GRINSTON: Well, to just throw
that out there for consideration for all
joint-account people, that would require if
they are going to be doing -- if it's the
same rules, it would require the same type of
reporting, the same type of auditing, the same
type of examination, the same type of
record-keeping. It would elevate a joint
account to the trust level. And I think that
the concern was that the smaller funeral homes
who may not have the staff -- if they only
have one person, you know, in the funeral
establishment to do that type of
record-keeping and the kind of things that are
required when you have a trust. But, again, this is open to the working group. The working group has previously voted to allow joint accounts to remain as they are with those minor changes. Would anybody -- would the working group like to reconsider that vote?

MR. MAHN: Hey, Kim, this is Todd.

MS. GRANSTON: Yes, Todd?

MR. MAHN: Yeh. I would just like to ask the question: Had we never had trusts and only had joint accounts that 100 percent had been put in, would we still be sitting here? FPS wouldn't have stole the money they took. And, you know what, we've never had any problems with joint accounts. We don't have a bunch of problems with the Board chasing people around because of joint accounts, you know. And with something being -- having no flaws in it at all, and 100 percent of that money is there for those families, can't we just leave something alone? Like, can't we just -- you know, can we just stop preying on everything here? And I say we leave the joint accounts alone. This trust monster is one big monster. If you want -- we want to fix the
whole thing -- (inaudible) -- joint accounts
would be 100 percent, but too much has already
been done and too much damage already
happened, and we have to deal with that now,
and we have to compromise now, and we have to
bend this and bend that way. But let's -- my
point is, just leave joint accounts alone.
Again, I'll say like I said the last meeting.
If there is little funeral homes out there
that can't make it because they can't tap
their joint accounts, then they oughtn't be in
business.

REPRESENTATIVE MEADOWS: I second that
motion. I'm Representative Meadows.

MS. GRINSTON: That's Representative --

MR. MAHN: Thank you, Representative.

REPRESENTATIVE MEADOWS: Thank you,

Todd.

MS. GRINSTON: That's Representative
Meadows. It's been seconded to leave the
recommendation as it is, and I could always
add a comment on the commissions and the
competitive issues that we talked about. The
working group, I'm going to -- I have a motion
to leave it as it is. Anybody object to that?
MR. OTTO: Well, I guess if the motion is not to change it, I would vote against that, I think.

MS. GRINSTON: Okay.

MR. OTTO: I mean, again, the statement that we haven't had problems with joint accounts, Todd, I respectfully would disagree with that because those have been stolen, too.

MR. MAHN: Well, if you can show me anywhere that joint account is equivalent to the problem we're having with NPS, I'll drive out there to Jeff City right now and you can show it to me.

MR. OTTO: Well, I'm saying the equivalent.

MR. MAHN: Well, that's what I'm talking about. We're dealing with big things here. You're going to have some little shop here or there misplace a joint account or do something, but this is major potatoes. And you know what, I have sat in these meetings and I have listened to this stuff, and I'm telling you right now, as a Board member, I am here to protect the consumer. And, right now,
these consumers, I don't hear too much word in
here for them, period.

MR. STUART: Todd, and all due
respect, nobody will be protected more than
the local CD by the local banker by the local
director. And I need to be --

MR. MAHN: There's 100 percent in --

MR. STUART: No. Todd. I need to be
lifted. It's a restrained trade that I don't
get the commission, that I choose my funding
vehicle, and I choose my vehicle as 100
percent here in the CD less my administration
fee, and that will be as well protected as
your trusting third parties and sending the
money off to insurance companies or out of
town. And I'm only saying just give me a
lift here so that I can compete and not have
to send my money out of town.

MR. MAHN: I think for all homes that
feel like they need a commission to stay
afloat, there's plenty of avenues to go here.
All I'm asking for is just let's leave one
perfect, you know, right in the ballpark for
the consumer. And they, you know, are getting
tapped everywhere else, and I know where
you're coming from, Bill, and, you know, I understand what you're saying to a point, but all I'm asking for is can we just -- can there just be one thing that we can just say, look, folks, do you want your money at 100 percent somewhere. There's not going to be any commission, there's not going to be anything tacked on it, then we do a joint account.

MR. STUART: Well, joint -- that's what got us in trouble, Todd, in '83. That's why we got put in --

MR. MAHN: Well, what got us in trouble in '83 was letting the peoples from NPS infiltrate into this --

MR. STUART: But, I mean, I'm telling you, Todd --

MS. GRINSTON: Bill, Todd, Representative Meadows and John have their hands up. Representative Meadows -- sorry.

REPRESENTATIVE MEADOWS: Okay. I personally believe that -- you know, let's face it. Joint accounts are great tools. And to allow 20 percent fee retained, in my eyes, is a step backwards. Correct me if I'm wrong,
but doesn't current law allow already, if it's specified in the contract, a reimbursement of expenses to the seller from the income, anyway? I mean, it's in there. If you put it in the contract, you can do that. I mean, is that correct?

MR. OTTO: From the income earned, that is correct, that expenses of maintaining the joint account. There is an argument that would not include a commission because that is not a expense in maintaining the joint account. Also, if you put it in an investment vehicle where you cannot draw the interest off, you can't get to it, so that's the problem. I think -- I mean, our position is simply if we come up with rules that we think are good to protect consumers on the trust, that it's easier and simpler and fairer if that applies to joint accounts, as well. I think I'm in the minority on that, but I just as soon we vote.

MS. GRINSTON: Don, John had his hand up, as well.

REPRESENTATIVE MEADOWS: In statute, I'm looking at it right here, 436.053, it
clearly states: "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." It's in 436.053, subsection 5 -- I
believe 4 or 3. I'm sorry. At any rate,
personally speaking, and I agree with Todd
Mahn on this, I mean, folks, this is a good
consumer tool, for the consumer, and I just
don't think that we need to be messing with
it. That's just my own personal opinion.

MR. MOORE: This is John Moore.

MS. GRINSTON: John, before -- John --

MR. MOORE: And I agree with Todd in a
lot of ways. I agree with Representative
Meadows.

MS. GRINSTON: John, before you do
that -- John, before you do that --

MR. MOORE: If joint accounts is so
great and has done such a good job, I would
ask the working group to take the standards of
joint accounts and apply to the rest of 436 at
this time and let everything fall and follow
by joint accounts.
MS. GRINSTON: John, John McCulloch is next.

MR. MCCULLOCH: Yeah. This is John McCulloch. Just a couple comments. I think if folks want to put 100 percent of their money in, they can go down to the bank and do that. They don't have to have a contract with the funeral home or anyone else. But if they do want to go to the funeral home, and I haven't ever thought of it this way, but I think I agree with Bill and John Moore that they should be handled the same way. It'll give you guys, like you said, a level playing field, and I think it should be handled the same way as the rest of the funding for preneed or what have you.

MS. GRINSTON: Which would include, of course, just -- and we should probably take this to a vote as now just to move it the conversational purposes of having time.

Please understand that that would include reporting, auditing, examination, and all the other requirements that are applicable to someone who is running a trust, including annual reports.
MR. OTTO: If -- again, I think I know how the vote is going to go on this. The current motion, I think, on the table is to not do anything, and I never like those kind of motions, to be honest with you, with all due respect, Representative.

REPRESENTATIVE MEADOWS: We do them all the time in the House.

MR. OTTO: I know. I know. Well, and that's how it turns out.

MS. GRINSTON: And the motion is to maintain the current recommendation. That is the motion that I think Representative Meadows has made. Someone else has called a second. Why don't we vote on that, to maintain the current recommendation, which is to leave joint account, except for those few minor changes, as they are right now in the law. Having said that, let's do a voice vote on that since we've had some discussion.

Representative Meadows, I'll start in the room.

REPRESENTATIVE MEADOWS: Aye.

MS. GRINSTON: Darlene?

MS. RUSSELL: Aye.

MS. GRINSTON: Bill?
MR. STALTER: Aye.

MS. GRINSTON: Don, what is your vote?

MR. OTTO: My vote on that is nay because I would like to make some changes.


John?

MR. McCULLOCH: Nay.

MS. GRINSTON: Todd?

MR. MAHN: Yeah.

MS. GRINSTON: Gary?

MR. FRAKER: Yes.

MS. GRINSTON: Martin? Martin? I think we lost Martin. Is Joy on the phone?

MS. DUNN: No.

MS. GRINSTON: Joy is not on the phone. Mr. Meierhoffer?

MR. MEIERHOFFER: Nay.

MS. GRINSTON: Who else? Who are the other working group members? I'm losing my memory here. Sharon is not voting; am I correct about that, Sharon?

MS. EULER: Yes.

MS. GRINSTON: Okay. Is there anyone else on the phone? Hearing no one else, I think the ayes have it, and I will make a
comment on the notes --

MR. STUART: What was the vote, Kim?

MS. GRINSTON: The vote was to leave joint accounts as they are.

MR. STUART: And what was the score, please?

MS. GRINSTON: I have one, two, three, four, five -- six to four.

MR. STUART: Thank you.

MS. GRINSTON: All right. Let's just move on. Page 32 -- and, again, I will make sure that the discussion is included in the comments. Page 32, payments to providers, any questions? That is your certificate of performance. I would like to skip to page 36 simply because we can come back to that last whole section we need to talk about, but let's see if we can get through the document and then come back. Page 36 through 37 is all annual-reporting information. I have no questions for the working group on that. I'll submit -- open those questions for discussion. Again, page 36 and page 37.

MR. VERNON: I'm back on. I'm listening. All right. They may have called
on me and I didn't hear it.

MS. DUNN: Martin, are you back?

MS. GRINSTON: Yeah. I hear Martin talking. Okay. Pages 36 through 37, no comments. Let's go on to page 38. I have the change that the first bullet point will be listed as unanimous recommendation. Anyone else have any questions on page 38? Hearing none. Page 39, which you can't see because there's a box there, but it's the page that says termination of business, and we'll fix that. I have a question here. There was a recommendation made by MFDEA. We talked about -- and for termination of business. We talked about this somewhat. I used a lot of the language that is currently in the law with some of the disclosures that we discussed. But the question was raised as to whether we -- you all talked about notice to consumers. If a seller goes out of business, telling the consumer; a provider goes out of business, you know, telling the consumer. A question was raised as to whether that notification should be made when it's just the sale or transfer of assets, when you don't have the entity going
out of business, but just selling to someone else, whether a notification should be made to consumers on that end, as well. And so, I would like to open it up for the working group's discussion because I don't think we got clear direction or talked about that originally. On a sale or transfer of assets for a preneed provider or seller, should there be a notification to consumers?

MR. STALTER: Well, this is Bill Stalter. I think one of the issues is whether you can actually have effective notice to all those consumers based on how old those contracts are. And if it's just a change of business, a sale transfer in that, it almost becomes incumbent upon the regulators to make sure that those obligations are covered. And I'd say that, you know, so long as the acquisition company, the purchaser, will assume those obligations, then the consumer notice might be burdensome -- (inaudible.)

MR. OTTO: Bill Stuart, this is Don Otto. We talked about this. Perhaps you would like to say something on this? This is being -- are you still there, Bill? I guess
not. Anyway, the concern was that if you have
a funeral home in a town and you are getting
-- and you're an LLC, and so, you're selling
your stock to someone else, and you are
required to notify all of your consumers that
have a preneed with you that this sale is
about to happen, that's going to kill the
value of your business. That was the concern.
You're now saying to the town, my business is
for sale. I'm about to sell it. What's that
-- you're just torpedoing the purchase right
there.

MS. GRINSTON: Even though the entity
buying, you may keep the same name --

MR. OTTO: Even though the entity is
staying the same, you know, it's not -- you're
not going out and -- Bob Smith Funeral Home,
LLC, is going to still be in business, but
you're required to say, okay, we're selling
our stock to so-and-so, and that will kill the
sales. That will kill sales of funeral homes.

MR. McCULLOCH: Yeah, you don't want
to that.

MS. GEINSTON: And so, the
recommendation was that you do the consumer
MR. OTTO: Yeah. Ceasing to do business makes sense because the consumer should be -- at least some attempt, and you're not going to be able to track everybody down. But at least, you know, sending notification to the last known address, if somebody has gone out of business, here's what's going to happen to your contract, makes perfect sense. But if it's just -- if the entity still exists, it's just a transfer of ownership, that's a bad thing.

MR. MCCULLOCH: And I think the Board should have to be the one notifying.

MR. MEIERHOFFER: This is Mike Meierhoffer. I think the only people that are going to make a notification of when a business goes out of business is going to be you all, the State Board. Other than that, I agree with Don wholeheartedly.

MS. GRINSTON: And then if that's the case, then with the State Board notifying,
we're going to need to have your purchaser
information. You're going to have to tell us
who your purchasers are, the names, the
addresses, and all that information because it
would be hard for us to notify people we don't
know about, so that's something that we would
have to get from you all on a regular basis
because, just in case you do go out of
business, if we are responsible for the
notification, we need to have -- and that
information needs to be updated with us
because if the Board is going to notify, we
need to know current address. So, if someone
moves, there is going to have to be a
requirement that you tell us with -- you know,
that you've got a change of address on a
contract.

MR. MOORE: I disagree with that. If a
funeral home goes out of business and just
goes belly-up tomorrow, the State Board is
going to come in and secure all those records
anyhow.

MS. GRINSTOK: We hope that we'll be
able to after the law passes. Right now, we
can't. I like the idea, though. But to be
honest, when you talk about, you know, seizing
books and records, you have to talk about
electronically. What happens if they just
close the doors and they're out of business
altogether and we don't have an opportunity to
get in and get the books and records. If the
notification is going to be on the Board,
we're going to have to have that information
and it's going to have to be updated on a
regular basis.

MS. EULER: This is Sharon with the
AG's office. I think that when the funeral
home, at some point, and, you know, after the
sale has been completed may be the better time
to do it. But I think the consumer absolutely
needs to be notified when there's a change of
ownership so that the consumer knows who
they're dealing with.

MR. OTTO: If Prudential Insurance
Company, the majority stockholder changes, do
you notify all Prudential Insurance Company
policyholders that there is now a new majority
stockholder?

MS. EULER: But that is usually not
what happens, Don.
MR. MOORE: Well, Sharon, if I could add something. If that did happen, what does it matter? The people can't transfer to the other funeral home in their town because whatever third-party agent that funeral home is working with will not transfer them contracts with full contract price plus -- (inaudible.) They penalize the other funeral home, so who's going to move?

MS. GRINSTON: And, John, I think that question is --

MS. EULER: Well, but the issue is not just one of portability, the issue is informing the consumer so that they know who they're dealing with.

MS. GRINSTON: So, Sharon, are you talking about when there is a change of name of the ownership or when there's change of ownership?

MS. EULER: I think --

MR. MEIERHOFFER: Sharon, this is Michael Meierhoffer. If I sell the business to my sons, do I need to notify everybody that I'm selling the business to my children?

MS. EULER: Well, I think we can
MR. MEIERHOFER: Well, that's what I think. I mean, I -- this gets really --

MR. McCULLOCH: I have an exception, too, then.

MS. EULER: But, Mike, if you sell your funeral home to Don Otto, even though the name stays the same, but you've, you know, gone to retire in the islands somewhere and Don Otto, LLC, owns the funeral home now, I think the consumer needs to know that.

MR. MEIERHOFER: I disagree wholeheartedly. I disagree with that. I'm with Don totally. That is not necessarily important information that has to be shared with everybody. I mean, you just don't.

MS. EULER: Well, the company that held my mortgage was recently assumed by another bank, and I'm glad that they sent me a notice about that because I know who I'm dealing with. And it seems to me that the funeral-home issue is the same way, that the consumer has a right to know who they're dealing with.

MS. GRINSTON: Sharon, are you saying...
that they should be notified at the time -- if
there's a change in the basic information?
Like, you know, if there's a change in the
name, you know, or something like that, then
they need to know who they're dealing with.
Because I think what Don was suggesting was
that you're going to be dealing with the same
person, that if you're dealing -- if ABC --
Mr. Meierhoffer, can I use your example? If
your son takes over the funeral chapel and
it's still Meierhoffer Funeral Chapel, and you
call the number and you ask to speak to
Meierhoffer, you're still going to being
dealing with Meierhoffer. Mr. Lindley has a
hand up in the back of the room.

MR. LINDLEY: You're dealing with
people's single purpose asset here; okay? You
have people that have spent a lifetime
building that asset. That's the only asset
that they have. And you cannot or should not,
for the consumer's sake, devalue that asset.
When you devalue that asset, you devalue the
ability for that consumer to get what he
bargained for. You cannot do this. Just like
in a law practice; okay? If a law practice
transfers hands, you know, typically, they
don't notify all the people that are -- have
files in their office. The only time that the
lawyer, in my correct assumption here,
notifies his clients is when he's ceasing to
do business; is that not correct?

MS. GRINSTON: I don't think that's --
I think it just depends. It think it depends.

MR. LINDLEY: Well, the same thing in a
medical practice. When a doctor has my file,
the only time that he notifies me is when he,
himself, is going out of business. If he's
transferred that to his other physicians, he's
not required by law to do anything. And the
reason for that is that he's built his whole
lifetime building that practice and he can't
devalue his asset because you're limiting his
ability to retire.

MS. GRINSTON: Well, hearing the
discussion, I'd like to open the
recommendation up to the working group. The
recommendation is, yes, you tell consumers if
you're going out of business, but you don't
have to if all you're doing is transferring
ownership by transferring assets or a change
of stock.

MR. OTTO: Well, I would just -- I
would make the motion that the recommendation
be as follows: That consumers will be notified
when the seller or provider ceases to do
business, period.

MS. DUNN: By whom?

MR. OTTO: Well, speaking on behalf of
Missouri Funeral Trust, we have no trouble --
we have no problem us notifying consumers at
the last known address if a provider goes out
of business. We don't have a problem with
that. Now, maybe other people do. Obviously,
if the seller goes out of business, it's going
to have to be the State if the seller goes
out of the business because there's nobody
above them, really, to do that. If a provider
goes out of business, I have no problem with
the seller notifying the purchasers at their
last known address of the ceasing to do
business. I've got --

MS. GRINSTON: Which I think was the
last recommendation.

MR. OTTO: But just leaving this
transfer of ownership completely out of the
recommendation at this point.

MS. GRINSTON: Okay. That's Don's recommendation. Anyone have -- do I have a second?

MR. McCULLOCH: Second.


MS. GRINSTON: Mike and John have seconded. Everybody, anyone who objects to the motion, if we can do that -- and I'm doing it this way because someone -- we have a phone. Anyone who objects to the motion, can you please register that now -- working group? Anyone abstaining from the vote, and we do know the attorney general's office and insurance will be.

MR. BAKER: Where are we cutting it off, Kim?

MS. GRINSTON: Pardon me? I think I've already -- in the draft you have -- let's see. He's asking me where do we cut it off, and let's look at the highlighted section. Probably right after within 30 days after ceasing business. "At least 30 days prior to ceasing business." And not required on the
sale or a transfer. You still have to tell
the Board, but you just won't have to tell
consumers. Okay. I think I hear that vote.
Okay. Yeah. Moving on, any other comments on
page 39 that you can't see and page 40? All
right. Page 41, again, we have a disappearing
number, but it's the audits, investigations,
and examinations section. Someone
recommended, and I think this came through
several people, that instead of generally
referring to books and records, that we should
say preneed books and records so that we're
not granting authority to go through every
book and record that a seller or someone may
have. And so, what you see here in the
highlighted section, I added language on
preneed books and records. That was the
recommendation. I'd like to open that for the
working group's discussion on whether it
should be just preneed books and records or
whether we should allow access to books and
records generally. Hearing no discussion, do
I have any objections to just saying preneed
books and records? I see everyone nodding.
On the phone, any objections? Okay. Also, on
that same page 41, Don pointed this out and, again, this was something I needed to bring back. Fees on preneed contracts. I know we all talked about how this is going to cost something for the Board and they are going to have to assess fees for licensing and everything else. Don suggested or remembered that the working group may have voted that the audits, investigations, and examinations should also be funded by the fees on preneed contracts and that that fee on your preneed contracts should be able to be adjusted by the Board by rule. I think I see one shaking head.

MR. STALTER: I agree.

MS. RUSSELL: I agree.

MS. GRINSTON: Everybody is saying "I agree." Will everybody on the phone, any objections? okay. Hearing no objections, we'll go ahead and incorporate that in. Page 42, Rich, I think this was a concern that you had on page 42. Do you want to --

MR. WEAVER: Sure. I would be happy to talk about that. I just had a couple comments or, I guess, observations on this, that a couple of these issues, primarily when
you say give the AG the responsibility to
review the actions of a trustee including the
exercise of any discretionary power. And a
couple -- the way that we're viewing this --
and I would say it would depend on how it's
drafted -- but, basically, this would mean
that the AG is a de facto bank regulator, and
that would totally contradict state and
federal banking laws. And so, that,

essentially, could increase the reputation and
legal risk for a bank. And so, when they're
looking at whether or not they take these
accounts, they may or may not want to take
these trust accounts if you're going to throw
the AG in, basically, trying to say that
they're a bank regulator in addition to the
FDIC, the OCC, Division of Finance. And so, I
point that out because it's my gut feeling
that that will be a very big concern. And
so, that's something, like I said, that
totally contradicts current state and federal
banking laws and you raise federal preemption
issues primarily for federal chartered
financial institutions. So, I just wanted --

MS. ERICKSON: I'd like to echo that
just briefly. If this is still on the books
-- and this is my opinion, and, Sharon, trying
to -- and the AG attempts to use this
authority, any preneed seller or whoever is
being audited will immediately say preemption,
which will lead to a whole new line of
litigation and it will not accomplish
anything. So, I echo Rich's comments there.

MR. OTTO: Given that a violation of
436 is already a violation of 407, which we're
not taking out, and the attorney general's
office has extensive powers under 407, which
has already been written so as to not to
conflict with the banking laws, I move that we
just eliminate this section completely.

MR. STALTER: And before you speak --
this is Bill Stalter. The way I came at this
one, this one caused me concerns, too, but I
fell to the part that it says you can initiate
a judicial proceeding to do these things
which, in -- I was very uncomfortable with the
AG taking these steps, but I guess I fell back
to saying you would have to have a court agree
to these things. But I still know the big
banks wouldn't want to be subject to this kind
MR. STALTER: Okay. But how do you reconcile between you assuming that responsibility and the Division of Finance? I mean, this is one of the recommendations that we made some time ago. I would rather go to the Division of Finance and explain the issues so that they understand. I mean, it's something that they deal with on a regular basis. But I assume that you would have
concurrent jurisdiction to pursue those matters even if the Division of Finance decided not to?

MS. EULER: Well, right now, we have authority to pursue some of these issues as they relate to the trustee under 407, only with the consent of Department of Finance. And so, that means for situations like we're dealing with right now, the hands of the AG are tied until Department of Finance gives authority to us to act, which they have not done. So, it just seems to me somebody needs to have the authority to take these issues to court and get them resolved.

MS. GRINSTON: There is some whispering in the room. Thoughts, Rich?

MR. WEAVER: Well, like I said, I just wanted to make that clear to the committee that that is a big change in the current, like I said, state and federal banking law, so I -- my gut feeling is you will have very strong push back from the banking industry on that, and I just wanted to make the committee aware of that. That's just my only opinion, and I just wanted to express that to the committee.
so --

MR. OTTO: Well, to take care of Sharon’s concerns that perhaps nobody in the law right now is authorized to do anything, or at least it’s not clear they’re authorized to do anything, but also keeping in mind that we don’t want to create a conflict between the existing legislation. And I would ask the Division of Finance this: Would there be a problem with just saying replacing and taking out attorney general and put in Division of Finance or Department of Insurance or whatever?

MR. STALTER: Isn’t the issue here, sharon, just as far as wanting some clear authority to go pursue action?

MS. EULER: Yes.

MR. STALTER: I mean, we’re really talking about NPS right here, aren’t we?

MS. EULER: No. I mean, the -- this committee was convened because NPS finally was the -- you know, the last bit. But NPS is not the only preneed seller that has had problems in Missouri where there has been some action needed. And so, I think it’s a mistake for this committee to think that this
legislation is just about NPS because it's not. It's about giving people in the State agencies the tools that we all need to make sure that the consumer money is being protected and to make sure that preneed contracts are being regulated in the state, and it's not just an NPS situation.

MR. OTTO: This is Don Otto. Keeping with this conversation we just had, I'd like to withdraw my previous motion to eliminate this section completely, and I would instead move that the working group approve this section with the following changes: That the word "attorney general" is deleted in that first section, replaced by Division of Finance, and that the very last bullet point is removed. How does that sound to everybody?

MS. ERICKSON: I'd actually make a different proposal on that. And one of the problems here is while Division of Finance, I'm sure, would be thrilled to be able to do all these things, it does not have the authority to take the next step, to, you know, punch it, to enforce it, to initiate the judicial proceeding. It can investigate and
review till it's blue in the face, but I don't think it can do the next step.

MR. WEAVER: That was going to be my comment, Don, is that -- I was going to -- on the tail end of that when you say we can initiate judicial proceedings. Right now, the way I understand it, we do not have the legal authority to issue or initiate a judicial proceeding against. Now, we can take administrative action and that's -- in the years that I've worked for the Division and the logic behind the way it's designed is that the bank regulator gets the first crack trying to solve a problem, and that's the reasoning for the way the law is designed now. In the event that once we look at it, we can't resolve the problem, then we always can refer that to the AG's office under Chapter 407 if there was an unfair or deceptive trade practice, and that's how our office has always operated for years and years. That's the kind of position that we feel that we have that we can issue cease-and-desist orders, we can issue civil-money penalties, take disciplinary actions in that manner, but as far as
 initiating the judicial proceeding against a
bank and trust company --

MR. OTTO: Okay. Should that then say:
Division of Finance shall be authorized to
initiate an administrative proceeding?

MS. ERICKSON: But that won't get you
really what you need.

MR. OTTO: But then the last thing is
then make it clear that the Division of
Finance can then refer the matter to the
attorney general's office.

MS. ERICKSON: And why don't we go
there? That's what I was going to suggest --
Mary Erickson again -- is when it says the
attorney general shall be authorized, we can
add in "with the consent and working with the
Division of Finance" initiate a judicial
proceeding, because I think the clearer thing
here is we want Finance to have a firm grip
on this, and maybe this is one of those
situations where finance does not want to
refer it to the AG, or because they know of
other federal banking stuff going on, it's not
right for that.

MR. OTTO: I withdraw my motion I
withdrew earlier. And at any point, I like what Mary just said.

MS. GRINSTON: Representative Meadows has his hand up.

REPRESENTATIVE MEADOWS: Well, just a case in point. When I first drafted this bill under 825, I gave -- it was in my intent to give the attorney general's office super powers. And after listening to what was just discussed here by all parties, I like that idea rather than -- because that was one of the things where I met the opposition the most from the industry was you're giving the attorney general's office here way super powers and you're going to have problems and, blah, blah, blah, blah, blah. So, I'm in agreement with Don and Mary and everyone here. So, if you can put them both together, give them hand-in-hand authority to work together to get it done. We've got to be able to streamline it the best way we can to help the Board to do what they need to do, and this, I think, is a good tool for you, wouldn't you say, Kim?

MS. GRINSTON: Yes. So, am I hearing
that this would be amended to provide the
Division of Finance can do the following, or
the attorney general's office, with the
consent and cooperation of the Division of
Finance?

MS. EULER: Kim?

MS. GRINSTON: Yes?

MS. EULER: Sharon. I think what I
heard being said and that I think that I could
agree to is that the Division of Finance and
the office of the attorney general will work
together.

MS. ERICKSON: My proposed language,
Sharon -- this is Mary Erickson again -- was
with the consent of and working with the
Division of Finance. Leave the -- the
attorney general shall be authorized, then add
in my phrase, that would allow, number one, a
referral and consent, but also working with
the Division to accomplish the goals that are
listed here.

MS. GRINSTON: So, hearing consent and
cooperation. Rich?

MR. WEAVER Just one other thought on
that, too, Kim. This is Rich Weaver again.
We do not have any jurisdiction over a federal chartered institution, so you might want to consider some wording that's going to incorporate the Office of the Comptroller of Currency, and then you have the FDIC in there, the federal regulators, because if you had a trust in a national bank, then that doesn't -- we don't have zero jurisdiction. We can't go in that door. So, if you're wanting to tighten this up as much as possible, you want to reference those other bank regulatory agencies, as well.

MR. STALTER: With that regard, we --
I think we talked in one of the meetings about with foreign fiduciaries having some kind of a consent of process or where they submit -- yeah. Basically, that they're going to act as fiduciaries on these accounts, and then they consent to certain proceedings, and that's something we probably would deal through with regulation, but, you know, it's out there. It's an issue.

MS. GRINGTON: All right. Okay. I hear the recommendation. The recommendation now is: Division of Finance, OCC, and what
was the other one, FDIC?

    MR. WEAVER: Yes.

    MS. GRINSTON: The attorney general shall have authority to, with the consent and cooperation of, with the three governmental entities listed. Hearing that, does anybody want to second that?

    MR. STALTER: Second.

    MS. GRINSTON: Bill did. Do I have any members of the working group objecting to that amendment? Okay. Hearing no objections, do I have anyone who would like to abstain -- of course, understanding the AG and insurance will be abstaining from that right now, as well. Okay. No other questions on that, let's move to pages 43 through 45, which was the disciplinary-authority section. I don't think we got any comments on that. Are there any now?

    MR. OTTO: Well, what I said just -- this was the single biggest comment I got back from our membership.

    MS. GRINSTON: Okay.

    MR. OTTO: Not understanding moral turpitude or how to be -- what that means.
Of course, I replied that that's included in
all the statutory language and -- although,
you know, it's just interesting. Of all the
things to get a comment on, anything that said
morals.

MS. ERICKSON: Don -- this is Mary
Erickson. You can point out that all of the
licensing agencies use that language, and, to
some extent, it is purposefully vague because
it is difficult to legislate every possible
permutation of what someone could do that may
or may not be a violation of the law
elsewhere, but you want to capture the other
wrongdoers. So, yeah. I can -- and courts
have problems with that, too, sometimes, Don.

MR. OTTO: Yeah. I pointed out
teachers used to have their licenses pulled
because they were seen, you know, out with an
unaccompanied -- unchaperoned, you know, with
a male. You know, that was moral turpitude
for a teacher 100 years ago. But, anyway,
it's just interesting, that was the biggest
single response.

MR. STALTER: One other comment. This
is Bill Stalter.
MS. GRINSTON: Yes, Bill

MR. STALTER: On page 44, the automatic-suspension language. You did make a comment about that, and it's always one of those things where you always hate to have automatic suspensions, particularly when it's talking about a shortage, you know. If a trust account is short by, you know, capital losses or something of that nature, you know, we do not want to have automatic suspensions. So, it's one of those where I kind of hesitate to grant any kind of authority to a Board for that kind of an issue.

MS. GRINSTON: Okay. Would the working group like to make or amend the recommendation on automatic-suspension language?

MS. DUNN: What other professions have that now?

MS. GRINSTON: There are a couple. The real estate commission does.

MS. DUNN: Architects?

MS. GRINSTON: Architects does. A couple of them do.

MR. STALTER: Yeah. We're going to
have it in 214, too, which we're --

MR. STUART: Kim?

MS. GRINSTON: Yes?

MR. STUART: Bill Stuart.

MS. GRINSTON: Hi, Bill.

MR. STUART: Was that on #4 -- that

question was about #4 on page 44?

MS. GRINSTON: Yes, sir.

MR. STUART: So, may I ask, is that

meaning that if a joint account has 80 percent

in it, it would not be required of -- I mean, regulatory? I don't understand that. I mean

--

MS. GRINSTON: I think that that says,

Bill, that if an account -- if we go in and

we look at the account and it has 20 percent

less than what it's supposed to be in the

account, that the Board may, in its discretion

-- doesn't have to, but the Board may

automatically suspend the license, and the

time to figure out if we've got a big problem,
a major problem, or something like that. And

there is a right to appeal to the

Administrative Hearing Commission if that
suspension is done. And, again, that would be
discretionary. So, if someone comes in and
says it's 20 percent short because, and gives
us -- you know, gives the reason, that it
would be in the Board's discretion to say this
is not grounds for an automatic suspension.
And you would have an independent party
reviewing that on appeal.

MR. OTTO: This is Don Otto. The
words "may" and "automatically" right next to
each other don't make sense to me.

MS. GRINSTON: Okay. So, should we
remove the word "automatic"?

MR. OTTO: At the very least, the word
"automatically" ought to be gotten out of
there.

MR. MEIERHOFFER: This is Michael
Meierhoffer. Let me ask for a clarification
here. When we say suspend a license, we've
got a lot of licenses in play here. What
license are we talking about?

MS. GRINSTON: You're correct. A
preneed-seller license is what I meant.
Should we clarify that?

MR. MEIERHOFFER: I think so, because
we're talking facility license, individual
funeral-home or funeral-director, embalmer
license, all kinds of things.

MS. GRINSTON: I think you're right.
Let's make sure we say -- that says a
preneed-seller license.

MS. EULER: This is Sharon with the
AG's office.

MS. GRINSTON: Yes, ma'am.

MS. EULER: And, Mike, just to be
aware that any violation of Chapter 436 is
cause for discipline against any license
issued pursuant to 333. So, if you have
violated 436, just under Chapter 333, the
Board can also seek discipline against
funeral-director, embalmer, and
funeral-establishment licenses.

MR. MEIERHOFFER: Well, Sharon, that's
where I'm going, and that's what I would like
to understand if that's what you really mean.

MS. GRINSTON: Yeah.

MS. EULER: That's in Chapter 333.

MR. MEIERHOFFER: I know it. We're in
436, and I'd like this to be specific from
what Kim is telling us here.
MS. GRINSTON: And, Mike, I understand that. I think that the intent -- my understanding was the intent was that that would be a preneed-seller license and not just any license held by the registrant licenses, if you will.

MR. MEHNFFER: Okay. That's good.

MS. GRINSTON: I'll make that change. And, Bill, I will also add your comment on the suspension language, as well, and I apologize I didn't do that. Okay. Yes, Representative Meadows?

REPRESENTATIVE MEADOWS: Also, in #4, just so you might have the power to do so, on the second line there, I think you may -- what if you just put in the word "immediately."

And the reason why I say that is, if you read it, it would say, "Notwithstanding any other provision of this section, the Board may suspend a license immediately if the Board finds after and expect," because then you're letting somebody know that you can do it -- it's in the law that you can immediately -- it gives you the power to immediately do something.
MS. GRINSTON: I think that's a good suggestion. I think that's in line.

MR. STALTER: And to add onto that, part of it where we talk about 214, too, was that it was because of a failure to do -- it could be fraud or theft, you know. If there is evidence of misconduct -- willful misconduct, then, yes, you need the power to take immediate action. But if it's a shortage because just the market has done poorly the last six months, you know, that's where we kind of -- you know, that's -- willful conduct would be the basis for taking immediate action.

MS. GRINSTON: Okay. My own thought on that, Bill, is that sometimes we may not be able to figure out willful conduct for months, you know, or years. Trust me. I'm joking. But it may take a while for us to put in line the things to demonstrate a willful misconduct. And so -- but I do understand your concern about triggering it just because the market has gone bad. I do, but I don't -- would you have a shortage in that instance?

MR. STALTER: If the market has gone down? Well, under the current law, you know,
when you draw down the income, you know, and
then you have a downturn in the market, and it
could be down for a while. I've seen accounts
like that where they've stayed down for a year
or two, so --

MS. GRINSTON: Yeah. Yeah. And I
don't know if that can be addressed through
the discretionary, you know, issues of the
Board under the language, but I will
definitely note that, as well, as a comment.
Okay. Pages 46 through 47 on enforcement
authority. Any questions or concerns with
that? Hearing none. Page 48 on fees, I
think we've already answered this question. I
think that was the recommendation of the
working group that the $2 fee could be
adjusted by the Board by rule to cover
auditing examination costs. Is there anything
else in the main document, and then we'll get
to the other addendum section? If there's
nothing else in the main document, if you can
go to the draft that we circulated with the
recommendation. It's just -- it's about three
pages. It says, "Allocation of Preneed Funds,
Expenses, Cancellation, and Portability."
tried to do some cleanup on this, and then
after I did some cleanup, I noticed that I
needed to do more cleanup. And so, I've added
some comments to clarify the position of the
board, and also to clarify, I believe, what
the recommendations were. In explaining this
to people who haven't been at the group, we --
the question kept -- we were continuously
asked who gets interest, who gets expenses,
and so, we added some language to clarify
that. I would like to open up that allocation
section for discussion and take any comments
that you all may have.

MR. STUART: What page, Kimberly?

MS. GRINSTON: Pages 32 through 34,
but we did it as an amendment, and so, it's a
separate section now. If you only have the
9/2 draft, it would be pages 33 through 35,
but there would be some amendments to the text
of that language. Bill?


MS. GRINSTON: Yes.

MR. STUART: 35. Are you going to
change the cancellation from 60 days to 30
days like Don suggested everything 30 days or
MS. GRINSTON: Is that cancellation for nonpayment?

MR. STUART: Yes. Could that be 30 days?

MS. ERICKSON: This is Mary Erickson with the Department --

MR. STUART: I think that's traditional insurance language, anyway, that goes with policies.

MS. ERICKSON: I think that we had extensive discussions and voting on that, if I recall correctly, and I would recommend it stays the 60 days.

MR. MEIERHOFER: Kim?

MS. GRINSTON: Yes?

MR. MEIERHOFER: Michael Meierhoffer. Are we working off the working draft, September 2, at 5:00 p.m.?

MS. GRINSTON: Actually, no, we're not. Some of the language is in there. You all were given a separate sort of like an addendum. It was three pages. Hopefully, you got it. It said, "Allocation of Preneed Funds."
MR. MEIERHOFFER: Okay. We're printing it now. We're finding it. Thank you.

MS. GRINSTON: Okay. That's what we're looking at now. And I can -- let me tell you one of the questions I had on your recommendation, and John pointed this out on behalf of APS in his comments. Under D, cancellation by seller for nonpayment, which is on page 34 of the handout. It's the third page. It's listed as page 34. When we added up the numbers on the time period for canceling a contract, those numbers went -- I forget how long it was. I think it went past -- way past the current 90-day language that we have now and it was a bit confusing. I think the way -- and I looked at this and I looked at the suggestion, and I wanted to bring this to the working group for their discussion. And I think this is what I think I heard. Let me know if I'm correct. That a seller can cancel the contract if you're in default of payment for 60 days. After the 60 days, the seller can issue notice to the consumer that they're going to cancel and that unless they get payment by the end of the
30-day period. They'll get a 30-day payment window. At the end of that 30-day payment window, then the contract can be canceled. So, we're still in a 90-day time period -- 60 days in arrears, 30 days for notification, and then you cancel on that final day. The last number I think I had in the last draft was 45 days plus a 15 day, and it just didn't add up correctly. So, let me know if that was what your intent was -- 60 days late, notify, you've got to give them 30 days after the notification, tell them what date you're going to cancel, payment doesn't come in, it's canceled on that day. Thoughts?

MR. OTTO: As long as it's just very clear, that's all I really care about with that.

MR. VERNON: What's wrong with that?

MS. GRINSTON: I think that the way I had it in the original draft, it was way past the 90-day period, if I'm not -- John, correct me if I'm wrong. I think it was way past a 90-day period.

MS. ERICKSON: I agree with Kim's ideas and I also know -- this is Mary Erickson
again. I agree with Don. I'm reading this paragraph and I've read it a couple of times, and I'm not sure it's crystal clear, so we should really be careful with the drafting here. We don't want to leave it up to guesswork.

MR. McCULLOCH: I guess our comment was just leave it the way it is at the 90 days. It's just real -- it is clear there that after 90 days, if they haven't paid, then you send them notice. You have to notify them and the funeral home, and then they're canceled.

MS. GRINSTON: But I think the thought was, John -- I think the concern was that they will never have a chance to make up payment because you could cancel and do everything on the same day. Like, let's say it's at-need, and they come in and say we'll pay the amount in arrears. I think the concern was -- and I think this actually came to the Board as a
issue from one of our investigators, that when they shoved up, they wouldn't let the family pay what was in arrears. They'd say, "Oh, you're past 90 days. I'm canceling you now,"
and now you're at at-need prices. And I think
the concern was about doing that cancellation
on the same day without giving the purchaser a
chance to make up the payments.

MR. McCULLOCH: Give them 16 days to
respond then.

MS. GRINSTON: Working group? Someone?

MS. ERICKSON: I like your idea, Kim.

MS. GRINSTON: And, again, I think John
suggested doing 90 days in arrears, 15 days to
pay, cancel on the 15th day. The way it's
written now, 60 days in arrears, 30 days to
pay, or you're canceled at the end of that 30
days. So, you still get 90 days, but -- and
I think you're right. We do need to clarify
that so that that's crystal clear because it
may not be in the language right now. Working
group, I don't know what your pleasure is.

Representative Meadows?

REPRESENTATIVE MEADOWS: Fifteen days
doesn't seem long enough.

MS. ERICKSON: Under insurance, you
get 30 days. You're in arrears, you get 30
days before --

REPRESENTATIVE MEADOWS: That's what
I'm saying. Fifteen seems like it's too short.

MR. McCULLOCH: When they cancel, you
make us pay them back in 15 days. You think
it's okay then -- current law.

MR. STUART: Did someone just say
insurance is only 30 days and you're canceled?

MS. ERICKSON: There are
notifications, et cetera, that go out, but the
typical time frames runs the 30 days.

MR. STUART: I mean, even with the
notification and everything, the max day is
30; right?

MS. ERICKSON: No. No.

MR. McCULLOCH: You're going to have
90.

MR. STUART: Oh, 90 under insurance?

MS. ERICKSON: But what we're talking
about is the curative time. Once the consumer
gets notification, can the consumer cure it.
How many days? Is it better to have 15 days
or 30 days or whatever? I would say 30 days
is a better curative period for the consumers.

MR. STALTER: Let me ask this
question. This is Bill Stalter. When we say
cancel the contract, are we talking about then
refunding or just the cancellation of the frozen price?

MS. GRINSTON: No. Cancellation and refunding.

MR. STALTER: Okay.

MR. MCCULLOCH: So, are you looking for a motion?

MS. GRINSTON: Yes. I just need to know which direction to go because this language is different from what you looked at before because, again, before, I think, the time frames were almost 100 days when I added it all up, and I know that's not what you all approved back then. And so, I just need to know what is your wish on how this should be handled.

MR. OTTO: Well, just so we get a vote, I move that we accept the language that Kim has provided.

MR. MCCULLOCH: I second that.

MS. ERICKSON: With the clarification that make sure this language is crystal clear.

MR. OTTO: Yeah. Absolutely.

MS. GRINSTON: Yes. Working group, anybody objecting? Anyone abstaining from the
vote? Okay. Hearing none, I'll make sure we clarify that and make sure it's clear. I'll actually send out these three pages again so everyone can see it before we do the final incorporation because I would like that to be -- you all to see that. Page 32 through 34 in your handout, any other questions on that?

MR. OTTO: Several.

MS. GRINSTON: Mr. Otto?

MR. OTTO: First, at the bottom of 32, B, bullet point #2, I don't know what that first sentence -- it ends after the word "the."

MS. GRINSTON: Huh. Oh, okay.

MR. OTTO: I don't -- it looks like something is missing.

MS. GRINSTON: Got it. Okay. Give me just a second.

MR. OTTO: Or it sounds like there's a dependent clause that was taken out.

MR. STUART: What page, Don?

MR. OTTO: It's on this three-page handout -- the three-page item on the bottom of page 32. Big B, second bullet point, the first sentence currently reads, "The seller should be required to pay the newly designated
provider the remaining payments owed to the
original provider under the contract, if the."

MS. GRINSTON: Yes. And that was my
mistake. That was the beginning of a revision
that didn't get finished and I didn't catch
that. You guys said that if the new provider
agrees to accept it, and I think that that was
what that language was going to say. "If
accepted by the new provider," but I apologize.

MR. OTTO: Okay. That makes sense.

My other one, on page 33, of course, this is
the big one.

MS. GRINSTON: Yes, sir.

MR. OTTO: The 80-20, 100, whatever.

MS. GRINSTON: Yes.

MR. OTTO: I note that this draft does
not reflect the fact, like it or not, that we
did go around the table once and there was a
majority vote that 90-10 was acceptable to the
majority of the people at the table.

MS. GRINSTON: On purchase or
cancellation or for administrative expenses?

MR. OTTO: We voted -- at one point,
we voted on 90-percent trusting.

MS. GRINSTON: Right.
MR. OTTO: Retaining 10 percent for --
and that was the majority of the people voted
that that would be, although not their first
choice and not what they would prefer, would
be an acceptable compromise.

MS. GRINSTON: Don, go back to your
main draft and look at page 22.

MR. OTTO: Okay.

MS. GRINSTON: And maybe I need to
reflect this a little bit different. Under
the administrative expenses one, I listed it
as a 10-percent administrative expense.

MR. OTTO: So, I guess that probably
should be reflected over on this section then.

MS. GRINSTON: Okay.

MR. OTTO: I see what you're saying.

Then the last question I have in this then --
well, maybe not the last one, but --

MS. GRINSTON: I'll move that over
then, Don, so it's not in two different places.

MR. OTTO: Yeah. That makes sense.

MS. GRINSTON: I get it.

MR. OTTO: I just would like clarified
what the board's position is on the top of
page 32. And here's the hypothetical, because
I think it's easier doing a hypothetical; okay? Let's assume we stay at 20 percent.

So, somebody comes in and purchases a $5,000 funeral and we stay at 20 percent so that the seller retains $1,000, $4,000 gets put into trust. A year has passed -- several years have passed. It has now grown to $4,400 and they switch to funeral home #2. How much does funeral home #2 get under the Board's recommendation?

MR. McCULLOCH: I think the intent was to give 1 percent of the face amount -- interest on the face amount.

MR. OTTO: But the way this is worded, you would have to give $5,000 back. You would have to go back to your -- the way this is worded, that box at the top of the page, you would have to give the new funeral home 100 percent of the preneed payments made by the purchaser. That means in my hypothetical, you would have to go back to your salesperson and get the commission back from him.

MR. McCULLOCH: That's true.

MR. OTTO: And if that -- I just don't -- I don't -- if that's what the Board voted --
MR. McCULLOCH: That's what they voted. That was my understanding of what we voted. I'll say it that way.

MR. OTTO: So that when you go from funeral home A to funeral home B, then funeral home B is going to get $5,000, in my scenario, plus 1 percent --

MR. McCULLOCH: On the $5,000.

MR. OTTO: -- on the $5,000, even though that $5,000 hasn't been in the trust and earning any money?

MR. McCULLOCH: That's right. That's where someone commented that they would just have to take that out of their general revenue and just pay it.

MR. OTTO: Okay.

MS. DUNN: Todd, are you on there?

MR. MOORE: But, Don?

MR. OTTO: Yeah.

MR. MOORE: This is John Moore. It says 100 percent of the preneed payments made. If I took a contract out for $5,000, paid $500 down and I'm paying $85 a month because that company is insuring it, and I had it for seven years and decided to change, I've paid
drastically more than the contract amount.
But you're telling me I get 100 percent of the
payment, so do they got to pay me back for
that insurance money, also?

MR. OTTO: I think under that wording
in that shaded box, there's an argument that
that -- you are correct. And, again, I'm not
trying to argue the point. This is the
Board's recommendation. I just want to
understand what the Board's recommendation is.

MR. MCCULLOCH: Well, I think the
intent was is that you would get back the face
amount or whatever has been paid in and then 1
percent interest on that amount. It's like
the first dollar that comes in. So, if -- I
thought you were talking about a paid in full,
but --

MR. OTTO: Well, I was, but he raised

--

MR. STALTER: He's got a point, though.

MR. OTTO: He raised a very good point.

MR. MCCULLOCH: If it's not paid in
full, then you're paying on first dollar that
comes in. So, let's say they've paid him

$500. You're going to get 1 percent on $500.
And then you're going to get your $500. So, the next funeral home gets $500 plus 1 percent on the $500.

MR. OTTO: Well, I understand. But what John says is a good point. There could be, easily, a scenario where it's an insurance-funded contract where the consumer has paid $10,000 on a $6,000 funeral over the years. And so, under this wording, funeral home B would not get $6,000, it would get $10,000.

MR. MEIERHOFER: This is Michael Meierhoffer again. Let me go back to the trust issue. Really, the way this is set up, it puts anybody in a trust in an underfunded situation automatically just by the law. If I sold ten contracts and I have ten contracts change, I would end up owing more money than I have in the trust. That doesn't make sense, either.

MR. OTTO: Yeah. That's a good point. If you sold ten $5,000 contracts and you kept 20 percent, you are already underfunded.

MR. MOORE: So, are you saying preneed does not work?
MR. OTTO: This is just the Board's recommendation and I was just trying to clarify what the Board voted on. And I think we've been clarified what the Board voted on, as much as I disagree with it.

MR. STUART: But is the -- Bill Stuart here. Is the Board saying that if the interest earned on that $5,000 contract less, say, if it is the 20 percent that they arrive at, is interest earned on that contract is, say, $5,000, and they change the provider, that the seller only has to provide them with the face value, $5,000, plus 1 percent of the $5,000 that it's grown to be worth?

MR. OTTO: It's the money that was paid in, not the face value with this little gray-box comment.

MR. STUART: Plus 1 percent of any interest earned.

MR. OTTO: Right.

MR. STUART: So, if it earned $4,000 in the interim, is the Board saying that they only owe the face value to the new provider, that's $5,000, plus $40?

MR. OTTO: Well, that's a good point.
MR. STUART: That's not very fair to the consumer.

MR. OTTO: Well, I think, probably, what they meant -- and jump in John or anybody. What they probably meant was that if over the life of that contract, you had earned 3 percent, 1 percent goes to the new funeral home. But the way it's worded, you're right. It's not -- it's one percent of the percentage.

MR. STUART: It's 1 percent of $4,000.

MR. OTTO: Yeah. That's --

MR. STUART: That's $40 -- I mean, that's ridiculous.

MR. McCulloch: I think the intent was 1 percent.

MR. OTTO: Yeah. I think the intent was that you're earning 1 percent.

MR. STUART: The consumer is going to be very penalized.

MR. OTTO: But, yeah.

MR. KAHN: This is Todd, and there has been so much talk of this and discussion and -- on this trust. And I know we're going to back up here a minute because I'm going to back up to what John Moore said is that --
and I think a couple other people said this, is why don't we just make an even playing field across the board? If we're going to clean everything up and stop having problems, then let's just treat trusts like the joint accounts, and I'm sure I can get a second from Representative Meadows. Let's just do 100 percent on the trust, too, and put this money back in an account for people like it ought to be just like if they're going to the bank, and let's put it in there.

MR. MOORE: Amen.

MR. MAHN: I make a motion on that. If anybody wants to second it and go around the table and vote.

MR. BROEKER: Did everybody hear that okay? Todd, could you say that again and speak just a little louder?

MR. MAHN: Okay. Everybody, what I'm saying is that the statement was made earlier that trust and joint accounts and trust accounts ought to match up. And we're here representing the public and we're trying to take care of the public. And this time, I say we take care of it for good and fix this.
thing. So, I say we match them up, 100 percent in joint account, 100 percent in trust. That's my motion.

MR. STUART: Todd?

MR. MAHN: Yes.

MR. STUART: Comment -- Bill Stuart.

When you do get that to pass, then what I was just saying happens. The consumer is well protected. If they do not like their provider or the provider sells out, they transfer that now $4,000, it's not $40 to the new funeral director or the new provider, it's the $4,000. It helps the consumer not be put in a bind by the receiving provider.

MR. MAHN: Right.

MR. STUART: It's only fair for the consumer.

MR. MAHN: Exactly.

MR. OTTO: This is Don Otto. I just would say that we don't have the whole working group here that was here at the earlier meeting. We went around the table, voted on this -- talked for about three hours, I think, went around -- easy. And we voted on this issue, and --
MR. MAHN: Well, we don't have everybody here today, either, Don, and we voted on --

MR. OTTO: Well, no. That's what I'm saying. When we had more people here, the vote was 90-10.

MR. MAHN: You know what, they're just not here. And so, all I'm saying is this is it and this is the day that we are here, and, you know -- and you brought it to our attention that you disagree with the way the Board discussed this. And all I'm saying is is that why not clean the whole thing up?

MR. MCCULLOCH: Comment from John McCulloch. What you guys are really saying is, is it's not that it's not taking care of the consumer, you're more concerned it's not taking care of you as a funeral director.

That's what you're concerned about.

MR. MOORE: Is there not a motion on the table, President?

REPRESENTATIVE MEADOWS: I'll second that motion on the 100 percent.

MS. GRINSTON: Representative Meadows has seconded Todd's 100-percent motion. Let's
take it to the working group. Working group, all those in favor --

MR. MEIERHOFFER: How about some discussion first?

MS. GRINSTON: Sure.

MR. MEIERHOFFER: I mean, I'm in agreement that we have spent hours and hours on this, and now we're flip-flopping at the last minute and changing the whole ball game, for whatever reasons, I don't know. So, I would just like to get it out there and let everybody talk about what we're really talking about doing here.

MR. McCulloch: Scott?

MR. LINDLEY: John, in that scenario, then are you actuarially going to have to make provisions in that trust for these refunds like they're talking about here, because if all that money goes and, supposedly, you sweep the income, how are you going to actuarially be able to take care of refunds? Are we going to have to set -- then you're going to get into a situation of reserving this, and I can see, you know -- and I just thought about it for about three minutes here, you know.
When you have that kind of a policy going forward because, basically, then what you're saying is, actuarially, unless there is some kind of statistical data that's out there, and I assume maybe there is in insurance -- I don't know whether there is with us -- that's accurate on refunds, that something is going to have to be -- I mean, if the Board is going to audit these and examine them, there's going to have to be some requirement to set that reserve aside to take care of these.

MS. GRINSTON: Todd, I --

MR. LINDLEY: You can't sweep the income and then --

MR. MCCulloch: During our discussions, the panel -- people kept suggesting that there weren't very many of these anyway, so I didn't think it was a big issue. Personally, I would think some of the funeral homes would have a problem with that, obviously. From my standpoint, I took the position, well, I'm paying you, why not just pay this person or that person, so it's not affecting me as much. But as a funeral-home owner, I have a problem with it; okay? But
what was suggested, I think it was from Mr. Kutis' firm, is that you just have to take that out of your operating funds to cover that, and that's kind of how we got to where we are.

MS. GRINSTON: Now, the -- Todd, can you clarify just what your recommendation is?

Your recommendation --

MR. MAHN: I'm going to clarify my recommendation one more time and if somebody wants to second it, fine, and go around and vote on this thing, and if you want to discuss it, go ahead. But, you know, my thing is that if we're going to do joint accounts at 100 percent, then do trusts at 100 percent. Even it all up.

MS. GRINSTON: Now, you guys already voted 100-percent trusting. You mean -- when you say 100 percent, what do you mean?

MR. MAHN: That's what I mean.

MS. GRINSTON: Yeah. You guys are already at 100 percent trusting, so --

MR. MAHN: Then that's it. You know, it's 100-percent trusting --

MR. OTTO: No. What Todd is talking
about is not being able to take 10 or 20
percent out.

MR. McCULLOCH: Yeah.

MS. GRINSTON: Right. So, Todd's
motion is 100-percent trusting, no
administrative expenses.

MR. STALTER: No sales expenses. No
sales expenses.

MS. GRINSTON: Thank you, Bill. No
sales expenses. I believe that was
seconded by Representative Meadows. A hundred
percent in, no sales expenses. Let's take
that open for a vote. Let's do it like we
did the other votes. Anybody objecting to
that vote, please register it, if you could do
it one-by-one, please.

MR. McCULLOCH: Opposed.

MS. GRINSTON: John.

MR. MEIERHOFFER: Opposed. Michael
Meierhoffer.

MS. GRINSTON: John, Mike, I think I
heard Bill say opposed. Dcn?

MR. VERNON: This is Martin. I can't
vote; right?

MS. GRINSTON: You can vote.
MR. VERNON: Then I object.

MS. GRINSTON: Don't?

MR. OTTO: Our position has always been that we should increase it over 80 percent, that more than 80 percent should be trusted. However, as we pointed out before, we don't have a consensus among our group whether it should be 90, 100, 95; therefore, on this particular version of this, I'm abstaining.

MS. GRINSTON: Okay. Other members of the working group? Darlene?

MS. RUSSELL: I'm for the motion.

MS. GRINSTON: Bob? I'm sorry.

MR. BAKER: I think I'll abstain, as well.

MS. GRINSTON: Gary?

MR. FRAZER: I'll vote for the motion, yes.

MS. GRINSTON: Ann? I know Mark previously abstained from the vote. I don't know if you --

MS. WARREN: Abstain.

MS. GRINSTON: Okay.

MR. STALTER: Have you got me? Did
you get my vote?

MS. GRINSTON: Yes, I did.

MR. STALTER: Okay.

MS. GRINSTON: I have the vote standing now four in favor, five against, and I've got three abstentions.

MR. MCCULLOCH: Move on.

MS. GRINSTON: Move on?

MR. STUART: Kimberly?

MS. GRINSTON: Yes, sir.

MR. STUART: Back to the recommendation of the Board, is that going to be left that there is only -- regarding a purchaser changing to a new provider, is it going to be stick only 1 percent of that $4,000 gets to stay in the seller's hands and not go to that new provider; is that solid?

MS. GRINSTON: I think that the recommendation of the Board was that when it goes -- when you go to a new provider, 10\% percent of what the purchaser has paid goes with them and 1 percent of the contract -- an additional 1 percent.

MR. STUART: Okay. One percent of the interest earned is what you have written.
MS. GRINSTON: So, if there was interest earned, I think that stays. I think the Board's recommendation was for that to stay with the other seller, but 100 percent of what was paid plus an additional 1 percent moves over with the new -- with the purchaser. But that is a Board recommendation, that's not a recommendation of the working group and won't be listed as a recommendation of the working group. And to the extent that that is what the Board has recommended, I think we have to leave it with the recommendation of the Board, but noting your comments.

Representative Meadows?

REPRESENTATIVE MEADOWS: I was just counting -- we were counting these votes --

MS. GRINSTON: Okay. Did I do it wrong? Please let me know.

REPRESENTATIVE MEADOWS: Well, I had John opposed, Bill opposed, Martin opposed, and Mike opposed. I only had four. And then we had four in favor; myself, Darlene, Gary, and Todd. Four, four, and two abstaining. That's what I came up with.

MS. GRINSTON: Did everyone hear
Representative Meadows?

MS. ERICKSON: Could you repeat that, Representative, please?

REPRESENTATIVE MEADOWS: Yeah. We had John opposed, Bill opposed, Martin opposed, and Mike opposed, and that was four. And then Darlene was in favor, Gary was in favor, I was in favor, and Todd Hahn was in favor; that was four. And then you had two gentlemen here, Don and Bob at the end of the table there that abstained, so it's --

MS. GRINSTON: You have it at a tie vote?

REPRESENTATIVE MEADOWS: We have it at a tie.

MS. GRINSTON: Okay. Which is where we are now. No majority decision reached. I'll list, you know, the suggestions, but that's where we are now.

MR. MOORE: So, basically, is what the Board saying is let's do this in another ten years when we all see everyone go under and face this all again?

MS. GRINSTON: No. The Board's recommendation is for transfers. The Board
has made a recommendation on trusting. They made a recommendation on cancellation. That is just their suggestion on transfers. It is not going to be listed as a recommendation of the working group. Okay.

MR. MAHN: Kim?

MS. GRINSTON: Yes, sir.

MR. MAHN: One thing I'd like to do here. I would like to try to put -- I want an extreme there. I'd like to put a motion on the floor if anybody will second, 100-percent trusting with 5-percent administrational fees to be taken out. That's a motion I have on the floor. Would anybody like to second that?

MR. FRAKER: Todd, I'll second it.

This is Gary.

MR. MAHN: Put that to a vote, Kim.

MS. GRINSTON: Sure. We've got a second on the floor.

MR. STUART: Todd, may I ask a question?

MR. MAHN: Yes.

MR. STUART: Does that mean then 95-5?

MR. MAHN: Right.
MR. STUART: Okay. So, you're out --

okay.

MS. GRINSTON: Okay. 95-5.

MR. STUART: That would be across the

board, sir?

MR. MAHN: Yes.

MS. GRINSTON: Five-percent

administrative expenses, 95 percent in trust.

Let's take a vote on that.

MR. STUART: He called it across the

board, and I believe he included joint

account; is that right, Todd?

MS. DUNN: I don't think he was

including joint account.

MR. MAHN: Right now, what I'm

speaking on only is trusts.

MR. STUART: Okay, sir. I'm sorry.

Earlier you said -- I'm sorry.

MS. GRINSTON: Trust only. I'll start

in the room. John?

MR. MCCULLOCH: Opposed.

MS. GRINSTON: Bill?

MR. STALTER: Opposed.

MS. GRINSTON: Don?

MR. OTTO: Abstain.
MS. GRINSTON: Bob?
MR. BAKER: Abstain.
MS. GRINSTON: Ann?
MS. WARREN: Abstain.
MS. GRINSTON: Representative Meadows?
REPRESENTATIVE MEADOWS: Aye.
MS. GRINSTON: Darlene?
MS. RUSSELL: Aye.
MS. GRINSTON: on the phone. Mr. Meierhoffer?
MR. MEIERHOFER: Nay.
MS. GRINSTON: All right. Gary?
MR. FRAKER: Yes.
MS. GRINSTON: Mr. Martin?
MR. VERNON: Opposed.
MS. GRINSTON: Todd?
MR. MANN: Yes.
MS. GRINSTON: Any other working-group members on the phone that I have missed?
Hearing none. I have the vote at four-four with three abstaining. What do you have?
REPRESENTATIVE MEADOWS: Three opposed.
MS. DUNN: We have Martin, John, Bill, and Mr. Meierhoffer opposing.
MS. RUSSELL: No, he abstained.
REPRESENTATIVE MEADOWS: Mike, what was your vote?

MR. MEIERHOFER: Nay.

REPRESENTATIVE MEADOWS: Oh, I thought you said abstain. Sorry, Mike.

MR. McCULLOCH: Can I make a motion?

MS. GRINSTON: Yeah.

MR. McCULLOCH: I'd like to make a motion that we accept what the Board approved before and that was to put 100 percent in trust and you can take out up to 20 percent by contract. Would anybody second that?

MR. VERNON: Second.

MR. STUART: What was it?

MR. MAHN: I couldn't hear you.

MR. MEIERHOFER: Who made the motion?

MS. GRINSTON: This is what the Board approved before. John made the motion. A hundred percent initially placed in trust with up to 20 percent for expenses as provided in the contract. John made the motion, and I believe -- who seconded?

MR. VERNON: Martin.

MS. GRINSTON: Martin seconded. Let's go ahead and vote that one out unless there's
any discussion in the middle.

MR. VERNON: John, change your vote to
just accepting what the Board recommended all
the way through.

MS. DUNN: Martin, that wasn't the
working group's vote, though.

MR. VERNON: Oh. But that's what
they're hacking on, isn't it?

MR. SPEAKS: Kim?

MS. GRINSTON: Yes, sir.

MR. SPEAKS: Can I ask for a point of
clarification?

MS. GRINSTON: Yes.

MR. SPEAKS: There has been no
discussion of accrual of interest in this
conversation. What is the intent in this
corresponding for that interest?

MS. GRINSTON: Can we get to that in
just a second? My understanding is the last
vote of the working group by majority vote was
that income accrues.

MR. SPEAKS: I'm sorry. Say that
again.

MS. GRINSTON: Income accrues.

MR. SPEAKS: Okay.
MS. GRINSTON: That's what I understood.

MR. SPEAKS: To who?

MS. GRINSTON: To whom -- you mean, like, who gets it once it's all done?

MR. SPEAKS: Right. Right.

MS. GRINSTON: Income belongs to the seller, generally. Then, again, that changes when you talk about cancellation and transfers. Then there was a split on how that should be handled.

MR. SPEAKS: Well, that's why I asked because this was in regard -- we got started on this because of transfer and portability.

MS. GRINSTON: Sure.

MR. SPEAKS: So, that's why I wondered.

MS. GRINSTON: I think -- good thought. All right. John has made the motion 100 percent in up to 20 percent for administrative expenses or as provided in the contract. Let's call that for a vote. John?

MR. McCULLOCH: For.

MS. GRINSTON: Representative Meadows?

REPRESENTATIVE MEADOWS: No.

MS. GRINSTON: Darlene?
1. MS. RUSSELL: No.
2. MS. GRINSTON: Bill?
3. MR. STALTER: I'm going to abstain.
4. MS. GRINSTON: Don?
5. MR. OTTO: No.
6. MS. GRINSTON: Bob?
7. MR. BAKER: Abstain.
8. MS. GRINSTON: Ann?
10. MS. GRINSTON: Mike?
11. MR. MEIERHOFFER: Yes.
12. MS. GRINSTON: Gary?
13. MR. FRAKER: No.
14. MS. GRINSTON: Todd?
15. MR. MAHN: No, and I'm going to say this: I'm going to vote one last -- I'm saying no on this. I'm saying I'm voting 100 percent on this deal now, and I'm not voting again.
16. MS. GRINSTON: Okay.
17. MS. LUNN: Okay. Thank you, Todd.
18. MS. GRINSTON: Got you. Any other members of the working group? Martin?
19. MR. VERNON: What's the motion?
20. MS. GRINSTON: Martin, the motion is
what the Board voted on, 100-percent trusted,
up to 26 percent in administrative expenses as
provided in the contract.

MR. VERNON: And that's yes for Martin.

MS. GRINSTON: Okay.

UNIDENTIFIED: Martin, you voted no or
yes?

MR. VERNON: Yes. I voted for the --
the way she read it, it's just what it is.

MR. MEIERHOFFER: Eighty-twenty.

UNIDENTIFIED: What did you vote, Todd?

MR. MAHN: I voted no.

MS. GRINSTON: And he's not voting
again.

UNIDENTIFIED: Well, I thought I heard
that part of it. I didn't get quite get it.

MR. MAHN: That's my vote. That's not
another vote.

MS. DUNW: Do you want us to go over
the votes?

MS. GRINSTON: I've got three yeses,
five nos, three abstentions; does that sound
right? Okay. All right. If that's the
case, we have the recommendations standing as
they are, which is that you guys have a slight
majority vote which was at 90-10 listed -- I
shouldn't say 90-10. A 10-percent
administrative expense listed as a reasonable
compromise even though people thought that
that should probably be either adjusted upward
or downward, but they wouldn't object. Slight
majority vote, but we have everyone else's
comments listed and noted. Having said that,
I'd like to -- because I'm at the end of the
document. Having said that, I would like to
open up the floor for any other general
comments, the recommendation report, draft,
any other suggestions. This is -- I think
this might be our last time around on this one.

MR. MAHN: Something Don Otto brought
up, and I might have missed this earlier at
the last meeting, about a person having to
take the law exam in order to sell prearranged
funerals. Did we decide on that today?

MS. GRINSTON: Good point, Todd.
Thank you. I did forget about that. We --
you guys voted the law exam for preneed
agents, and everyone wrote in, I think
everyone said funeral directors shouldn't have
to take that exam again. I think MFDEA may
have suggested that they should, but I don't
know if I got your comment right.

MR. OTTO: No. No. We didn't say
that -- we did not say that -- can I get a
triple negative in here? We did not say that
funeral directors should not be exempted. We
did make the comment that we do believe there
needs to be some mechanism to make sure
funeral directors who are already licensed are
well versed in the new Chapter 416 in some
mechanism, whether that's a class that's
offered, you know, or something like that.
But I would -- to the extent that the draft
says that MFDEA believes that funeral
directors should not be exempted, that would
be an incorrect.

MS. GRINSTON: Okay. I'll make sure I
clarify that. I apologize.

MR. McCULLOCH: Of course, you're
going to do this for free; right?

MS. GRINSTON: Todd, did you want to
make a comment on that?

MR. MAHN: Was that Don talking?

MR. OTTO: Yeah, that was me.

MR. MAHN: I couldn't hear you very
well. What did you say?

MR. OTTO: You know, our concern as the association is that everyone who is not a funeral director should have to take the test, period.

MR. MAHN: Right.

MR. OTTO: If you are already a funeral director, we have not taken the position that you are not exempt from this; however, we do have concern that existing licensed funeral directors be made aware of what the new law is in some form, whether it's through a class, whether it's through a testing or something.

MR. MAHN: My motion then is that only nonlicensed people take this test. I don't think the funeral directors need to come back in and be retested again on making a prearranged funeral.

MS. GRINSTON: And I think we've got that. Now --

MR. OTTO: I think that's what the working-group document already says.

MS. GRINSTON: And I think now that I'm hearing MFDEA's clarification, I think that is now unanimous, if I'm not mistaken.
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<th>MR. OTTO: I think that would be correct.</th>
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<td>MS. GRINSTON: Okay. And I apologize for that, Don. I'll make sure we correct that. Having said that, I don't have anything else on the draft. Working group or anyone else, if you have anything else?</td>
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<td>MR. MOORE: This is John Moore. If I could add one last thing?</td>
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<td>10</td>
<td>MS. GRINSTON: Yes, Mr. Moore?</td>
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| 11 | MR. MOORE: With the way this is written and where it's going to probably end up going and with the great work of Representative Meadows, we did nothing for the future to prevent -- (inaudible) -- a shortfall. I feel we need something in this legislation that's going to make up the difference when this happens, not if it happens again, when we have another NPS situation come up in the next five years, eight years, or ten years. We did nothing to try to assist the consumers and the funeral-home owners. I think we need something in there that's going to give a security fee or a seller's fee that's going to
be controlled by the Board into an account to
protect and be able to make this shortfall up
the next time we're looking at the national
organization or whoever to bail out the next
third-party company or the next funeral home
that goes under and leaves these contract
holders shortfalled. We need to add some type
of service fee or some type of security fee on
to the preneed contract. And just for
example, if we charged every consumer that
wrote a preneed $100, and that money was
turned over to the State Board to control in a
special account to only be used for a
situation of this again, if we wrote 25,000
contracts a year at 100 bucks and that money
is sitting there, and we do that for the next
five or eight years, when we're having these
meetings again because another company had did
this to the consumers and the funeral-home
owners, we then have some funds, one, to bail
and help out the funeral homes that are being
shorted because these companies have walked
off with the money, and, two, to give the
board some funds to be able to afford to go
and do what needs to be done right. And
we've added nothing like that. We haven't
looked at when this happens again. It's not
if it happens again. We've had many years of
preneed, many years of companies. We all know
this is going to happen again. We need to
protect that and have a fallback to help us
out with that.

MS. GRINSTON: I think what you're
suggesting really is sort of like a Guaranty
Association type of arrangement that is going
to be funded. I think that that discussion
probably was tossed around very quickly at the
beginning of our discussions. I don't think
we revisited it again or made any
recommendations. I can tell you that as we
head towards the September 10th hearing date,
would the working group like to ask for
additional time to consider an option like
that because it has been talked about quite
often, or would the working group like to just
add a comment that they would be in support of
something like that? How would the working
group like to handle that? Would you --
because I just don't think we probably have
time to have -- to get that hashed out between
now and the 10th. But I don't want to
forestall or take away the time because I
think it is an important discussion, and I
don't know if the working group would like to
address that, reserve additional time or ask
for more additional time or what -- can that
point alone.

MR. OTTO: There are a couple states
that have a preneed Guaranty fund. Florida?

MR. STALTER: Florida has one.

MR. OTTO: Florida has one. In
general, that might be a very good idea. The
devil, of course, is in the details and
hashing out, you know, when does the -- when
does it kick in, how much does it pay, you
know. The insurance Guaranty fund law is --
how thick is that? That is pretty big.

Probably all we can do before the 10th is to
put a comment in there that if the working
group votes for this -- and I would -- that
the working group would strongly support the
legislature developing a Guaranty fund type of
mechanism funded through the sales of preneed
contracts for preneed. I think that's
probably all that could be done before the
10th.

MS. GRINSTON: And I need to clarify.

It's the 9th. It's the 9th.

MR. OTTO: The 9th. You're right.

MS. GRINSTON: I'm so sorry. It's the 9th. Don's suggestion is that you --

MR. MAHN: I'd second that motion,

Kim, if that's what Don likes.

MR. OTTO: I'll make that a motion.

MR. MAHN: I second it. This is Todd. Working group, anybody opposed? Anybody abstaining from the vote? Then I will add that as a comment to the draft.

MR. MAHN: I also want to back up for just a second. I've heard phones click on and off and I don't know who is on and who isn't.

Is our chairman back?

MS. DUNN: No.

MR. MAHN: Okay.

MS. GRINSTON: He's not back on.

MR. MAHN: Would the chairman have the opportunity to vote on our tie?

MS. GRINSTON: Todd, you would raise a difficult question.
MR. MAHN: Somebody has got the list
of who voted and who didn't.

MR. STALTER: But, Todd, if we do
that, why don't we bring all the other
working-committee members back in to vote,
too. I mean, we have beat this issue to
death. I mean -- and there's not going to be
an agreement upon it.

MR. MAHN: I can't hear --

MR. STALTER: This is Bill Stalter.

MR. MAHN: Bill, what did you say?

MR. STALTER: If we're waiting for Jim
to come back in, are we going to wait for the
other working-committee members to participate
in that, too?

MR. MAHN: No. I just asked the
question. I'm just asking the question. He
is actually the chairman. I don't think any
of the others have got the title chairman, so

--

UNIDENTIFIED: Yeah. What was the
tie, Kim?

MR. MCCULLOCH: I think he's got a
good point. You don't have everyone here and
you're trying to take advantage of that.
MS. GRINSTON: I would submit this to the working group. What is your pleasure?

MR. MEIERHOFFER: We've already taken a vote. The vote stands.

MS. GRINSTON: Mr. Meierhofer?

MR. McCULLOCH: And, Vernon, you're the chairman. Say we're out of here.

MS. GRINSTON: Well, before we do that, Mr. Broeker? Mr. Broeker has some final comments for us. I want to thank you for being patient with me, everybody who helped to educate me, who e-mailed me, called me. I really appreciate it. You all helped us through, I think, a very difficult process. I think we've done some really good work. Mr. Lindley?

MR. LINDLEY: I would hope that on this committee the day that this is presented on the 9th, that people in this working group would present proposals that speak to the language that you've talked about and also maybe to affix -- I would hate that that hearing get into a situation that we would start pointing fingers at different people about the causes of this and pointing out some
real deficiencies that would bring more negativity to this than a solution. And I
would hope that if there was any group that
was thinking about that, that for the benefit
of the providers that are in a difficult
situation and the consumer, that that group
would hold those comments until a solution is
worked out because I don't think that will
help anybody whatsoever.

MS. GRINSTON: Thank you, Mr. Lindley.
Mr. Broeker?

MR. BROEKER: For one last time, I
want to say thank you again to everybody who
participated. These have been -- this is our
seventh meeting, I think, as I recall.
They've been long meetings, but they've been,
I think, overall, very fruitful. All of you
have put in a lot of time on this. You've
responded to the requests that the staff has
asked of you and it's been very much
appreciated, your time, your effort. The
hearing coming up on the 9th, obviously, any
and all of you are more than welcome to
attend. As we mentioned earlier, the
committee is planning on -- this is
Representative Meadows. I think, your first meeting.

REPRESENTATIVE MEADOWS: Yes.

MR. BROEKER: You are planning on more after that. Public comment will be asked for at later meetings, not at this first one. But any of the roundtable participants who are interested in coming, as well as the members of the Board, obviously, that -- you know, that's up to you. If your time allows you to do so, I would recommend it if you can. Not only do I want to thank all of those of you who have participated in this, who have driven many miles in many cases to be here, also the staff from the Division, as well as the Board. I can tell you for a fact the hours they've put into this has been immense. They've done a good job. I'm real proud of them, and I don't get to tell them that often enough. They've done a great job and I want to thank them, as well. Thanks to all of you.

MS. GRINSTON: Mr. Vernon, I think we're ready to take a motion to adjourn.

MR. McCULLOCH: I make the motion we adjourn.
MS. GRINSTON: Hello?

MR. VERNON: Is there a second? I think the chairman is there, isn't he?

MR. REINHARD: Go ahead, Martin.

Finish it up.

MR. OTTO: Everyone is standing up and leaving. You better vote quick.

(Off the record)
I, Kristy B. Bradshaw, a Certified Court Reporter in the State of Missouri, do hereby certify that the foregoing transcript constitutes a full, true and correct record of said proceedings that were held on September 4, 2008; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 1st day of October, 2008.

[Signature]

KRISTY B. BRADSHAW, CCR
ALLOCATION OF PRENEED FUNDS
(EXPENSES, CANCELLATION & PORTABILITY)

The Working Group dedicated significant discussion to the proper allocation of preneed contract funds and related interest. The Working Group considered the proper allocation of preneed funds based on four distinct preneed scenarios:

1. **Contract Fulfillment**: The beneficiary dies and the preneed contract is fulfilled by the original seller and provider according to the contract terms. In this scenario, the purchaser has paid all outstanding costs and the provider and seller have complied with all contractual obligations.

2. **Transfer of Providers**: The purchaser decides to maintain the preneed contract but desires to select a different provider to perform the disposition or to provide the facilities, services or merchandise identified in the contract.

3. **Cancellation By Purchaser**: The purchaser decides to cancel the contract entirely. Here, the purchaser does not wish to designate a new provider or make other changes to the contract. Instead, the contract is to be completely terminated.

4. **Cancellation By Seller For Non-Payment**: This option is exercised by the seller in those instances when the purchaser has failed to remit payment as required by the contract. If exercised, the preneed contract is cancelled and is no longer in effect.

Each of the foregoing scenarios are valid and raise different consumer and funding concerns. Accordingly, the Working Group recommends that the Joint Committee separately consider the allocation of preneed funds/interest for each scenario.

**A. Contract Fulfillment:**

The Working Group approved the following unanimous recommendations:
- On fulfillment, sellers should be entitled to payment of all funds held in trust and any related income unless otherwise provided in the contract.

**B. Transfer of Providers:**

The Working Group approved the following consensus recommendations:
- Chapter 436 should clearly allow for 100% portability. Purchasers should have complete and unrestricted freedom to select an alternative provider and should not be penalized or assessed any additional fee/costs for a transfer.

- The seller should be required to pay the newly designated provider the remaining payments owed to the original provider under the contract, if the . Here, the newly designated provider would simply "step into the shoes" of the original provider for purposes of payment and fulfilling the contract.

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WORKING DRAFT
Dated September 2, 2008 at 5:00 p.m.
The Seller should be required to accept the new provider designated by the purchaser if the provider agrees to accept the remaining payments owed to the original provider, as designated in the contract.

Interest should be allocated to the seller as provided in the original contract.

C. Purchaser Cancellation:

The Working Group approved the following unanimous recommendations:

- Purchasers should be entitled to a full refund of payments if the purchaser cancels the contract within thirty (30) days after receiving a fully executed contract.
- Purchasers should be allowed to cancel after the thirty day cancellation period with or without cause (see additional recommendations below).

Additional Recommendations:

- 100% of all funds held in trust. Note: This option would require the seller to refund its expenses to the purchaser plus any related income.
- 90% of the amount paid by the purchaser. Note: This option would require the seller to return a portion of the funds for expenses plus any related income.
- 90% of all payments plus a portion of the income earned. Note: This option would require the seller to return a portion of the funds for expenses, however, a portion of the income earned would be refunded to the purchaser.
- 80% of all payments plus a portion of the income earned. Note: This option would require the seller to return a portion of the funds for expenses, however, a portion of the income would be refunded to the purchaser.

After extensive discussion and research, the Working Group did not reach a unanimous consensus or majority recommendation for the refunding of prepaid funds if the purchaser cancels the contract after the 30-day review period. However, Working Group Participants suggested the following discussion/refund amounts:

- 100% of all funds held in trust. Note: This option would require the seller to refund its expenses to the purchaser plus any related income.
- 90% of the amount paid by the purchaser. Note: This option would require the seller to return a portion of the funds for expenses plus any related income.
- 90% of all payments plus a portion of the income earned. Note: This option would require the seller to return a portion of the funds for expenses, however, a portion of the income earned would be refunded to the purchaser.
- 80% of all payments plus a portion of the income earned. Note: This option would require the seller to return a portion of the funds for expenses, however, a portion of the income would be refunded to the purchaser.
80% of the payments made by the purchaser. Note: This option would allow the seller to retain its expenses plus any related income. [State Board Recommendation]

D. Cancellation By Seller For Non-Payment:

The Working Group approved the following consensus recommendations:

- Sellers should be allowed to cancel the contract momentarily if the purchaser is in default of payment for sixty days (60) additional business days for refund provided.

- Prior to cancellation, purchasers should be provided written confirmation from the seller of the seller’s intent to cancel. The notice should be provided thirty days prior to cancellation and should notify the purchaser of the proposed cancellation date and that the contract will be cancelled if payment is not received or in default.

- If the seller fails to cancel the contract prior to at-need services being required, the purchaser should be provided the opportunity to remit the payment in arrears. If payment is not remitted, the seller should be required to credit the purchaser’s preneed payments towards the at-need cost for services. If a credit is applied, the seller may determine funeral/burial costs based on the seller’s at-need prices.

The Working Group approved the following majority recommendations:

- On seller cancellation, 80% percent of the contract payments should be refunded to purchasers. Note: This option would allow the seller to retain its administrative expenses plus any related income.
Recommendations – MFDEA
STATE BOARD OF
EMBALMERS
AND FUNERAL DIRECTORS

CHAPTER 436
WORKING GROUP
RECOMMENDATIONS

Submitted: September 1, 2008
September 1, 2008

Dear Joint Committee Members:

Over the last year, the nation has witnessed an unprecedented crisis in the preneed industry. Estimates of the financial impact on Missouri consumers and the funeral industry are alarming. While recent concerns relate to a single entity, the crisis has focused much needed attention on the regulation of preneed funeral contracts in the state of Missouri and Chapter 436, RSMo, governing preneed sales.

The State Board of Embalmers and Funeral Directors (the “Board”), under the auspices of the Missouri Division of Professional Registration (the “Division”), regulates embalmers, funeral directors, funeral establishments, preneed sellers and preneed providers licensed in this state. As part of its statutory duties, the Board annually reviews legislation to identify potential recommendations of the Board. In recent years, this process has included a review of Chapter 436.

Senate Bill 780, enacted by the General Assembly 2008, which created the Joint Committee on Preneed Funeral Contracts. As part of its annual legislative review, the Board was invited to gather a working group of representatives from across the preneed industry to collectively identify suggested preneed recommendations for the Joint Committee’s review. The Working Group consisted of a diverse representation from all aspects of the preneed industry, including liaisons from various consumer groups, members of the State Board and representatives from the funeral, preneed and insurance industries.

The Working Group respectfully submits the attached recommendations to the Joint Committee for review. While diverse interests were represented, the Working Group unanimously agreed that revisions to Chapter 436 are desperately needed to better protect Missouri consumers and those funeral directors, funeral establishments, preneed providers and preneed sellers who truly dedicate themselves to serving the public.

We commend the General Assembly in convening the Joint Committee and in dedicating the time and resources to this important task.

Sincerely,

To be determined

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WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
I. GENERAL OVERVIEW:

During the 2008-2009 legislative session, various Chapter 436 proposals were introduced. Although not enacted, the proposals sparked intense discussion among regulators, consumers and professional groups. While a consensus was not reached, industry and regulatory groups were able to identify several common areas of agreement.

At the close of the legislative session, various representatives met with Senator Debert Scott and Representative Jay Wasson to discuss Chapter 436 concerns. The Board was subsequently asked to formulate a working group to help identify agreed areas for legislative recommendations.

The Board hosted five (5) open meetings for the Working Group in Jefferson City, Missouri. All meetings of the Working Group were conducted as open meetings in accordance with Chapter 610, RSMo. Notice of meetings and the proposed agenda were made available to the public and published on the Board’s website.

II. PARTICIPANTS:

The Working Group consisted of representatives from consumer groups, funeral directors, preneed providers, preneed sellers, third-party preneed sellers, the Missouri Funeral Directors and Embalmers Association, related insurance companies and representatives from small, large and minority funeral establishments. Participants were chosen from prior legislative involvement and from recommendations made by legislators, Board members and related consumer groups. Members of the public were also invited to attend and given an opportunity to provide both oral and written comments.

The Working Group included:

- Linda Bokser
- David Broeker
- Sharon Euler
- Mary Erickson
- Larry McCord
- Mark Stahlhuth
- Rich Weaver

REGULATORS:

- Acting Director - Department of Insurance, Financial Institutions and Professional Registration ("DIFP")
- Division Director, Division of Professional Registration
- Office of the Attorney General
- Senior Enforcement Counsel - DIFP
- General Counsel - DIFP
- Senior Counsel - Financial Section, DIFP
- Director, Division of Finance

1 Open meetings were hosted on July 8th, July 15th, July 24th, July 29th and August 12th.

* Did not participate as a voting member of the Working Group.

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
ADDITIONAL PARTICIPANTS:

James Reinhard, Chair, State Board of Embalmers and Funeral Directors
Gary Fraker Board Member
Joy Gerstein Board Member
Todd Mahn Board Member
Martin Vernon Board Member
John McCulloch Board Member/American Prearranged Services
Bob Baker Wright Baker Hill Funeral Home
Barbara Brown Layne Renaissance Chapel, LLC
Norma Collins AARP
George Kuta/ Kuta Funeral Home, Inc.
George Kine
Jim Moody
Rep. Timothy Meadows
Michael Meierhofer Meierhofer Funeral Home & Crematory, Inc.
Barbara Newman Rep. Meadows’ Office
Darlene Russell Charter Life Insurance Co.
Josh Slocum Executive Director, Federal Consumer Alliance
Bill Stalter Stalter Legal Services
Bill Trimm/ Silver Haired Legislators
Jo Walker
Don Otto Executive Director, Missouri Funeral Director and Embalmers’ Association/Missouri Funeral Trust
Mark Warren Inglish & Monaco- Representing Homesteaders Life Insurance, etc.
Mike Winters Lobbyist, American Prearranged Services

COMMITTEE SUPPORT STAFF:

Connie Clarkson Director of Budget & Legislation, Division of Professional Registration
Pecky Dunn Executive Director, State Board
Deena Groose Administrative Assistant to Director of Budget & Legislation, Division of Professional Registration
Kimberly Grinington Legal Counsel, Division of Professional Registration
Lori Hayes Inspector, State Board

III. REVIEW PROCESS:

To guide the review, the Board circulated a survey with a listing by topic area of Chapter 436 proposals submitted to the Board in prior years. Participants were asked to rank the priority of topic areas listed for purposes of discussion. Surveys were made publicly available and were posted on the Board’s website. The Division subsequently compiled the rankings and utilized results to structure the Working Group. [See Appendix 1- Bd. Survey].

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
The surveyed topics were ranked as follows:

[INCLUDE SURVEY RESULTS HERE]
Working Group recommendations have been compiled as follows:

**Unanimous Recommendations:** Recommended by a unanimous vote of all Working Group Participants.

**Consensus Recommendations:** Recommended by an overwhelming majority of Participants, generally with less than 15% of Participants dissenting.

**Majority Recommendations:** Recommended by a simple majority vote of Working Group Participants.

**Unresolved:** Majority vote not reached. Suggestions from Participants have been provided.

For purposes of this Report, recommendations have been categorized as follows:

I. General Regulatory Authority .................................................. 10
II. Definitions ........................................................................... 11-12
III. Licensing/Registration ......................................................... 13
IV. Preneed Contracts ............................................................... 14-15
V. Preneed Providers ................................................................. 16
VI. Trust-Funded Preneed Plans ............................................... 18-19
VII. Regulation of Trusts & Trustees ........................................... 23-23
VIII. Insurance-Funded Preneed Plans ........................................ 24-25
IX. Joint Account-Funded Preneed Contracts ............................. 26
X. Payments to Providers .......................................................... 27
XI. Cancellation/Portability of Preneed Contracts ...................... 28-30
XII. Reporting Requirements ........................................... 31-32
XIII. Consumer Reporting/Notifications .............................. 33
XIV. Termination of Business ........................................... 34-35
XV. Audits, Investigations and Examinations ....................... 36-37
XVI. Disciplinary Authority ............................................. 38-40
XVII. Enforcement Authority ........................................... 41-42
XVIII. Fees ................................................................. 43
XIX. Conclusion .......................................................... 45
The Working Group unanimously agreed to the following recommendations:

- Regulatory authority over Chapter 436 and preneed licensing should remain with the Board. Regulatory authority should not be transferred to another agency.

  ![Comments: The Division and Board support this proposal but would also support transferring authority if another regulatory agency is deemed more appropriate.]

- The Missouri Attorney General should be granted concurrent jurisdiction with local prosecutors to prosecute violations of Chapter 436.

- The Board should be granted general rulemaking authority to administer Chapter 436 and to establish necessary fees.

  ![Comments: Funeral Consumer Alliance suggested that the current licensee confidentiality restrictions should be revised to allow the dissemination of more information to the public. Division staff indicated that the current confidentiality restrictions apply to all regulated boards/commissions within the Division and would require a statutory change specific to the Board.]

- The Board should be authorized to hire legal counsel to assist in the enforcement of Chapter 436.

  ![Comments: Board staff indicated this proposal would allow them to utilize both the Attorney General's Office and outside counsel, if needed. Representatives from the Attorney General's Office refrained from the vote.]

**MDFA BELIEVES THAT THE GROUP WAS FAVORABLE TO THE LAW STATING THAT THE STATE BOARD WOULD CREATE REQUIRED DISCLOSURES TO BE GIVEN TO CONSUMERS APART FROM THE LANGUAGE IN THE CONTRACTS. THESE WOULD SPELL OUT THE CONSUMERS RIGHTS REGARDING CANCELLATION, PORTABILITY, AND OTHER NOTIFICATIONS.**
DEFINITIONS

Several of Chapter 436’s current definitions are insufficiently defined. Accordingly, the Working Group approved the following unanimous recommendations:

- "Beneficiary", the individual who is to be the subject of the disposition or who will receive funeral services, facilities or merchandise described in a preneed contract.

- “Board,” the Missouri State Board of Embalmers and Funeral Directors.

- "Division", the division of professional registration of the department of insurance, financial institutions and professional registration.

- "Funeral merchandise", caskets, grave vaults, or receptacles, and other personal property incidental to a funeral or burial service, the final disposition of a human body, and such term shall also include grave lots, grave space, grave markers, monuments, tombstones, urns, crypts, niches or mausoleums. THE PHRASE “FINAL DISPOSITION” SHOULD BE USED AS THAT IS DEFINED BY LAW AND IS MORE INCLUSIVE THAN “BURIAL SERVICE.” FOR EXAMPLE, IT CLEARLY INCLUDES CREMATION OR CHARGES FOR REMOVAL FROM THE STATE.

- “Guaranteed Contract”, A preneed contract in which the future costs for the disposition, facilities, services or merchandise identified in the preneed contract are definitively designated and guaranteed/assured in the contract.

- “Insurance-Funded Preneed Contract”, A preneed contract which is designated to be funded by payments or proceeds from an insurance policy.

- “Joint-Account Funded Preneed Contract”, A preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account.

- “Market Value”, A fair market value,
  (a) As to cash, the amount thereof;
  (b) As to a security as of any date, the price for the security in that date obtained from a generally recognized source, or to the extent no generally recognized source exists, the price to sell an asset in an orderly transaction between unrelated market participants at the measurement date, and;
  (c) As to any other asset, the price to sell an asset in an orderly transaction between unrelated market participants at the measurement date consistent with Statements of Financial Accounting Standards.
• “Non-Guaranteed Contract”: A preneed contract in which the costs for the disposition, facilities, services or merchandise are not guaranteed/assured in the contract.

• "Person", any individual, partnership, corporation, cooperative, association, or other entity.

• "Preneed contract", any contract or other arrangement which provides for the final disposition of a dead human body, or for funeral or burial services or facilities, or for funeral or other 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.

• “Preneed Agent,” any person authorized to sell a preneed contract for or on behalf of a preneed seller.

• "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.

• "Provider", the person designated to provide the disposition or funeral services, facilities, or merchandise described in a preneed contract.

• "Purchaser", the person who is obligated to pay under a preneed contract.

• "Seller", the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

• "Trustee", the trustee of a preneed trust, including successor trustees.

• “Trust-Funded Preneed Contract”: A preneed contract which provides that payments for the preneed contract shall be deposited and maintained in trust.
The Working Group agreed to the following consensus recommendations:

- A "license" should be required for all preneed providers/sellers. Currently, sellers and providers are "registered" with the Board. A "license" denotes legal obligations and more accurately reflect the authorization being issued by the Board.

- Individuals selling preneed for or on behalf of a preneed seller should be licensed by the Board as a preneed agent. As a condition of licensure, preneed agents should successfully pass the Missouri law examination currently offered by the Board, provided that Missouri licensed funeral directors should not be required to take an additional examination.

> Comment: John McCullock (APS) expected concerns imposing full licensing, testing or disciplinary requirements on preneed agents.

- To be eligible for licensure/renewal, preneed agents, providers and sellers must be of good moral character, remit a licensing fee and have a high school diploma or the equivalent. If a corporation, licensure/renewal requirements should be applicable to each officer, director, manager or controlling shareholder.

- All preneed sellers or providers operating as business entities must be properly registered with the Missouri Secretary of State and authorized to conduct business in the state.

- Chapter 436 should be clarified to exempt endowed care cemetery operators governed by Chapter 214 from the provisions of Chapter 436. However, cemetery operators should be subject to Chapter 436 if the contract includes services that may only be, lawfully provided by a licensed funeral director or embalmer. MFDAA BELIEVES THIS IS AN INCORRECT STATEMENT OF THE GROUP'S POSITION. RATHER IT IS THE OTHER WAY AROUND, THOSE ITEMS GOVERNED EXCLUSIVELY BY 214 SHOULD BE EXEMPT FROM 436 BUT IF A CEMETARY IS SELLING FUNERAL MERCHANDISE ON A PRENEED BASIS, IT SHOULD HAVE TO FOLLOW THE SAME RULES AS SELLERS UNDER 436.

- Chapter 436 should clearly provide that the provisions of the Chapter are inapplicable to contracts of insurance. However, Chapter 436 should apply to any preneed contract sold in conjunction with insurance. The current statutory language regarding insurance assignments or beneficiary designations is unclear and should be modified in compliance with the recommendation.
Due to potential costs, preneed licensees should not be required to obtain bonding or any specific insurance. The Working Group suggested that increasing consumer protections and regulatory oversight would adequately address the need for additional insurance/bonding.
PRENEED CONTRACTS

The Working Group unanimously approved the following recommendations:

- To accommodate the varying forms of preneed, Chapter 436 should define and regulate preneed contracts based on their funding mechanism. Specifically, preneed contracts should be classified as either insurance-funded, trust-funded or joint-account funded. Unique concerns relate to each different type of funding. Chapter 436 could be more effectively regulated if the provisions were modified to accommodate each specific form of funding.

- While minimum preneed contract requirements should be established, as provided below, a standard preneed contract form should not be required.

![Comments: Although MFREA supported the vote, representatives stressed that a standard form could be beneficial.]

- Preneed sellers should be required to maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided. Contracts should be provided to the Board on request.

![Comments: Funeral Consumer Alliance recommended that sellers should also provide copies of all preneed contracts to the Board. The Board suggested this requirement may be unduly burdensome and that requiring sellers to providing copies upon request would satisfy regulatory concerns.]

- Preneed contracts should only be designated as irrevocable if the contract is being used to qualify for Medicaid (i.e., for "spend down").

- Preneed contracts should be in writing and should clearly and conspicuously:
  - Include the name, address, and phone number of the purchaser, beneficiary, provider and the seller;
  - Detail the disposition or facilities, services or merchandise requested;
  - Clearly identify if the contract is guaranteed or non-guaranteed on the face of the contract in a recognizable type (i.e., a 12 to 13-point type);
  - Identify terms for cancelling the contract by the purchaser or by the seller for payment default;
  - Identify the funding mechanism including, the trust or financial institution where preneed funds will be held or the insurance company issuing an insurance policy;
  - Identify expenses to be retained by the seller.
Be signed by the purchaser, the preneed agent and the seller or a representative. MEDEA BELIEVES THE CONTRACT SHOULD BE SIGNED BY THE PROVIDER AS WELL.

- Preneed contracts not in compliance with Chapter 436 should be rendered void [should this be voidable by the purchaser] and unenforceable. If not in compliance, payments may be recoverable by the purchaser or their legal representative plus attorney fees.

! Comments: This requirement is similar to current law.

- Sellers/providers should be prohibited from redesignating a preneed contract as a trust-funded, insurance-funded or joint-account funded preneed contract without the consent of the purchaser.

! Comments: The Funeral Consumer Alliance suggested that purchasers should also be given a written statement identifying the financial consequences of the redesignation (i.e. reduction in cash surrender value, interest accrual and fees).

- On the death or legal incapacity of the purchaser, all rights or remedies of the purchaser should accrue to the benefit of the purchaser or his/her successor as designated in the contract. Proceeds payable under a life insurance contract, should be governed by insurance law and the insurance contract.

The Working Group approved the following consensus recommendations:

- Preneed contracts should clearly designate whether the contract is revocable or irrevocable.

! Comments: Homesteaders Life Insurance Co., suggested the funding for preneed contracts should be made irrevocable and not the contract itself. The commenter remarked that irrevocable contracts may hinder a consumer's freedom of choice.

! Comments: The Board also recommended that contracts include notification that complaints regarding preneed sellers/providers may be forwarded to the Board and the current number/address of the Board. Representatives of AARP, the Silver Haired Legislators and the Funeral Consumer Alliance agreed with this suggestion.

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
PRENEED PROVIDERS

The Working Group unanimously approved the following recommendations:

- In light of recent concerns raised by the Federal Trade Commission, preneed provider licensing should not be restricted to only funeral establishments or cemetery operators. Private individuals are currently authorized to sell funeral merchandise preneed or at-need. However, it should be clarified that Chapter 436 does not exempt any person from the licensing requirements of Chapter 333 governing funeral directors and establishment.

- Chapter 436 should clearly state that the provider designated in a preneed contract is obligated to provide the disposition, facilities, services or merchandise designated in the preneed contract.

- Providers must have a written agreement with each preneed seller that the provider has authorized to designate the licensee as a provider in a preneed contract.

- Providers should be required to report the name and address of its custodian of records and of all sellers authorized to name the licensee as a provider. The Board should be notified by the provider in writing within 15 days of any amendments or changes.
PRENEED SELLERS

The Working Group adopted the following unanimous recommendations:

- For purposes of licensure, Chapter 436 should be clarified to provide that a preneed trust is not required if the seller is only selling joint-account or insurance-funded preneed plans.

- Preneed sellers should have the option to sell either trust-funded, joint-account funded or an insurance-funded preneed contract. Sellers should notify the Board of the type of contracts to be sold.

- Sellers should report to the Board the name and address of its custodian of records and of all providers that have authorized the seller to name the licensee as a provider. The Board should be notified by the seller in writing of any amendments or changes.

- The written agreement between the provider and seller should include:
  - Consent from the provider authorizing the seller to designate the licensee as a provider.
  - Procedures for tracking preneed fund payments received by the provider.

- Sellers should maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided.
The Working Group unanimously approved the following recommendations:

- Sellers should be required to issue receipts to the purchaser for preneed payments received by the seller. **THIS SHOULD BE THAT ANY PERSON TAKING CASH FROM A PURCHASER SHOULD PROVIDE FOR A RECEIPT. NO RECEIPT IS PRACTICAL IF THE CONSUMER IS SENDING A CHECK TO A BANK OR IF IT IS AN ELECTRONIC TRANSFER. CHECKS OPERATE AS RECEIPTS. THE DANGER IS WHEN THE CONSUMER PAYS ANYONE CASH AND WHOEVER RECEIVES CASH (SELLER, PROVIDER, OR PRENEED AGENT) SHOULD GIVE A RECEIPT.**

The Working Group approved the following consensus recommendations:

- 100% of all payments for a trust-funded preneed contract should be deposited into trust. Sellers should be authorized to submit a request to the trustee for administrative expenses (see Additional Comments below).

    **Comment:** APS and Meehoffer suggested that requiring sellers to request expenses from the trustee would create additional administrative expenses that may be passed onto the consumer. APS and Meehoffer strongly recommended retaining the current process of allowing the seller to retain the first 20% of contract payments and to trust the remaining 80%.

- Payments for trust-funded preneed contracts should be deposited into trust within sixty-days of receipt.

    **Comment:** Participants suggested that sixty-days would allow sufficient administrative time for processing and forwarding payments to the seller and for clearing payments made by check. However, other participants suggested that a 30-45 day deposit requirement would decrease consumer protection.

- Seller administrative expenses should be authorized from the initial payments received.

The following Working Group recommendations were unresolved: After considerable discussion and research, the Working Group did not reach a consensus or majority vote on the recommended allowance for seller administrative expenses. However, Participants recommended the following amounts:

- No administrative expense should be allowed.
- Three quarters (¾) of 1% of the face value of the Preneed Contract.
  - Josh Slocum
  - Note: This provision models New York’s preneed legislation.
• Ten percent of face value: The majority of Participants agreed that 10% of the contract's face value would be a reasonable compromise.
  o AARP
  o Silver Haired Legislature
  o Rep. Meadows
• Ten to fifteen percent
  o DIFF
• Twenty percent of face value
  o Mike Meierhofer
  o Kutis Funeral Home
  o John McCulloch
  o Mike Winters
  o Austin-Layne
REGULATION OF TRUSTS & TRUSTEES

The Working Group unanimously approved the following recommendations:

GENERAL REQUIREMENTS:

![Comments: Bill Stalter recommended that regulation of the trust and trustee functions activities would be better served if oversight of the trust was transferred to the Division of Finance.]

- Trustees of a preneed trust must be a state or federally chartered institution authorized to exercise trust powers in Missouri.

- Provisions of the Uniform Trust Act under Chapter 469 and Chapter 456 should not be wholly incorporated into Chapter 436.

![Comments: Participants commented that Chapters 469 and 456 contain provisions that are not suited for preneed. For example, Chapters 469 and 456 allow the trustees and grantor to modify the statutory requirements by agreement. It was also suggested that the definition of income would be inappropriate for Chapter 436.]

- A preneed trust should terminate when trust principal no longer includes any payments made under any preneed contract. On termination the trustee should distribute all trust property, including principal and undistributed income, to the seller which established the trust.

The Working Group approved the following consensus recommendations:

- Expenses of the trust, including trustee's fees, legal and accounting fees, investment expenses and taxes should be paid from the trust.

![Comments: Several participants recommended that expenses of the trust should continue to be paid by the seller directly. Concerns were raised that allowing payment from the trust could reduce trust principal.]

The Working Group approved the following majority recommendations:

- Income of the trust should accrue and should generally not be distributed until the contract is fulfilled or otherwise cancelled.

![Comments: Several participants recommended that the current income distribution rules should be maintained and income distributions allowed as earned.]

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
TRUSTEE DUTIES:

The Working Group unanimously approved the following recommendations:

- The prudent investor rule should be adopted for trustees. Specifically, trustees should invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee should exercise reasonable care, skill, and caution.

- Trustees who have special skills or expertise, or who are named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, should have a duty to use those special skills or expertise when investing and managing trust assets.

- Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee should review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of Missouri law.

- The trustee should maintain "adequate books and records" of all transactions administered through the trust and pertaining to the trust generally.

CONFLICTS OF INTEREST: The Working Group unanimously agreed that conflicts of interest between trustees and investment advisors should be prohibited. Specifically, the following recommendations were made:

- The financial institution and investment advisor should not be controlled by or under common control with the seller.

- "Control", "controlled by" and "under common control" with should be defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contact other than the power is the result of an official position with or corporate office held otherwise, unless the power is the result of an official position with or corporate office held by the person.

- Control should be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing to the board that control does not in fact exist to determine within its sole discretion that control does not in fact exist.

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
• Trustees should be prohibited from selling, investing or authorizing any transaction involving the investment or management of trust property with:
  o The spouse of the trustee;
  o Descendants, siblings, parents, or spouses of a preneed seller or an officer, manager, director or employee of a preneed seller, provider or counselor;
  o Agents or attorneys of the trustee, preneed seller or provider; or
  o A corporation or other person or enterprise in which the trustee, preneed seller, preneed provider, or a preneed provider owns a significant interest or has an interest that might affect the trustee’s best judgment.

Comments: Bill Slater recommended that a seller should be allowed to have a relationship with the advisor so long as the fiduciary remains responsible for the trust’s compliance with the prudent investor rule and retains title of the assets.

INVESTMENT OF FUNDS:

The Working Group unanimously approved the following recommendations:

• Trustees should be limited to investments that have reasonable potential for growth or producing income.

• Trustee’s should be specifically restricted from investing trust funds in any insurance product. MEDEA DOES NOT BELIEVE WE VOTED THIS, NO TERM LIFE YES, BUT NOT ON ANY INSURANCE PRODUCT.

• Diversification of trust assets should be mandatory unless the trustee reasonably determines that, because of special circumstances, the purpose of the trust are better served without diversifying.

• In investing trust assets, a trustee should be required to consider:
  o General economic conditions;
  o The possible effect of inflation or deflation;
  o The expected tax consequences of investment decisions or strategies;
  o The role that each investment or course of action plays within the overall trust portfolio;
  o The expected total return from income and the appreciation of capital;
  o Other resources of the beneficiaries known to the trustee;
  o Needs for liquidity, regularity of income, and preservation or appreciation of capital;
  o An asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; and
  o The size of the portfolio, nature and estimated duration of the fiduciary relationship and distribution requirements under the governing instrument.
• Trustees and preneed licensees should be prohibited from procuring or accepting a loan against any investment or asset of the trust.

• Commingling of trust funds should be only be allowed if the trustee maintains adequate records that individually and separately identify the payments, income and distribution for each preneed contract. Commingling should be limited to payments received for Missouri preneed contracts.

SELECTIONS OF AGENTS/INDEPENDENT INVESTMENT ADVISORS:

• Trustees should only delegate duties and powers to an agent that a prudent trustee of comparable skills could properly delegate under the circumstances.

• If an agent is selected, the trustee should exercise reasonable care, skill, and caution in:
  o Selecting an agent:
    - Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust, and
  o Periodically reviewing the agent’s actions and monitoring the agent’s performance and compliance with the terms of the delegation.

• In performing a delegated function, an agent should owe a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

• Agents that accept a delegation of powers or duties from a trustee should be deemed to have consented to the jurisdiction of Missouri courts.

• By selecting an agent, a trustee should not be relieved of any duty or responsibility imposed on the trustee by Missouri law.

The Working Group approved the following recommendations by majority vote:

• Sellers should be allowed to approve the investment advisor selected.

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The Department of Insurance, Division of Finance, State Board and the Missouri Attorney General’s Office unanimously agree that seller approval of the investment advisor would hinder the independence of the investment advisor and threaten consumer protection. The suggestion proposed would allow the NIRP concerns to occur again. Comments should not and cannot be placed at continued risk of unscrupulous business practices. A trustee of a financial institution should be more than capable of selecting an investment advisor that would be adequate for the trust. Seller “approval” is not and should not be required.

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
INSURANCE-FUNDED PRENEED PLANS

The Working Group adopted the following unanimous recommendations:

- Currently, Chapter 436 does not clearly allow/regulate insurance-funded plans. Insurance-funded preneed plans are a safe and necessary option. **MFEA questions why this sentence is here. Insurance may be a consumer's option depending on the circumstances, and we support it being clearly permitted, but it is clearly not "necessary" as there are other options and, indeed, other states prohibit insurance used in this way and because insurance may or may not be "safe."** Accordingly, Chapter 436 should clearly authorize insurance-funded contracts.

- Insurance law should not apply to preneed contracts but should apply to any insurance sold with a preneed contract.

- Sellers should not change, assess or collect any administrative fees for an insurance-funded preneed plan. Instead, sellers should only be allowed to receive/collaborate from a purchaser the amount required to pay insurance premiums as established by the insurer.

- In no instance, should a term life insurance product be used to fund a preneed contract. However, consumers should be allowed to assign proceeds from a term-life insurance product to a provider, or to designate a provider as a beneficiary under a preneed contract, provided that the assignment is not related to, or done in contemplation of, executing the sale of a preneed contract.

**Comments:** MFEA recommended that a blanket prohibition may be overreaching and that consumers should still be allowed to assign proceeds from a pre-existing term-life product to a provider or to designate a funeral establishment as the beneficiary. MFEA remarked that term life insurance may be the only affordable option for some consumers or the only insurance option that consumers who are older or have significant health problems may qualify for.

The Working Group adopted the following consensus recommendations:

- Payments received by the seller/provider for insurance-funded preneed contracts should be forwarded to the insurer within thirty (30) days of receipt.

**Comments:** Homesteaders remarked that sellers/providers should only be authorized to collect the initial premium payment. All subsequent premium payments should be made directly to the insurer.

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
- Preneed contracts funded by a life insurance policy should include:
  - Terms for cancellation by the purchaser or seller;
  - Notice that cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract.
  - Notice that insurance cancellation must be made in writing to the insurer.
  - Notice that the purchaser will only receive the cash surrender value of the policy, which may be less than the amount paid in, if cancelled after a designated time;
  - Notice that the purchaser has the right to reassign/transfer the beneficiary designation or assignment to another funeral home.

| Comments: | To avoid confusion and potential misconstructions, concerns were raised that the majority of this information should be provided by the insurer and included in the insurance contract since it would require the seller to summarize the insurance contract. Additionally, Homesteaders suggested use of the National Association of Insurance Commissioner's model for insurance funded disclosures. Funeral Consumer Alliance also suggested that the amount of commission should also be disclosed in an insurance-funded contract. MEDIA IS CONCERNED THAT CONSUMERS DO NOT KNOW HOW MUCH THEY WILL RECEIVE FROM AN INSURANCE CONTRACT IN THE EVENT IT IS CANCELLED OR HOW MUCH THEIR TOTAL PAYMENTS WILL BE FOR THEIR FUNDING THROUGH AN INSURANCE POLICY. THIS SHOULD CLEARLY BE DISCLOSED SEPARATELY FROM THE INSURANCE CONTRACT ITSELF |
| Comments: | Funeral Consumer Alliance suggested that licensees should disclose to the purchaser if the licensee is an insurance agent/producer and if the licensee will receive any commission, payment or other consideration for the sale of an insurance product. |
JOINT ACCOUNT-FUNDED PRENEED CONTRACTS

The Working Group unanimously recommended that the current provisions for joint-account funded preneed plans are adequate and should be maintained. However, the Working Group suggested the following minor changes:

- Chapter 436 should be clarified to provide that a preneed seller may sell joint-account funded contracts. Currently, Chapter 436 only authorizes joint accounts for providers.

- Sellers only utilizing joint-account funded preneed contracts should not be required to have a trust.

"MEDFA MADE THE POINT THAT JOINT-ACCOUNTS SHOULD BE TREATED THE SAME WAY AS TRUST FUNDED ACCOUNTS REGARDING THE AMOUNT RETAINED AND HOW CANCELLATION AND PORTABILITY IS HANDLED. THERE IS NO BASIS FOR TREATING THESE METHODS OF FUNDING DIFFERENTLY"
PAYMENTS TO PROVIDERS

The Working Group unanimously recommended the following:

- To request payment, providers should be required to submit a certificate of performance certifying that the provider has rendered services to the preneed beneficiary. The certificate of performance should be signed by the provider and the person authorized to make arrangements on behalf of the preneed beneficiary.

- Sellers should remit payment to providers within thirty (30) days after receiving a certificate of performance. Sellers should not be prohibited from also requiring submission of a certified death certificate.

*MDEA HAS A CONCERN THAT A SELLER COULD USE THE FACT THAT A DEATH CERTIFICATE IS DELAYED FOR REASONS BEYOND THE FUNERAL DIRECTORS CONTROL (I.E. BY THE DOCTOR/ME/CORONER) TO DELAY RIGHTFULL PAYMENT TO A PROVIDER, ALTHOUGH A SELLER MAY REQUIRE A DEATH CERTIFICATE, THIS SHOULD NOT BE USED AS AN EXCUSE TO DELAY PAYMENT.*
CANCELLATION/PORTABILITY OF PRENEED CONTRACTS

MEDEA BELIEVES THAT CANCELLATION AND PORTABILITY CANNOT BE DISCUSSED IN A MEANINGFUL MANNER UNTIL AFTER THE ISSUE OF HOW MUCH MUST BE TRUSTED (100%, 90%, 80%) IS DECIDED. AS THERE WAS NO CONSENSUS ON THAT ISSUE, THERE CAN BE NO REAL ANALYSIS OF HOW CANCELLATION MIGHT BE HANDLED.

MEDEA NOTES THAT THE WORKING GROUP DID VOTE ON THE FOLLOWING: THAT UPON CANCELLATION THE CONSUMER WOULD RECEIVE THE FUNDS IN TRUST (WOULD VARY DEPPENDING ON 80% OR 90% TRUSTING WHEN WE VOTED ON THIS THE SLIGHT MAJORITY WAS STILL FOR 80% BUT LATER A MAJORITY VOTED FOR 90%) PLUS 10% OF THE INCOME THAT HAD BEEN EARNED. THIS WAS, WE BELIEVE, CLOSE TO A UNANIMOUS VOTE.

The Working Group considered four distinct scenarios that generally arise over the life of a preneed contract:

1. **Contract Fulfillment:** The beneficiary dies and the preneed contract is fulfilled by the original seller and provider according to the contract terms. In this scenario, the purchaser has paid all outstanding costs and the provider and seller have complied with all contractual obligations.

2. **Transfer of Providers:** The purchaser decides to maintain the preneed contract but desires to select a different provider to perform the disposition or to provide the facilities, services or merchandise identified in the contract.

3. **Cancellation By Purchaser:** The purchaser decides to cancel the contract entirely. Here, the purchaser does not wish to designate a new provider or make other changes to the contract. Instead, the contract is to be completely terminated.

4. **Cancellation By Seller For Non-Payment:** This option is exercised by the seller in those instances when the purchaser has failed to remit payment as required by the contract. If exercised, the preneed contract is cancelled and is no longer in effect.

A. **Contract Fulfillment:**

The Working Group approved the following unanimous recommendations:

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
• On fulfillment, sellers should be entitled to payment as provided in the contract and the related income.

B. Transfer of Providers:

The Working Group approved the following unanimous recommendations:

• Chapter 436 should allow for 100% portability. Purchasers should have complete and unrestricted freedom to select an alternative provider. Purchasers should not be penalized nor should any additional fee or costs be assessed to the purchasers for a transfer.

• The new provider designated by the purchaser should be accepted by the seller if the provider agrees to accept the remaining payment owed the original provider as designated in the contract. Here, the newly designated provider would simply “step into the shoes” of the original provider for purposes of payment and fulfilling the contract.

Comments: While MFDA generally supported this recommendation, concerns were raised that the seller should be able to reject a designated provider if the seller does not have a contract with the provider or if legitimate business reasons exist for the seller not accepting the designation (i.e., the provider has failed to comply with the contract in other instances or has misappropriated funds from the seller). MFDA’s concerns are that (1) a seller could be forced to be in a legal relationship with a party they do not have a contract with and with whom they do not wish to be in business with and (2) a seller/provider could wind up having to invest funds on behalf of (and for the benefit of a competitor). The simplest solution is that when the consumer wishes to transfer that (assuming the new funeral home accepts the arrangement) the funds currently in the trust (including net income/interest/growth) be transferred to the new funeral home. In other words, “cut a check” to the new funeral home and let them invest the funds for their own benefit.

C. Purchaser Cancellation:

The Working Group approved the following unanimous recommendations:

• Purchasers should be entitled to a full refund of payments if the purchaser cancels the contract within thirty (30) days after receiving a fully executed contract.

• Purchasers should be allowed to cancel after the thirty day cancellation period. The refund amount should be designated by statute (however, see below).

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WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
Additional Recommendations: After extensive discussion and research, the Working Group did not reach a unanimous, consensus or majority recommendation for the refunding of preneed funds if the purchaser cancels the contract after the 30-day review period. However, the following recommendations were suggested by Working Group Participants:

- 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- 100% of all funds held in trust should be refunded.
- 80% of all funds held in trust should be refunded.
- 80% of all funds paid by the purchaser should be refunded.
- 80% of all funds paid should be refunded plus a portion of the income earned.

D. Cancellation By Seller For Non-Payment:

The Working Group approved the following unanimous recommendations:

- Sellers should be allowed to cancel the contract unilaterally if the purchaser is in default of payment.
- If cancelled by the seller, preneed purchasers should be refunded 80% of all amounts paid for the contract.
- Prior to cancellation, purchasers should be provided written notification from the seller of the seller’s intent to cancel. The notice should be provided forty-five days prior to cancellation and should allow the purchaser thirty days to remit the payment in arrears to avoid cancellation.
- If the seller does not cancel prior to at-need services being required, the purchaser should be provided the opportunity to remit the payment in arrears. If payment is not remitted, the seller should be required to credit the purchaser’s preneed payments towards the at-need cost for services. If a credit is applied, the seller may determine funeral/burial costs based on the seller’s at-need prices.

The Working Group approved the following majority recommendations:

- On seller cancellation, 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- Eighty percent of all funds paid and held in trust should be refunded to purchasers.

![Comment: Bill Stalter recommended that issues regarding trust expenses and income/expense allocations would be better addressed in rulemaking.](Image)

WORKING DRAFT
Dated August 17, 2008 at 5:30 p.m.
REPORTING REQUIREMENTS

To assist the Board in regulation, the Working Group unanimously recommended expanding the information submitted to the Board by preneed licensees.

ANNUAL REPORT REQUIREMENTS FOR ALL PRENEED SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

- The purchaser’s name and address and preneed contract number, if any. Contract numbers should not be required but should be provided if available.
- The total number and face value of outstanding preneed contracts sold since the last report was filed.
- The contract amount for each preneed contract sold since the last annual report.
- The name, address and contract number of all preneed agents authorized to sell preneed for the seller.
- The number of contracts fulfilled by the seller since the last report.
- The name and address of each provider contracted with the seller.
- The name and address of a custodian of preneed records.
- Authorization for the Board to conduct an audit and/or an examination of books and records.
- Any other information deemed necessary by the Board by rule.

ANNUAL REPORT REQUIREMENTS FOR TRUST-FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate officer of the trustee.)

- The name and address of the financial institution where the trust is held and the account number.
- The trust fund balance as reported in the previous year’s report and the current trust fund balance.
- Principal contributions received since the last report.
- Total trust earnings and total distributions to the seller since the last report.
- A statement of assets and investments of the trust listing cash, real or personal property, stocks, bonds, and other assets. The listing should show cost, acquisition date and current market value of each asset and investment.
- Total expenses since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS FOR JOINT-ACCOUNT FUNDED PRENEED CONTRACT SELLERS

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the financial institution.)

- The number and address of the Missouri financial institution where the joint account is held and the account number.
- The amount on deposit in each joint account.
- The joint account balance reported the previous year.
- Principal contributions placed into each joint account since the last report.
- Total earnings since the previous report.
- Total distributions to the seller from each joint account since the previous year.
- Total expenses deducted from the joint account since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS
FOR INSURER FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations:

- The name and address of each insurer issuing insurance to fund a preneed contract during the preceding year.
- The status and total death benefit and cash surrender value of each policy in force at the time of the report. (This should be certified as true and accurate by the insurer.)
CONSUMER REPORTING / NOTIFICATIONS

The Working Group unanimously approved the following recommendations:

- Purchasers should be entitled to an annual report from the seller indicating the amount of funds paid by the purchaser during the reporting year and the name and address of the trustee.
- Sellers should inform purchasers of a change in trustee within thirty (30) days after the change. Notification should include the name, address and phone number of the trustee.

The Working Group approved the following majority recommendations:

- Purchasers should be notified by the trustee each time a deposit is made into trust for the contract. *MEDIA DOES NOT BELIEVE WE VOTED ON THIS. THIS WOULD BE EXTREMELY BURDENSOME AND IMPractical. THINK ABOUT A BANK SENDING YOU A SEPARATE NOTICE IN THE MAIL EACH TIME YOU HAVE MADE A DEPOSIT INTO YOUR ACCOUNT.*

| Comments: Participants expressed concerns that an annual report would create an unnecessary burden on priced sellers and increase administrative expenses that would eventually be passed on to the consumer. |

- Purchasers should be provided a receipt for each payment made by or on behalf of the purchaser. The receipt should be provided by the initial person receiving the payment (i.e., the seller, provider or the agent).
TERMINATION OF BUSINESS

The Board has experienced significant regulatory difficulty with ensuring that Missouri consumers are adequately protected when preneed providers and sellers cease doing business either voluntarily or involuntarily. As a result, the Working Group unanimously recommended the following:

PRENEED SELLERS:
• The Working Group approved the following unanimous recommendations: The following notification/reporting requirements should be mandated for preneed sellers:
  o Notice to the Board at least thirty (30) days prior to a seller ceasing business or transferring a majority of its stock/assets.
  o A final annual report filed with the Board which includes a detailed plan indicating how outstanding preneed contracts will be filled and/or satisfied and how assets will be allocated for preneed obligations.
  o Notice to all providers that the seller has ceased doing business thirty (30) days prior to the seller ceasing business or transferring a majority of stock/assets.
  o Notice to consumers that the seller will cease doing business and indicate a contact number for questions regarding preneed contracts, consumer refunds or how arrangements will be satisfied. Purchaser notification should be required at least thirty (30) days prior to ceasing business or, in instances of a sale/transfer, within thirty (30) days after completion of the sale/transfer.
  o Submission of any additional information designated by the Board.
• Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider/seller to ensure contractual obligations are met.
• The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed seller who ceases business without notification to the Board.

PRENEED PROVIDERS:
• The following notification/reporting requirements should be mandated for preneed providers:
  o Notice to the Board at least thirty (30) days prior to the provider ceasing business or transferring a majority of its stock/assets.
  o A final annual report filed with the Board.
  o Notice of the provider’s intent to all sellers with whom the provider has outstanding preneed contracts within thirty (30) days prior to the provider ceasing business or transferring/disposing of a majority of stock/assets.
  o Upon notification from the providers, sellers should be required to notify all purchasers that the provider has ceased doing business or has transferred ownership. Notification should include provisions for...
selecting an alternative provider and should be provided within thirty (30) days after the provider ceasing business or transferring ownership/assets. MFDIA DOES NOT BELIEVE WE VOTED ON THIS FOR A CHANGE IN OWNERSHIP ONLY FOR WHEN A PROVIDER CEASED TO DO BUSINESS. THIS MAKES SENSE TO DO WHEN A FUNERAL HOME GOES OUT OF BUSINESS AS THE CONSUMER WILL NEED TO KNOW WHAT TO DO WITH THEIR PREPAID PLANS BUT WITH A TRANSFER OF OWNERSHIP THE NEW OWNER IS STILL OBLIGATED TO SERVICE THE PLANS. SUCH NOTIFICATIONS COULD ALSO SERIOUSLY CAUSE HARM TO THE NEW PURCHASER OF THE BUSINESS.

- Submission of any additional information designated by the Board.
- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records of a preneed provider who ceases business without notification to the Board.
AUDITS, INVESTIGATIONS AND EXAMINATIONS

The Working Group unanimously agreed that effective regulation of the preneed industry may only be accomplished by strengthening, clarifying and expanding the current investigation, examination and audit authority of the Board.

The Working Group unanimously recommended the following:

- The Board should be granted clear authority to:
  - Issue subpoenas to compel the production of books and records of any licensee or trustee.
  - Enter the premises or establishment where preneed business is conducted, or is advertised to be conducted, for the purposes of accessing books and records.
  - Conduct random or targeted inspections, with or without cause and at the discretion of the Board.
  - Investigate complaints and to investigate licensees to determine compliance with Chapter 436.
  - Conduct random or targeted examinations of books and records, at the discretion of the Board. The Board should be authorized to conduct an examination of each preneed seller at least once every five years.

  ! **Comments:** Although the Working Group initially recommended every three years, the Board expressed concerns regarding cost and the financial feasibility of conducting such examinations.

- Sellers selling joint-account-funded plans only should be exempt from the examinations conducted by the Board every five years. However, the Board should retain authority to audit or examine the seller, if deemed necessary.

- Audit a preneed seller with cause if the Board has reasonable grounds for verifying the proper handling of preneed funds.

- Inspections, investigations, audits and examinations should be authorized with or without a complaint.

- The Board may request DIFP, the attorney general or the division of finance, to designate investigator(s) or financial examiner(s) to assist the Board with any inspection, investigation, examination or audit.

- Preneed licensees should clearly be required to cooperate with any inspection, investigation, examination or audit conducted by the Board, DIFP, the attorney general or the division of finance.

- Books and records of licensees should be made available to the Board by the licensees upon request.

- Costs of an inspection, investigation, examination or audit should be funded through licensing fees AND/OR FEES ON PRENEED CONTRACTS AS established by the Board by rule.

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
ATTORNEY GENERAL AUTHORITY

The Working Group unanimously recommended the following:

If a violation of Chapter 436 is found after an investigation, audit or examination, the Attorney General should be authorized to initiate a judicial proceeding to:

- Declare rights.
- Approve a nonjudicial settlement.
- Appoint or remove a trustee.
- Interpret or construe the terms of the trust.
- Determine the validity of a trust or its terms.
- Compel a trustee to report or make an accounting.
- Enjoin a trustee from performing a particular act or to grant the trustee any necessary or desirable power.
- Review the actions of the trustee, including the exercise of any discretionary power.
- Determine trustee liability and to grant any available remedy for breach of a trust.
- Approve employment and compensation of agents.
- Determine the propriety of investments.
- Determine the timing and quantity of distributions and disposition of assets.
- Utilize any other power vested in the attorney general.

IT NEEDS TO BE CLEAR THAT IT IS THE COURT AND NOT THE AG THAT DETERMINES LIABILITY, GRANT REMEDIES, ISSUE INJUNCTIONS, ETC. THIS IS NOT CLEAR FROM THIS SECTION
DISCIPLINARY AUTHORITY

The Working Group unanimously agreed that to effectively regulate Chapter 436, the Board's disciplinary process must be streamlined to allow for a more efficient and effective remedy. This would necessarily include, expanding the current grounds for discipline as well as the disciplinary tools available to the Board.

The Working Group unanimously recommended the following legislative change:

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

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

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

2. The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty or an act of violence, 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 under this chapter or in obtaining permission to take any examination given or required under this chapter;

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

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

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
(6) Violation of, or assisting or enabling any person to violate, any provision of [sections 436 regulating preneed], or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person other than 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) Misappropriation or theft of preneed funds;

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by [the provisions of Chapter 436 regulating preneed] who is not registered and currently eligible to practice thereunder;

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

(13) Failure to display a valid certificate or license if so required by this [the provisions of Chapter 436 regulating preneed] or any rule promulgated thereunder;

(14) Violation of any professional trust or confidence;

(15) Making or filing any report required by [the provisions of Chapter 436 regulating preneed] which the licensee knows to be false or knowingly failing to make or file a report required by [the provisions of Chapter 436 regulating preneed];

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

(17) Willfully and through undue influence selling a preneed contract.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke the license, certificate, or permit.
4. Notwithstanding any other provision of this section, the board may automatically suspend a license if the Board finds, after an inspection, examination, investigation or audit, a shortage in any preseed trust or joint account which exceeds 20% of the total amount required to be held or deposited in the trust or account pursuant to [the provisions of Chapter 436 regulating preneed].

5. Any person whose license is suspended under subsection 4 of this section may appeal such suspension to the administrative hearing commission. Notice of such appeal must be received by the administrative hearing commission within ninety days of mailing, by certified mail, the notice of suspension. Failure of a person whose license was suspended to notify the administrative hearing commission of his or her intent to appeal waives all rights to appeal the suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commission pursuant to Chapter 621.

6. Use of the procedures set out in this section shall not preclude the application of the provisions of subsection 2 of section 332.061.
ENFORCEMENT AUTHORITY

INJUNCTIVE/CIVIL AUTHORITY

The Working Group unanimously recommended the following:

- Similar to current law, the Board should have authority to seek injunctive relief or any other civil authority necessary to enjoin/restrain an entity from:
  - Unlicensed activity.
  - Engaging in any activity that would pose a substantial probability of danger to the public health, safety or welfare.
  - Engaging in any activity that presents a substantial probability of serious danger to the solvency of any premises seller.
- The authority granted to the Board should be in addition to any other remedies authorized by law.
- Proper venue for any such action should be amended to include Cole County.
- Violation of Chapter 436 should be deemed violations of Chapter 407, under the jurisdiction of the Attorney General. In actions brought under Chapter 407, the court should be authorized to impose any penalty/remedy authorized under Chapter 436 or 407. Additionally, remedies should include revocation/suspension of the premises license.

CRIMINAL AUTHORITY

The Working Group unanimously recommended the following:

- Knowing and willful violations of Chapter 436 by incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty should be deemed Class C felonies. Comment: Violations are currently Class D felonies.

FINDS & CIVIL PENALTIES

The Working Group unanimously recommended the following:

- The Board should be authorized to impose civil penalties and fines as a form of discipline.
- Fines/Civil Penalties should be assessed in light of the seriousness of the violation found.
- Fines/civil penalties should be consistent with the fines/penalties currently authorized for other professions within the Division. Specifically, the legislature has approved civil penalties for the Real Estate Commission and Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects in the amount of two thousand five hundred dollars for each offense.
- In considering a fine/civil penalty, the Board should be required to consider, among other factors:
  1. Whether the violations are likely to continue or reoccur;
  2. Whether actual financial loss was sustained by consumers and if restitution has been made;
  3. If the violation was detected as part of a self-audit or internal compliance program and immediately reported to the Board; and
(4) In the violation had previously been detected, but inadequate policies and procedures were implemented to prevent reoccurrence.

![Comments: Currently, the Attorney General also has authority to assess/requests fines and penalties under Chapter 407. A concern was raised by MFPDA that preneed licensees may be subjected to double penalties if an action is initiated by the Board as well as through the Attorney General's Office. MFPDA and Metzger have suggested that if accepted, language should be developed to prevent duplicate imposition of fines/penalties by the Board and the Attorney General's Office for the same conduct. Response: As litigation counsel for the Board, the Attorney General's Office traditionally represents and coordinates with the Board in pursuing any remedy. Additionally, the remedies imposed by the Board and by the Attorney General's Office are distinctly different. The remedies imposed by the Board would be limited to licensing violations only. The remedies authorized under Chapter 407 are to redress/remedy a harm inflicted on the public at large. A concern was raised that if a licensee's conduct violates the licensing law as well as harms the public, expanded remedies would be appropriate.]

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The proposed recommendations would require additional funding for the Board to regulate the proposed provisions and to fulfill all statutory obligations.

The Working Group unanimously approved the following recommendations:

- Licensing and renewal fees for preneed seller, providers and agents as established by the Board by rule. If both the preneed sellers/providers are required to pay fees, the preneed agent licensing fees should be minimal and proportionately lower than preneed seller/providers.
- Preneed sellers should continue to be assessed a two-dollar fee per preneed contract sold during the annual reporting year as currently required.

**INCORRECT: WE DID NOT VOTE TO KEEP THE FEE AT $2. INDEED MFDEA BELIEVES THAT THE CONSENSUS OF THE GROUP IS THAT THIS FEE SHOULD BE INCREASED AND THAT IT IS FROM THIS FEE THAT THE COSTS OF INVESTIGATIONS AND AUDITS SHOULD BE PAID.**
CONCLUSION

Nationally, the preneed industry has experienced significant and sustained growth as consumers focus more attention on their final needs. Preneed arrangements can provide a valuable option to purchasers desiring to ensure their arrangements. Chapter 436 regulating preneed is in need of significant legislative changes. As reflected in the present crisis impacting Missouri, Chapter 436 must be enhanced and amended to ensure consumer protection and the continued viability of Missouri's preneed industry.

The Working Group appreciates the opportunity to share its recommendations. We look forward to providing any further assistance you may need.
Recommendations – Meierhofer
STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

CHAPTER 436 WORKING GROUP RECOMMENDATIONS

Submitted: September 1, 2008
September 1, 2008

Dear Joint Committee Members:

Over the last year, the nation has witnessed an unprecedented crisis in the preneed industry. Estimates of the financial impact on Missouri consumers and the funeral industry are alarming. While recent concerns relate to a single entity, the crisis has focused much needed attention on the regulation of preneed funeral contracts in the state of Missouri and Chapter 436, RSMo, governing preneed sales.

The State Board of Embalmers and Funeral Directors (the "Board"), under the auspices of the Missouri Division of Professional Registration (the "Division"), regulates embalmers, funeral directors, funeral establishments, preneed sellers and preneed providers licensed in this state. As part of its statutory duties, the Board annually reviews legislation to identify potential recommendations of the Board. In recent years, this process has included a review of Chapter 436.

Senate Bill 780, enacted by the General Assembly 2008, which created the Joint Committee on Preneed Funeral Contracts. As part of its annual legislative review, the Board was invited to gather a working group of representatives from across the preneed industry to collectively identify suggested preneed recommendations for the Joint Committee’s review. The Working Group consisted of a diverse representation from all aspects of the preneed industry, including liaisons from various consumer groups, members of the State Board and representatives from the funeral, preneed and insurance industries.

The Working Group respectfully submits the attached recommendations to the Joint Committee for review. While diverse interests were represented, the Working Group unanimously agreed that revisions to Chapter 436 are desperately needed to better protect Missouri consumers and those funeral directors, funeral establishments, preneed providers and preneed sellers who truly dedicate themselves to serving the public.

We commend the General Assembly in convening the Joint Committee and in dedicating the time and resources to this important task.

Sincerely,

To be determined
I. GENERAL OVERVIEW:

During the 2008-2009 legislative session, various Chapter 436 proposals were introduced. Although not enacted, the proposals sparked intense discussion among regulators, consumers and professional groups. While a consensus was not reached, industry and regulatory groups were able to identify several common areas of agreement.

At the close of the legislative session, various representatives met with Senator Delbert Scott and Representative Jay Wasson to discuss Chapter 436 concerns. The Board was subsequently asked to formulate a working group to help identify agreed areas for legislative recommendations.

The Board hosted five (5) open meetings for the Working Group in Jefferson City, Missouri. All meetings of the Working Group were conducted as open meetings in accordance with Chapter 610, RSMo. Notice of meetings and the proposed agenda were made available to the public and published on the Board’s website.

II. PARTICIPANTS:

The Working Group consisted of representatives from consumer groups, funeral directors, preneed providers, preneed sellers, third-party preneed sellers, the Missouri Funeral Directors and Embalmers Association, related insurance companies and representatives from small, large and minority funeral establishments. Participants were chosen from prior legislative involvement and from recommendations made by legislators, Board members and related consumer groups. Members of the public were also invited to attend and given an opportunity to provide both oral and written comments.

The Working Group included:

<table>
<thead>
<tr>
<th>REGULATORS:</th>
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<tbody>
<tr>
<td>Linda Bohrer, Acting Director - Department of Insurance, Financial Institutions and Professional Registrations (&quot;DIFP&quot;)</td>
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<tr>
<td>David Brocker, Division Director, Division of Professional Registration*</td>
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<td>Sharon Euler, Office of the Attorney General</td>
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<td>Mary Erickson, Senior Enforcement Counsel - DIFP</td>
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<td>Larry McCord, General Counsel - DIFP</td>
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<tr>
<td>Mark Stahlhuth, Senior Counsel - Financial Section, DIFP</td>
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<tr>
<td>Rich Weaver, Director, Division of Finance</td>
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1 Open meetings were held on July 8th, July 15th, July 24th, July 29th and August 12th.
* Did not participate as a voting member of the Working Group.

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
ADDITIONAL PARTICIPANTS:

James Reinhard, Chair, State Board of Embalmers and Funeral Directors
Gary Fraker, Board Member
Joy Gerstein, Board Member
Todd Mahn, Board Member
Martin Vernon, Board Member
John McCulloch, Board Member/American Prearranged Services
Bob Baker, Wright Baker Hill Funeral Home
Barbara Brown, Layne Renaissance Chapel, LLC
Norma Collins, AARP
George Kutz, Kutz Funeral Home, Inc.
George Kline, Lobbyist, SCI
Jim Moody, Rep. Timothy Meadows
Michael Meierhoffer, Meierhoffer Funeral Home & Crematory, Inc.
Barbara Newman, Rep. Meadows’ Office
Darlene Russell, Charter Life Insurance Co.
Josh Slocum, Executive Director, Funeral Consumer Alliance
Bill Stalter, Stalter Legal Services
Bill Trimmy, Silver Haired Legislative
Jo Walker, Lobbyist, American Prearranged Services

COMMITTEE SUPPORT STAFF:

Connie Clarkston, Director of Budget & Legislation, Division of Professional Registration
Becky Dunn, Executive Director, State Board
Jeanette Goos, Administrative Assistant to Director of Budget & Legislation, Division of Professional Registration
Kimberly Grinstead, Legal Counsel, Division of Professional Registration
Earl Hayes, Inspector, State Board

III. REVIEW PROCESS:

To guide the review, the Board circulated a survey with a listing by topic area of Chapter 436 proposals submitted to the Board in prior years. Participants were asked to rank the priority of topic areas listed for purposes of discussion. Surveys were made publicly available and were posted on the Board’s website. The Division subsequently compiled the rankings and utilized results to structure the Working Group. [See Appendix 4- Bd. Survey].

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
The surveyed topics were ranked as follows:

[INCLUDE SURVEY RESULTS HERE]
Working Group recommendations have been compiled as follows:

**Unanimous Recommendations:** Recommended by a unanimous vote of all Working Group Participants.

**Consensus Recommendations:** Recommended by an overwhelming majority of Participants, generally with less than 15% of Participants dissenting.

**Majority Recommendations:** Recommended by a simple majority vote of Working Group Participants.

**Unresolved:** Majority vote not reached. Suggestions from Participants have been provided.

For purposes of this Report, recommendations have been categorized as follows:

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GENERAL REGULATORY AUTHORITY

The Working Group unanimously agreed to the following recommendations:

- Regulatory authority over Chapter 436 and perceived licensing should remain with the Board. Regulatory authority should not be transferred to another agency.

> Comment: The Division and Board support this proposal but would also support transferring authority if another regulatory agency deemed more appropriate.

- The Missouri Attorney General should be granted concurrent jurisdiction with local prosecutors to prosecute violations of Chapter 436.

- The Board should be granted general rulemaking authority to administer Chapter 436 and to establish necessary fees.

> Comment: Funeral Consumer Alliance suggested that the current license confidentiality restrictions should be revised to allow the dissemination of more information to the public. Division staff indicated that the current confidentiality restrictions apply to all regulated boards/commisions within the Division and would require a statutory change specific to the Board.

- The Board should be authorized to hire legal counsel to assist in the enforcement of Chapter 436.

> Comment: Board staff indicated this proposal would allow them to utilize both the Attorney General’s Office and outside counsel, if needed. Representatives from the Attorney General’s Office refrained from the vote.
DEFINITIONS

Several of Chapter 436’s current definitions are insufficiently defined. Accordingly, the 
Working Group approved the following unanimous recommendations:

- "Beneficiary", the individual who is to be the subject of the disposition or who 
  will receive funeral services, facilities or merchandise described in a preneed 
  contract.

- "Board," the Missouri State Board of Embalmers and Funeral Directors.

- "Division", the division of professional registration of the department of 
  insurance, financial institutions and professional registration.

"Funeral merchandise", caskets, grave vaults, or receptacles, and other personal 
property incidental to a funeral or burial service. (Items deleted are currently governed 
by Chapter 324 and under the purview of the Office of Licensed Cemeteries.) 
(Moenttlufer 8/5/2008)

- "Guaranteed Contract", a preneed contract in which the future costs for the 
disposition, facilities, services or merchandise identified in the preneed contract 
are definitively designated and guaranteed/assured in the contract.

- "Insurance-Funded Preneed Contract". A preneed contract which is 
designated to be funded by payments or proceeds from an insurance policy.

- "Joint-Account Funded Preneed Contract". - A preneed contract which 
designates that payments for the preneed contract made by or on behalf of the 
purchaser will be deposited and maintained in a joint account.

- "Market Value". A fair market value,
  (a) As of each; the amount thereof;
  (b) As to a security as of any date, the price for the security in that date 
  obtained from a generally recognized source, or to the extent no generally 
  recognized source exists, the price to sell an asset in an orderly transaction 
  between unrelated market participants at the measurement date, and;
  (c) As to any other asset, the price to sell an asset in an orderly transaction 
  between unrelated market participants at the measurement date consistent with 
  Statements of Financial Accounting Standards.

- "Non-Guaranteed Contract". A preneed contract in which the costs for the 
disposition, facilities, services or merchandise are not guaranteed/assured in the 
contract.

- "Person", any individual, partnership, corporation, cooperative, association, or 
  other entity.

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WORKING DRAFT
Dated August 17, 2008 at 6:00 p.m.
"Preneed contract", any contract or other arrangement which provides 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.

"Preneed Agent," any person authorized to sell a preneed contract for or on behalf of a preneed seller.

"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.

"Provider", the person designated to provide the disposition or funeral services, facilities, or merchandise described in a preneed contract.

"Purchaser", the person who is obligated to pay under a preneed contract.

"Seller", the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

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

"Trust Funded Preneed Contract", a preneed contract which provides that payments for the preneed contract shall be deposited and maintained in trust.
The Working Group agreed to the following consensus recommendations:

- A "license" should be required for all preneed providers/sellers. Currently, sellers and providers are "registered" with the Board. A "license" denotes legal obligations and more accurately reflect the authorities being issued by the Board.

- Individuals selling preneed for or on behalf of a preneed seller should be licensed by the Board as a preneed agent. As a condition of licensure, preneed agents should successfully pass the Missouri law examination currently offered by the Board, provided that Missouri licensed funeral directors, Missouri registered apprentice funeral directors, and Missouri licensed insurance producers (Merchoffer 8/29/2008) should not be required to take an additional examination.

  ! Comment: John Merchoffer (APS) expressed concern imposing full licensing, testing or disciplinary requirements on preneed agents.

- To be eligible for licensure/renewal, preneed agents, providers and sellers must be of good moral character, remit a licensing fee and have a high school diploma or the equivalent. If a corporation, licensure/renewal requirements should be applicable to each officer, director, manager or controlling shareholder.

- All preneed sellers or providers operating as business entities must be properly registered with the Missouri Secretary of State and authorized to conduct business in the state.

- Chapter 436 should be clarified to exempt endowed care cemetery operators governed by Chapter 214 from the provisions of Chapter 436. However, cemetery operators should be subject to Chapter 436 if the contract includes services that may only be lawfully provided by a licensed funeral director or embalmer.

- Chapter 436 should clearly provide that the provisions of the Chapter are inapplicable to contracts of insurance. However, Chapter 436 should apply to any preneed contract sold in conjunction with insurance. The current statutory language regarding insurance assignments or beneficiary designations is unclear and should be modified in compliance with the recommendation.

- Due to potential costs, preneed licensees should not be required to obtain bonding or any specific insurance. The Working Group suggested that increasing consumer protections and regulatory oversight would adequately address the need for additional insurance/bonding.

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WORKING DRAFT
Date: August 17, 2008 at 5:00 p.m.
PRENEED CONTRACTS

The Working Group unanimously approved the following recommendations:

- To accommodate the varying forms of preneed, Chapter 436 should define and regulate preneed contracts based on their funding mechanism. Specifically, preneed contracts should be classified as either insurance-funded, trust-funded or joint-account funded. Unique concerns relate to each different type of funding. Chapter 436 could be more effectively regulated if the provisions were modified to accommodate each specific form of funding.

- While minimum preneed contract requirements should be established, as provided below, a standard preneed contract form should not be required.

<Comments: Although NFDA supported the vote, representatives stressed that a standard form could be beneficial.>

A standard form may be promulgated by the Board for the ease of licenses, but should not be required by statute or rule. (Moehlman 8/30/2008)

- Preneed sellers should be required to maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary; cancellation of the contract or after the facilities, services or merchandise have been provided. Contracts should be provided to the Board on request.

<Comments: Phoenix Consumer Alliance recommended that sellers should also provide copies of all preneed contracts to the Board. The Board suggested this requirement may be unduly burdensome and that requiring sellers to provide copies upon request would satisfy regulatory concerns.>

- Preneed contracts should only be designated as irrevocable if the contract is being used to qualify for Medicaid. (i.e. for "spend down").

- Preneed contracts should be in writing and should clearly and conspicuously:
  - Include the name, address and phone number of the purchaser, beneficiary, provider and the seller;
  - Detail the disposition or facilities, services or merchandise requested;
  - Clearly identify if the contract is guaranteed or non-guaranteed on the face of the contract in a recognizable type (e.g. a 12 to 13-point type);
  - Identify terms for cancelling the contract by the purchaser or by the seller for payment default.
  - Identify the funding mechanisms including, the trust or financial institution where preneed funds will be held or the insurance company issuing an insurance policy.

<Moehlman 8/30/2008> the signed by the purchaser, the preneed agent and the seller or representative.

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
• Preneed contracts not in compliance with Chapter 456 should be rendered void [should this be voidable by the purchaser] and unenforceable. If not in compliance, payments may be recoverable by the purchaser or their legal representative plus attorney fees.

Comments: This requirement is similar to current law.

• Sellers/providers should be prohibited from redesignating a preneed contract as a trust-funded, insurance-funded or joint-account funded preneed contract without the consent of the purchaser.

Comments: The Funeral Consumer Alliance suggested that purchasers should also be given a written statement identifying the financial consequences of the redesignation (i.e., reduction in cash surrender value, interest accrued and fees).

• On the death or legal incapacity of the purchaser, all rights or remedies of the purchaser should accrue to the benefit of the purchaser or his/her successor as designated in the contract. Proceeds payable under the life insurance contract, should be governed by insurance law and the insurance contract.

The Working Group approved the following consensus recommendations:

• Preneed contracts should clearly designate whether the contract is revocable or irrevocable.

Comments: Homesteaders Life Insurance Co. suggested the funding for preneed contracts should be made irrevocable and not the contract itself. The consumer remarked that irrevocable contracts may hinder a consumer’s freedom of choice.

Comments: The Board also recommended that contracts include notification that complaints regarding preneed sellers/providers may be forwarded to the Board and the current member address of the Board. Representatives of AARP, the Illinois Senior Healthcare Council and the Funeral Consumer Alliance agreed with this suggestion.

Do not ignore the above comment. The Board would then become the de facto arbiter for all contract issues that arise. Allow the two parties of the contract to settle any disputes prior to the Board becoming involved. This will lead to the Board hearing too many issues that could be resolved earlier (Methoffer 8/25/2008)

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
The Working Group unanimously approved the following recommendations:

- In light of recent concerns raised by the Federal Trade Commission, preneed provider licensing should not be restricted to only funeral establishments or cemetery operators. Private individuals are currently authorized to sell funeral merchandise preneed or at-need. However, it should be clarified that Chapter 436 does not exempt any person from the licensing requirements of Chapter 353 governing funeral directors and establishments. What can be drafted to include persons not licensed by the State in any way who are actively engaged in pre-need sales/providing? Currently an operator without a license may do so because the Board has no authority to govern such a person. (Dvorak/Farber 6/25/2008)

- Chapter 436 should clearly state that the provider designated in a preneed contract is obligated to provide the disposition, facilities, services or merchandise designated in the preneed contract.

- Providers must have a written agreement with each preneed seller that the provider has authorized to designate the licensee as a provider in a preneed contract.

- Providers should be required to report the name and address of its custodians of records and of all sellers authorized to name the licensee as a provider. The Board should be notified by the provider in writing within 15 days of any amendments or changes.
The Working Group adopted the following unanimous recommendations:

- For purposes of licensure, Chapter 436 should be clarified to provide that a preneed trust is not required if the seller is only selling joint-account or insurance-funded preneed plans.

- Preneed sellers should have the option to sell either trust-funded, joint-account funded or an insurance-funded preneed contract. Sellers should notify the Board of the type of contracts to be sold.

- Sellers should report to the Board the name and address of its custodian of records and of all providers that have authorized the seller to name the licensee as a provider. The Board should be notified by the seller in writing of any amendments or changes.

- The written agreement between the provider and seller should include:
  - Consent from the provider authorizing the seller to designate the licensee as a provider.
  - Procedures for tracking preneed fund payments received by the provider. Homestead's draft includes a provision that all payments be made to the insurer. We would like to add the initial payment be exempt from this provision. The initial payment is collected by the pre-need agent to be delivered with the signed contract to the insurer. (Herschberger 8/12/2008)

- Sellers should maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided.
TRUST FUNDED PRENEED PLANS

The Working Group unanimously approved the following recommendations:

- Sellers should be required to issue receipts to the purchaser for preneed payments received by the seller.

The Working Group approved the following consensus recommendations:

- 100% of all payments for a trust-funded preneed contract should be deposited into trust. Sellers should be authorized to submit a request to the trustee for administrative expenses (see Additional Comments below).

![Comment: APS and Meierhoffer suggested that requiring sellers to request expenses from the trustee would create additional administrative expenses that may be passed onto the consumer. APS and Meierhoffer strongly recommended retaining the current process of allowing the seller to pay the first 10% of contract payments and to trust the remaining 90%.

Meierhoffer and APS were joined by katia Funeral Home, Bob Winters and Austin-Logan in this concern, as indicated on the following page. This concern is founded on the fact that to operate and maintain an active trust staff for the consumer, there are substantial costs involved to operate such a business. (Meierhoffer 6/29/2000)

- Payments for trust-funded preneed contracts should be deposited into trust within sixty-days of receipt.

![Comment: Participants suggested that sixty-days would allow sufficient administrative time for preparing and forwarding payments to the seller and for clearing payments made by check. However, other participants suggested that a 90-day deposit requirement would increase consumer protection.

- Seller administrative expenses should be authorized from the initial payments received.

The following Working Group recommendations were unreached: After considerable discussion and research, the Working Group did not reach a consensus or majority vote on the recommended allowance for seller administrative expenses. However, participants recommended the following amounts:

- No administrative expense should be allowed.

- Three quarters (75%) of 1% of the face value of the Preneed Contract.
  - Josh Sloxum
  - Note: The provision models New York’s preneed legislation.

- Ten percent of face value: The majority of Participants agreed that 10% of the contract’s face value would be a reasonable compromise.
  - AARP
  - Silver Haired Legislature

WORKING DRAFT
Dated August 17, 2008 at 5:50 p.m.
- Rep. Meadows
- Ten to fifteen percent
- EIP
- Twenty percent of face value
  - Mike Meierhofer
  - Kutis Funeral Home
  - John McCulloch
  - Mike Winters
  - Austin-Layne
The Working Group unanimously approved the following recommendations:

GENERAL REQUIREMENTS:

- Trustees of a preneed trust must be a state or federally chartered institution authorized to exercise trust powers in Missouri.

- Provisions of the Uniform Trust Act under Chapter 496 and Chapter 456 should not be wholly incorporated into Chapter 456.

A preneed trust should terminate when the trust principal no longer includes any payments made under any preneed contract. On termination the trustee should distribute all trust property, including principal and undistributed income, to the seller which established the trust. Should this be clarified to say that a preneed trust terminates when all contracts covered by the trust have been fulfilled?

The Working Group approved the following consensus recommendations:

- Expenses of the trust, including trustee’s fees, legal and accounting fees, investment expenses and taxes should be paid from the trust.

The Working Group approved the following majority recommendations:

- Income of the trust should accrue and should generally not be distributable until the contract is fulfilled or otherwise cancelled.

Work:

Dated August 17, 2008 at 5:00 p.m.
TRUSTEE DUTIES:

The Working Group unanimously approved the following recommendations:

- The prudent investor rule should be adopted for trustees. Specifically, trustees should invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee should exercise reasonable care, skill, and caution.

- Trustees who have special skills or expertise, or who are named trustee in reliance upon the trustee’s representation that the trustee has special skills or expertise, should have a duty to use those special skills or expertise when investing and managing trust assets.

- Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee should review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of Missouri law.

- The trustee should maintain “adequate books and records” of all transactions administered through the trust and pertaining to the trust generally.

CONFLICTS OF INTEREST: The Working Group unanimously agreed that conflicts of interest between trustees and investment advisors should be prohibited. Specifically, the following recommendations were made:

- The financial institution and investment advisor should not be controlled by or under common control with the seller.

- “Control”, “controlled by” and “under common control” with should be defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contact other than the power is the result of an official position with or corporate office held otherwise, unless the power is the result of an official position with or corporate office held by the person.

- Control should be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be
INVESTMENT OF FUNDS:

The Working Group unanimously approved the following recommendations:

- Investment of trust funds should be limited to investments that have reasonable potential for growth or producing income.

- Trustees should be specifically restricted from investing trust funds in any insurance product. (Mackeppen points out in their recommendation a ban on term insurance alone. We agree with their comments as submitted. (Meachoffer & Zsc/2008)

- Diversification of trust assets should be mandatory unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

- In investing trust assets, a trustee should be required to consider:
  - The possible effect of inflation or deflation;
  - The expected tax consequences of investment decisions or strategies;
  - The role that each investment or course of action plays within the overall trust portfolio;
  - The expected total return from income and the appreciation of capital;
  - Other resources of the beneficiaries known to the trustee;
  - Needs for liquidity, regularity of income, and preservation or appreciation of capital;

* Comments: Bill Quater recommended that a seller should be allowed to have a relationship with the seller even though the fiduciary remains responsible for the trust's compliance with the prudent investor rule and retains title of the asset.
o An asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; and
• The size of the portfolio, nature and estimated duration of the fiduciary relationship and distribution requirements under the governing instrument.

• Trustees and preneed licensees should be prohibited from procuring or accepting a loan against any investment or asset of the trust.

• Commingling of trust funds should be only be allowed if the trustee maintains adequate records that individually and separately identify the payments, income and distribution for each preneed contract. Commingling should be limited to payments received for Missouri preneed contracts.

**SELECTIONS OF AGENTS/INDEPENDENT INVESTMENT ADVISORS:**

• Trustees should only delegate duties and powers to an agent that a prudent trustee of comparable skills could properly delegate under the circumstances.

• If an agent is selected, the trustee should exercise reasonable care, skill, and caution in:
  o Selecting an agent;
  o Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
  o Periodically reviewing the agent’s actions and monitoring the agent’s performance and compliance with the terms of the delegation.

• In performing a delegated function, an agent should owe a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

• Agents that accept a delegation of powers or duties from a trustee should be deemed to have consented to the jurisdiction of Missouri courts.

• By selecting an agent, a trustee should not be relieved of any duty or responsibility imposed on the trustee by Missouri law.

The Working Group approved the following recommendations by majority vote:

• Sellers should be allowed to approve the investment advisor selected.

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**Comments:** The Department of Insurance, Division of Finance, Board and the Missouri Attorney General’s Office unanimously agree that seller approval of the investment advisor would hinder the independence of the investment advisor and Missouri consumers. The suggestion proposed would allow the NPS concerns to occur again. Consumers should not have, and cannot be, placed at continued risk of nonappropriation, business practices. A trustee of a financial institution should be more than capable of selecting an investment advisor that would be appropriate for the trust. Seller “approved” is not one and should not be required.

Dated August 17, 2008 at 5:00 p.m.
INSURANCE-FUNDED PRENEED PLANS

The Working Group adopted the following unanimous recommendations:

- Currently, Chapter 436 does not clearly allow/regulate insurance-funded plans. Insurance funded preneed plans are a safe and necessary option. Accordingly, Chapter 436 should clearly authorize insurance-funded contracts.

- Insurance law should not apply to preneed contracts but should apply to any insurance sold with a preneed contract.

- Sellers should not charge, assess or collect any administrative fees for an insurance-funded preneed plan. Instead, sellers should only be allowed to receive/collect from a purchaser the amount required to pay insurance premiums as established by the insurer.

- In no instance, should a term life insurance product be used to fund a preneed contract. However, consumers should be allowed to assign proceeds from a term-life insurance product to a provider, or to designate a provider as a beneficiary under a preneed contract, provided that the assignment is not related to, or done in contemplation of, executing the sale of a preneed contract.

To add to MFDA's comments, this may be required during a Medicaid spend-down situation (e.g. Hospice). MFDA (August 2008)

The Working Group adopted the following consensus recommendations:

- Payments received by the seller/provider for insurance-funded preneed contracts should be forwarded to the insurer within thirty (30) days of receipt.

- Payments received by the seller/provider for insurance-funded preneed contracts should be forwarded to the insurer within thirty (30) days of receipt.

- Preneed contracts funded by a life insurance policy should include:
  - Terms for cancellation by the purchaser or seller;

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WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
Notice that cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract.

Notice that insurance cancellation must be made in writing to the insurer.

Notice that the purchaser will only receive the cash surrender value of the policy, which may be less than the amount paid in, if cancelled after a designated time.

Notice that the purchaser has the right to reassign/transfer the beneficiary designation or assignment to another funeral home.

Comments: To avoid confusion and potential misrepresentations, concerns were raised that the majority of this information should be provided by the insurer and included in the insurance contract since it would require the seller to summarize the insurance contract. Additionally, Homeowners suggested use of the National Association of Insurance Commissioners' model for interstate funded disclosure. Funeral Consumer Alliance also suggested that the amount of commission should also be disclosed in an insurance-funded contract.

Comments: Funeral Consumer Alliance suggested that licensees should disclose to the purchaser if the licensee is an insurance agent/producer and if the licensee will receive any commission, payment or other consideration for the sale of an insurance product.

We disagree with Funeral Consumer Alliance's comment above. What other regulated professions have such disclosures? (McIntosh, R. J. 2006)

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WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
The Working Group unanimously recommended that the current provisions for joint-account funded preneed plans are adequate and should be maintained. However, the Working Group suggested the following minor changes:

- Chapter 436 should be clarified to provide that a preneed seller may sell joint-account funded contracts. Currently, Chapter 436 only authorizes joint accounts for providers.

- Sellers only utilizing joint-account funded preneed contracts should not be required to have a trust.
The Working Group unanimously recommended the following:

- To request payment, providers should be required to submit a certificate of performance certifying that the provider has rendered services to the preneed beneficiary. The certificate of performance should be signed by the provider and the person authorized to make arrangements on behalf of the preneed beneficiary.

- Sellers should remit payment to providers within thirty (30) days after receiving a certificate of performance. Sellers should not be prohibited from also requiring submission of a certified death certificate.
The Working Group considered four distinct scenarios that generally arise over the life of a preneed contract:

1. **Contract Fulfillment**: The beneficiary dies and the preneed contract is fulfilled by the original seller and provider according to the contract terms. In this scenario, the purchaser has paid all outstanding costs and the provider and seller have complied with all contractual obligations.

2. **Transfer of Providers**: The purchaser decides to maintain the preneed contract but desires to select a different provider to perform the disposition or to provide the facilities, services or merchandise identified in the contract.

3. **Cancellation By Purchaser**: The purchaser decides to cancel the contract entirely. Here, the purchaser does not wish to designate a new provider or make other changes to the contract. Instead, the contract is to be completely terminated.

4. **Cancellation By Seller For Non-Payment**: This option is exercised by the seller in those instances when the purchaser has failed to remit payment as required by the contract. If exercised, the preneed contract is cancelled and is no longer in effect.

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A. **Contract Fulfillment**:

The Working Group approved the following unanimous recommendations:

- On fulfillment, sellers should be entitled to payment as provided in the contract and the related income.

B. **Transfer of Providers**:

The Working Group approved the following unanimous recommendations:

- Chapter 436 should allow for 100% (Materbutter 8/25/2009) portability. Purchasers should have complete and unrestricted freedom to select an alternative provider. Purchasers should not be penalized nor should any additional fee or costs be assessed to the purchasers for a transfer.

- The new provider designated by the purchaser should be accepted by the seller if the provider agrees to accept the remaining payment owed the original provider as designated in the contract. Here, the newly designated provider would simply
C. Purchaser Cancellation:

The Working Group approved the following unanimous recommendations:

- Purchasers should be entitled to a full refund of payments if the purchaser cancels the contract within thirty (30) days after receiving a fully executed contract.
- Purchasers should be allowed to cancel after the thirty-day cancellation period. The refund amount should be designated by statute (however, see below).

Additional Recommendations: After extensive discussion and research, the Working Group did not reach a unanimous, consensus or majority recommendation for the refunding of preneed funds if the purchaser cancels the contract after the 30-day review period. However, the following recommendations were suggested by Working Group Participants:

- 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- 100% of all funds held in trust should be refunded.
- 80% of all funds held in trust should be refunded. **Mainshofer agrees with this recommendation (8/15/2008)**
- 80% of all funds paid by the purchaser should be refunded.
- 80% of all funds paid should be refunded plus a portion of the income earned.

D. Cancellation By Seller For Non-Payment:

The Working Group approved the following unanimous recommendations:

- Sellers should be allowed to cancel the contract unilaterally if the purchaser is in default of payment.
- If cancelled by the seller, preneed purchasers should be refunded 80% of all amounts paid for the contract.
- Prior to cancellation, purchasers should be provided written notification from the seller of the seller's intent to cancel. The notice should be provided forty-five days prior to the cancellation date.
days prior to cancellation and should allow the purchaser thirty days to remit the payment in arrears to avoid cancellation.

- If the seller does not cancel prior to at-need services being required, the purchaser should be provided the opportunity to remit the payment in arrears. If payment is not remitted, the seller should be required to credit the purchaser’s preneed payments towards the at-need cost for services. If a credit is applied, the seller may determine funeral/burial costs based on the seller’s at-need prices.

The Working Group approved the following majority recommendations:

- On seller cancellation, 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- Eighty percent of all funds paid and held in trust should be refunded to purchasers. (Riecher, Koffler agree with this recommendation. 8/27/2008)

I: Comments: Bill Riecher recommended that issues regarding trust expenses and income/expenditure allocations would be better addressed in rulemaking.
REPORTING REQUIREMENTS

To assist the Board in regulation, the Working Group unanimously recommended expanding the information submitted to the Board by preneed licensees.

ANNUAL REPORT REQUIREMENTS FOR ALL PRENEED SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

- The purchaser's name and address and preneed contract number, if any, for any contract sold since the last report (Meisterhorfer 8/25/2008). Contract numbers should not be required but should be provided if available.
- The total number and face value of outstanding preneed contracts sold since the last report was filed.
- The contract amount for each preneed contract sold since the last annual report.
- The name, address and contract number of all preneed agents authorized to sell preneed for the seller.
- The number of contracts fulfilled by the seller since the last report.
- The name and address of each provider contracted with the seller.
- The name and address of a custodian of preneed records.
- Authorization for the Board to conduct an audit and/or an examination of books and records.
- Any other information deemed necessary by the Board by rule.

Allow for the submission of data electronically to the Board for specific contract information as requested (i.e., names, addresses, contract numbers, etc.) (Meisterhorfer 8/25/2008)

ANNUAL REPORT REQUIREMENTS FOR TRUST-FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the trustee.)

- The name and address of the financial institution where the trust is held and the account number;
- The trust fund balance as reported in the previous year's report and the current trust fund balance;
- Principal contributions received since the last report.
- Total trust earnings and total distributions to the seller since the last report.
- A statement of assets and investments of the trust listing cash, real or personal property, stocks, bonds, and other assets. The listing should show cost, acquisition date and current market value of each asset and investment.
- Total expenses since the last report, excluding distributions to the seller.

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
ANNUAL REPORT REQUIREMENTS
FOR JOINT-ACCOUNT FUNDED PRENED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual report filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the financial institution.)

- The number and address of the Missouri financial institution where the joint account is held and the account number.
- The amount on deposit in each joint account.
- The joint account balance reported the previous year.
- Principal contributions placed into each joint account since the last report.
- Total earnings since the previous report.
- Total distributions to the seller from each joint account since the previous year.
- Total expenses deducted from the joint account since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS
FOR INSURER FUNDED PRENED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations:

- The name and address of each insurer issuing insurance to fund a preneed contract during the preceding year.
- The status and total death benefit and cash surrender value of each policy in force at the time of the report. (The should be certified as true and accurate by the insurer.)

Homestake's suggests in their draft requiring the only pertinent status that needs to be reported is in-force. Meanwhile, agrees with their suggestion in writing. (Homestake 3/24/2008)

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WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
CONSUMER REPORTING / NOTIFICATIONS

The Working Group unanimously approved the following recommendations:

- Purchasers should be entitled to an annual report from the seller indicating the amount of funds paid by the purchaser during the reporting year and the name and address of the trustee.
- Sellers should inform purchasers of a change in trustee within thirty (30) days after the change. Notification should include the name, address and phone number of the trustee.

The Working Group approved the following majority recommendations:

*Comments: Participants expressed concerns that an annual report would create an unnecessary burden on present sellers and increase administrative expenses that would eventually be passed on to the consumer.*

- Purchasers should be provided a receipt for each payment made by or on behalf of the purchaser. The receipt should be provided by the initial person receiving the payment (i.e., the seller, broker, or the agent). This provision should be waived for cases where payments are made directly to the trustee. These transactions are governed by Working Draft (Metersboffer 8/15/2006).

Deleted: Purchasers should be notified by the trustee each time a deposit is made into trust for the contract.

Deleted: 1

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
TERMINATION OF BUSINESS

The Board has experienced significant regulatory difficulty with ensuring that Missouri consumers are adequately protected when preneed providers and sellers cease doing business either voluntarily or involuntarily. As a result, the Working Group unanimously recommended the following:

**PRENEED SELLERS:**
- The Working Group approved the following unanimous recommendations: The following notification/reporting requirements should be mandated for preneed sellers:
  - Notice to the Board at least thirty (30) days prior to a seller ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board which includes a detailed plan indicating how outstanding preneed contracts will be filed and/or satisfied and how assets will be allocated for preneed obligations.
  - Notice to all providers that the seller has ceased doing business thirty (30) days prior to the seller ceasing business or transferring a majority of stock/assets.
  - Notice to consumers that the seller will cease doing business and indicate a contact number for questions regarding preneed contracts, consumer refunds or how arrangements will be satisfied. Purchaser notification should be required at least thirty (30) days prior to ceasing business or, in instances of a sale/transfer, within thirty (30) days after completion of the sale/transfer.
  - Submission of any additional information designated by the Board.
- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider/seller to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed seller who ceases business without notification to the Board.

**PRENEED PROVIDERS:**
- The following notification/reporting requirements should be mandated for preneed providers:
  - Notice to the Board at least thirty (30) days prior to the provider ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board.
  - Notice of the provider’s intent to all sellers with whom the provider has outstanding preneed contracts within thirty (30) days prior to the provider ceasing business or transferring/disposing of a majority of stock/assets.
  - Upon notification from the providers, sellers should be required to notify all purchasers that the provider has ceased doing business or has transferred ownership. (Effective date 6/25/2004).
  - Submission of any additional information designated by the Board.

**WORKING DRAFT**
Dated August 17, 2008 at 5:00 p.m.
• Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider to ensure contractual obligations are met.
• The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed provider who ceases business without notification to the Board.
AUDITS, INVESTIGATIONS AND EXAMINATIONS

The Working Group unanimously agreed that effective regulation of the preneed industry may only be accomplished by strengthening, clarifying and expanding the current investigation, examination and audit authority of the Board.

The Working Group unanimously recommended the following:

- The Board should be granted clear authority to:
  - Issue subpoenas to compel the production of books and records of any licensee or trustee.
  - Enter the premises or establishment where preneed business is conducted, or is advertised to be conducted, for the purposes of accessing books and records.
  - Conduct random or targeted inspections, with or without cause and at the discretion of the Board.
  - Investigate complaints and to investigate licensees to determine compliance with Chapter 406.
  - Conduct random or targeted examinations of books and records, at the discretion of the Board. The Board should be authorized to conduct an examination of each preneed seller at least once every five years.

![Comment: Although the Working Group initially recommended every three years, the Board expressed concern regarding cost and the financial feasibility of conducting such examinations.]

- Sellers selling joint-account funded plans only should be exempt from the examinations conducted by the Board every five years. However, the Board should retain authority to audit or examine the seller, if deemed necessary.

- Audit a preneed seller with cause if the Board has reasonable grounds for verifying the proper handling of preneed funds.

- Inspections, investigations, audits and examinations should be authorized with or without a complaint.

- The Board may request DIFP, the attorney general or the division of finance, to designate investigator(s) or financial examiner(s) to assist the Board with any inspection, investigation, examination or audit.

- Preneed licensees should clearly be required to cooperate with any inspection, investigation, examination or audit conducted by the Board, DIFP, the attorney general or the division of finance.

- Books and records of licensees should be made available to the Board by the licensee upon request.

- Costs of an inspection, investigation, examination or audit should be funded through licensing fees established by the Board by rule.
ATTORNEY GENERAL AUTHORITY

The Working Group unanimously recommended the following:

If a violation of Chapter 436 is found after an investigation, audit or examination, the Attorney General should be authorized to initiate a judicial proceeding to:

- Declare rights.
- Approve a nonjudicial settlement.
- Appoint or remove a trustee.
- Interpret or construe the terms of the trust.
- Determine the validity of a trust or its terms.
- Compel a trustee to report or make an accounting.
- Enjoin a trustee from performing a particular act or to grant the trustee any necessary or desirable power.
- Review the actions of the trustee, including the exercise of any discretionary power.
- Determine trustee liability and to grant any available remedy for breach of a trust.
- Approve employment and compensation of agents.
- Determine the propriety of investments.
- Determine the timing and quantity of distributions and disposition of assets.
- Utilize any other power vested in the attorney general.
The Working Group unanimously agreed that to effectively regulate Chapter 436, the Board’s disciplinary process must be streamlined to allow for a more efficient and effective remedy. This would necessarily include, expanding the current grounds for discipline as well as the disciplinary tools available to the Board.

The Working Group unanimously recommended the following legislative change:

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

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

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

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty or an act of violence, 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 under this chapter or in obtaining permission to take any examination given or required under this chapter;

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

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;
(6) Violation of, or assisting or enabling any person to violate, any provision of [sections 426 regulating preneed], or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person not 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) Misappropriation or theft of preneed funds;

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by [the provisions of Chapter 426 regulating preneed] who is not registered and currently eligible to practice thereunder;

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

(13) Failure to display a valid certificate of license if so required by this [the provisions of Chapter 426 regulating preneed] or any rule promulgated thereunder;

(14) Violation of any professional trust or confidence;

(15) Making or filing any report required by [the provisions of Chapter 426 regulating preneed] which the licensee knows to be false or knowingly failing to make or file a report required by [the provisions of Chapter 426 regulating preneed];

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

(17) Willfully and through undue influence selling a preneed contract.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 62A, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deem 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.
4. Notwithstanding any other provision of this section, the board may automatically suspend a license if the Board finds, after an inspection, examination, investigation or audit, a shortage in any reserved trust or joint account which exceeds 20% of the total amount required to be held or deposited in the trust or account pursuant to [the provisions of Chapter 428 regulating reserves].

5. Any person whose license is suspended under subsection 4 of this section may appeal such suspension to the administrative hearing commission. Notice of such appeal must be received by the administrative hearing commission within ninety days of mailing, by certified mail, the notice of suspension. Failure of a person whose license was suspended to notify the administrative hearing commission of his or her intent to appeal waives all rights to appeal the suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commission pursuant to Chapter 621.

6. Use of the procedures set out in this section shall not preclude the application of the provisions of subsection 2 of section 333.061.
ENFORCEMENT AUTHORITY

INJUNCTIVE/CIVIL AUTHORITY

The Working Group unanimously recommended the following:

- Similar to current law, the Board should have authority to seek injunctive relief or any other civil authority necessary to enjoin/restrain an entity from:
  - Unlicensed activity.
  - Engaging in any activity that would pose a substantial probability of danger to the public health, safety or welfare.
  - Engaging in any activity that presents a substantial probability of serious danger to the solvency of any provider seller.
- The authority granted to the Board should be in addition to any other remedies authorized by law.
- Proper venue for any such action should be amended to include Cole County.
- Violation of Chapter 436 should be deemed violations of Chapter 407, under the jurisdiction of the Attorney General. In actions brought under Chapter 407, the court should be authorized to impose any penalty/remedy authorized under Chapter 436 or 407. Additionally, remedies should include revocation/suspension of the provider license.

CRIMINAL AUTHORITY

The Working Group unanimously recommended the following:

- Knowing and willful violations of Chapter 436 by incompetence, misconduct,
gross negligence, fraud, misrepresentation or dishonesty should be deemed Class C felonies. Comment: Violations are currently Class D felonies.

FINES & CIVIL PENALTIES

The Working Group unanimously recommended the following:

- The Board should be authorized to impose civil penalties and fines as a form of discipline.
- Fines/Civil Penalties should be assessed in light of the seriousness of the violation found.
- Fines/civil penalties should be consistent with the fines/penalties currently authorized for other professions within the Division. Specifically, the legislature has approved civil penalties for the Real Estate Commission and Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects in the amount of two thousand five hundred dollars for each offense.
- In considering a fine/civil penalty, the Board should be required to consider, among other factors:
  (1) If the violations are likely to continue or recur;
  (2) Whether actual financial loss was sustained by consumers and if restitution has been made;
  (3) If the violation was detected as part of a self-audit or internal compliance program and immediately reported to the Board; and
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WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
Comments: Currently, the Attorney General also has authority to assess/request fines and penalties under Chapter 407. A concern was raised by MYSHA that repeat of licensees may be subjected to double penalties if an action is initiated by the Board as well as through the Attorney General’s Office. MYSHA and Motorbussner suggested that if accepted, language should be developed to prevent duplicate imposition of fines/penalties by the Board and the Attorney General’s Office for the same conduct.

Response: As litigation counsel for the Board, the Attorney General’s Office traditionally represents and coordinates with the Board in pursuing any remedy. Additionally, the remedies imposed by the Board and by the Attorney General’s Office are distinctly different. The remedies imposed by the Board would be limited to licensing violations only. The remedies authorized under Chapter 407 are to redress/remedy a harm inflicted on the public at large. A concern was raised that if a licensee’s conduct violates the licensing law as well as harms the public, expanded remedies would be appropriate.
FEES

The proposed recommendations would require additional funding for the Board to regulate the proposed provisions and to fulfill all statutory obligations.

The Working Group unanimously approved the following recommendations:

- Licensing and renewal fees for preneed seller, providers and agents as established by the Board by rule. If both the preneed sellers/providers are required to pay fees, the preneed agent licensing fees should be minimal and proportionately lower than preneed seller/providers.
- Preneed sellers should continue to be assessed a two-dollar fee per preneed contract sold during the annual reporting year as currently required.
CONCLUSION

Nationally, the preneed industry has experienced significant and sustained growth as consumers focus more attention on their final needs. Preneed arrangements can provide a valuable option to purchasers desiring to ensure their arrangements. Chapter 436 regulating preneed is in need of significant legislative changes. As reflected in the present crisis impacting Missouri, Chapter 436 must be enhanced and amended to ensure consumer protection and the continued viability of Missouri’s preneed industry.

The Working Group appreciates the opportunity to share its recommendations. We look forward to providing any further assistance you may need.
Recommendations – Kutis
September 1, 2008

Dear Joint Committee Members:

Over the last year, the nation has witnessed an unprecedented crisis in the preneed industry. Estimates of the financial impact on Missouri consumers and the funeral industry are alarming. While recent concerns relate to a single entity, the crisis has focused much needed attention on the regulation of preneed funeral contracts in the state of Missouri and Chapter 436, RSMo, governing preneed sales.

The State Board of Embalmers and Funeral Directors (the “Board”), under the auspices of the Missouri Division of Professional Registration (the “Division”), regulates embalmers, funeral directors, funeral establishments, preneed sellers and preneed providers licensed in this state. As part of its statutory duties, the Board annually reviews legislation to identify potential recommendations of the Board. In recent years, this process has included a review of Chapter 436.

Senate Bill 780, enacted by the General Assembly 2008, which created the Joint Committee on Preneed Funeral Contracts. As part of its annual legislative review, the Board was invited to gather a working group of representatives from across the preneed industry to collectively identify suggested preneed recommendations for the Joint Committee’s review. The Working Group consisted of a diverse representation from all aspects of the preneed industry, including, liaisons from various consumer groups, members of the State Board and representatives from the funeral, preneed and insurance industries.

The Working Group respectfully submits the attached recommendations to the Joint Committee for review. While diverse interests were represented, the Working Group unanimously agreed that revisions to Chapter 436 are desperately needed to better protect Missouri consumers and those funeral directors, funeral establishments, preneed providers and preneed sellers who truly dedicate themselves to serving the public.

We commend the General Assembly in convening the Joint Committee and in dedicating the time and resources to this important task.

Sincerely,

To be determined
I. GENERAL OVERVIEW:

During the 2008-2009 legislative session, various Chapter 436 proposals were introduced. Although not enacted, the proposals sparked intense discussion among regulators, consumers and professional groups. While a consensus was not reached, industry and regulatory groups were able to identify several common areas of agreement.

At the close of the legislative session, various representatives met with Senator Delbert Scott and Representative Jay Wasson to discuss Chapter 436 concerns. The Board was subsequently asked to formulate a working group to help identify agreed areas for legislative recommendations.

The Board hosted five (5) open meetings for the Working Group in Jefferson City, Missouri. All meetings of the Working Group were conducted as open meetings in accordance with Chapter 610, RSMo. Notice of meetings and the proposed agenda were made available to the public and published on the Board’s website.

II. PARTICIPANTS:

The Working Group consisted of representatives from consumer groups, funeral directors, preneed providers, preneed sellers, third-party preneed sellers, the Missouri Funeral Directors and Embalmers Association, related insurance companies and representatives from small, large and minority funeral establishments. Participants were chosen from prior legislative involvement and from recommendations made by legislators, Board members and related consumer groups. Members of the public were also invited to attend and given an opportunity to provide both oral and written comments.

The Working Group included:

REGULATORS:

- Linda Roberts, Acting Director, Department of Insurance, Financial Institutions and Professional Registration ("DIFP")
- David Brocker, Division Director, Division of Professional Registration
- Sharon Euler, Office of the Attorney General
- Mary Erickson, Senior Enforcement Counsel - DIFP
- Larry McCord, General Counsel, DIFP
- Mark Stahlhuth, Senior Counsel - Financial Section, DIFP
- Rich Weaver, Director, Division of Finance

1 Open meetings were hosted on July 8th, July 15th, July 28th, July 29th and August 12th.
2 Did not participate as a voting member of the Working Group.

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
III. REVIEW PROCESS:

To guide the review, the Board circulated a survey with a listing by topic area of Chapter 436 proposals submitted to the Board in prior years. Participants were asked to rank the priority of topic areas listed for purposes of discussion. Surveys were made publicly available and were posted on the Board’s website. The Division subsequently compiled the rankings and utilized results to structure the Working Group. [See Appendix 1- Bd. Survey]
The surveyed topics were ranked as follows:

[INCLUDE SURVEY RESULTS HERE]
Working Group recommendations have been compiled as follows:

**Unanimous Recommendations:** Recommended by a unanimous vote of all Working Group Participants.

**Consensus Recommendations:** Recommended by an overwhelming majority of Participants, generally with less than 15% of Participants dissenting.

**Majority Recommendations:** Recommended by a simple majority vote of Working Group Participants.

**Unresolved:** Majority vote not reached. Suggestions from Participants have been provided.

For purposes of this Report, recommendations have been categorized as follows:

I. General Regulatory Authority ................................................. 10
II. Definitions ......................................................................... 11-12
III. Licensing/Registration ....................................................... 13
IV. Preneed Contracts ............................................................... 14-15
V. Preneed Providers ................................................................. 16
VI. Trust-Funded Preneed Plans ................................................. 18-19
VII. Regulation of Trusts & Trustees ........................................ 20-23
VIII. Insurance-Funded Preneed Plans ..................................... 24-25
IX. Joint Account-Funded Preneed Contracts ......................... 26
X. Payments to Providers ......................................................... 27
XI. Cancellation/Portability of Preneed Contracts .................... 28-30

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Dated August 17, 2008 at 5:00 p.m.
The Working Group unanimously agreed to the following recommendations:

- Regulatory authority over Chapter 43B and premises licensing should remain with the Board. Regulatory authority should not be transferred to another agency.

  ! **Comment:** The Division and Board support this proposal but would also support transferring authority if another regulatory agency is deemed more appropriate.

- The Missouri Attorney General should be granted concurrent jurisdiction with local prosecutors to prosecute violations of Chapter 43B.

- The Board should be granted general rulemaking authority to administer Chapter 43B and to establish necessary fees.

  ! **Comment:** General Consumer Alliance suggested that the current license confidentiality restrictions should be revised to allow the dissemination of more information to the public. Division staff indicated that the current confidentiality restrictions apply to all regulated boards/commissions within the Division and would require a statutory change specific to the Board.

  Leave confidentiality restrictions in place. No need for specific statutory change for 430-Kids.

- The Board should be authorized to hire legal counsel to assist in the enforcement of Chapter 43B.

  ! **Comment:** Board staff indicated this proposal would allow them to utilize both the Attorney General's Office and outside counsel, if needed. Representatives from the Attorney General's office refrained from the vote.
DEFINITIONS

Several of Chapter 436’s current definitions are insufficiently defined. Accordingly, the Working Group approved the following unanimous recommendations:

- "Beneficiary", the individual who is to be the subject of the disposition or who will receive funeral services, facilities or merchandise described in a preneed contract.

- "Board," the Missouri State Board of Embalmers and Funeral Directors.

- "Division", the division of professional registration of the department of insurance, financial institutions and professional registration.

- "Funeral merchandise", caskets, grave vaults, or receptacles, and other personal property incidental to a funeral or burial service, and such terms shall also include grave lots, grave space, grave markers, monuments, tombstones, crypts, niches or mausoleums.

- "Guaranteed Contract", A preneed contract in which the future costs for the disposition, facilities, services or merchandise identified in the preneed contract are definitively designated and guaranteed/assured in the contract.

- "Insurance-Funded Preneed Contract", A preneed contract which is designated to be funded by payments or proceeds from an insurance policy.

- "Joint-Account Funded Preneed Contract", A preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account.

- "Market Value", A fair market value,
  (a) As to cash, the amount thereof;
  (b) As to a security as of any date, the price for the security in that date obtained from a generally recognized source, or to the extent no generally recognized source exists, the price to sell an asset in an orderly transaction between unrelated market participants at the measurement date, and;
  (c) As to any other asset, the price to sell an asset in an orderly transaction between unrelated market participants at the measurement date consistent with Statements of Financial Accounting Standards.

- "Non-Guaranteed Contract", A preneed contract in which the costs for the disposition, facilities, services or merchandise are not guaranteed/assured in the contract.

- "Person", any individual, partnership, corporation, cooperative, association, or other entity.

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Dated August 17, 2008 at 5:50 p.m.
"Preneed contract", any contract or other arrangement which provides 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.

"Preneed Agent," any person authorized to sell a preneed contract for or on behalf of a preneed seller.

Licensed Missouri Funeral Directors or apprentices need not be licensed separately as pre-need licensee. - Kuts.

"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.

"Provider", the person designated to provide the disposition or funeral services, facilities, or merchandise described in a preneed contract.

"Purchaser", the person who is obligated to pay under a preneed contract.

"Seller", the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

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

"Trust-Funded Preneed Contract": A preneed contract which provides that payments for the preneed contract shall be deposited and maintained in trust.
The Working Group agreed to the following consensus recommendations:

- A "license" should be required for all preneed providers/sellers. Currently, sellers and providers are "registered" with the Board. A "license" denotes legal obligations and more accurately reflect the authorization being issued by the Board.

- Individuals selling preneed for or on behalf of a preneed seller should be licensed by the Board as a preneed agent. As a condition of licensure, preneed agents should successfully pass the Missouri law examination currently offered by the Board, provided that Missouri licensed funeral directors should not be required to take an additional examination.

- To be eligible for licensure/renewal, preneed agents, providers and sellers must be of good moral character, remit a licensing fee and have a high school diploma or the equivalent. If a corporation, licensure/renewal requirements should be applicable to each officer, director, manager or controlling shareholder.

- All preneed sellers or providers acting as business entities must be properly registered with the Missouri Secretary of State and authorized to conduct business in the state.

- Chapter 436 should be clarified to exempt endowment care cemetery operators governed by Chapter 334 from the provisions of Chapter 436. However, cemetery operators should be subject to Chapter 436 if the contract includes services that may only be lawfully provided by a licensed funeral director or embalmer.

- Chapter 436 should clearly provide that the provisions of the Chapter are inapplicable to contracts of insurance. However, Chapter 436 should apply to any preneed contract sold in conjunction with insurance. The current statutory language regarding insurance assignments or beneficiary designations is unclear and should be modified in compliance with the recommendation.

- Due to potential costs, preneed licenses should not be required to obtain bonding or any specific insurance. The Working Group suggested that increasing consumer protections and regulatory oversight would adequately address the need for additional insurance/bonding.
PREEED CONTRACTS

The Working Group unanimously approved the following recommendations:

- To accommodate the varying forms of preneed, Chapter 436 should define and regulate preneed contracts based on their funding mechanism. Specifically, preneed contracts should be classified as either insurance-funded, trust-funded or joint-account funded. Unique concerns relate to each different type of funding. Chapter 436 could be more effectively regulated if the provisions were modified to accommodate each specific form of funding.

- While minimum preneed contract requirements should be established, as provided below, a standard preneed contract form should not be required.

**Comment:** Although MFDFA supported the vote, representatives stressed that a standard form could be beneficial.

- Preneed sellers should be required to maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided. Contracts should be provided to the Board on request.

**Comment:** Funeral Consumer Alliance recommended that sellers should also provide copies of all preneed contracts to the Board. The Board suggested this requirement may be unworkable burdensome and that requiring sellers to providing copies upon request would satisfy regulatory concerns.

- Preneed contracts should only be designated as irrevocable if the contract is being used to qualify for Medicaid (i.e., for "spend down").

**Misprint:** Preneed contracts should be able to be made irrevocable in accordance with purchaser's wishes or if Medicaid spend down. This would keep pre-need funds unavailable to others (perhaps family members – this has happened) who wish to use the funds for their own purposes rather than for the purchaser's final expenses.

- Preneed contracts should be in writing and should clearly and conspicuously:
  - Include the name, address and phone number of the purchaser, beneficiary, provider and the seller;
  - Detail the disposition or facilities, services or merchandise requested;
  - Clearly identify if the contract is guaranteed or non-guaranteed on the face of the contract in a recognizable type (i.e., a 12 to 13-point type);
  - Identify terms for canceling the contract by the purchaser or by the seller for payment default;
  - Identify the funding mechanism including, the trust or financial institution where preneed funds will be held or the insurance company issuing an insurance policy.

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> Identify expenses to be retained by the seller.
> 
> *Kjis*: Remove this item. There's no need, nor precedent, for any business to reveal its expenses when someone purchases something from them.
> 
> Be signed by the purchaser, the preneed agent and the seller or a representative.
> 
> Preneed contracts not in compliance with Chapter 436 should be rendered void [should this be voidable by the purchaser] and unenforceable. If not in compliance, payments may be recoverable by the purchaser or their legal representative plus attorney fees.
> 
> ![Comments: This requirement is similar to current law.]
> 
> Sellers/providers should be prohibited from redesignating a preneed contract as a trust-funded, insurance-funded or joint-account funded preneed contract without the consent of the purchaser.
> 
> *Kjis*: Varies redesignating prohibited
> 
> ![Comments: The Funeral Consumer Alliance suggested that purchasers should also be given a written statement identifying the financial consequences of the redesignation (i.e.- reduction in cash surrender value, interest accrued and fees).]
> 
> On the death or legal incapacity of the purchaser, all rights or remedies of the purchaser should accrue to the benefit of the purchaser or his/her successor as designated in the contract. Proceeds payable under a life insurance contract should be governed by insurance law and the insurance contract.
> 
> The Working Group approved the following consensus recommendations:
> 
> Preneed contracts should clearly designate whether the contract is revocable or irrevocable.
> 
> ![Comments: Illinois Legislators Life Insurance Co., suggested the funding for preneed contracts should be made irrevocable and not the contract itself. The commenter noted that irrevocable contracts may hinder a consumer’s freedom of choice.]
> 
> [Footnote 9: Disagree – funding and contract both should be revocable, to protect right of consumer to cancel, unless made irrevocable by purchaser]
> 
> ![Comments: The Board also recommended that contracts include notification that complaints regarding preneed sellers/providers may be forwarded to the Board and the current number/address of the Board. Representatives of AARP, the Silver Haired Legislators and the Funeral Consumer Alliance agreed with this suggestion.]
> 
> **Deemed 1**

WORKING DRAFT

Dated August 17, 2008 at 5:00 p.m.
The Working Group unanimously approved the following recommendations:

- In light of recent concerns raised by the Federal Trade Commission, preneed provider licensing should not be restricted to only funeral establishments or cemetery operators. Private individuals are currently authorized to sell funeral merchandise preneed as at-need. However, it should be clarified that Chapter 436 does not exempt any person from the licensing requirements of Chapter 223 governing funeral directors and establishment.

- Chapter 436 should clearly state that the provider designated in a preneed contract is obligated to provide the disposition, facilities, services or merchandise designated in the preneed contract.

- Providers must have a written agreement with each preneed seller that the provider has authorized to designate the licensee as a provider in a preneed contract.

- Providers should be required to report the name and address of its custodian of records and of all sellers authorized to name the licensee as a provider. The Board should be notified by the provider in writing within 15 days of any amendments or changes.
PRENEED SELLERS

The Working Group adopted the following unanimous recommendations:

- For purposes of licensure, Chapter 436 should be clarified to provide that a preneed trust is not required if the seller is only selling joint-account or insurance-funded preneed plans.

- Preneed sellers should have the option to sell either trust-funded, joint-account funded or an insurance-funded preneed contract. Sellers should notify the Board of the type of contracts to be sold.

- Sellers should report to the Board the name and address of its custodian of records and of all providers that have authorized the seller to name the licensee as a provider. The Board should be notified by the seller in writing of any amendments or changes.

- The written agreement between the provider and seller should include:
  > Consent from the provider authorizing the seller to designate the licensee as a provider.
  > Procedures for tracking preneed fund payments received by the provider.

- Sellers should maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided.
The Working Group unanimously approved the following recommendations:

- Sellers should be required to issue receipts to the purchaser for preneed payments received by the seller.

The Working Group approved the following consensus recommendations:

- 100% of all payments for a trust-funded preneed contract should be deposited into trust. Sellers should be authorized to submit a request to the trustee for administrative expenses (see Additional Comments below).

**Comment:** APS and Meierhofer suggested that requiring sellers to request expenses from the trustee would create additional administrative expense that may be passed onto the consumer. APS and Meierhofer strongly recommended retaining the current process of allowing the seller to retain the first 20% of contract payments and to trust the remaining 80%.

*FURTHER AGREES with maintaining current process. 80% into trust, 20% remaining available under current regulation. Interest paid joint with the seller, and seller has right to use of that interest at any time, purchaser has right to cancel and receive 80% minimum. Sellers discretion to return 20% of interment funds in this area do this already. Putting 20% in and then getting expenses back from the bank is unduly burdensome on the bank and the funeral home as well as cost ineffective. Fees would be passed on to the consumer.*

- Payments for trust-funded preneed contracts should be deposited into trust within sixty-days of receipt.

**Comment:** Participants suggested that sixty-days would allow sufficient administrative time for processing and forwarding payments to the seller and for clearing payments made by check. However, other participants suggested a 30-45 day deposit requirement would increase consumer protection.

- Seller administrative expenses should be authorized from the initial payments received.

The following Working Group recommendations were unswayed: After considerable discussion and research, the Working Group did not reach a consensus or majority vote on the recommended allowance for seller administrative expenses. However, Participants recommended the following amounts:

- No administrative expense should be allowed.
- Three quarters (¾) of ½% of the face value of the Preneed Contract.
  - Josh Slocum
  - Note: This provision models New York’s preneed legislation.
- Ten percent of face value: The majority of Participants agreed that 10% of the contract’s face value would be a reasonable compromise.
  - AARP
  - Silver Haired Legislature
  - Rep. Meadows
- Ten to fifteen percent
  - DIFP
- Twenty percent of face value
  - Mike Meierhofer
  - Kuita Funeral Home
  - John McCulloch
  - Mike Winters
  - Austin-Layne
REGULATION OF TRUSTS & TRUSTEES

The Working Group unanimously approved the following recommendations:

GENERAL REQUIREMENTS:

- Trustees of a preneed trust must be a state or federally chartered institution authorized to exercise trust powers in Missouri.

- Provisions of the Uniform Trust Act under Chapter 469 and Chapter 456 should not be wholly incorporated into Chapter 456.

A preneed trust should terminate when trust principal no longer includes any payments made under any preneed contract. On termination the trustee should distribute all trust property, including principal and undistributed income, to the seller which established the trust.

The Working Group approved the following consensus recommendations:

- Expenses of the trust, including trustee’s fees, legal and accounting fees, investment expenses and taxes should be paid from the trust.

Kutis agrees to continue to have seller pay fees

- Income of the trust should accrue and should generally not be distributed until the contract is fulfilled or otherwise cancelled.
TRUSTEE DUTIES:

The Working Group unanimously approved the following recommendations:

- The prudent investor rule should be adopted for trustees. Specifically, trustees should invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee should exercise reasonable care, skill, and caution.

- Trustees who have special skills or expertise, or who are named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, should have a duty to use those special skills or expertise when investing and managing trust assets.

- Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee should review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of Missouri law.

- The trustee should maintain "adequate books and records" of all transactions administered through the trust and pertaining to the trust generally.

CONFLICTS OF INTEREST: The Working Group unanimously agreed that conflicts of interest between trustees and investment advisors should be prohibited. Specifically, the following recommendations were made:

- The financial institution and investment advisor should not be controlled by or under common control with the seller.

- "Controlling", "controlled by" and "under common control" with should be defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contact other than the power is the result of an official position with or corporate office held otherwise, unless the power is the result of an official position with or corporate office held by the person.

- Control should be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent

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Dated August 17, 2008 at 5:00 p.m.
or more of the voting securities of any other person. This presumption may be rebutted by a showing to the board that control does not in fact exist to determine within its sole discretion that control does not in fact exist.

- Trustees should be prohibited from selling, investing or authorizing any transaction involving the investment or management of trust property with:
  - the spouse of the trustee;
  - Descendants, siblings, parents, or spouses of a preneed seller or an officer, manager, director or employee of a preneed seller, provider or counselor;
  - Agents or attorneys of the trustee, preneed seller or provider; or
  - A corporation or other person or enterprise in which the trustee, preneed seller, preneed provider, or a preneed provider owns a significant interest or has an interest that might affect the trustee's best judgment.

| Comments: Bill Flitner recommended that a seller should be allowed to have a relationship with the advisor so long as the fiduciary remains responsible for the trust's compliance with the prudent investor rule and retains title of the assets. |

**INVESTMENT OF FUNDS:**

The Working Group unanimously approved the following recommendations:

- Investment of trust funds should be limited to investments that have reasonable potential for growth or producing income.

- Trustees should be specifically restricted from investing trust funds in any insurance product.

- Diversification of trust assets should be mandatory unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying.

- In investing trust assets, a trustee should be required to consider:
  - General economic conditions;
  - The possible effect of inflation or deflation;
  - The expected tax consequences of investment decisions or strategies;
  - The role that each investment or course of action plays within the overall trust portfolio;
  - The expected total return from income and the appreciation of capital;
  - Other resources of the beneficiaries known to the trustee;
  - Needs for liquidity, regularity of income, and preservation or appreciation of capital;
  - An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; and

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Dated August 17, 2008 at 5:00 p.m.
The size of the portfolio, nature and estimated duration of the fiduciary relationship and distribution requirements under the governing instrument.

- Trustees and preneed licensees should be prohibited from procuring or accepting a loan against any investment or asset of the trust.

- Commingling of trust funds should be only be allowed if the trustee maintains adequate records that individually and separately identify the payments, income and distribution for each preneed contract. Commingling should be limited to payments received for Missouri preneed contracts.

**SELECTIONS OF AGENTS/INDEPENDENT INVESTMENT ADVISORS:**

- Trustees should only delegate duties and powers to an agent that a prudent trustee of comparable skills could properly delegate under the circumstances.

- If an agent is selected, the trustee should exercise reasonable care, skill, and caution in:
  - Selecting an agent;
  - Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
  - Periodically reviewing the agent's actions and monitoring the agent's performance and compliance with the terms of the delegation.

- In performing a delegated function, an agent should owe a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

- Agents that accept a delegation of powers or duties from a trustee should be deemed to have consented to the jurisdiction of Missouri courts.

- By selecting an agent, a trustee should not be relieved of any duty or responsibility imposed on the trustee by Missouri law.

The Working Group approved the following recommendations by majority vote:

- Selectors should be allowed to approve the investment advisor selected.

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**Comment:** The Department of Insurance, Division of Finance, State Board and the Missouri Attorney General's Office unanimously agreed that selector approval of the investment advisor would hinder the independence of the investment advisor and threaten consumer protection. The suggestion proposed would allow the NPI licensee to select agents. Commenters should not and cannot be held or found guilty of unreasoning business practices. A matter of a financial institution should be more than capable of selecting an investment advisor that would be adequate for the trust. Selector approval is not and should not be required.

WORKING DRAFT
Dated August 17, 2018 at 5:00 p.m.
The Working Group adopted the following unanimous recommendations:

- Currently, Chapter 436 does not clearly allow regulate insurance-funded plans. Insurance funded preneed plans are a safe and necessary option. Accordingly, Chapter 436 should clearly authorize insurance-funded contracts.

- Insurance law should not apply to preneed contracts but should apply to any insurance sold with a preneed contract.

- Sellers should not charge, assess or collect any administrative fees for an insurance-funded preneed plan. Instead, sellers should only be allowed to receive/collect from a purchaser the amount required to pay insurance premiums as established by the insurer.

- In no instance, should a term life insurance product be used to fund a preneed contract. However, consumers should be allowed to assign proceeds from a term-life insurance product to a provider, or to designate a provider as a beneficiary under a preneed contract, provided that the assignment is not related to, or done in contemplation of, executing the sale of a preneed contract.

The Working Group adopted the following consensus recommendations:

- Payments received by the seller/provider for insurance-funded preneed contracts should be forwarded to the insurer within thirty (30) days of receipt.

- Preneed contracts funded by a life insurance policy should include:
  - Terms for cancellation by the purchaser or seller;
  - Notice that cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract.

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Dated August 17, 2004 at 5:00 p.m.
- Notice that insurance cancellation must be made in writing to the insurer.
- Notice that the purchaser will only receive the cash surrender value of the policy, which may be less than the amount paid in, if canceled after a designated time;
- Notice that the purchaser has the right to reassign/transfer the beneficiary designation or assignment to another funeral home.

![Comments: To avoid confusion and potential misconceptions, concerns were raised that the majority of this information should be provided by the insurer and included in the insurance contract since it would require the seller to summarize the insurance contract. Additionally, some commenters suggested use of the National Association of Insurance Commissioners' model for insurance funded disclosure. Funeral Consumer Alliance also suggested that the amount of commission should also be disclosed in an insurance-funded contract.](image)

![Comments: Funeral Consumer Alliance suggested that licensees should disclose to the purchaser if the licensee is an insurance agent/producer and if the license will receive any commission, payment or other consideration for the sale of an insurance product.](image)
JOINT ACCOUNT-FUNDED PRENEED CONTRACTS

The Working Group unanimously recommended that the current provisions for joint-account funded preneed plans are adequate and should be maintained. However, the Working Group suggested the following minor changes:

- Chapter 436 should be clarified to provide that a preneed seller may sell joint-account funded contracts. Currently, Chapter 436 only authorizes joint accounts for providers.

- Sellers only utilizing joint-account funded preneed contracts should not be required to have a trust.
PAYMENTS TO PROVIDERS

The Working Group unanimously recommended the following:

- To request payment, providers should be required to submit a certificate of performance certifying that the provider has rendered services to the preneed beneficiary. The certificate of performance should be signed by the provider and the person authorized to make arrangements on behalf of the preneed beneficiary.

- Sellers should remit payment to providers within thirty (30) days after receiving a certificate of performance. Sellers should not be prohibited from also requiring submission of a certified death certificate.
CANCELLATION/PORTABILITY
OF PRENEED CONTRACTS

The WorkK Group considered four distinct scenarios that generally arise over the life of a preneed contract:

1. **Contract Fulfillment:** The beneficiary dies and the preneed contract is fulfilled by the original seller and provider according to the contract terms. In this scenario, the purchaser has paid all outstanding costs and the provider and seller have complied with all contractual obligations.

2. **Transfer of Providers:** The purchaser decides to maintain the preneed contract but desires to select a different provider to perform the disposition or to provide the facilities, services or merchandise identified in the contract.

3. **Cancellation By Purchaser:** The purchaser decides to cancel the contract entirely. Here, the purchaser does not wish to designate a new provider or make other changes to the contract. Instead, the contract is to be completely terminated.

4. **Cancellation By Seller For Non-Payment:** This option is exercised by the seller in those instances when the purchaser has failed to remit payment as required by the contract. If exercised, the preneed contract is cancelled and is no longer in effect.

---

A. **Contract Fulfillment:**

*The Working Group approved the following unanimous recommendations:*

- On fulfillment, sellers should be entitled to payment as provided in the contract and the related income.

B. **Transfer of Providers:**

*The Working Group approved the following unanimous recommendations:*

- Chapter 470 should allow for 100% portability. Purchasers should have complete and unrestricted freedom to select an alternative provider. Purchasers should not be penalized nor should any additional fee or costs be assessed to the purchaser for a transfer.

- The new provider designated by the purchaser should be accepted by the seller if the provider agrees to accept the remaining payment owed the original provider as designated in the contract. Here, the newly designated provider would simply

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Working Draft
Dated August 17, 2008 at 5:00 p.m.
“step into the shoes” of the original provider for purposes of payment and fulfilling the contract.

![Comments: While MFDA generally supported this recommendation, concerns were raised that the seller should be able to reject a designated provider if the seller does not have a contract with the provider or if legitimate business reasons exist for the seller not accepting the designation (i.e., the provider has failed to comply with the contract in other instances or has misappropriated funds from the seller).]

C. Purchaser Cancellation:

The Working Group approved the following unanimous recommendations:

- Purchasers should be entitled to a full refund of payments if the purchaser cancels the contract within thirty (30) days after receiving a fully executed contract.
- Purchasers should be allowed to cancel after the thirty day cancellation period. The refund amount should be designated by statute (however, see below).

Additional Recommendations: After extensive discussion and research, the Working Group did not reach a unanimous, consensus or majority recommendation for the refunding of preneed funds if the purchaser cancels the contract after the 30-day review period. However, the following recommendations were suggested by Working Group Participants:

- 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- 100% of all funds held in trust should be refunded.
- 80% of all funds held in trust should be refunded.
- 80% of all funds paid by the purchaser should be refunded.
- 80% of all funds paid should be refunded plus a portion of the income earned.

D. Cancellation By Seller For Non-Payment:

The Working Group approved the following unanimous recommendations:

- Sellers should be allowed to cancel the contract unilaterally if the purchaser is in default of payment.
- If cancelled by the seller, preneed purchasers should be refunded 80% of all amounts paid for the contract.
- Prior to cancellation, purchasers should be provided written notification from the seller of the seller’s intent to cancel. The notice should be provided forty-five
days prior to cancellation and should allow the purchaser thirty days to remit the payment in arrears to avoid cancellation.

- If the seller does not cancel prior to at-need services being required, the purchaser should be provided the opportunity to remit the payment in arrears. If payment is not remitted, the seller should be required to credit the purchaser's preneed payments towards the at-need cost for services. If a credit is applied, the seller may determine funeral/burial costs based on the seller's at-need prices.

The Working Group approved the following majority recommendations:

- On seller cancellation, 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- Extra: not the income.
- Eighty percent of all funds paid and held in trust should be refunded to purchasers.

Comments: Bill Stabler recommended that issues regarding trust expenses and income/expense allocations would be better addressed in rulemaking.
REPORTING REQUIREMENTS

To assist the Board in regulation, the Working Group unanimously recommended expanding the information submitted to the Board by preneed licensees.

ANNUAL REPORT REQUIREMENTS FOR ALL PRENEED SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

• The purchaser's name and address and preneed contract number, if any. Contract numbers should not be required but should be provided if available.
• The total number and face value of outstanding preneed contracts sold since the last report was filed.
• The contract amount for each preneed contract sold since the last annual report.
• The name, address and contract number of all preneed spots authorized to sell preneed for the seller.
• The number of contracts fulfilled by the seller since the last report.
• The name and address of each provider contracted with the seller.
• The name and address of a custodian of preneed records.
• Authorization for the Board to conduct an audit and/or an examination of books and records.
• Any other information deemed necessary by the Board by rule.

ANNUAL REPORT REQUIREMENTS FOR TRUST-FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the trustee.)

• The name and address of the financial institution where the trust is held and the account number.
• The trust fund balance as reported in the previous year's report and the current trust fund balance.
• Principal contributions received since the last report.
• Total trust earnings and total distributions to the seller since the last report.
• A statement of assets and investments of the trust listing cash, real or personal property, stocks, bonds, and other assets. The listing should show cast, acquisition date and current market value of each asset and investment.
• Total expenses since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS FOR JOINT-ACCOUNT FUNDED PRENEED CONTRACT SELLERS

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WORKING DRAFT

Date: August 17, 2008 at 5:00 p.m.
The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the financial institution.)

- The number and address of the Missouri financial institution where the joint account is kept and the account number.
- The amount on deposit in each joint account.
- The joint account balance reported the previous year.
- Principal contributions placed into each joint account since the last report.
- Total earnings since the previous report.
- Total distributions to the seller from each joint account since the previous year.
- Total expenses deducted from the joint account since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS FOR INSURER FINANCED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations:

- The name and address of each insurer issuing insurance to fund a preneed contract during the preceding year.
- The status and total death benefit and cash surrender value of each policy in force at the time of the report. (This should be certified as true and accurate by the insurer.)
CONSUMER REPORTING / NOTIFICATIONS

The Working Group unanimously approved the following recommendations:

• Purchasers should be entitled to an annual report from the seller indicating the amount of funds paid by the purchaser during the reporting year and the name and address of the trustee.
• Sellers should inform purchasers of a change in trustee within thirty (30) days after the change. Notification should include the name, address and phone number of the trustee.

The Working Group approved the following majority recommendations:

• Purchasers should be notified by the trustee each time a deposit is made into trust for the contract.

Comments: Participants expressed concerns that an annual report would create an unnecessary burden on private sellers and increase administrative expenses that would eventually be passed on to the consumer.

Kutis – record of payments available to purchaser. “I don’t need to notify each time a payment is made, agree annual report burdensome and costly. Present reporting rules are satisfactory.

• Purchasers should be provided a ‘receipt for each payment made by or on behalf of the purchaser. The receipt should be provided by the initial person receiving the payment (i.e. the seller, provider or the agent).
The Board has experienced significant regulatory difficulty with ensuring that Missouri consumers are adequately protected when preneed providers and sellers cease doing business either voluntarily or involuntarily. As a result, the Working Group unanimously recommended the following:

**PRENEED SELLERS:**

- The Working Group approved the following unanimous recommendations: The following notification/reporting requirements should be mandated for preneed sellers:
  - Notice to the Board at least thirty (30) days prior to a seller ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board which includes a detailed plan indicating how outstanding preneed contracts will be liquidated and/or satisfied and how assets will be allocated for preneed obligations.
  - Notice to all providers that the seller has ceased doing business thirty (30) days prior to the seller ceasing business or transferring a majority of stock/assets.
  - Notice to consumers that the seller will cease doing business and indicate a contact number for questions regarding preneed contracts, consumer refunds or how arrangements will be satisfied. Purchaser notification should be required at least thirty (30) days prior to ceasing business or, in instances of a sale/transfer, within thirty (30) days after completion of the sale/transfer.
  - Submission of any additional information designated by the Board.
- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider/seller to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed seller who ceases business without notification to the Board.

**PRENEED PROVIDERS:**

- The following notification/reporting requirements should be mandated for preneed providers:
  - Notice to the Board at least thirty (30) days prior to the provider ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board.
  - Notice of the provider's intent to all sellers with whom the provider has outstanding preneed contracts within thirty (30) days prior to the provider ceasing business or transferring/disposing of a majority of stock/assets.
  - Upon notification from the provider, sellers should be required to notify all purchasers that the provider has ceased doing business or has transferred ownership. Notification should include provisions for
selecting an alternative provider and should be provided within thirty (30) days after the provider ceasing business or transferring ownership/assets.

- Submission of any additional information designated by the Board.
- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records of any preneed provider who ceases business without notification to the Board.
AUDITS, INVESTIGATIONS AND EXAMINATIONS

The Working Group unanimously agreed that effective regulation of the preneed industry may only be accomplished by strengthening, clarifying and expanding the current investigation, examination and audit authority of the Board.

The Working Group unanimously recommended the following:

- The Board should be granted clear authority to:
  - Issue subpoenas to compel the production of books and records of any licensee or trustee.
  - Enter the premises or establishment where preneed business is conducted, or is advertised to be conducted, for the purposes of accessing books and records.
  - Conduct random or targeted inspections, with or without cause and at the discretion of the Board.
  - Investigate complaints and to investigate licensees to determine compliance with Chapter 436.
  - Conduct random or targeted examinations of books and records, at the discretion of the Board. The Board should be authorized to conduct an examination of each preneed seller at least once every five years.

1. Comments: Although the Working Group initially recommended every three years, the Board expressed concerns regarding cost and the financial feasibility of conducting such examinations.

- Kritis agree with concerns of cost and feasibility.
  - Sellers selling joint-account funded plans only should be exempt from the examinations conducted by the Board every five years. However, the Board should retain authority to audit or examine the seller, if deemed necessary.
  - Audit a preneed seller with cause if the Board has reasonable grounds for verifying the proper handling of preneed funds.

- Inspections, investigations, audits and examinations should be authorized with or without a complaint.
- The Board may request DIDP, the attorney general or the division of finance, to designate investigator(s) or financial examiner(s) to assist the Board with any inspection, investigation, examination or audit.
- Inspections, investigations, audits and examinations should clearly be required to cooperate with any inspection, investigation, examination or audit conducted by the Board, DIDP, the attorney general or the division of finance.
- Books and records of licensees should be made available to the Board by the licensees upon request.
- Costs of an inspection, investigation, examination or audit should be funded through licensing fees established by the Board by rule.

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
ATTORNEY GENERAL AUTHORITY

The Working Group unanimously recommended the following:

If a violation of Chapter 436 is found after an investigation, audit or examination, the Attorney General should be authorized to initiate a judicial proceeding to:

- Declare rights.
- Approve a nonjudicial settlement.
- Appoint or remove a trustee.
- Interpret or construe the terms of the trust.
- Determine the validity of a trust or its terms.
- Compel a trustee to report or make an accounting.
- Enjoin a trustee from performing a particular act or to grant the trustee any necessary or desirable power.
- Review the actions of the trustee, including the exercise of any discretionary power.
- Determine trustee liability and to grant any available remedy for breach of a trust.
- Approve employment and compensation of agents.
- Determine the propriety of investments.
- Determine the timing and quantity of distributions and disposition of assets.
- Utilize any other power vested in the attorney general.
The Working Group unanimously agreed that to effectively regulate Chapter 436, the Board's disciplinary process must be streamlined to allow for a more efficient and effective remedy. This would necessarily include, expanding the current grounds for discipline as well as the disciplinary tools available to the Board.

The Working Group unanimously recommended the following legislative change:

Section A.1. The board may refuse to issue any certificate of registration or authority, permit or license required under this chapter for one or any combination of causes stated in subsection 3 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 621, RS Mo.

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

(a) Use of any controlled substance, as defined in chapter 195, RS Mo., 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;

(b) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving mali8 ture, whether or not sentence is imposed;

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

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

(e) 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 [sections 436 regulating preneed], or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person not 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) Misappropriation or theft of preneed funds;

(11) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by [the provisions of Chapter 436 regulating preneed] who is not registered and currently eligible to practice thereunder;

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

(13) Failure to display a valid certificate or license if so required by this [the provisions of Chapter 436 regulating preneed] or any rule promulgated thereunder;

(14) Violation of any professional trust or confidence;

(15) Making or filing any report required by [the provisions of Chapter 436 regulating preneed] which the licensee knows to be false or knowingly failing to make or file a report required by [the provisions of Chapter 436 regulating preneed];

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

(17) Willfully and through undue influence selling a preneed contract.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 622, RSA. Upon a finding by the administrative hearing commissioner that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, ensnare 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.

WORKING DRAFT
Date August 17, 2008 at 5:00 p.m.
4. Notwithstanding any other provision of this section, the board may automatically suspend a license if the Board finds, after an inspection, examination, investigation or audit, a shortage in any prepaid trust or joint account which exceeds 20% of the total amount required to be held or deposited in the trust or account pursuant to [the provisions of Chapter 46F regulating prepaid].

5. Any person whose license is suspended under subsection 4 of this section may appeal such suspension to the administrative hearing commission. Notice of such appeal must be received by the administrative hearing commission within ninety days of mailing, by certified mail, the notice of suspension. Failure of a person whose license was suspended to notify the administrative hearing commission of his or her intent to appeal waives all rights to appeal the suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commission pursuant to Chapter 621.

6. Use of the procedures set out in this section shall not preclude the application of the provisions of subsection 2 of section 332.061.
ENFORCEMENT AUTHORITY

INJUNCTIVE/CIVIL AUTHORITY

The Working Group unanimously recommended the following:

• Similar to current law, the Board should have authority to seek injunctive relief
  or any other civil authority necessary to enjoin/restrain an entity from:
  • Unlicensed activity;
  • Engaging in any activity that would pose a substantial probability of
danger to the public health, safety or welfare;
  • Engaging in any activity that presents a substantial probability of serious
danger to the solvency of any presided seller.

• The authority granted to the Board should be in addition to any other remedies
  authorized by law.

• Proper venue for any such action should be amended to include Cola County.

• Violation of Chapter 436 should be deemed violations of Chapter 407, under the
  jurisdiction of the Attorney General. In actions brought under Chapter 407, the
court should be authorized to impose any penalty/remedy authorized under
Chapter 436 or 407. Additionally, remedies should include
revelation/suspension of the presided license.

CRIMINAL AUTHORITY

The Working Group unanimously recommended the following:

• Knowing and willful violations of Chapter 436 by incompetence, misconduct,
gross negligence, fraud, misrepresentation or dishonesty should be deemed Class
C felonies. Comment: Violations are currently Class D felonies.

FINES & CIVIL PENALTIES

The Working Group unanimously recommended the following:

• The Board should be authorized to impose civil penalties and fines as a form of
discipline.

• Fines/Civil Penalties should be assessed in light of the seriousness of the
  violation found.

• Fines/civil penalties should be consistent with the fines/penalties currently
  authorized for other professions within the Division. Specifically, the legislature
  has approved civil penalties for the Real Estate Commission and Architects,
  Professional Engineers, Professional Land Surveyors and Landscape Architects in
  the amount of two thousand five hundred dollars for each offense.

• In considering a fine/civil penalty, the Board should be required to consider, among other
  factors:

  (1) If the violations are likely to continue or reoccur;

  (2) Whether actual financial loss was sustained by consumers and if restitution has been
  made;

  (3) If the violation was detected as part of a self-audit or internal compliance program
  and immediately reported to the Board; and

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Dated August 17, 2008 at 5:00 p.m.
(4) In the violation had previously been detected, but inadequate policies and procedures were implemented to prevent recurrence.

| Comments: Currently, the Attorney General also has authority to assess/report fines and penalties under Chapter 407. A concern was raised by MFERA that provisional licenses may be subjected to double penalties if an action is initiated by the Board as well as through the Attorney General’s Office. MFERA and Meierhofer suggested that if adopted, language should be developed to prevent duplicate impositions of fines/penalties by the Board and the Attorney General’s Office for the same conduct.

Discussion: As litigation counsel for the Board, the Attorney General’s Office traditionally represents and coordinates with the Board in pursuing any remedy. Additionally, the remedies imposed by the Board and by the Attorney General’s Office are distinctly different. The remedies imposed by the Board would be limited to licensure violations only. The remedies authorized under Chapter 407 are to address/remedy a harm inflicted on the public at large. A concern was raised that if a licensee’s conduct violates the licensing law as well as harms the public, expanded remedies would be appropriate.
FEES

The proposed recommendations would require additional funding for the Board to regulate the proposed provisions and to fulfill all statutory obligations.

The Working Group unanimously approved the following recommendations:

- Licensing and renewal fees for preneed sellers, providers and agents as established by the Board by rule. If both the preneed sellers/providers are required to pay fees, the preneed agent licensing fees should be minimal and proportionately lower than preneed seller/providers.
- Preneed sellers should continue to be assessed a two-dollar fee per preneed contract sold during the annual reporting year as currently required.
CONCLUSION

Nationally, the preneed industry has experienced significant and sustained growth as consumers focus more attention on their final needs. Preneed arrangements can provide a valuable option to purchasers desiring to ensure their arrangements. Chapter 436 regulating preneed is in need of significant legislative changes. As reflected in the present crisis impacting Missouri, Chapter 436 must be enhanced and amended to ensure consumer protection and the continued viability of Missouri’s preneed industry.

The Working Group appreciates the opportunity to share its recommendations. We look forward to providing any further assistance you may need.
Recommendations – Finance
STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

CHAPTER 436 WORKING GROUP RECOMMENDATIONS

Submitted: September 1, 2008
September 1, 2008

Dear Joint Committee Members:

Over the last year, the nation has witnessed an unprecedented crisis in the preneed industry. Estimates of the financial impact on Missouri consumers and the funeral industry are alarming. While recent concerns relate to a single entity, the crisis has focused much needed attention on the regulation of preneed funeral contracts in the state of Missouri and Chapter 436, RSMo, governing preneed sales.

The State Board of Embalmers and Funeral Directors (the “Board”), under the auspices of the Missouri Division of Professional Registration (the “Division”), regulates embalmers, funeral directors, funeral establishments, preneed sellers and preneed providers licensed in this state. As part of its statutory duties, the Board annually reviews legislation to identify potential recommendations of the Board. In recent years, this process has included a review of Chapter 436.

Senate Bill 790, enacted by the General Assembly 2008, which created the Joint Committee on Preneed Funeral Contracts. As part of its annual legislative review, the Board was invited to gather a working group of representatives from across the preneed industry to collectively identify suggested preneed recommendations for the Joint Committee’s review. The Working Group consisted of diverse representation from all aspects of the preneed industry, including, liaisons from various consumer groups, members of the State Board and representatives from the funeral, preneed and insurance industries.

The Working Group respectfully submits the attached recommendations to the Joint Committee for review. While diverse interests were represented, the Working Group unanimously agreed that revisions to Chapter 436 are desperately needed to better protect Missouri consumers and those funeral directors, funeral establishments, preneed providers and preneed sellers who truly dedicate themselves to serving the public.

We commend the General Assembly in convening the Joint Committee and in dedicating the time and resources to this important task.

Sincerely,

To be determined
I. GENERAL OVERVIEW:

During the 2008-2009 legislative session, various Chapter 436 proposals were introduced. Although not enacted, the proposals sparked intense discussion among regulators, consumers and professional groups. While a consensus was not reached, industry and regulatory groups were able to identify several common areas of agreement.

At the close of the legislative session, various representatives met with Senator Delbert Scott and Representative Jay Wasson to discuss Chapter 436 concerns. The Board was subsequently asked to formulate a working group to help identify agreed areas for legislative recommendations.

The Board hosted five (5) open meetings for the Working Group in Jefferson City, Missouri. All meetings of the Working Group were conducted as open meetings in accordance with Chapter 610, RSMo. Notice of meetings and the proposed agenda were made available to the public and published on the Board’s website.

II. PARTICIPANTS:

The Working Group consisted of representatives from consumer groups, funeral directors, preneed providers, preneed sellers, third-party preneed sellers, the Missouri Funeral Directors and Embalmers Association, related insurance companies and representatives from small, large and minority funeral establishments. Participants were chosen from prior legislative involvement and from recommendations made by legislators, Board members and related consumer groups. Members of the public were also invited to attend and given an opportunity to provide oral and written comments.

The Working Group included:

<table>
<thead>
<tr>
<th>Name</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Linda Bohrer</td>
<td>Acting Director- Department of Insurance, Financial Institutions and Professional Registration (“DIFP”)</td>
</tr>
<tr>
<td>David Rooke</td>
<td>Division Director, Division of Professional Registration*</td>
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<tr>
<td>Sharon Euler</td>
<td>Office of the Attorney General</td>
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<tr>
<td>Mary Erickson</td>
<td>Senior Enforcement Counsel- DIFP</td>
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<tr>
<td>Larry Mc Cord</td>
<td>General Counsel- DIFP</td>
</tr>
<tr>
<td>Mark Stahlhuth</td>
<td>Senior Counsel- Financial Section, DIFP</td>
</tr>
<tr>
<td>Rich Weaver</td>
<td>Deputy Commissioner, Division of Finance</td>
</tr>
</tbody>
</table>

REGULATORS:

* Open meetings were held on July 8th, July 15th, July 24th, July 31st, and August 12th.

* Did not participate as a voting member of the Working Group.

WORKING DRAFT

Dated August 17, 2008 at 5:00 p.m.
ADDITIONAL PARTICIPANTS:

James Reinhard, Chair, State Board of Embalmers and Funeral Directors
Gary Fraker, Board Member
Joy Gerstein, Board Member
Todd Mahn, Board Member
Martin Vernon, Board Member
John McCulloch, Board Member/American Prearranged Services
Bob Baker, Wright Baker Hill Funeral Home
Barbara Brown, Layne Renaissance Chapel, LLC
Norma Collins, AARP
George Kutis*, Kutis Funeral Home, Inc.
George Kline
Jim Moody, Lobbyist, SCI
Rep. Timothy Meadows
Michael Meierhoffer, Meierhoffer Funeral Home & Crematory, Inc.
Barbara Newman, Rep. Meadows’ Office
Darlene Russell, Charter Life Insurance Co.
Josh Slocom, Executive Director, Funeral Consumer Alliance
Bill Stalzer, Stalzer Legal Services
Bill Trimmer, Silver Haired Legislators
Jo Walker
Don Otto, Executive Director, Missouri Funeral Director and Embalmers Association/Missouri Funeral Trust
Mark Warren, English & Monaco - Representing Homesteaders Life Insurance, etc.
Mike Winters

COMMITTEE SUPPORT STAFF:

Connie Clarkston, Director of Budget & Legislation, Division of Professional Registration
Becky Dunn, Executive Director, State Board*
Jeana Groose, Administrative Assistant to Director of Budget & Legislation, Division of Professional Registration*
Kimberly Grinston, Legal Counsel, Division of Professional Registration*
Lozi Hayes, Inspector, State Board*

III. REVIEW PROCESS:

To guide the review, the Board circulated a survey with a listing by topic area of Chapter 456 proposals submitted to the Board in prior years. Participants were asked to rank the priority of topic areas listed for purposes of discussion. Surveys were made publicly available and were posted on the Board’s website. The Division subsequently compiled the rankings and utilized results to structure the Working Group. [See Appendix 1- Bld. Survey].

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
The surveyed topics were ranked as follows:

[INCLUDE SURVEY RESULTS HERE]
Working Group recommendations have been compiled as follows:

**Unanimous Recommendations:**  Recommended by a unanimous vote of all Working Group Participants.

**Consensus Recommendations:**  Recommended by an overwhelming majority of Participants, generally with less than 15% of Participants dissenting.

**Majority Recommendations:**  Recommended by a simple majority vote of Working Group Participants.

**Unresolved:**  Majority vote not reached. Suggestions from Participants have not been provided.

For purposes of this Report, recommendations have been categorized as follows:

I. General Regulatory Authority .................................................. 10
II. Definitions ............................................................................. 11-12
III. Licensing/Registration ............................................................ 13
IV. Prewed Contracts ................................................................. 14-15
V. Prewed Providers ................................................................. 16
VI. Trust-Funded Prewed Plans ................................................ 18-19
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VIII. Insurance-Funded Prewed Plans .......................................... 24-25
IX. Joint Account-Funded Prewed Contracts ............................. 26
X. Payments to Providers ........................................................... 27
XI. Cancellation/Portability of Prewed Contracts ........................ 28-30

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WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
GENERAL REGULATORY AUTHORITY

The Working Group unanimously agreed to the following recommendations:

- Regulatory authority over Chapter 436 and preneed licensing should remain with the Board. Regulatory authority should not be transferred to another agency.

  ![Comment: The Division and Board support this proposal but would also support transferring authority to another regulatory agency if deemed more appropriate.]

- The Missouri Attorney General should be granted concurrent jurisdiction with local prosecutors to prosecute violations of Chapter 436. (This needs careful vetting with prosecutors and legal scholars.)

- The Board should be granted general rulemaking authority to administer Chapter 436 and to establish necessary fees.

  ![Comment: Funeral Consumer Alliance suggested that the current licensee confidentiality restrictions should be revised to allow the dissemination of more information to the public. Division staff indicated that the current confidentiality restrictions apply to all regulated boards/commissions within the Division and would require a statutory change specific to the Board.]

- The Board should be authorized to hire legal counsel to assist in the enforcement of Chapter 436.

  ![Comment: Board staff indicated this proposal would allow them to utilize both the Attorney General’s Office and outside counsel, if needed. Representatives from the Attorney General’s Office refrained from the vote.]

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WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
DEFINITIONS

Several of Chapter 436's current definitions are insufficiently defined. Accordingly, the Working Group approved the following unanimous recommendations:

• "Beneficiary", the individual who is to be the subject of the disposition or who will receive funeral services, facilities or merchandise described in a preneed contract.

• "Board," the Missouri State Board of Embalmers and Funeral Directors.

• "Division", the division of professional registration of the department of insurance, financial institutions and professional registration.

• "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.

• "Guaranteed Contract", A preneed contract in which the future costs for the disposition, facilities, services or merchandise identified in the preneed contract are definitively designated and guaranteed/assured in the contract.

• "Insurance-Funded Preneed Contract", A preneed contract which is designated to be funded by payments or proceeds from an insurance policy.

• "Joint-Account Funded Preneed Contract", - A preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account.

• "Market Value". - A fair market value,
  (a) As to cash, the amount thereof;
  (b) As to a security as of any date, the price for the security in that date obtained from a generally recognized source, or to the extent no generally recognized source exists, the price to sell an asset in an orderly transaction between unrelated market participants at the measurement date, and;
  (c) As to any other asset, the price to sell an asset in an orderly transaction between unrelated market participants at the measurement date consistent with Statements of Financial Accounting Standards.

• "Non-Guaranteed Contract". - A preneed contract in which the costs for the disposition, facilities, services or merchandise are not guaranteed/assured in the contract.

• "Person", any individual, partnership, corporation, cooperative, association, or other entity.

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WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
• "Preneed contract", any contract or other arrangement which provides 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.

• "Preneed Agent," any person authorized to sell a preneed contract for or on behalf of a preneed seller.

• "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.

• "Provider", the person designated to provide the disposition or funeral services, facilities, or merchandise described in a preneed contract.

• "Purchaser", the person who is obligated to pay under a preneed contract.

• "Seller", the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

• "Trustee", the trustee of a preneed trust, including successor trustees.

• "Trust-Funded Preneed Contract". A preneed contract which provides that payments for the preneed contract shall be deposited and maintained in trust.
The Working Group agreed to the following consensus recommendations:

- A “license” should be required for all preneed providers/sellers. Currently, sellers and providers are “registered” with the Board. A “license” denotes legal obligations and more accurately reflect the authorization being issued by the Board.

- Individuals selling preneed for or on behalf of a preneed seller should be licensed by the Board as a preneed agent. As a condition of licensure, preneed agents should successfully pass the Missouri law examination currently offered by the Board, provided that Missouri licensed funeral directors should not be required to take an additional examination.

![Comment: John McCullough (APB) expressed concerns imposing full licensing, testing or disciplinary requirements on preneed agents.]

- To be eligible for licensure/renewal, preneed agents, providers and sellers must be of good moral character, remit a licensing fee and have a high school diploma or the equivalent. If a corporation, licensure/renewal requirements should be applicable to each officer, director, manager or controlling shareholder.

- All preneed sellers or providers operating as business entities must be properly registered with the Missouri Secretary of State and authorized to conduct business in the state.

- Chapter 436 should be clarified to exempt endowed care cemetery operators governed by Chapter 244 from the provisions of Chapter 436. However, cemetery operators should be subject to Chapter 436 if the contract includes services that may only be lawfully provided by a licensed funeral director or embalmer.

- Chapter 436 should clearly provide that the provisions of the Chapter are inapplicable to contracts of insurance. However, Chapter 436 should apply to any preneed contract sold in conjunction with insurance. The current statutory language regarding insurance assignments or beneficiary designations is unclear and should be modified in compliance with the recommendation.

- Due to potential costs, preneed licensees should not be required to obtain bonding or any specific insurance. The Working Group suggested that increasing consumer protections and regulatory oversight would adequately address the need for additional insurance/bonding.
PRENEED CONTRACTS

The Working Group unanimously approved the following recommendations:

- To accommodate the varying forms of preneed, Chapter 436 should define and regulate preneed contracts based on their funding mechanism. Specifically, preneed contracts should be classified as either insurance-funded, trust-funded or joint-account funded. Unique concerns relate to each different type of funding. Chapter 436 could be more effectively regulated if the provisions were modified to accommodate each specific form of funding.

- While minimum preneed contract requirements should be established, as provided below, a standard preneed contract form should not be required.

  ![Comments: Although MFHEA supported the vote, representation stressed that a standard form could be beneficial.]

- Preneed sellers should be required to maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided. Contracts should be provided to the Board on request.

  ![Comments: Funeral Consumer Alliance recommended that sellers should also provide copies of all preneed contracts to the Board. The Board suggested this requirement may be unduly burdensome and that requiring sellers to provide copies upon request would satisfy regulatory concerns.]

- Preneed contracts should only be designated as revocable if the contract is being used to qualify for Medicaid (i.e., for "spend down").

- Preneed contracts should be in writing and should clearly and conspicuously:
  > Include the name, address and phone number of the purchaser, beneficiary, provider and the seller;
  > Detail the disposition or facilities, services or merchandise requested;
  > Clearly identify if the contract is guaranteed or non-guaranteed on the face of the contract in a recognizable type (i.e., a 12 to 15-point type);
  > Identify terms for cancelling the contract by the purchaser or by the seller for payment default.
  > Identify the funding mechanism including, the trust or financial institution where preneed funds will be held or the insurance company issuing an insurance policy.
  > Identify expenses to be retained by the seller.
  > Be signed by the purchaser, the preneed agent and the seller or a representative.

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Dated August 17, 2008 at 5:00 p.m.
• Preneed contracts not in compliance with Chapter 436 should be rendered void [should this be voidable by the purchaser] and unenforceable. If not in compliance, payments may be recoverable by the purchaser or their legal representative plus attorney fees.

! Comments: This requirement is similar to current law.

• Sellers/providers should be prohibited from redesignating a preneed contract as a trust-funded, insurance-funded or joint-account funded preneed contract without the consent of the purchaser.

! Comments: The Funeral Consumer Alliance suggested that purchasers should also be given a written statement identifying the financial consequences of the redesignation (i.e. reduction in cash surrender value, interest accrual and fees).

• On the death or legal incapacity of the purchaser, all rights or remedies of the purchaser should accrue to the benefit of the purchaser or his/her successor as designated in the contract. Proceeds payable under a life insurance contract, should be governed by insurance law and the insuritwes contract.

The Working Group approved the following consensus recommendations:

• Preneed contracts should clearly designate whether the contract is revocable or irrevocable.

! Comments: Homesteaders Life Insurance Co. suggested the funding for preneed contracts should be made irrevocable and not the contract itself. The commenter remarked that irrevocable contracts may hinder a consumer’s freedom of choice.

! Comments: The Board also recommended that contracts include notification that complaints regarding preneed sellers/providers may be forwarded to the Board and the current number/address of the Board. Representatives of AARP, the Silver Haired Legislators and the Funeral Consumer Alliance agreed with this suggestion.

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WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
PRENEED PROVIDERS

The Working Group unanimously approved the following recommendations:

- In light of recent concerns raised by the Federal Trade Commission, preneed provider licensing should not be restricted to only funeral establishments or cemetery operators. Private individuals are currently authorized to sell funeral merchandise preneed or at-need. However, it should be clarified that Chapter 430 does not exempt any person from the licensing requirements of Chapter 333 governing funeral directors and establishment.

- Chapter 436 should clearly state that the provider designated in a preneed contract is obligated to provide the disposition, facilities, services or merchandise designated in the preneed contract.

- Providers must have a written agreement with each preneed seller that the provider has authorized to designate the licensee as a provider in a preneed contract.

- Providers should be required to report the name and address of its custodian of records and of all sellers authorized to name the licensee as a provider. The Board should be notified by the provider in writing within 15 days of any amendments or changes. (already addressed in 436.095(1) and (2)(c))
PRENEED SELLERS

The Working Group adopted the following unanimous recommendations:

• For purposes of licensure, Chapter 496 should be clarified to provide that a preneed trust is not required if the seller is only selling joint-account or insurance-funded preneed plans.

• Preneed sellers should have the option to sell either trust-funded, joint-account funded or an insurance-funded preneed contract. Sellers should notify the Board of the type of contracts to be sold.

• Sellers should report to the Board the name and address of its custodian of records and of all providers that have authorized the seller to name the licensee as a provider. The Board should be notified by the seller in writing of any amendments or changes.

• The written agreement between the provider and seller should include:
  > Consent from the provider authorizing the seller to designate the licensee as a provider.
  > Procedures for tracking preneed fund payments received by the provider.

• Sellers should maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided.
The Working Group unanimously approved the following recommendations:

- Sellers should be required to issue receipts to the purchaser for preneed payments received by the seller.

The Working Group approved the following expenses recommendations:

- 100% of all payments for a trust-funded preneed contract should be deposited into trust. Sellers should be authorized to submit a request to the trustee for administrative expenses (see Additional Comments below).

| Comments | APS and Meierhoffer suggested that requiring sellers to request expenses from the trustee would create additional administrative expenses that may be passed onto the consumer. APS and Meierhoffer strongly recommended retaining the current process of allowing the seller to retain the first 25% of contract payments and to trust the remaining 75%. |

- Payments for trust-funded preneed contracts should be deposited into trust within sixty-days of receipt.

| Comments | Participants suggested that sixty-days would allow sufficient administrative time for processing and forwarding payments to the seller and for clearing payments made by check. However, other participants suggested that a 30-day deposit requirement would increase consumer protection. |

- Seller administrative expenses should be authorized from the initial payments received.

The following Working Group recommendations were unresolved: After considerable discussion and research, the Working Group did not reach a consensus or majority vote on the recommended allowance for seller administrative expenses. However, Participants recommended the following amounts:

- No administrative expense should be allowed.
- Three-quarters (75%) of 1% of the face value of the Preneed Contract.
  - Josh Slocum
  - Note: This provision models New York’s preneed legislation.
- Ten percent of face value; The majority of Participants agreed that 10% of the contract’s face value would be a reasonable compromise.
  - AARP
  - Silver Haired Legislature
  - Rep. Meadows
- Ten to fifteen percent
  - DFFP

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
- Twenty percent of face value
  - Mike Meilcheffer
  - Kritis Funeral Home
  - John McCulloch
  - Mike Winters
  - Austin-Layne
REGULATION OF TRUSTS & TRUSTEES

The Working Group unanimously approved the following recommendations:

GENERAL REQUIREMENTS:

- Trustees of a prepaid trust must be a state or federally chartered institution authorized to exercise trust powers in Missouri. (Included in current law)

- Provisions of the Uniform Trust Act under Chapter 469 and Chapter 456 should not be wholly incorporated into Chapter 436.

- A prepaid trust should terminate when trust principal no longer includes any payments made under any prepaid contract. On termination the trustee should distribute all trust property, including principal and undistributed income, to the seller which established the trust.

The Working Group approved the following consensus recommendations:

- Expenses of the trust, including trustee's fees, legal and accounting fees, investment expenses and taxes should be paid from the trust.

- Income of the trust should accrue and should generally not be distributed until the contract is fulfilled or otherwise cancelled.

WORKING DRAFT
Dated August 17, 2008 at 5:06 p.m.
TRUSTEE DUTIES:

The Working Group unanimously approved the following recommendations:

- The prudent investor rule should be adopted for trustees. Specifically, trustees should invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee should exercise reasonable care, skill, and caution.

- Trustees who have special skills or expertise, or who are named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, should have a duty to use those special skills or expertise when investing and managing trust assets.

- Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee should review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of Missouri law.

- The trustee should maintain "adequate books and records" of all transactions administered through the trust and pertaining to the trust generally.

CONFLICTS OF INTEREST: The Working Group unanimously agreed that conflicts of interest between trustees and investment advisors should be prohibited. Specifically, the following recommendations were made:

- The financial institution and investment advisor should not be controlled by or under common control with the seller.

- "Control", "controlled by" and "under common control" with should be defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contact other than the power is the result of an official position with or corporate office held otherwise, unless the power is the result of an official position or corporate office held by the person.

- Control should be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing to the board that control does not in fact exist to determine within its sole discretion that control does not in fact exist.

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
• Trustees should be prohibited from selling, investing or authorizing any transaction involving the investment or management of trust property with:
  o The spouse of the trustee;
  o Descendants, siblings, parents, or spouses of a preneed seller or an officer, manager, director or employee of a preneed seller, provider or counselor;
  o Agents or attorneys of the trustee, preneed seller or provider; or
  o A corporation or other person or enterprise in which the trustee, preneed seller, preneed provider, or a preneed provider owns a significant interest or has an interest that might affect the trustee's best judgment.

† Comments: Bill Slater recommended that a seller be allowed to have a relationship with the advisor so long as the fiduciary remains responsible for the trust's compliance with the prudent investor rule and retains title of the assets.

*Any and all conflicts of interest affecting a trustee or investment advisor should be strictly prohibited. In addition, sellers and providers should not be involved in the selection of investment advisors. If trust and act authorize use of investment advisor the trustee should select the investment advisor.*

INVESTMENT OF FUNDS:

The Working Group unanimously approves the following recommendations:

• Investment of trust funds should be limited to investments that have reasonable potential for growth or producing income. (agreed)

• Trustees should be specifically restricted from investing trust funds in any insurance product.

• Diversification of trust assets should be mandatory unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better served without diversifying. (already part of prudent investor act - restatement not needed)

• In investing trust assets, a trustee should be required to consider:
  o General economic conditions;
  o The possible effect of inflation or deflation;
  o The expected tax consequences of investment decisions or strategies;
  o The role that each investment or course of action plays within the overall trust portfolio;
  o The expected total return from income and the appreciation of capital;
  o Other resources of the beneficiaries known to the trustee;
  o Needs for liquidity, regularity of income, and preservation or appreciation of capital;

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- An asset's special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; and
- The size of the portfolio, nature and estimated duration of the fiduciary relationship and distribution requirements under the governing instrument. [already part of prudent investor act - restatement not needed]

Trustees and proceed licensees should be prohibited from procuring or accepting a loan against any investment or asset of the trust.

- Commingling of trust funds should only be allowed if the trustee maintains adequate records that individually and separately identify the payments, income and distribution for each proceed contract. Commingling should be limited to payments received for Missouri proceed contracts.

**SELECTIONS OF AGENTS/INDEPENDENT INVESTMENT ADVISORS:**

- Trustee should only delegate duties and powers to an agent that a prudent trustee of comparable skills could properly delegate under the circumstances.

  - If an agent is selected, the trustee should exercise reasonable care, skill, and caution in:
    - Selecting an agent;
    - Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
    - Periodically reviewing the agent's actions and monitoring the agent’s performance and compliance with the terms of the delegation.
    - (restating algo you when you said earlier to exclude)

- In performing a delegated function, an agent should owe a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

- Agents that accept a delegation of powers or duties from a trustee should be deemed to have consented to the jurisdiction of Missouri courts.

- By selecting an agent, a trustee should not be relieved of any duty or responsibility imposed on the trustee by Missouri law.

The Working Group approved the following recommendations by majority vote:

- Sellers should be allowed to approve the investment advisor selected.

**Comment:** The Department of Insurance, Division of Finance, State Board and the Missouri Attorney General’s Office unanimously agree that seller approval of the investment advisor would hinder the independence of the investment advisor and prevent consumer protection. The suggestion proposed would allow the N/P concern to occur again. Consumers should not, and cannot, be placed at continued risk of unsound practices. A trustee of a financial institution should be more than equally of selecting an investment advisor that would be adequate for the trust. Seller “approval” is not and should not be required.

**Deletion:** 15
INSURANCE-FUNDED PRENEED PLANS

The Working Group adopted the following unanimous recommendations:

- Currently, Chapter 436 does not clearly allow/regulate insurance-funded plans. Insurance funded preneed plans are a safe and necessary option. Accordingly, Chapter 436 should clearly authorize insurance-funded contracts.

- Insurance law should not apply to preneed contracts but should apply to any insurance sold with a preneed contract.

- Sellers should not charge, assess or collect any administrative fees for an insurance-funded preneed plan. Instead, sellers should only be allowed to receive/collect from a purchaser the amount required to pay insurance premiums as established by the insurer.

- In no instance, should a term life insurance product be used to fund a preneed contract. However, consumers should be allowed to assign proceeds from a term-life insurance product to a provider, or to designate a provider as a beneficiary under a preneed contract, provided that the assignment is not related to, or seen in contemplation of, executing the sale of a preneed contract.

I Comments: MFIEA recommended that a blanket prohibition may be overreaching and that consumers should still be allowed to assign proceeds from a pre-existing term life product to a provider or to designate a provider as a beneficiary. MFIEA offered that term life insurance may be the only affordable option for some consumers or the only insurance option that consumers who are older or have significant health problems may qualify for.

The Working Group adopted the following consensus recommendations:

- Payments received by the seller/provider for insurance-funded preneed contracts should be forwarded to the insurer within thirty (30) days of receipt.

I Comments: Nonespeakers remarked that sellers/providers should only be authorized to collect the initial premium payment. All subsequent premium payments should be made directly to the insurer.

- Preneed contracts funded by a life insurance policy should include:
  - Terms for cancellation by the purchaser or seller;
  - Notice that cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract.

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WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
- Notice that insurance cancellation must be made in writing to the insurer.
- Notice that the purchaser will only receive the cash surrender value of the policy, which may be less than the amount paid in, if cancelled after a designated time.
- Notice that the purchaser has the right to reassign/transfer the beneficiary designation or assignment to another funeral home.

**Comments:** To avoid confusion and potential misconceptions, concerns were raised that the majority of this information should be provided by the insurer and included in the insurance contract since it would require the seller to summarize the insurance contract. Additionally, the National Association of Insurance Commissioners's model for insurance-funded disclosures. Funeral Consumer Alliance also suggested that the amount of commission should also be disclosed in an insurance-funded contract.

**Comments:** Funeral Consumer Alliance suggested that licensees should disclose to the purchaser if the licensee is an insurance agent/producer and if the licensee will receive any commission, payment or other consideration for the sale of an insurance product.
JOINT ACCOUNT-FUNDED PRENEED CONTRACTS

The Working Group unanimously recommended that the current provisions for joint-account funded preneed plans are adequate and should be maintained. However, the Working Group suggested the following minor changes:

- Chapter 436 should be clarified to provide that a preneed seller may sell joint-account funded contracts. Currently, Chapter 436 only authorizes joint accounts for providers.

- Sellers only utilizing joint-account funded preneed contracts should not be required to have a trust.

(Sellers should be required to register their joint account bank with the Board so that financial institution regulators and purchasers of contracts can clearly ID and maintain current information regarding the bank or banks designated.)
PAYMENTS TO PROVIDERS

The Working Group unanimously recommended the following:

- To request payment, providers should be required to submit a certificate of performance certifying that the provider has rendered services to the preneed beneficiary. The certificate of performance should be signed by the provider and the person authorized to make arrangements on behalf of the preneed beneficiary.

- Sellers should remit payment to providers within thirty (30) days after receiving a certificate of performance. Sellers should not be prohibited from also requiring submission of a certified death certificate.
CANCELLATION/PORTABILITY OF PRENEED CONTRACTS

The Working Group considered four distinct scenarios that generally arise over the life of a preneed contract:

1. **Contract Fulfillment**: The beneficiary dies and the preneed contract is fulfilled by the original seller and provider according to the contract terms. In this scenario, the purchaser has paid all outstanding costs and the provider and seller have complied with all contractual obligations.

2. **Transfer of Providers**: The purchaser decides to maintain the preneed contract but desires to select a different provider to perform the disposition or to provide the facilities, services or merchandise identified in the contract.

3. **Cancellation By Purchaser**: The purchaser decides to cancel the contract entirely. Here, the purchaser does not wish to designate a new provider or make other changes to the contract. Instead, the contract is to be completely terminated.

4. **Cancellation By Seller For Non-Payment**: This option is exercised by the seller in those instances when the purchaser has failed to remit payment as required by the contract. If exercised, the preneed contract is cancelled and is no longer in effect.

### A. Contract Fulfillment

The Working Group approved the following unanimous recommendations:

- On fulfillment, sellers should be entitled to payment as provided in the contract and the related income.

### B. Transfer of Providers

The Working Group approved the following unanimous recommendations:

- Chapter 39 should allow for 100% portability. Purchasers should have complete and uninterrupted freedom to select an alternative provider. Purchasers should not be penalized nor should any additional fee or costs be assessed to the purchasers for a transfer.

- The new provider designated by the purchaser should be accepted by the seller if the provider agrees to accept the remaining payment owed the original provider as designated in the contract. Here, the newly designated provider would simply...
“step into the shoes” of the original provider for purposes of payment and fulfilling the contract.

\[ \text{Comments: While MGDRA generally supported this recommendation, concerns were raised that the seller should be able to reselect a designated provider if the seller does not have a contract with the provider or if legitimate business reasons exist for the seller not accepting the designation (i.e., the provider has failed to comply with the contract in other instances or has misappropriated funds from the seller).} \]

C. Purchaser Cancellation:

The Working Group approved the following unanimous recommendations:

- Purchasers should be entitled to a full refund of payments if the purchaser cancels the contract within thirty (30) days after receiving a fully executed contract.
- Purchasers should be allowed to cancel after the thirty day cancellation period. The refund amount should be designated by statute (however, see below).

Additional Recommendations: After extensive discussion and research, the Working Group did not reach a unanimous, consensus or majority recommendation for the refunding of preneed funds if the purchaser cancels the contract after the 30-day review period. However, the following recommendations were suggested by Working Group Participants:

- 100% of all funds paid and held in trust should be refunded to the purchaser (including income).
- 100% of all funds held in trust should be refunded.
- 80% of all funds held in trust should be refunded.
- 80% of all funds paid by the purchaser should be refunded.
- 80% of all funds paid should be refunded plus a portion of the income earned.

D. Cancellation By Seller For Non-Payment:

The Working Group approved the following unanimous recommendations:

- Sellers should be allowed to cancel the contract unilaterally if the purchaser is in default of payment.
- If cancelled by the seller, preneed purchasers should be refunded 80% of all amounts paid for the contract.
- Prior to cancellation, purchasers should be provided written notification from the seller of the seller’s intent to cancel. The notice should be provided forty-five
days prior to cancellation and should allow the purchaser thirty days to remit the payment in arrears to avoid cancellation.

• If the seller does not cancel prior to at-need services being required, the purchaser should be provided the opportunity to remit the payment in arrears. If payment is not remitted, the seller should be required to credit the purchaser's preneed payments towards the at-need cost for services. If a credit is applied, the seller may determine funeral/burial costs based on the seller's at-need prices.

The Working Group approved the following majority recommendations:

• On seller cancellation, 100% of all funds paid and held in trust should be refunded to the purchaser (including income).

• Eighty percent of all funds paid and held in trust should be refunded to purchasers.

\[\text{Comments: Bill Stoller recommended that issues regarding trust expenses and income/expenditures allocations would be better addressed in rulemaking.}\]
REPORTING REQUIREMENTS

To assist the Board in regulation, the Working Group unanimously recommended expanding the information submitted to the Board by preneed licensees.

ANNUAL REPORT REQUIREMENTS FOR ALL PRENEED SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

- The purchaser's name and address and preneed contract number, if any. Contract numbers should not be required but should be provided if available.
- The total number and face value of outstanding preneed contracts sold since the last report was filed.
- The contract amount for each preneed contract sold since the last annual report.
- The name, address and contract number of all preneed agents authorized to sell preneed for the seller.
- The number of contracts fulfilled by the seller since the last report.
- The name and address of each provider contracted with the seller.
- The name and address of a custodian of preneed records.
- Authorization for the Board to conduct an audit and/or an examination of books and records.
- Any other information deemed necessary by the Board by rule.

ANNUAL REPORT REQUIREMENTS FOR TRUST-FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the trustee.)

- The name and address of the financial institution where the trust is held and the account number.
- The trust fund balance as reported in the previous year's report and the current trust fund balance.
- Principal contributions received since the last report.
- Total trust earnings and total distributions to the seller since the last report.
- A statement of assets and investments of the trust listing cash, real or personal property, stocks, bonds, and other assets. The listing should show cost, acquisition date and current market value of each asset and investment.
- Total expenses since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS FOR JOINT-ACCOUNT FUNDED PRENEED CONTRACT SELLERS

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Draft August 17, 2008 at 5:00 p.m.
The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate office of the financial institution.)

- The number and address of the Missouri financial institution where the joint account is held and the account number.
- The amount on deposit in each joint account.
- The joint account balance reported the previous year.
- Principal contributions placed into each joint account since the last report.
- Total earnings since the previous report.
- Total distributions to the seller from each joint account since the previous year.
- Total expenses deducted from the joint account since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS FOR INSURER-FUNDED PREELED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations:

- The name and address of each insurer issuing insurance to fund a preneed contract during the preceding year.
- The status and total death benefit and each surrender value of each policy in force at the time of the report. (This should be certified as true and accurate by the insurer.)
CONSUMER REPORTING / NOTIFICATIONS

The Working Group unanimously approved the following recommendations:

- Purchasers should be entitled to an annual report from the seller indicating the amount of funds paid by the purchaser during the reporting year and the name and address of the trustee.
- Sellers should inform purchasers of a change in trustee within thirty (30) days after the change. Notification should include the name, address and phone number of the trustee.

The Working Group approved the following majority recommendations:

- Purchasers should be notified by the trustee each time a deposit is made into trust for the contract.

- ! Comments: Participants expressed concern that an annual report would create an unnecessary burden on groups sellers and increase administrative expenses that would eventually be passed on to the consumer.

- Purchasers should be provided a receipt for each payment made by or on behalf of the purchaser. The receipt should be provided by the initial person receiving the payment (i.e., the seller, provider or the agent).
TERMINATION OF BUSINESS

The Board has experienced significant regulatory difficulty with ensuring that Missouri consumers are adequately protected when preneed providers and sellers cease doing business either voluntarily or involuntarily. As a result, the Working Group unanimously recommended the following:

PRENEED SELLERS:

- The Working Group approved the following unanimous recommendations: The following notification/reporting requirements should be mandated for preneed sellers:
  - Notice to the Board at least thirty (30) days prior to a seller ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board which includes a detailed plan indicating how outstanding preneed contracts will be filled and/or satisfied and how assets will be allocated for preneed obligations.
  - Notice to all providers that the seller has ceased doing business thirty (30) days prior to the seller ceasing business or transferring a majority of stock/assets.
  - Notice to consumers that the seller will cease doing business and indicate a contact number for questions regarding preneed contracts, consumer refunds or how arrangements will be satisfied. Purchaser notification should be required at least thirty (30) days prior to ceasing business or, in instances of a sale/transfer, within thirty (30) days after completion of the sale/transfer.
  - Submission of any additional information designated by the Board.

- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider/seller to ensure contractual obligations are met.

- The Attorney General should be granted authority to enter the premises and access/execute possession of the books and records any preneed seller who ceases business without notification to the Board.

PRENEED PROVIDERS:

- The following notification/reporting requirements should be mandated for preneed providers:
  - Notice to the Board at least thirty (30) days prior to the provider ceasing business or transferring a majority of its stock/assets.
  - A final annual report filed with the Board.
  - Notice of the provider's intent to all sellers with whom the provider has outstanding preneed contracts within thirty (30) days prior to the provider ceasing business or transferring/disposing of a majority of stock/assets.
  - Upon notification from the providers, sellers should be required to notify all purchasers that the provider has ceased doing business or has transferred ownership. Notification should include provisions for...
selecting an alternative provider and should be provided within thirty (30) days after the provider ceasing business or transferring ownership/assets.

- Submission of any additional information designated by the Board.
- Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the predecessor provider to ensure contractual obligations are met.
- The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any predecessor provider who ceases business without notification to the Board.
AUDITS, INVESTIGATIONS AND EXAMINATIONS

The Working Group unanimously agreed that effective regulation of the preneed industry may only be accomplished by strengthening, clarifying and expanding the current investigation, examination and audit authority of the Board.

The Working Group unanimously recommended the following:

- The Board should be granted clear authority to:
  - Issue subpoenas to compel the production of books and records of any licensee or trustee. (If an interested party believes the Board should have subpoena power of trustees, if this is the case it needs to be limited to preneed trust records only)
  - Enter the premises or establishment where preneed business is conducted, or is advertised to be conducted, for the purposes of accounting books and records.
  - Conduct random or targeted inspections, with or without cause and at the discretion of the Board.
  - Investigate complaints and to investigate licensees to determine compliance with Chapter 456.
  - Conduct random or targeted examinations of books and records, at the discretion of the Board. The Board should be authorized to conduct an examination of each preneed seller at least once every five years.

Comments: Although the Working Group initially recommended every three years, the Board expressed concern regarding the cost and the financial feasibility of conducting such examinations.

- Sellers selling joint-account funded plans only should be exempt from the examinations conducted by the Board every five years. However, the Board should retain authority to audit or examine the seller, if deemed necessary.
- Audit a preneed seller with cause if the Board has reasonable grounds for verifying the proper handling of preneed funds.

- Inspections, investigations, audits and examinations should be authorized with or without a complaint.
- The Board may request DIPP, the attorney general or the division of finance, to designate investigator(s) or financial examiner(s) to assist the Board with any inspection, investigation, examination or audit.
- Preneed licensees should clearly be required to cooperate with any inspection, investigation, examination or audit conducted by the Board, DIPP, the attorney general or the division of finance.
- Books and records of licensees should be made available to the Board by the licensees upon request.
- Costs of an inspection, investigation, examination or audit should be funded through licensing fees established by the Board by rule.

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Dated August 17, 2008 at 5:06 p.m.
ATTORNEY GENERAL AUTHORITY

The Working Group unanimously recommends the following:

If a violation of Chapter 436 is found after an investigation, audit or examination, the Attorney General should be authorized to initiate a judicial proceeding to:

- Declare rights.
- Approve a nonjudicial settlement.
- Appoint or remove a trustee.
- Interpret or construe the terms of the trust.
- Determine the validity of a trust or its terms.
- Compel a trustee to report or make an accounting.
- Enjoin a trustee from performing a particular act or to grant the trustee any necessary or desirable power.
- Review the actions of the trustee, including the exercise of any discretionary power.
- Determine trustee liability and to grant any available remedy for breach of a trust.
- Approve employment and compensation of agents.
- Determine the propriety of investments.
- Determine the timing and quantity of distributions and disposition of assets.
- Utilize any other power vested in the attorney general.

(AG authority to pursue judicial remedies against trustees. This appears to be full borne including 427 powers. And includes AG initiating actions to review the discretionary acts of the Trustee. This pretty much makes the AG a bank regulator with respect to pre-norm trusts on par with the FDIC, OCC and FRB. This raises federal pre-emption issues with federally chartered institutions and perhaps at some point will interfere with discretion and duties of FDIC. If this provision is included—litigation risk and reputation risk for banks considering accepting such an account will be higher. The statutory implementation of this needs to be reviewed very carefully.
The Working Group unanimously agreed that is effectively regulate Chapter 436, the Board's disciplinary process must be streamlined to allow for a more efficient and effective remedy. This would necessarily include, expanding the current grounds for discipline as well as the disciplinary tools available to the Board.

The Working Group unanimously recommended the following legislative change:

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

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

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

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal proceeding under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense involving a controlled substance, or for any offense an essential element of which is fraud, dishonesty or an act of violence, 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 under this chapter or in obtaining permission to take any examination given or required under this chapter;

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

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

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(6) Violation of, or assisting or enabling any person to violate, any provision of sections 436 regulating preneed, or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person so 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:

(vi) Misappropriation or theft of preneed funds;

(a) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by [the provisions of Chapter 436 regulating preneed] who is not registered and currently eligible to practice therein;

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

(c) Failure to display a valid certificate or license if so required by this [the provisions of Chapter 436 regulating preneed] or any rule promulgated thereunder;

(d) Violation of any professional trust or confidence;

(e) Making or filing any report required by [the provisions of Chapter 436 regulating preneed] which the licensee knows to be false or knowingly failing to make or file a report required by [the provisions of Chapter 436 regulating preneed];

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

(g) Willfully and through undue influence selling a preneed contract.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 68, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke the license, certificate, or permit.

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Dated August 17, 2008 at 5:00 p.m.
4. Notwithstanding any other provision of this section, the board may automatically suspend a license if the Board finds, after an inspection, examination, investigation or audit, a shortage in any prepaid trust or joint account which exceeds 20% of the total amount required to be held or deposited in the trust or account pursuant to [the provisions of Chapter 436 regulating prepaid].

5. Any person whose license is suspended under subsection 4 of this section may appeal such suspension to the administrative hearing commission. Notice of such appeal must be received by the administrative hearing commission within ninety days of mailing, by certified mail, the notice of suspension. Failure of a person whose license was suspended to notify the administrative hearing commission of his or her intent to appeal waives all rights to appeal the suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commission pursuant to Chapter 62A.

6. Use of the procedures set out in this section shall not preclude the application of the provisions of subsection 2 of section 333.061.
ENFORCEMENT AUTHORITY

INJUNCTIVE/CIVIL AUTHORITY

The Working Group unanimously recommended the following:

- Similar to current law, the Board should have authority to seek injunctive relief or any other civil authority necessary to enjoin/restrain an entity from:
  - Unlicensed activity.
  - Engaging in any activity that would pose a substantial probability of danger to the public health, safety or welfare.
  - Engaging in any activity that presents a substantial probability of serious danger to the solvency of any preneed seller.
- The authority granted to the Board should be in addition to any other remedies authorized by law.
- Proper venue for any such action should be amended to include Colie County.
- Violation of Chapter 436 should be deemed violations of Chapter 407, under the jurisdiction of the Attorney General. In actions brought under Chapter 407, the court should be authorized to impose any penalty/remedy authorized under Chapter 436 or 407. Additionally remedies should include revocation/suspension of the preneed license.

CRIMINAL AUTHORITY

The Working Group unanimously recommended the following:

- Knowing and willful violations of Chapter 436 by incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty should be deemed Class C felonies. Comment: Violations are currently Class D felonies.

FINES & CIVIL PENALTIES

The Working Group unanimously recommended the following:

- The Board should be authorized to impose civil penalties and fines as a form of discipline.
- Fines/Civil Penalties should be assessed in light of the seriousness of the violation found.
- Fines/civil penalties should be consistent with the fines/penalties currently authorized for other professions within the Division. Specifically, the legislature has approved civil penalties for the Real Estate Commission and Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects in the amount of two thousand five hundred dollars for each offense.
- In considering a fine/civil penalty, the Board should be required to consider, among other factors:
  1. If the violations are likely to continue or recur;
  2. Whether actual financial loss was sustained by consumers and if restitution has been made;
  3. If the violation was detected as part of a self-audit or internal compliance program and immediately reported to the Board; and

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Date: August 17, 2008 at 5:00 p.m.
(4) In the violation had previously been detected, but inadequate policies and procedures were implemented to prevent recurrence.

| Comment: Currently, the Attorney General also has authority to waive/modify fines and penalties under Chapter 407. A concern was raised by MIPA that water licenses may be subjected to double penalties if an action is initiated by the Board as well as through the Attorney General's Office. MIPA and MIPA argued that if accepted, language should be developed to prevent double imposition of fines/penalties by the Board and the Attorney General's Office for the same conduct. |
| Response: An argument was made for the Board, the Attorney General's Office traditionally represents and coordinates with the Board in pursuing any remedy. Additionally, the remedies imposed by the Board and by the Attorney General's Office are distinctly different. The remedies imposed by the Board would be limited to licensing violations only. The remedies authorized under Chapter 407 are to redress/modify a harm inflicted on the public at large. A concern was raised that if a licensee's conduct violates the licensing law as well as harms the public, expanded remedies would be appropriate. |
FEES

The proposed recommendations would require additional funding for the Board to regulate the proposed provisions and to fulfill all statutory obligations.

The Working Group unanimously approved the following recommendations:

- Licensing and renewal fees for preneed sellers, providers and agents as established by the Board by rule. If both the preneed sellers/providers are required to pay fees, the preneed agent licensing fees should be minimal and proportionately lower than preneed seller/providers.
- Preneed sellers should continue to be assessed a two-dollar fee per preneed contract sold during the annual reporting year as currently required.
CONCLUSION

Nationally, the preneed industry has experienced significant and sustained growth as consumers focus more attention on their final needs. Preneed arrangements can provide a valuable option to purchasers desiring to secure their arrangements. Chapter 436 regulating preneed is in need of significant legislative changes. As reflected in the present crisis impacting Missouri, Chapter 436 must be enhanced and amended to ensure consumer protection and the continued viability of Missouri’s preneed industry.

The Working Group appreciates the opportunity to share its recommendations. We look forward to providing any further assistance you may need.
Recommendations – APS
STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS

CHAPTER 436 WORKING GROUP RECOMMENDATIONS

Submitted: September 1, 2008
September 1, 2008

Dear Joint Committee Members:

Over the last year, the nation has witnessed an unprecedented crisis in the preneed industry. Estimates of the financial impact on Missouri consumers and the funeral industry are alarming. While recent concerns relate to a single entity, the crisis has focused much needed attention on the regulation of preneed funeral contracts in the state of Missouri and Chapter 436, RSMo, governing preneed sales.

The State Board of Embalmers and Funeral Directors (the "Board"), under the auspices of the Missouri Division of Professional Registration (the "Division"), regulates embalmers, funeral directors, funeral establishments, preneed sellers and preneed providers licensed in this state. As part of its statutory duties, the Board annually reviews legislation to identify potential recommendations of the Board. In recent years, this process has included a review of Chapter 436.

Senate Bill 780, enacted by the General Assembly 2008, which created the Joint Committee on Preneed Funeral Contracts. As part of its annual legislative review, the Board was invited to gather a working group of representatives from across the preneed industry to collectively identify suggested preneed recommendations for the Joint Committee’s review. The Working Group consisted of a diverse representation from all aspects of the preneed industry, including, liaisons from various consumer groups, members of the State Board and representatives from the funeral, preneed and insurance industries.

The Working Group respectfully submits the attached recommendations to the Joint Committee for review. While diverse interests were represented, the Working Group unanimously agreed that revisions to Chapter 436 are desperately needed to better protect Missouri consumers and those funeral directors, funeral establishments, preneed providers and preneed sellers who truly dedicate themselves to serving the public.

We commend the General Assembly in convening the Joint Committee and in dedicating the time and resources to this important task.

Sincerely,

To be determined

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
I. GENERAL OVERVIEW:

During the 2008-2009 legislative session, various Chapter 436 proposals were introduced. Although not enacted, the proposals sparked intense discussion among regulators, consumers and professional groups. While a consensus was not reached, industry and regulatory groups were able to identify several common areas of agreement.

At the close of the legislative session, various representatives met with Senator Delbert Scott and Representative Jay Wasson to discuss Chapter 436 concerns. The Board was subsequently asked to formulate a working group to help identify agreed areas for legislative recommendations.

The Board hosted five (5) open meetings for the Working Group in Jefferson City, Missouri. All meetings of the Working Group were conducted as open meetings in accordance with Chapter 610, RSMS. Notice of meetings and the proposed agenda were made available to the public and published on the Board’s website.

II. PARTICIPANTS:

The Working Group consisted of representatives from consumer groups, funeral directors, preneed providers, preneed sellers, third-party preneed sellers, the Missouri Funeral Directors and Embalmers Association, related insurance companies and representatives from small, large and minority funeral establishments. Participants were chosen from prior legislative involvement and from recommendations made by legislators, Board members and related consumer groups. Members of the public were also invited to attend and given an opportunity to provide both oral and written comments.

The Working Group included:

- Linda Bohrer
- David Broster
- Sharon Euler
- Mary Erickson
- Larry McCord
- Mark Stahlhuth
- Rich Weaver

REGULATORS:

- Acting Director, Department of Insurance, Financial Institutions and Professional Registration ("DIFP")
- Division Director, Division of Professional Registration*
- Office of the Attorney General
- Senior Enforcement Counsel, DIFP
- General Counsel, DIFP
- Senior Counsel, Financial Section, DIFP
- Director, Division of Finance

*Open meetings were hosted on July 8th, July 15th, July 22nd, July 29th and August 12th.

Did not participate as a voting member of the Working Group.

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Dated August 17, 2008 at 5:00 p.m.
ADDITIONAL PARTICIPANTS:

James Reinhardt, Chair, State Board of Embalmers and Funeral Directors
Gary Fraher, Board Member
Joy Gerstein, Board Member
Todd Main, Board Member
Martin Vernon, Board Member
John McCulloch, Board Member/American Prearranged Services
Bob Baker, Wright Baker Hill Funeral Home
Barbara Brown, Layne Renaissance Chapel, LLC
Norma Collins, AARP
George Kuttis, Kuttis Funeral Home, Inc.
George Kline, Lobbyist, SCI
Jim Moody, Rep. Timothy Meadows
Michael Meierhofer, Meierhofer Funeral Home & Crematory, Inc.
Barbara Newman, Rep. Meadows' Office
Durlene Russell, Charter Life Insurance Co.
Josh Slocom, Executive Director, Funeral Consumer Alliance
Bill Stikelether, Stikelether Legal Services
Bill Trimphenour, Silver Haired Legislators
Jo Walker
Don Otto, Executive Director, Missouri Funeral Directors and Embalmers Association/Missouri Funeral Trust
Mark Warren, English & Monaco- Representing Homesteaders Life Insurance, etc.
Mike Winters, Lobbyist, American Prearranged Services

COMMITTEE SUPPORT STAFF:

Connie Clarkston, Director of Budget & Legislation, Division of Professional Registration
Becky Dunn, Executive Director, State Board
Jeana Groce, Administrative Assistant to Director of Budget & Legislation, Division of Professional Registration
Kimberly Grisston, Legal Counsel, Division of Professional Registration
Lori Hayes, Inspector, State Board

III. REVIEW PROCESS:

To guide the review, the Board circulated a survey with a listing by topic area of Chapter 436 proposals submitted to the Board in prior years. Participants were asked to rank the priority of topic areas listed for purposes of discussion. Surveys were made publicly available and were posted on the Board's website. The Division subsequently compiled the rankings and utilized results to structure the Working Group. [See Appendix 1- Ed. Survey].

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The surveyed topics were ranked as follows:

[INCLUDE SURVEY RESULTS HERE]
Working Group recommendations have been compiled as follows:

**Unanimous Recommendations:** Recommended by a unanimous vote of all Working Group Participants.

**Consensus Recommendations:** Recommended by an overwhelming majority of Participants, generally with less than 15% of Participants dissenting.

**Majority Recommendations:** Recommended by a simple majority vote of Working Group Participants.

**Unresolved:** Majority vote not reached. Suggestions from Participants have been provided.

For purposes of this Report, recommendations have been categorized as follows:

I. General Regulatory Authority ........................................... 10
II. Definitions ................................................................... 11-12
III. Licensing/Registration ...................................................... 13
IV. Preneed Contracts ......................................................... 14-15
V. Preneed Providers ........................................................... 16
VI. Trust-Funded Preneed Plans ........................................... 18-19
VII. Regulation of Trusts & Trustees ..................................... 20-23
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IX. Joint Account-Funded Preneed Contracts ..................... 26
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XII. Reporting Requirements .................................................. 31-32
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XV. Audits, Investigations and Examinations .............................. 36-37
XVI. Disciplinary Authority .................................................... 38-40
XVII. Enforcement Authority ................................................ 41-42
XVIII. Fees ........................................................................ 43
XIX. Conclusion ................................................................... 45
GENERAL REGULATORY AUTHORITY

The Working Group unanimously agreed to the following recommendations:

- Regulatory authority over Chapter 436 and preneed licensing should remain with the Board. Regulatory authority should not be transferred to another agency.

  "Comment: The Division and Board support this proposal but would also support transferring authority if another regulatory agency is deemed more appropriate.

- The Missouri Attorney General should be granted concurrent jurisdiction with local prosecutors to prosecute Violations of Chapter 436.

- The Board should be granted general rulemaking authority to administer Chapter 436 and to establish necessary fees.

  "Comment: FBA suggested that the current license confidentiality restrictions should be revised to allow the dissemination of more information to the public. Division staff indicated that the current confidentiality restrictions apply to all regulated boards/commissions within the Division and would require a statutory change specific to the Board.

- The Board should be authorized to hire legal counsel to assist in the enforcement of Chapter 436.

  "Comment: Board staff indicated this proposal would allow them to utilize both the Attorney General’s Office and outside counsel, if needed. Representatives from the Attorney General’s Office refrained from the vote.

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WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
DEFINITIONS

Several of Chapter 436's current definitions are insufficiently defined. Accordingly, the Working Group approved the following unanimous recommendations:

- "Beneficiary", the individual who is to be the subject of the disposition or who will receive funeral services, facilities or merchandise described in a preneed contract.
- "Board," the Missouri State Board of Embalmers and Funeral Directors.
- "Division", the division of professional registration of the department of insurance, financial institutions and professional registration.
- "Funeral merchandise", caskets, grave vaults, sarcophagi, and other personal property incidental to a funeral or burial service, and such shall also include grave lots, grave space, grave markers, monuments, tombedomes, crypts, niches or mausoleums.
- "Guaranteed Contract", a preneed contract in which the future costs for the disposition, facilities, services or merchandise identified in the preneed contract are definitively designated and guaranteed in contract.
- "Insurance-Funded Preneed Contract", a preneed contract which is designated to be funded by payments or proceeds from an insurance policy.
- "Joint-Account Funded Preneed Contract", a preneed contract which designates that payments for the preneed contract made by or on behalf of the purchaser will be deposited and maintained in a joint account.
- "Market Value", a fair market value,
  (a) As to cash, the amount thereof;
  (b) As to a security as of any date, the price for the security on that date obtained from a generally recognized source, or to the extent no generally recognized source exists, the price to sell an asset in an orderly transaction between unrelated market participants at the measurement date, and;
  (c) As to any other asset, the price to sell an asset in an orderly transaction between unrelated market participants at the measurement date consistent with Statements of Financial Accounting Standards.
- "Non-Guaranteed Contract", a preneed contract in which the costs for the disposition, facilities, services or merchandise are not guaranteed in contract.
- "Person", any individual, partnership, corporation, cooperative, association, or other entity.

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Dated August 17, 2008 at 5:00 p.m.
• "Preneed contract", any contract or other arrangement which provides 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 future date.

• "Preneed Agent," any person authorized to sell a preneed contract for or on behalf of a preneed seller.

• "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.

• "Provider", the person designated to provide the disposition or funeral services, facilities, or merchandise described in a preneed contract.

• "Purchaser", the person who is obligated to pay under a preneed contract.

• "Seller", the person who executes a preneed contract with a purchaser and who is obligated under such preneed contract to remit payment to the provider.

• "Trustee", the trustee of a preneed trust, including successor trustees.

• "Trust-Funded Preneed Contract". A preneed contract which provides that payments for the preneed contract shall be deposited and maintained in trust.
The Working Group agreed to the following consensus recommendations:

- A “license” should be required for all preneed providers/sellers. Currently, sellers and providers are “registered” with the Board. A “license” denotes legal obligations and more accurately reflects the authorization being issued by the Board.

- Individuals selling preneed for or on behalf of a registered preneed seller should be licensed. John McCullough (AP) expressed concerns impacting full licensing, testing or disciplinary requirements on preneed agents.

- To be eligible for licensure/renewal, providers and sellers must be of good moral character, remit a licensing fee and have a high school diploma or the equivalent. If a corporation, licensure/renewal requirements should be applicable to each officer, director, manager or controlling shareholder.

- All preneed sellers or providers operating as business entities must be properly registered with the Missouri Secretary of State and authorized to conduct business in the state.

- Chapter 436 should be clarified to exempt endowed care cemetery operators governed by Chapter 214 from the provisions of Chapter 436. However, cemetery operators should be subject to Chapter 436 if the contract includes services that may only be lawfully provided by a licensed funeral director or embalmer.

- Chapter 436 should clearly provide that the provisions of the Chapter are inapplicable to contracts of insurance. However, Chapter 436 should apply to any preneed contract sold in conjunction with insurance. The current statutory language regarding insurance assignments or beneficiary designations is unclear and should be modified in compliance with the recommendation.

- Due to potential costs, preneed licensees should not be required to obtain bonding or any specific insurance. The Working Group suggested that increasing consumer protections and regulatory oversight would adequately address the need for additional insurance/bonding.
PRENEED CONTRACTS

The Working Group unanimously approved the following recommendations:

- To accommodate the varying forms of preneed, Chapter 436 should define and regulate preneed contracts based on their funding mechanism. Specifically, preneed contracts should be classified as either insurance-funded, trust-funded or joint-account funded. Unique concerns relate to each different type of funding. Chapter 436 could be more effectively regulated if the provisions were modified to accommodate each specific form of funding.

- While minimum preneed contract requirements should be established, as provided below, a standard preneed contract form should not be required.

| Comment: Although MFDRA supported the vote, representatives stressed that a standard form could be beneficial. |

| Preneed sellers should be required to maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided. Contracts should be provided to the Board on request. |

| Comment: Funeral Consumer Alliance recommended that sellers should also provide copies of all preneed contracts to the Board. The Board suggested this requirement may be unduly burdensome and that requiring sellers to provide copies upon request would satisfy regulatory concerns. |

- Preneed contracts should only be designated as irrevocable if the contract is being used to qualify for Medicaid (i.e., "spend down").

- Preneed contracts should be in writing and should clearly and conspicuously:
  > Include the name, address and phone number of the purchaser, beneficiary, provider and the seller;
  > Detail the disposition or facilities, services or merchandise requested;
  > Clearly identify if the contract is guaranteed or non-guaranteed on the face of the contract in a recognizable type (i.e., a 10-point type).
  > [Note: This 10- to 12-point font type seems excessive, as Truth-in-Lending requires an 8-point font type to be the minimum size considered recognizable and acceptable.]
  > Identify terms for cancelling the contract by the purchaser or by the seller for payment default;
  > Identify the funding mechanism, including the trust or financial institution where preneed funds will be held by the insurance company issuing an insurance policy.

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- Identify expenses to be retained by the seller.
- Be signed by the purchaser, the reinsured agent and the seller or a representative.

- Premium contracts not in compliance with Chapter 436 should be rendered void [should this be voidable by the purchaser] and unenforceable. If not in compliance, payments may be recoverable by the purchaser or their legal representative plus attorney fees.

  ![Comments: This requirement is similar to current law.]

  ![Comments: The Funeral Consumer Alliance suggested that purchasers should also be given a written statement identifying the financial consequences of the redesignation (i.e., reduction in cash surrender value, interest accrual and fees).]

- On the death or legal incapacity of the purchaser, all rights or remedies of the purchaser should accrue to the benefit of the purchaser or his/her successor as designated in the contract. Proceeds payable under a life insurance contract, should be governed by insurance law and the insurance contract.

The Working Group approved the following consensus recommendations:

- Premium contracts should clearly designate whether the contract is revocable or irrevocable.

  ![Comments: Homeowners Life Insurance Co. suggested the funding for premium contracts should be made irrevocable and not the contract itself. The commenter remarked that irrevocable contracts may hinder consumer's freedom of choice.]

  ![Comments: The Board also recommended that contracts include notification that complaints regarding present sellers/providers may be forwarded to the Board and the current number/address of the Board. Representations of AARP, the Silver Haired4 Legislators and the Funeral Consumer Alliance agreed with this suggestion.]

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WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
PRENEED PROVIDERS

The Working Group unanimously approved the following recommendations:

- In light of recent concerns raised by the Federal Trade Commission, preneed provider licensing should not be restricted to only funeral establishments or cemetery operators. Private individuals are currently authorized to sell funeral merchandise preneed or at-need. However, it should be clarified that Chapter 436 does not exempt any person from the licensing requirements of Chapter 333 governing funeral directors and establishment.

- Chapter 436 should clearly state that the provider designated in a preneed contract is obligated to provide the disposition, facilities, services or merchandise designated in the preneed contract.

- Providers must have a written agreement with each preneed seller that the provider has authorized to designate the licensee as a provider in a preneed contract.

- Providers should be required to report the name and address of its custodian of records and of all sellers authorized to name the licensee as a provider. The Board should be notified by the provider in writing within 15 days of any amendments or changes.
PRENEED SELLERS

The Working Group adopted the following unanimous recommendations:

- For purposes of licensure, Chapter 456 should be clarified to provide that a preneed trust is not required if the seller is only selling joint-account or insurance-funded preneed plans.

- Preneed sellers should have the option to sell either trust-funded, joint-account funded or an insurance-funded preneed contract. Sellers should notify the Board of the type of contracts to be sold.

- Sellers should report to the Board the name and address of its custodian of records and of all providers that have authorized the seller to name the licensee as a provider. The Board should be notified by the seller in writing of any amendments or changes.

- The written agreement between the provider and seller should include:
  > Consent from the provider authorizing the seller to designate the licensee as a provider.
  > Procedures for tracking preneed fund payments received by the provider.

- Sellers should maintain "adequate records" of preneed contracts for the duration of the contract and for no less than two (2) years after the final disposition of the beneficiary, cancellation of the contract or after the facilities, services or merchandise have been provided.
The Working Group approved the following consensus recommendations:

- 100% of all payments for a trust-funded preneed contract should be deposited into trust. Sellers should be authorized to submit a request to the trustee for administrative expenses (see Additional Comments below).

**NOTE:** Please use the language finalized by the State Board in our last meeting—depositing 100% but allowing sellers to request up to 20% back from the trust for administrative expenses.

**Comments:** API and Matterhoffer suggested that requiring sellers to request expenses from the trust would create additional administrative costs that may be passed onto the consumer. API and Matterhoffer strongly recommended retaining the current process of allowing the seller to retain the first 50% of contract payments and to trust the remaining 50%.

- Payments for trust-funded preneed contracts should be deposited into trust within sixty-days of receipt.

**Comments:** Participants suggested that sixty-days would allow sufficient administrative time for processing and forwarding payments to the seller and for clearing payments made by check. However, other participants suggested that a 30-45 day deposit requirement would increase consumer protection.

- Seller administrative expenses should be authorized from the initial payments received.

The following Working Group recommendations were unresolved: After considerable discussion and research, the Working Group did not reach a consensus or majority vote.
on the recommended allowance for seller administrative expenses. However, Participants recommended the following amounts:

- No administrative expense should be allowed.
- Three quarters (¾) of 1½% of the face value of the Preneed Contract.
  - Note: This provision models New York's preneed legislation.
- **Ten percent of face value:** The majority of Participants agreed that 10% of the contract's face value would be a reasonable compromise.
  - AARP
  - Silver Haired Legislature
  - Rep. Meadows
- Ten to fifteen percent
  - DIFP
- Twenty percent of face value
  - Mike Meierhoffer
  - Kutis Funeral Home
  - John McColloch
  - Mike Winters
  - Austin-Layne
REGULATION OF TRUSTS & TRUSTEES

The Working Group unanimously approved the following recommendations:

GENERAL REQUIREMENTS:

- Trustees of a preneed trust must be a state or federally chartered institution authorized to exercise trust powers in Missouri.

- Provisions of the Uniform Trust Act under Chapter 469 and Chapter 456 should not be wholly incorporated into Chapter 456.

- A preneed trust should terminate when trust principal no longer includes any payments made under any preneed contract. On termination the trustees should distribute all trust property, including principal and undistributed income, to the seller which established the trust.

The Working Group approved the following consensus recommendations:

- Expenses of the trust, including trustee’s fees, legal and accounting fees, investment expenses and taxes should be paid from the trust.

- Income of the trust should accrue and should generally not be distributed until the contract is fulfilled or otherwise cancelled.

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Dated August 17, 2008 at 5:00 p.m.
TRUSTEE DUTIES:

The Working Group unanimously approved the following recommendations:

- The prudent investor rule should be adopted for trustees. Specifically, trustees should invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the trust. In satisfying this standard, the trustee should exercise reasonable care, skill, and caution.

- Trustees who have special skills or expertise, or who are named trustee in reliance upon the trustee’s representation that the trustee has special skills or expertise, should have a duty to use those special skills or expertise when investing and managing trust assets.

- Within a reasonable time after accepting a trusteeship or receiving trust assets, a trustee should review the trust assets and make and implement decisions concerning the retention and disposition of assets in order to bring the trust portfolio into compliance with the purposes, terms, distribution requirements, and other circumstances of the trust, and with the requirements of Missouri law.

- The trustee should maintain "adequate books and records" of all transactions administered through the trust and pertaining to the trust generally.

CONFLICTS OF INTEREST: The Working Group unanimously agreed that conflicts of interest between trustees and investment advisors should be prohibited. Specifically, the following recommendations were made:

- The financial institution and investment advisor should not be controlled by or under common control with the seller.

- "Control", "controlled by" and "under common control" with should be defined as the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than the power is the result of an official position with or corporate office held otherwise, unless the power is the result of an official position with or corporate office held by the person.

- Control should be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent or more of the voting securities of any other person. This presumption may be rebutted by a showing to the board that control does not in fact exist to determine within its sole discretion that control does not in fact exist.
• Trustees should be prohibited from selling, investing or authorizing any transaction involving the investment or management of trust property with:
  o The spouse of the trustee;
  o Descendants, siblings, parents, or spouses of a preneed seller or an officer, manager, director or employee of a preneed seller, provider or counselor;
  o Agents or attorneys of the trustee, preneed seller or provider; or
  o A corporation or other person or enterprise in which the trustee, preneed seller, preneed provider, or a preneed provider owns a significant interest or has an interest that might affect the trustee’s best judgment.

\[Comments: \text{Bar Stuber recommended that a seller should be allowed to have a relationship with the advisor as long as the fiduciary remains responsible for the trust's compliance with the prudent investor rule and retains title of the assets.}\]

\textbf{INVESTMENT OF FUNDS:}

The Working Group unanimously approved the following recommendations:

• Investment of trust funds should be limited to investments that have reasonable potential for growth or producing income.
  
\[\text{(This was not agreed to by the Working Group, see Note 2, first paragraph, which supports investing trust funds into insurance products and recognizes such investments as safe and necessary.)}\]

• Diversification of trust assets should be mandatory unless the trustee reasonably determines that, because of special circumstances, the purposes of the trust are better serviced without diversifying.

• In investing trust assets, a trustee should be required to consider:
  o General economic conditions;
  o The possible effect of inflation or deflation;
  o The expected tax consequences of investment decisions or strategies;
  o The role that each investment or course of action plays within the overall trust portfolio;
  o The expected total return from income and the appreciation of capital;
  o Other resources of the beneficiaries known to the trustee;
  o Needs for liquidity, regularity of income, and preservation or appreciation of capital;
  o An asset’s special relationship or special value, if any, to the purposes of the trust or to one or more of the beneficiaries; and
  o The size of the portfolio, nature and estimated duration of the fiduciary relationship and distribution requirements under the governing instrument.

\textbf{Working Draft}

Dated August 17, 2008 at 5:00 p.m.
• Trustees and preneed licensees should be prohibited from procuring or accepting a loan against any investment or asset of the trust.

• Commingling of trust funds should be only allowed if the trustee maintains adequate records that individually and separately identify the payments and distribution for each preneed contract. Commingling should be limited to payments received for Missouri preneed contracts.

NOTE: It is not possible to exactly identify the income individually by preneed contract when trust funds are commingled. You could equalize the estimated income earned by dividing the total income earned among the preneed contracts based on the percentage of the total trust. However, since interest is paid at the rate of death based on the percentage contractually agreed to, the actual amount of interest earned on each individual preneed contract will not necessarily be the amount total out or distribution.

SELECTIONS OF AGENTS/INDEPENDENT INVESTMENT ADVISORS:
• Trustees should only delegate duties and powers to an agent that a prudent trustee of comparable skills could properly delegate under the circumstances.

• If an agent is selected, the trustee should exercise reasonable care, skill, and caution in:
  o Selecting an agent;
  o Establishing the scope and terms of the delegation, consistent with the purposes and terms of the trust; and
  o Periodically reviewing the agent’s actions and monitoring the agent’s performance and compliance with the terms of the delegation.

• Is performing a delegated function, an agent should owe a duty to the trust to exercise reasonable care to comply with the terms of the delegation.

• Agents that accept a delegation of powers or duties from a trustee should be deemed to have consented to the jurisdiction of Missouri courts.

• By selecting an agent, a trustee should not be relieved of any duty or responsibility imposed on the trustee by Missouri law.

The Working Group approved the following recommendations by majority vote:

• Sellers should be allowed to approve the investment advisor selected.

?? Comment by APS: Would investment advisors be required or allowed? We typically invest in GNMA’s and other guaranteed funds and it would not be feasible to pay investment advisor fees on the entire trust balance.

WORKS:
Date: A

[Comment: The Department of Insurance, Division of Finance, State Board and the Missouri Attorney General’s Office unanimitously agree that seller approval of the investment advisor would hinder the independence of the investment advisor and threaten consumer protection. The suggestion proposed would allow the IRS concerns to occur again. Consumers should not, and cannot, be placed at continued risk of unscrupulous business practices. A trustee of a financial institution should be more than capable of selecting an investment advisor that would be adequate for the trust. Seller “approval” is not and should not be required.]
The Working Group adopted the following unanimous recommendations:

- Currently, Chapter 436 does not clearly allow/regulate insurance-funded plans. Insurance funded preneed plans are a safe and necessary option. Accordingly, Chapter 436 should clearly authorize insurance-funded contracts.

- Insurance law should not apply to preneed contracts but should apply to any insurance sold with a preneed contract.

- Sellers should not charge, assess or collect any administrative fees for an insurance-funded preneed plan. Instead, sellers should only be allowed to receive/collect from a purchaser the amount required to pay insurance premiums as established by the insurer.

- In no instance, should a term life insurance product be used to fund a preneed contract. However, consumers should be allowed to assign proceeds from a term-life insurance product to a provider, or to designate a provider as a beneficiary under a preneed contract, provided that the assignment is not related to, or done in contemplation of, executing the sale of a preneed contract.

![Comments: MFEA recommended that a blanket prohibition may be overreaching and that consumers should still be allowed to assign proceeds from a pre-existing term-life product to a provider or to designate a financial establishment as the beneficiary. MFEA remarked that term life insurance may be the only affordable option for some consumers or the only insurance option that consumers who are older or have significant health problems may qualify for.]

The Working Group adopted the following consensus recommendations:

- Payments received by the seller/provider for insurance-funded preneed contracts should be forwarded to the insurer within thirty (30) days of receipt.

![Comments: Homesteaders remarked that sellers/providers should only be authorized to collect the initial premium payment. All subsequent premium payments should be made directly to the insurer.]

- Preneed contracts funded by a life insurance policy should include:
  - Terms for cancellation by the purchaser or seller;
  - Notice that cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract.

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- Notice that insurance cancellation must be made in writing to the insurer.
- Notice that the purchaser will only receive the cash surrender value of the policy, which may be less than the amount paid in, if cancelled after a designated time;
- Notice that the purchaser has the right to reassign/transfer the beneficiary designation or assignment to another funeral home.

**Comment(s):** To avoid confusion and potential misconceptions, concerns were raised that the majority of this information should be provided by the insurer and included in the insurance contract since it would require the seller to memorize the insurance contract. Additionally, it was suggested that use of the National Association of Insurance Commissioners' model for insurance-funded disclosures. The Funeral Consumer Alliance also suggested that the amount of commission should also be disclosed in an insurance-funded contract.

**Comment(s):** The Funeral Consumer Alliance suggested that licensees should disclose to the purchaser if the insurance is an insurance agent/producer and if the licensee will receive any commission, payment or other consideration for the sale of an insurance product.
JOINT ACCOUNT-FUNDED PRENEED CONTRACTS

The Working Group unanimously recommended that the current provisions for joint-account funded preneed plans are adequate and should be maintained. However, the Working Group suggested the following minor changes:

- Chapter 436 should be clarified to provide that a preneed seller may sell joint-account funded contracts. Currently, Chapter 436 only authorizes joint accounts for providers.

- Sellers only utilizing joint-account funded preneed contracts should not be required to have a trust.
PAYMENTS TO PROVIDERS

The Working Group unanimously recommended the following:

- To request payment, providers should be required to submit a certificate of performance certifying that the provider has rendered services to the preneed beneficiary. The certificate of performance should be signed by the provider and the person authorized to make arrangements on behalf of the preneed beneficiary.

- Sellers should remit payment to providers within thirty (30) days after receiving a certificate of performance. Sellers should not be prohibited from also requiring submission of a certified death certificate.
CANCELLATION/PORTABILITY
OF PRENEED CONTRACTS

The Working Group considered four distinct scenarios that generally arise over the life
of a preneed contract:

1. **Contract Fulfillment:** The beneficiary dies and the preneed contract is
furnished by the original seller and provider according to the contract terms. In
this scenario, the purchaser has paid all outstanding costs and the provider and
seller have complied with all contractual obligations.

2. **Transfer of Providers:** The purchaser decides to maintain the preneed
contract but desires to select a different provider to perform the disposition or to
provide the facilities, services or merchandise identified in the contract.

3. **Cancellation By Purchaser:** The purchaser decides to cancel the contract
entirely. Here, the purchaser does not wish to designate a new provider or make
other changes to the contract. Instead, the contract is to be completely
terminated.

4. **Cancellation By Seller For Non-Payment:** This option is exercised by the
seller in those instances when the purchaser has failed to remit payment as
required by the contract. If exercised, the preneed contract is cancelled and is no
longer in effect.

A. **Contract Fulfillment:**

The Working Group approved the following unanimous recommendations:

- On fulfillment, sellers should be entitled to payment as provided in the contract
and the related income.

B. **Transfer of Providers:**

The Working Group approved the following unanimous recommendations:

- Chapter 430 should allow for 100% portability. Purchasers should have complete
and unrestricted freedom to select an alternative provider. Purchasers should
not be penalized nor should any additional fee or costs be assessed to the
purchasers for a transfer.

Comment by APS: The State Board approved 100% portability with 1% interest on
preneed transfers. However, we believe this would create problems, as some trusts
may not earn 1% and some sellers will have used the initial 10% for commissions and
overhead and this language would then allow transfers to other funeral homes and

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require the funeral home that wrote the business to pay back 100% of the face amount of the preneed contract plus interest when they have already spent a portion of the funds to obtain the business (i.e., paid commissions to preneed agents, paid taxes on the income earned on the preneed funds, etc.).

- The new provider designated by the purchaser should be accepted by the seller if the provider agrees to accept the remaining payment owed the original provider as designated in the contract. Here, the newly designated provider would simply "step into the shoes" of the original provider for purposes of payment and fulfilling the contract.

C. Purchaser Cancellation:

The Working Group approved the following unanimous recommendations:

- Purchasers should be entitled to a full refund of payments if the purchaser cancels the contract within thirty (30) days after receiving a fully executed contract.
- Purchasers should be allowed to cancel after the thirty day cancellation period. The refund amount should be designated by statute (however, see below).

Additional Recommendations: After extensive discussion and research, the Working Group did not reach a unanimous, consensus or majority recommendation for the refund of preneed funds if the purchaser cancels the contract after the 30-day review period. However, the following recommendations were suggested by Working Group Participants:

APBS agrees with the Board's recommendation that only 80% should be paid back on cancellations. However, if the statute is changed to require 100% of the monies to be initially paid into trust, then this cancellation language should be written to clearly state that cancellations would require a refund of all monies in trust less 20% of the face amount of the contract.

- 100% of all funds paid and held in trust should be refunded to the purchaser (including interest).
- 100% of all funds held in trust should be refunded.
- 80% of all funds held in trust should be refunded.

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• 80% of all funds paid by the purchaser should be refunded.
• 80% of all funds paid should be refunded plus a portion of the income earned.

D. Cancellation By Seller For Non-Payment:

The Working Group approved the following unanimous recommendations:

• Sellers should be allowed to cancel the contract unilaterally if the purchaser is in default of payment.

If cancelled by the seller, preneed purchasers should be refunded, all monies in trust less 20% of the face amount of the contract, which is the amount allowed to be retained by the seller for administrative expenses.

NOTE: Refunding 80% really won't work. What's the purchaser but only paid in 20%. Then the seller would only be allowed to retain 15% (20% of the 20% paid in). That would be significantly less than the commissions paid to obtain the business.

• Prior to cancellation, purchasers should be provided written notification from the seller of the seller’s intent to cancel. The notice should be provided forty-five days prior to cancellation and should allow the purchaser thirty days to remit the payment in arrears to avoid cancellation.

APC believes the current law which allows sellers to cancel contracts in arrears for 90 days is more fair to all parties. If purchasers are allowed six days to remit payments in arrears to avoid cancellation, contracts sometimes allow payments over a period of six months. But think how hard it would be to collect payments from purchasers who consistently pay late.

NOTE: If this portion of the statute is changed, then it should be clearly written that these changes only apply to contracts written after the date that these changes become effective. Those contracts written in the past clearly allow cancellation when payments are 90 days in arrears without the requirement that parties be given six days to remit payments in arrears to avoid cancellation.

• If the seller does not cancel prior to at-need services being required, the purchaser should be provided the opportunity to remit the payment in arrears. If payment is not remitted, the seller should be required to credit the purchaser’s preneed payments towards the at-need cost for services. If a credit is applied, the seller may determine funeral/burial costs based on the seller’s at-need prices.

The Working Group approved the following majority recommendations:

This was not approved by the Working Group and should be removed! This also directly contradicts the prior paragraph. Additionally, as stated earlier, it would

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be unfair to require sellers to refund 100% of the funds paid in plus interest, as commission would have been paid out to obtain the business and income taxes would have been paid on the income earned.

- Eighty percent of all funds paid and held in trust should be refunded to purchasers.

Comments: Bill Stabler recommended that issues regarding trust expenses and income/expenditure allocations would be better addressed in rulemaking.
REPORTING REQUIREMENTS

To assist the Board in regulation, the Working Group unanimously recommended expanding the information submitted to the Board by preneed licensees.

ANNUAL REPORT REQUIREMENTS FOR ALL PRENEED SELLERS

Would these reports be available for public viewing? This information should be maintained as strictly CONFIDENTIAL. Information relative to purchasers should not be seen by the Board Members or the public as funeral homes certainly would not want their competition to have access to this information. This would especially be true since proposed changes would allow people to freely change funeral homes and transfer trust or their trust plus interest to competing funeral homes.

Purchaser names, addresses, preneed contract numbers, etc., would be available during Board reviews and audits if necessary. Therefore, we do not believe it would be prudent or fair to require preneed sellers to file this much information in annual reports.

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

- The purchaser’s name and address and preneed contract number, if any. Contract numbers should not be required but should be provided if available.
- The total number and face value of outstanding preneed contracts sold since the last report was filed.
- The contract amount for each preneed contract sold since the last annual report.
- The name, address and contract number of all preneed agents authorized to sell preneed for the seller.
- The number of contracts fulfilled by the seller since the last report.
- The name and address of each provider contracted with the seller.
- The name and address of a custodian of preneed records.
- Authorization for the Board to conduct an audit and/or an examination of books and records.
- Any other information deemed necessary by the Board by rule.

ANNUAL REPORT REQUIREMENTS FOR TRUST-FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(The following should be certified as true and accurate by a corporate officer of the trustee.)

- The name and address of the financial institution where the trust is held and the account number;
• The trust fund balance as reported in the previous year’s report and the current trust fund balance.
• Principal contributions received since the last report.
• Company profits should not have to be reported. Other businesses do not disclose this confidential information.
• Total expenses since the last report, excluding distributions to the seller.

ANNUAL REPORT REQUIREMENTS
FOR JOINT-ACCOUNT FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations: Annual reports filed with the Board by the seller should include:

(These should be certified as true and accurate by a corporate office of the financial institution.)

• The number and address of the Missouri financial institution where the joint account is held and the account number.
• The amount on deposit in each joint account.
• The joint account balance reported the previous year.
• Principal contributions placed into each joint account since the last report.
• Total earnings since the previous report.
• Total distributions to the seller from each joint account since the previous year.

You cannot deduct any expenses from joint accounts. Income taxes would likely be paid by the seller, unless the insurance's social security number was used for insurance tax reporting purposes on the joint account by the written agreement of the parties. We do not believe there would be any bank fees involved; however, if they were, they would be paid by the seller.

ANNUAL REPORT REQUIREMENTS
FOR INSURER FUNDED PRENEED CONTRACT SELLERS

The Working Group approved the following unanimous recommendations:

• The name and address of each insurer issuing insurance to fund a preneed contract during the preceding year.
• The status and total death benefit and cash surrender value of each policy in force at the time of the report. (This should be certified as true and accurate by the insurer.)

This information is regulated by the Department of Insurance and should not be required. Also, as stated earlier, this information would be available for review or audit by the Board, if necessary.

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"The Working Group absolutely did not approve this language. It would be extremely burdensome and cost prohibitive for vendors to provide receipts to every single purchaser for every single payment received. Present rules require that the payment of each month must be sent at the end of the month. It would require a huge amount of extra staffing, hours, supplies, and postage to issue receipts for all preneed payments received. Purchasers have self-cancelled checks as receipts and can always call to request documentation and verification of all payments made at anytime. Other vendors, banks, credit card companies, utility companies, etc., are not required to issue receipts for every payment received! You could always add language requiring preneed sellers to provide written documentation of all payments received when requested by purchasers. We certainly provide written receipts immediately upon request and would assume that all sellers do the same."
TERMINATION OF BUSINESS

The Board has experienced significant regulatory difficulty with ensuring that Missouri consumers are adequately protected when preneed providers and sellers cease doing business either voluntarily or involuntarily. As a result, the Working Group unanimously recommended the following:

PRENEED SELLERS:

• The Working Group approved the following unanimous recommendations: The following notification/reporting requirements should be mandated for preneed sellers:
  o Notice to the Board at least thirty (30) days prior to, a seller ceasing business or transferring a majority of its stock/assets.
  o A final annual report filed with the Board which includes a detailed plan indicating how outstanding preneed contracts will be filled and/or satisfied and how assets will be allocated for preneed obligations.
  o Notice to all providers that the seller has ceased doing business thirty (30) days prior to the seller ceasing business or transferring a majority of stock/assets.
  o Notice to consumers that the seller will cease doing business and indicate a contact number for questions regarding preneed contracts, consumer refunds or how arrangements will be satisfied. Purchaser notification should be required at least thirty (30) days prior to ceasing business or, in instances of a sale/transfer, within thirty (30) days after completion of the sale/transfer.
  o Submission of any additional information designated by the Board.

• Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the preneed provider/seller to ensure contractual obligations are met.

• The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any preneed seller who ceases business without notification to the Board.

PRENEED PROVIDERS:

• The following notification/reporting requirements should be mandated for preneed providers:
  o Notice to the Board at least thirty (30) days prior to the provider ceasing business or transferring a majority of its stock/assets.
  o A final annual report filed with the Board.
  o Notice of the provider's intent to all sellers with whom the provider has outstanding preneed contracts within thirty (30) days prior to the provider ceasing business or transferring/disposing of a majority of stock/assets.
  o Upon notification from the providers, should be required to notify all purchasers that the provider has ceased doing business or has transferred ownership. Notification should include provisions for selecting an
alternative provider and should be provided within thirty (30) days after the provider ceasing business or transferring ownership/assets.

It would be extremely unfair and burdensome to expect the seller to notify purchasers. This should be a joint effort between the provider who is going out of business and the State Board, since the State Board would have the information available and would also have more resources to handle this.

- Submission of any additional information designated by the Board.

  - Upon notification, the Board should have the continuing ability to inspect, examine and/or audit the books and records of the proceeds provider to ensure contractual obligations are met.
  - The Attorney General should be granted authority to enter the premises and access/take possession of the books and records any proceeds provider who ceases business without notification to the Board.
AUDITS, INVESTIGATIONS AND EXAMINATIONS

The Working Group unanimously agreed that effective regulation of the preneed industry may only be accomplished by strengthening, clarifying and expanding the current investigation, examination and audit authority of the Board.

The Working Group unanimously recommended the following:

- The Board should be granted clear authority to:
  - Issue subpoena to compel the production of books and records of any licensee or trustee.
  - Enter the premises or establishment where preneed business is conducted, or is advertised to be conducted, for the purposes of accessing books and records.
  - Conduct random or targeted inspections, with or without cause and at the discretion of the Board.
  - Investigate complaints and to investigate licensees to determine compliance with Chapter 456.
  - Conduct random or targeted examinations of books and records, at the discretion of the Board. The Board should be authorized to conduct an examination of each preneed seller at least once every five years.

**Comment:** Although the Working Group initially recommended every three years, the Board expressed concern regarding cost and the financial feasibility of conducting such examinations.

- Sellers selling joint-account funded plans only should be exempt from the examinations conducted by the Board every five years. However, the Board should retain authority to audit or examine the seller, if deemed necessary.
- Audit a preneed seller with cause if the Board has reasonable grounds for verifying the proper handling of preneed funds.
- Inspections, investigations, audits and examinations should be authorized with or without a complaint.
- The Board may request DIFP, the attorney general or the division of finance, to designate investigator(s) or financial examiner(s) to assist the board with any inspection, investigation, examination or audit.
- Preneed licensees should clearly be required to cooperate with any inspection, investigation, examination or audit conducted by the Board, DIFP, the attorney general or the division of finance.
- Books and records of licensees should be made available to the Board by the licensees upon request.
- Costs of an inspection, investigation, examination or audit should be funded through licensing fees established by the Board by rule.
ATTORNEY GENERAL AUTHORITY

The Working Group unanimously recommended the following:

If a violation of Chapter 436 is found after an investigation, audit or examination, the Attorney General should be authorized to initiate a judicial proceeding to:

- Declare rights.
- Approve a nonjudicial settlement.
- Appoint or remove a trustee.
- Interpret or construe the terms of the trust.
- Determine the validity of a trust or its terms.
- Compel a trustee to report or make an accounting.
- Enjoin a trustee from performing a particular act or to grant the trustee any necessary or desirable power.
- Review the actions of the trustee, including the exercise of any discretionary power.
- Determine trustee liability and to grant any available remedy for breach of a trust.
- Approve employment and compensation of agents.
- Determine the propriety of investments.
- Determine the timing and quantity of distributions and disposition of assets.
- Utilize any other power vested in the attorney general.
The Working Group unanimously agreed that to effectively regulate Chapter 435, the Board's disciplinary process must be streamlined to allow for a more efficient and effective remedy. This would necessarily include, expanding the current grounds for discipline as well as the disciplinary tools available to the Board.

The Working Group unanimously recommended the following legislative changes:

Section A.1. The board may refuse to issue any certificate of registration or authority, permit or license required under this chapter for one or any combination of reasons stated in subsection 3 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his or her right to file a complaint with the administrative hearing commission as provided by chapter 629, RSMo.

3. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 629, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:

(a) Use of any controlled substance, as defined in chapter 190, RSMo, or alcoholic beverage to an extent this such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

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

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

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

(e) 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.

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(6) Violation of, or assisting or enabling any person to violate, any provision of sections 428 regulating preneed, or of any lawful rule or regulation adopted pursuant thereto;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person to use his or her certificate of registration or authority, permit, license or diploma from another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

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

(9) Misappropriation or theft of preneed funds;

(10) Assisting or enabling any person to practice or offer to practice any profession licensed or regulated by the provisions of Chapter 428 regulating preneed who is not registered and currently eligible to practice therein;

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

(13) Failure to display a valid certificate or license if required by this (the provisions of Chapter 428 regulating preneed) or any rule promulgated thereunder;

(14) Violation of any professional rule or confidence;

(15) Making or filing any report required by the provisions of Chapter 428 regulating preneed which the licensee knows to be false or knowingly failing to make or file a report required by the provisions of Chapter 428 regulating preneed;

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

(19) Willfully and through undue influence selling a preneed contract.

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 62a, RMSO. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2 of this section, for disciplinary action are met, the board may, singly or in combination, suspend 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.
4. Notwithstanding any other provision of this section, the board may automatically suspend a license if the Board finds, after an inspection, examination, investigation or audit, a shortage in any prepaid trust or joint account which exceeds 20% of the total amount required to be held or deposited in the trust or account pursuant to the provisions of Chapter 366 regulating prepaid.

5. Any person whose license is suspended under subsection 3 of this section may appeal such suspension to the administrative hearing commission. Notice of such appeal must be received by the administrative hearing commission within ninety days of mailing, by certified mail, the notice of suspension. Failure of a person whose license was suspended to notify the administrative hearing commission of his or her intent to appeal within all rights to appeal the suspension. Upon notice of such person's intent to appeal, a hearing shall be held before the administrative hearing commission pursuant to Chapter 62.

6. Use of the procedures set out in this section shall not preclude the application of the provisions of subsection 2 of section 533.061.
ENFORCEMENT AUTHORITY

INJUNCTIVE/CIVIL AUTHORITY

The Working Group unanimously recommended the following:
- Similar to current law, the Board should have authority to seek injunctive relief or any other civil authority necessary to expel/restrain an entity from:
  - Unlicensed activity.
  - Engaging in any activity that would pose a substantial probability of danger to the public health, safety or welfare.
  - Engaging in any activity that presents a substantial probability of serious danger to the solvency of any preneed seller.
- The authority granted to the Board should be in addition to any other remedies authorized by law.
- Proper venue for any such action should be amended to include Cooke County.
- Violation of Chapter 436 should be deemed violations of Chapter 407, under the jurisdiction of the Attorney General. In actions brought under Chapter 407, the court should be authorized to impose any penalty/remedies authorized under Chapter 436 or 407. Additionally, remedies should include revocation/suspension of the preneed license.

CRIMINAL AUTHORITY

The Working Group unanimously recommended the following:
- Knowing and wilful violations of Chapter 436 by incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty should be deemed Class C felonies. Comment: Violations are currently Class D felonies.

FINES & CIVIL PENALTIES

The Working Group unanimously recommended the following:
- The Board should be authorized to impose civil penalties and fines as a form of discipline.
- Fines/Civil Penalties should be assessed in light of the seriousness of the violation found.
- Fines/civil penalties should be consistent with the fines/penalties currently authorized for other professions within the division. Specifically, the legislature has approved civil penalties for the Real Estate Commission and Architects, Professional Engineers, Professional Land Surveyors and Landscape Architects in the amount of two thousand five hundred dollars for each offense.
- In considering a fine/civil penalty, the Board should be required to consider, among other factors:
  1. If the violations are likely to continue or recur;
  2. Whether actual financial loss was sustained by consumers and if restitution has been made;
- If the violation was detected as part of a self-audit or internal compliance program and immediately reported to the Board; and

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
(4) If the violation had previously been detected but inadequate policies and procedures were implemented to prevent recurrence.

\[\text{[Redacted]}\]

**Comments:** Currently, the Attorney General also has authority to assess/recover fines and penalties under Chapter 407. A concern was raised by MFTRA that proximal licenses may be subject to double penalties if an action is initiated by the Board as well as through the Attorney General's Office. MFTRA and Meierhofer suggested that if congruous language should be developed to prevent the imposition of fines/penalties by the Board and the Attorney General's Office for the same conduct.

**Response:** As stipulated above, for the Board, the attorney General's Office traditionally represents and coordinates with the Board in pursuing any remedy. Additionally, the remedies imposed by the Board may be handled by the Attorney General's Office are distinctly different. The remedies imposed by the Board would be limited to licensing violations only. The remedies authorized under Chapter 407 are to redress/remedy a harm inflicted on the public at large. A concern was raised that if a licensee's conduct violates the licensing law as well as harms the public, expanded remedies would be appropriate.
FEES

The proposed recommendations would require additional funding for the Board to regulate the proposed provisions and to fulfill all statutory obligations.

The Working Group unanimously approved the following recommendations:

• Licensing and renewal fees for premises seller, providers and agents as established by the Board by rule. If both the premises sellers/providers are required to pay fees, the premises agent licensing fees should be minimal and proportionately lower than premises seller/providers.
• Premises sellers should continue to be assessed a two-dollar fee per premises contract sold during the annual reporting year as currently required.
CONCLUSION

Nationally, the preneed industry has experienced significant and sustained growth as consumers focus more attention on their final needs. Preneed arrangements can provide a valuable option to purchasers desiring to ensure their arrangements. Chapter 436 regulating preneed is in need of significant legislative changes. As reflected in the present crisis impacting Missouri, Chapter 436 must be enhanced and amended to ensure consumer protection and the continued viability of Missouri’s preneed industry.

The Working Group appreciates the opportunity to share its recommendations. We look forward to providing any further assistance you may need.
Comments – Moore Funeral Home
Dear Don Otto,

In regards to 436, it is my opinion to put in place a fund to assist the "N.P.S." corporate Class was to ever come to light again. I offer the following:

Addition to 436:

A) Every seller of a preneed contract, be it by insurance, trust, joint CD or another type of investment shall be charged a Seller’s Security fee of $100.00 to be paid at the day of the contract to the Missouri State board of embalmers and funeral directors.

B) The fee shall be collected on each and every contract wrote in the State of Missouri.

C) The seller must send the funds within five days of the sale of the contract.

D) The funds shall be deposited into an interest bearing account with an Institution with a backing of FDIC for excess of the $100,00.00 limits.

E) This fund shall be governed by the Missouri State Board of Embalmers and Funeral Directors and can only be accessed with the proof and failure of a Preneed Company or Funeral Home with a Corporate Headquarters in Missouri. Use of funds can only be accessed when the Board holds an open meeting and an open vote for approval.

It is my thought that with the above we can help save firms when this occurs again. This funding would help make up the loss by the Funeral Homes with the difference in the contract and inflation amount. Please consider this as an addition to the current 436 revisions.

Thank You,

John H. Moore
Moore Funeral Homes, Potosi, Irondale, Missouri

Cc: Missouri State Board of Embalmers and Funeral Directors
   Cc: Rep. Belinda Harris
   Cc: Senator Kevin Engler