OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

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

Tuesday, August 4, 2009 – 12:00 p.m.

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

BOARD MEMBERS PRESENT:
Martin Vernon, Chairman
Todd Mahn, Secretary
John McCulloch, Member

BOARD MEMBERS ABSENT:
James Reinhard, Member
Gary Fraker, Vice-Chairman
Joy Gerstein, Public Member

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

CLOSED SESSION
Motion was made by John McCulloch and seconded by Todd Mahn to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021...
Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a
disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug
dependency diagnosis or treatment of specific licensees; and Subsection of 610.021
RSMo for the purpose of reviewing and approving the closed minutes of previous
meetings. Motion carried with Martin Vernon, Todd Mahn and John McCulloch voting in
favor with no votes in opposition. James Reinhard was absent for this portion of the
meeting. Gary Fraker and Joy Gerstein were absent from the meeting in its entirety.

Wednesday, August 5, 2009 – 9:23 a.m.

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

BOARD MEMBERS PRESENT:
Martin Vernon, Chairman
Todd Mahn, Secretary
James Reinhard, Member
John McCulloch, Member

BOARD MEMBERS ABSENT:
Gary Fraker, Vice-Chairman
Joy Gerstein, Public Member

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

GUESTS PRESENT:
Mark Warren, Inghish & Monaco/Missouri Preneed Coalition
Bill Stalter, Stalter Legal Services
Chris Moody, SCI
Jim Moody, SCI
Representative Tim Meadows, self
Don Otto, MFDEA
Brad Speaks, Speaks Funeral Home
APPROVAL OF THE AGENDA
Motion was made by Jim Reinhard and seconded by John McCulloch to approve the open agenda as submitted. Motion carried with Todd Mahn, John McCulloch, and Jim Reinhard voting in favor with no votes in opposition. Gary Fraker and Joy Gerstein were absent from the meeting in its entirety.

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

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

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

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

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

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

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

- 333.011
- 333.091
- 333.315
• 333.320
• 333.325
• 333.330
• 333.335
• 333.340

CLOSSED SESSION
Motion was made by Todd Mahn and seconded by John McCulloch to move into closed session and that all records and votes, to the extent permitted by law, pertaining to and/or resulting from the closed meeting be closed pursuant to Section 610.021 Subsection (14) and Section 324.001.8 RSMo for discussing educational transcripts and/or test scores and/or complaints and/or audits and/or investigative reports and/or other information pertaining to the licensee or applicant for licensure; Section 610.021 Subsection (1) RSMo for discussing general legal actions, causes of action or litigation and any confidential or privileged communications between this agency and its attorney; Section 610.021 Subsection (1) RSMo and 324.001.9 RSMo for deliberation on discipline; Section 610.021 Subsection (3) RSMo discussing hiring, firing, disciplining or promoting an employee of this agency; Section 610.021 Subsection (13) RSMo for making performance ratings pertaining to individual employees; Section 610.021 Subsection (7) RSMo for reviewing testing and examination materials; Section 610.021 Subsection (14) and Section 324.001.8 RSMo for proceedings required pursuant to a disciplinary order concerning medical, psychiatric, psychological, or alcoholism or drug dependency diagnosis or treatment of specific licensees; and Subsection of 610.021 RSMo for the purpose of reviewing and approving the closed minutes of previous meetings. Motion carried with Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. Gary Fraker and Joy Gerstein were absent from the meeting in its entirety.

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

SENATE BILL 1 IMPLEMENTATION PROCESS - CONTINUED
The Board continued its review of the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.

ADJOURNMENT
A motion was made by Todd Mahn and seconded by John McCulloch to adjourn. Motion carried with Todd Mahn, John McCulloch, and James Reinhard voting in favor with no votes in opposition. The meeting adjourned at 2:53 p.m. on Wednesday, August 5, 2009. Gary Fraker and Joy Gerstein were absent from the meeting in its entirety.
Executive Director: SandeSebastian
Approved by the Board on: 10/14/10
MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

TRANSCRIPTION OF MEETING

DIVISION OF PROFESSIONAL REGISTRATION
3605 MISSOURI BOULEVARD
JEFFERSON CITY, MISSOURI

AUGUST 5, 2009
9:20 A.M. - 2:55 P.M.
CHAIRMAN: I want to thank everybody for showing up and being here. We had a great meeting last week and, hopefully, this week follows suite with that and flows just as smooth and we get a lot accomplished, so glad that everybody is here. So, the meeting is called to order. Roll call: Board Members, Jim Reinhard?

MR. REINHARD: Here.

CHAIRMAN: I'm here. Gary Fraker?

MS. DUNN: Absent.

CHAIRMAN: Absent. Todd Mahn?

MR. MAHN: Here.

CHAIRMAN: Joy Gerstein? John McCulloch?

MR. MCCULLOCH: Here.

CHAIRMAN: All right. So, staff present, Becky Dunn?

MS. DUNN: Yes.

CHAIRMAN: Inspector Lori Hayes?

MS. HAYES: Here.

CHAIRMAN: Who else is on there?

MS. DUNN: Tab.

CHAIRMAN: Tab? There's Tab; she started to go out the door.
MS. DUNN: Earl Kraus.

CHAIRMAN: Earl, right here, our assistant, and Sharon, our assistant. I'm sorry about that. Senior legal counsel for the Division, I'm looking at the paper, and assistant attorney general and Connie Clarkston. Hi, Connie.

MS. CLARKSTON: How are you?

CHAIRMAN: Good.

MS. EULER: And Don.

MS. DUNN: Don Eggen.

CHAIRMAN: And Don from CIU. I should have just introduced the table instead of looking at your list.

MS. DUNN: And Darcie.

CHAIRMAN: And Darcie. Hi, Darcie.

MS. REHAGEN: Hello.

CHAIRMAN: I don't know that I've met Darcie. Have I met Darcie?

MS. REHAGEN: I do the rules for the Division.

CHAIRMAN: All right.

MS. DUNN: Approval of the agenda.

CHAIRMAN: Need a motion for the approval of the agenda for the day.
MR. REINHARD: So moved.

MR. MCCULLOCH: Second.

CHAIRMAN: Second. Todd?

MR. MAHN: Yes.

MS. DUNN: Okay. If we could, just go ahead and discuss the rules of the meeting, and then we can have everybody introduce themselves.

CHAIRMAN: Okay. Becky is going to describe our ground rules for the day and she has a couple of sidebars that need to be addressed in that.

MS. DUNN: If anyone was here last week, we have a court reporter present. It's very important that we only speak one at a time. Always stand up, identify yourself, who you're with. If you do have side conversations in the audience, if you could step out, because we learned from last week those conversations are picked up by the recorders and they're hard to identify in taking the minutes. So, again, if you would identify yourself, who you're with, stand up, we very much appreciate that. If you have comments in writing, we appreciate those, as
well. And step up to the table as you talk.

Do you want to introduce the audience?

MS. EULER: Comments for next week, if
they could get them to you by Friday of this
week.

CHAIRMAN: Sharon is reminding if you
have comments for next week's discussion,
through that e-mail process or getting the
information so they can be addressed into the
criteria for discussion that week. So, does
everybody understand how that part of it
works? If you have -- yeah. They need those
by Friday if you want to submit comments so it
can be part of next week's discussion.

MS. DUNN: One other thing is we've
got on our front page of our Web site, we
have the Senate Bill implementation meetings,
and then we have any handouts that the staff
has prepared or our legal counsel, and then we
have a public-comment section. As you send
those to me, I'm getting those put on our Web
site, as well. That's the easiest and
quickest way that we can handle this. I know
we have short time frames. I apologize. I
know everyone is trying to get their comments
to me quickly. We got some from Stuart Enterprises last night. I don't even know if they're posted on our Web site yet, but I do have them as a handout, and I will have them posted to the Web site later today.

CHAIRMAN: Okay. We'll remind everybody if you haven't signed in, we need you to sign in. And on that note, let's go around the outside of the room and everyone tell us who you are. Start back there with Bill. Bill Stalter with Stalter Legal Services. Brad Speaks, Speaks Funeral Home. Missouri State Representative Tim Meadows. Don Otto, Missouri Funeral Directors and Embalners Association and Missouri Funeral Trust. Mark Warren, Inglish & Monaco, Jefferson City, Missouri Preneed Coalition. Jim Moody, Moody & Associates, representing SCI. Chris Moody, Moody & Associates, representing SCI.

CHAIRMAN: All right. Again, glad you're all here today. Before we get into the actual discussion of the day, Sharon has a quick comment that she would like to follow with.
MS. EULER: I have two minutes. One, I just want to let everybody know I've been summoned to a meeting downtown and I need to leave here in about five or ten minutes, and then I will be back. It has nothing to do with the Embalmers stuff or anything, something totally unrelated, but when I get a call from General Koster's office saying we need you downtown, I need to go. So, I will be back this afternoon. The second thing I wanted to let everyone know, I know that there have been a lot of phone calls generated with the claim packets that have been sent out to consumers, and we heard that some people who do not have NPS contracts have received claim packets. I spoke with Chris Fuller this morning, who is the attorney for the SDR who says that under Texas law, they are required to send out claim packets to everybody who is in the company database. So, that means there may be some people in the database who never -- who don't currently have NPS plans. I sent Chris a couple examples and he is going to see if he can get some more information to us. So, if people are getting packets and they
don't have NPS plans, it's just because their names were in the database somehow. Maybe they had been contacted by a salesperson at some point. Who knows? But they were in the database, so it's nothing to get too upset about. If people have that, have them call the SDR and my understanding is that they tell them I don't know why I'm getting this, I've never had an NPS plan, then the customer-service people are taking down their name and contact information and sending those up for somebody to investigate. That's all.

CHAIRMAN: Okay. All right. Thank you very much. We also have Representative Tim Meadows here with us this morning, and we're very glad to have him with us, and Tim has asked to address everyone here this morning first.

REPRESENTATIVE MEADOWS: Well, thank you very much, Mr. Chairman. I have a meeting with the governor's office at 11:00, so I'll be ducking out of here probably about 10:30. But I missed your -- sorry I missed your last meeting and I'm going to try to be a faithful attender seeing as how I helped write the
Senate Bill 1 and some of the amendments to that. With that being said, I know that there was some discussion last week about some of the issues with Senate Bill 1, and I just want the Board to know that when I put that amendment in about funeral directors being audited, the reason why I did that -- and I'm not picking on any Board member or any past member of this Board. I feel that this -- your industry is one industry that has got to prove themselves to a higher standard. You are all held to a higher standard anyway by virtue of the jobs that you do and by the positions that you hold in your communities back home. I've always said that. But I wanted to make sure and I think that the Board should have the opportunity, even though I say funeral director or funeral-home owner, I think that that could also be interpreted by the Board as an employee of a firm as long as that firm has been audited or has gone through some type of audit, or at least turned in financial or had it been looked at financially by the State Board. That's what my interpretation is. I feel all too often in
the past -- and, let's face it, NPS has brought us to this situation of rewriting the law. It was an antiquated law 32 years ago, and I still feel it's antiquated. I know we made some changes. Sometimes I -- will those changes be for the good? I personally think so, but I know there's some funeral directors out there that are having heartburn over this, and I don't mean to create problems for them, but I feel that the Board should have the opportunity to make those decisions when you look at. I just want to make sure that everyone passes through the eye of that needle, and I believe that wholeheartedly inside my heart. I think past Boards were here, and I'm not passing judgment on them, but I think a lot of things of the past, you know, and the space that NPS operated in this state for a long time and they were slapped with things that they were supposed to do by previous administrations, and they -- and for whatever reason, that didn't get done. I'm not pointing fingers at past board members, but I think that we need to all hold ourselves a little bit higher. If you want to be a
force and to serve on this Board, then you
should have that recognition as doing things
the right way. And I think others would look
up to you and respect you a whole lot more
knowing that you are -- that you have passed
through the eye of the needle and that you are
doing the right thing. So, I don't mean to
create hassles for everyone, but I will be
here as much as I can be here to voice my
opinion in regard to that, and that's the one
reason when we, as a legislature -- many in
the legislature talked about this, and
Representative Dixon, who had the other
amendment to increase the Board to ten people,
Representative Dixon and I spoke at length
about this very thing, and he wholeheartedly
supported that. And he said yes, he felt that
this was very important that that would on
there because then, that way, everyone that
serves on this Board is held to the higher
standard. So, I know it may cocreate problems
for many in your industry, but, again, I'm
very, very proud of the fact that we did what
we did. So -- and, of course, I'm hearing,
also, rumors that they're saying that this is
unconstitutional and they're going to try to throw the whole bill out and there's this massive thing going on right now to try to tear this down. Why do that? This is -- you know, this is the legislature trying to help the consumers of the State of Missouri, and that's what we are trying to do, and we all know what our obligations are to our communities back home and to the consumer. So, I'll stand by that legislation and defend it till the day that I die even though many have some heartburn with it. I still think I did the right thing. So, if anyone has any questions, you can e-mail me, you can call me, and I will also be here as much as I can throughout this process, and I thank you for the opportunity to speak before the Board today.

CHAIRMAN: Thank you.

REPRESENTATIVE MEADOWS: All right.

CHAIRMAN: Appreciate that.

REPRESENTATIVE MEADOWS: I'll sit down and shut up.

CHAIRMAN: All right. So, future meeting dates, I'm just going to let Becky
expound on that.

    MS. DUNN: Since we have some new
    public visitors here today, I just wanted to
    go over the meeting dates once again. Next
    week, August 11th, 9:00 a.m.; August 19th,
    9:00 a.m.; August 25th, 9:00 a.m.; September
    2nd, 9:00 a.m. I'm trying to get meeting
    rooms scheduled and postings done, and the
    postings will be generic and the materials
    that I get out to the e-mail group and to our
    Web site will be more informative to you. Any
    questions on that? Don? Okay.

    MR. OTTO: Sounds good.

    CHAIRMAN: This is just an FYI. The
    Board was sent a letter by Mid-America
    Transplant Services about some of their new
    harvesting procedures and all of that.
    Actually, every funeral home got a copy of it
    because I got a copy of it in the mail
    directly from Mid-America. I think we're just
    acknowledging the fact that that was sent out
    to members of the profession. Anybody that's
    got a comment about that from the Board that
    you want to make, fine, but I assume most of
    you all may have seen that anyway, so -- okay.
Okay. All right. That kind of takes care of the housekeeping rules, I guess, to some of the beginning stuff. We'll start the process again like we did last week. We had kind of laid some ground rules that we were actually going to hold comments to the end so we could get things done so we weren't chasing rabbits and shotgun effects splattering all over everywhere with this. But, actually, we were able to focus very well with the folks participating, getting everyone's comments. That's how we arrived at the comment section of the rule with the sidebars over at the side from the attorneys having the ability to look at those questions and being able to address those some. Worked very, very well. We were able to stay focused on the specific that we were talking about at the time and we took lots of comments. We'll just say we're getting started and we'll start with the group #1 potential rules, and we kind of just used the attorneys to -- they were the ones working with that to kind of lead that, so I guess I will turn it over to Mr. Kraus and say let's start our format.
MR. KRAUS: All right. Well, as the Chair was saying, we went through the various sections in group #1. You'll notice, I think, the handout that you have only goes through --

MS. DUNN: Is this the handout you're referring to?

MR. KRAUS: Yes.

MS. DUNN: Okay. The first handout he's looking at is the one that has the comments written out on the edge.

MR. KRAUS: On the first page at the top, it says Senate Bill 1, implementation, group #1, and it has a bubble comment out to the side on the right. And this group #1 consists of going through, I believe, the sections that were in Senate Bill 1 with regard to Chapter 333. And what we did is took all the different comments that we received, basically, before putting this up on the Web site, so if you submitted some comments after that, they won't be incorporated in here, but I understand they're in a separate handout. And the thoughts that were brought up in prior meetings and in -- by me, by Sharon, by Becky, by other Board
members, and by other folks who submitted
questions or comments, we tried to incorporate
those in here as a way to promote discussion
by the Board at this meeting as we march
through each section, basically going section
by section, and in some sections, line by
line, to, first and foremost, identify issues
that will need to be addressed by rule,
particularly if it needs to be addressed by
emergency rule, and, to some extent,
discussion conceptwise as to what those rules
should cover and comprise. And then we'll
take -- we, meaning staff and counsel -- will
take that discussion back, those directives
back from the Board, draft potential rules to
come back at the next meeting and let the
Board look at those draft rules to see if
that's what the Board meant. And we did a
similar thing last meeting and we actually
have a couple of draft rules today to talk
about with the Board at some point to see if
it's what the Board meant from the last
meeting. So, that's kind of how we see things
rolling forward. Hopefully, that will work.
And with that, I think we can just start in
on page -- what's marked as page 2 under
Section 333.011 in the definitions. There
were some comments that we may actually want
to define by rule some of the terms set out
in the definitions if the Board thinks that's
necessary. Under funeral merchandise, it
looks like there's -- it refers to other
personal property. That may be intended as a
catchall. If the Board wanted to give some
specifics by rule as to what some examples
might be of that, that's a possibility. Do
you just want to take comments from the Board
and then individually as we go?

CHAIRMAN: That will work.

MR. KRAUS: All right. Any thoughts
from the Board on that?

CHAIRMAN: Do you guys -- anybody have
a comment in that? Under that
personal-property comment?

MR. KRAUS: And I should say that as
we're going through these, that it's certainly
not required in any way that you promulgate
rules with regard to certain issues here with
the exception of where the statute explicitly
says "and the Board shall do this by rule."
Then, of course, you need to do a rule. But this would be one of those where you could decide to do a rule and be more explicit or not and let the law stand for whatever it means.

MS. DUNN: So, Martin, is your plan to listen to any comments from the Board, then go around the room and then vote?

CHAIRMAN: Do like -- yes.

MS. DUNN: Okay.

CHAIRMAN: Like we did last week. So, if they have -- and I'll even start with that. Why, in the law -- does anyone know -- why did we have to define funeral merchandise again, so to speak? What's different about this definition of funeral merchandise than what was actually already in the law; do we know?

MS. DUNN: Well --

MR. McCULLOCH: This clarifies to do with cemeteries, separate that out.

UNIDENTIFIED: Yeah.

CHAIRMAN: Is that why?

MR. McCULLOCH: Yeah.

MS. DUNN: Yes.
CHAIRMAN: Okay. Okay. Got the answer. It was about to do with cemeteries, so -- okay.

MR. KRAUS: And vaults versus caskets versus where those lines are.

CHAIRMAN: Okay. I just wasn't certain on that, so -- anyone on the outside or Board that actually has some -- wants to make a specific comment in regard to that funeral merchandise section?

MS. DUNN: Don, did you have a comment?

MR. OTTO: No. I thought -- I'm later. I'm too -- I'm further down.

MS. DUNN: Oh, okay. Okay.

MR. OTTO: I didn't realize how we were doing this.

MS. DUNN: (Inaudible) -- that we could write a rule to clarify that.

CHAIRMAN: Okay. Or do we need to?

MR. KRAUS: Yeah. And none of these comments are intended to promote or recommend that a rule should be done in any particular way. It's just kind of brainstorming to say, hey, this might be a place where you might want a rule, but not intended to push the
Board in that direction.

MS. DUNN: And so, on my part in the Board office and in Don's part at the association office, a rule further clarifies what the statute says so it's not left up to someone's interpretation. So, rules help me and the Board and the public to better understand what the law says.

CHAIRMAN: Okay. Well, I'll go back to myself with a question then. In specific as to someone thought we might need to address the personal-property issue, do we know why?

MR. KRAUS: I think because that's a very generic term and could be very broad, could be very narrow. From this industry, what would you say would fall into that category?

CHAIRMAN: Getting real specific here, but anybody have a -- do you want comments from everybody or is that just something you guys would like to come back and --

MR. KRAUS: Well, I was just curious because, you know, I could hear, you know, in cases down the road, legal counsel making all sorts of different arguments about what that
includes or doesn't include.

MS. DUNN: So, would it be a concern -- well, Don has got a comment, but from my standpoint and the Board's standpoint, would there be any problem with a rule drafted and brought back for your review?

CHAIRMAN: That would be my thought, I suppose. Okay. Don, do you have comment?

MR. OTTO: Well, one concern that was popped up -- this was prompted by the cemeterians, but one thing that popped up as it was talked about is, for example, clothes of the deceased. Is that funeral merchandise or not, you know?

CHAIRMAN: I suppose if you buy it out of my closet, it is.

MR. OTTO: Yeah. You know, but if you sell -- you know, then how does that affect in preneed contracts, you know? So, I mean, actually, I like regulation a lot because it makes my life easier when people call me in, but this might be one to let lie for a while and see what happens -- if there's a problem out there.

CHAIRMAN: Okay.
MR. OTTO: And just like I said, we -- nobody in this room, I don't think, really generated this issue, anyway.

MR. KRAUS: Yeah. I think that's right. And that's a good point in that the rules that the Board comes up with through this process are, of course, not the be-all, end-all of all rules. I mean, you can be -- as different issues arise that aren't identified earlier, you can look at promulgating those at that time, so --

CHAIRMAN: Okay. To the Board, do you want to do something with this? Do you want legal to look at it, come back with some possibilities or a thought, or move on?

MR. McCULLOCH: Move on.

CHAIRMAN: Move on. Okay.

MR. KRAUS: Let's see. Here, we have, of course, a definition of person includes corporation. There was a suggestion about, you know, setting out explicitly in a rule that a corporation has to be represented by an attorney in like proceedings before the Board and other such things. That is the law already. I think the suggestion was made
because -- just so that it's explicit for
everyone to see that, hey, you know, if your
entity is actually a corporation, don't show
up as the owner and expect to be able to do
anything or say anything on behalf of the
corporation in -- at, say, a hearing before
the Board because you can't because that would
be -- you would be representing a legal
entity, that would be practicing law without a
license. You can't do that, you have to have
counsel there to represent the corporation.
As to whether that's necessary or not, I don't
know, but that was the comment.

CHAIRMAN: Comment?

MR. KRAUS: I think that may be
referenced in a couple of other places
throughout these sections, too.

MS. DUNN: I think it's important.

CHAIRMAN: So, the idea is just get
something in the wording so it's just already
acknowledged for people who realize it's there?

MR. KRAUS: Yeah.

CHAIRMAN: Okay. Board, address it?

MS. DUNN: It's already a law, so it's
just --
MR. REINHARD: Then no. No. It's already a law.

MS. DUNN: No. I mean, we're just confirming what -- so, is it okay?

MR. REINHARD: Move on. Yes.

MR. STALTER: Can I ask a question?

CHAIRMAN: Yeah.

MR. STALTER: Is that true of every proceeding before the Board, if you have a corporation, you have to be represented by an attorney, or is it when it gets to an administrative hearing, or what? In a way, that gets counterproductive. You know, some of these -- if it's a corporation and you want to encourage them to come in and talk to the Board if there's an issue, but if they've got to bring an attorney, personally, I like the part about the attorney, but I don't think it's really what you want, though.

MR. KRAUS: I think it's certainly true at hearings. You mean, just like appearances before the Board?

MR. STALTER: Yeah. Just appearances.

Yeah.

MR. KRAUS: I mean, I think a person
-- and, say, an owner -- I think, could appear
before the Board -- and this is just my own
opinion -- could appear before the Board and
make representations as the owner of that
corporation. Now, are those the same as
representations of the corporation? I don't
think they are. In that setting, that may not
matter, but I think there is a difference.

MR. STALTER: I agree. I think part
of it is if you brought an entity in because,
you know, the Board got a complaint, if
there's something, you know, we may give you
an opportunity to talk about it, you know, you
will discourage them if I said bring your
attorney with you.

MR. McCULLOCH: Because in the past,
we could come by ourselves.

MR. KRAUS: Yeah. And I think then
that person would be appearing basically as a
witness who knows some facts about the
situation. And whether they are providing
representation on behalf of the corporation or
not doesn't really matter because they're
going to provide the same information either
way. But where it's a hearing, it does matter
because they're actually representing on behalf of the corporation, and you have to be because that's the party. So -- but that's a good point. You could chill some effect where people may take that as I can't show up anytime for anything without my attorney, which isn't really true.

CHAIRMAN: And I'll reiterate for the court reporter. I realized when she moved the microphone, that may fix it, but we really -- actually, we need you to stand up and just come up to the corner of the table because it's really important for the transcripts, and identify yourself, please, so -- all right. I heard move on, but we addressed some -- there was, obviously, comments, so any other comments?

MR. McCULLOCH: So, what else do you put in here to clarify that? I mean --

MR. KRAUS: Well, you could do nothing and let it stand as it is and the law is already what it is. Or if you wanted to do some kind of rule to try to explain that, then you could. That would be going pretty deep. That would be tough to set out in a rule in a
way that makes sense to anybody.

MR. McCULLOCH: I would think --

MR. KRAUS: But, you know, we can try
if you want us to.

CHAIRMAN: What's the downside of just
leaving it as the wording and going on?

MR. KRAUS: I don't know that there is
one myself. Other than, I suppose, there's
potential that someone may show up -- I had
this happen. This was at a hearing over at
the LIRC -- the Labor Industrial Relations
Commission. Someone showed up, they were a
sole proprietor, they were -- actually, they
were the owner of the corporation -- showed up
for a hearing thinking they could, you know,
represent themselves and found they couldn't,
and had a lot of trouble because of that.
The hearing was set, it didn't get continued,
and it was not a big deal. But, you know,
people are aware of their requirements and
aware of the law, and if they formed a
corporation, they, you know, had some
knowledge in that area, then there may not be
any impact at all.

MR. McCULLOCH: But if it comes to
that, Becky, would you be informing them as to kind of how the procedure works?

MS. DUNN: Yes.

MR. McCULLOCH: So, you kind of educate them anyway; right?

MS. DUNN: Yes.

MR. McCULLOCH: So, it might take care of itself that way.

CHAIRMAN: Why don't we let this -- obviously, you guys decide, too, but why don't we let Earl and Sharon, in their get-togethers, look at what could be possible with this. I think that -- and bring it back to us, and then we can -- is that a good thought?

MR. KRAUS: If you want to, that's fine.

CHAIRMAN: Are you guys okay with that? Do you want to do that?

MR. McCULLOCH: Yeah.

CHAIRMAN: Then we can decide if it really is or isn't. All right.

MR. KRAUS: Okay. On down, they want to define if the determining factor is not whether they're receiving payment or not.
CHAIRMAN: Payment of what?

MR. KRAUS: That -- at all. That someone can't say they're not practicing funeral directing because they are -- well, not -- just not charging that one customer anything or something. That they're still in the business even in that instance.

CHAIRMAN: Yes, Don.

MR. OTTO: Don Otto, Missouri Funeral Directors and Embalmers Association. We actually proposed a rule on this a year or so ago that went nowhere fast because we had this issue where we think "in the business of" probably needs to be defined because we had, for example, a minister who was arranging funerals, but he didn't charge anything as long as you made a $2,000 donation to his church. Or the casket store that -- I'm not in the business of doing funerals because I'm not charging you anything for it, but if you buy this casket from me, I'll help you out. So, we proposed -- and I can try to regurgitate it again if you can't find it in the Board minutes, but a rule that's spelled out that receiving any sort of compensation,
directly or indirectly, was "in the business of." And the one thing it didn't -- and good point. The one thing it didn't propose is, like, what if you're usually in the business of it, but you do this one for free, you know? That shouldn't relieve you of the obligations just because you did a free one off for somebody on the side, either. So, we supported that this be fleshed out for -- this popped up when we had the issue of people doing their own funerals, and we had to change the regulation to make it clear people can do their own funerals, which is fine if they're not receiving compensation for it. But then you get those situations where I'm not getting paid for the funeral, but I'm only going to help you if you make a donation to my church. I think that's getting compensation and I think you should be regulated if you're doing that kind of thing.

CHALKMAN: All makes sense.

MS. DUNN: If a rule defines that, it could help us possibly better have a position if the Federal Trade Commission challenges us. Or since we are on probation for ten years.
CHAIRMAN: Okay. Comment from the Board?

MR. McCULLOCH: I think that's a good idea.

UNIDENTIFIED: Me, too.

MR. KRAUS: Don, would you still have drafts of any of that that was proposed at that time?

MR. OTTO: I'll have to dig, but I will find it and I'll have it submitted by Friday.

CHAIRMAN: Okay. So, obviously, you guys need to work on that one. Okay. All right.

MR. KRAUS: Okay. The last one on page 2, preneed agents, clarify by rule of preneed agent/seller must also be licensed in Missouri. Any thoughts on that?

CHAIRMAN: To be a preneed agent in Missouri, you have to be a preneed seller in Missouri.

MR. KRAUS: That the agent, of course, would be registered in Missouri, and the seller for which they are an agent would need to licensed in Missouri.
MR. McCULLOCH: And that's what the new law says; right?

MR. KRAUS: I think it does. I think that's kind of a clarification just of setting it out there for everybody. Whether that's also needed in rule or is more of a clarification setting out explicitly for people to look at, that may be just what it is. So, it may be duplicating to some extent.

MR. McCULLOCH: It sort of seems like it is because it's just right there. It's very clear now that you have to have a license.

CHAIRMAN: So, from a legal point of view -- or do you need to look?

MR. KRAUS: As I recall, this was a comment as, you know, this may be worth stating again in rule kind of a thing. But I'm -- is it something that I'd say you really, really have to do? No, I don't think so.

MR. McCULLOCH: So, do you think people go to the definitions first to get a quick overview and they would think, oh, I don't have to have a license and then just go on; do you think that's the problem?
MR. KRAUS: Or I suppose that someone could think, well, I'm a seller, but I'm not in Missouri, and I'm just going to have a bunch of agents that are registered in Missouri and I'll be okay. Well, no, because the agents --

MR. McCULLOCH: Right.

MR. KRAUS: -- need to be agents of a seller that is licensed in Missouri.

MS. DUNN: What we have throughout is we have Missouri emphasized throughout our rules, so it would probably help someone that read this. And we've gotten lots of agent calls already, so it just helps remember that --

MR. McCULLOCH: So, what happens is the definition doesn't change, or do you add it there, or do you put it back in the back like a -- (inaudible.)

MR. KRAUS: Everything that we're talking about today would be putting something into a separate rule that would supplement the statute.

MR. McCULLOCH: But is it like this when you have -- the rules are in the back?
MR. KRAUS: Yeah.

MR. McCULLOCH: You have to be like this, so it's really not going to be under definition anyway?

MR. KRAUS: Except to the extent there could be a definition section in the rules. But you're right; if you go to the statute and look at the definitions in the statute, it's not going to have anything right there.

MR. McCULLOCH: Yeah.

MR. KRAUS: No, it's not.

MR. McCULLOCH: So, it's not going to help that anyway.

MR. KRAUS: To that extent, no.

MS. DUNN: Typically what -- if someone has a phone call or phones in an inquiry about the statute, we do reference the rules for additional clarification. So, if they have -- if the statute hasn't included, let's say, Missouri, then the time to put that in would be by rule making.

MR. McCULLOCH: I got you. Okay. So, that helps you then, for sure?

MS. DUNN: Well, it helps individuals understand exactly -- "Oh, I see. I have to
work for a Missouri seller."

MR. McCULLOCH: I got you.

(Inaudible.)

MS. CLARKSTON: But is that something that can be included in the agent rule versus the definition rule to keep it all together to address your issue, that somebody would know exactly where to go? Isn't that something that could be said under the agent rule, as well?

MR. KRAUS: Sure. Yeah.

MR. CLARKSTON: Okay.

CHAIRMAN: Bill?

MR. STALTER: Bill Stalter, Stalter Legal. The issue I saw here with it, I mean, we know what a seller is, that's defined, and the agent has to be authorized by the seller, and we know that the seller has to be licensed in Missouri. I saw the issue more as how is the agent authorized by the seller, and that would be a regulation issue as opposed to having to redefine or add clarity to the existing definition. Does that make sense?

MR. KRAUS: You mean, so that you don't have someone who registers as an agent
for a seller and the seller doesn't want them to be?

MR. STALTER: No. We're talking about -- we already have -- we know what a seller is. He's defined. He has to be licensed by the Board. He has to be in Missouri. But now we say how is this agent authorized by a defined seller? You know, that was really kind of the issue we argued with last year in terms of, you know, the relationship between an agent and the seller.

MR. KRAUS: And you would be going towards prohibiting or preventing someone asserting they're an agent in an unauthorized manner?

MR. STALTER: No. I guess, I'm not -- I'm struggling with what it is that you're trying to address where you see the need for the regulation, you know, in defining, you know, the -- what that agent's authority under that rule, who gave him the authority. I think we know who gave him the authority. It's a Missouri licensed seller.

MR. KRAUS: Does the statute actually say Missouri licensed or does it just say
licensed?

MS. DUNN: Senate Bill 1?

MR. KRAUS: Yeah. The agent -- here we go. Well, it does say "who are licensed as" -- let's see.

MS. DUNN: What page are you looking at?

MR. KRAUS: Fourteen. No person shall sell, negotiate, or solicit the sale preneed contracts for or on behalf of the seller unless registered with the Board as a preneed agent.

MR. McCULLOCH: Where did you all find that?

MR. KRAUS: On page 14 --

MS. DUNN: Of Senate Bill 1.

MR. KRAUS: Well, 14 of your handout.

MS. DUNN: Oh, okay. Okay. I thought you were looking in the senate bill.

MR. KRAUS: Under agent registration of Section 333.325, it has, "No person shall sell, negotiate, solicit the sale of preneed contracts for or on behalf of a seller unless registered with the Board as a preneed agent.
except for" -- dah, dah, dah, dah, dah. "The Board shall maintain a registry." And then down at the bottom, it has that they'll provide the name and address of each seller for whom the agent is authorized to sell. And you look at the definition of preneed agent, it says "The person authorized to sell a preneed contract on behalf of the seller."

So, I think the thought from that comment was to explicitly say a seller licensed in Missouri.

CHAIRMAN: It may be redundant, it may not be.

MR. STALTER: I think, you know, sometimes -- my complaint is about SB 1. You know, sometimes we said things twice, you know, just to be -- you know, we really mean it this time, but sometimes we didn't say it the same way each time. And so, you know, if it would keep -- if we're going to repeat it because we really mean it this time -- you know, if we state it differently each time, then it creates ambiguity and then somebody else would come in and read it differently.

So --
MR. KRAUS: What language will you point to there to say that it is a Missouri seller?

MR. STALTER: Oh, I think that, you know, he has to register. One thing, he's going to register with the Board, but who is your seller?

MR. KRAUS: Right.

MR. STALTER: You know, have we got -- you know, we have licensed sellers.

MR. KRAUS: Well, what if they say my seller is this seller who is registered in Maryland under Maryland law?

MR. STALTER: Well, you know, we define seller under SB 1.

MR. KRAUS: And they're my seller. Yeah. "As a person who executes a preneed contract with the purchaser and is obligated under such preneed contract to remit payment to the provider."

MR. STALTER: Who is licensed with the State Board, so say that. You know, then within our definition of sellers.

MR. KRAUS: I mean, that's the -- I'm just saying that's where the comment came
from, so --

MR. STALTER: Okay.

CHAIRMAN: Okay, Board. We've heard some discussion in that thought. What do you want to do?

MR. McCULLOCH: Well, it won't hurt anything to put -- (inaudible.)

CHAIRMAN: Okay. Any other comment or just add it on?

MS. DUNN: Can we discuss how we're doing this process that we're voting and amending unless there is opposition?

CHAIRMAN: Becky is reminding me that the way that this is going to work is instead of voting on every little single one of these as we go to the end, we'll say, "And we're going to do all of these. All in favor?"

MS. DUNN: Unless there is strong opposition, and then we'll deal with it per comment.

MR. KRAUS: And, of course, that's -- I'm assuming that any of these directives will be to merely to the point of staff drafting something and bringing it back to the next Board meeting, not any actual decision.
MS. DUNN: Correct

CHAIRMAN: Correct. Okay. So, John?

John says go for it. Everybody else in the
mode to go for it? Go for it.

MR. KRAUS: And, Bill, if you have any
additional comments as to the authorization
part of it that you want us to try to include
--

MR. STALTER: Yeah. I know the --
yeah.

MR. KRAUS: -- we could try to address
that. All right. Flying right along, page 3
of the handout, whether it's set out whether
every licensed funeral director is a provider
and must pay the fee.

MR. McCULLOCH: The provider has to
pay a fee now annually; right?

MS. DUNN: They pay an annual report.
That's correct. Currently.

MR. McCULLOCH: So, you're asking that
every licensed funeral director is a provider
and must pay the fee? That's paid by the
funeral home, isn't it, not every individual
funeral director; correct?

UNIDENTIFIED: Correct.
CHAIRMAN: I don't see how every
funeral director could be a provider, but I
guess I can understand where somebody might
kind of think that, but --

MR. McCULLOCH: The funeral home is the
provider, not the individual funeral director.

MR. KRAUS: I don't think the comment
got toward clarifying that one way or the
other.

CHAIRMAN: Yes, Don?

MR. OTTO: Don Otto again. Yeah. I
think you're right. It's not fatal for the
statute because persons defined is including
corporations and all that stuff. But a
regulation that say under the provider means
funeral establishment under here --

MR. McCULLOCH: That needs to be
clarified?

MR. OTTO: Yeah. To clarify the
provider in this section means funeral
establishment that has, under Chapter 436,
consented to -- they're -- done whatever it is
you have to do under 436 to be a provider
because what you don't want to have somebody
do a preneed contract, stick a funeral home on
it without the funeral home's knowledge, and
then the funeral home get in trouble because
they didn't file an annual fee when they
didn't even know they were on the contract.
So, it might be the regulation would say, you
know, provider under this means a funeral
establishment that has agreed to undertake the
obligations of a provider under Chapter 436,
something like that.

CHAIRMAN: Okay. Just for my own
personal thought, I don't understand how any
funeral establishment thinks they are not a
funeral provider or a preneed provider.

MS. DUNN: I guess, unless they do all
at-need.

MR. MAHN: We talked about that,
combining those two. I think it makes --
don't make a lot of sense. They mean two
separate things. I mean --

MR. McCULLOCH: The provider/seller,
you mean?

MR. MAHN: Yeah. Well, the provider
establishment. Provider establishment. I
mean, isn't every --

MR. McCULLOCH: Combine it, you mean?
MR. MAHN: Well, we talked about one
of those circle --

CHAIRMAN: Is that feasible? Is that
feasible that the establishment license could
be establishment/provider in one license?
Didn't mean to put you on the spot, but --

MR. KRAUS: No. I mean, I would
imagine that it is. I would expect there's a
number of details we would need to work out.

MR. MAHN: It's too late. We're
separating two things that are one common
thing, anyway. It doesn't make a lot of sense.

CHAIRMAN: Brad Speaks?

MR. SPEAKS: Brad Speaks. It could be
possible, while unlikely, that a funeral
establishment would not be a provider of
preneed contracts. They didn't sell them,
they don't provide them, and it would be
counterproductive, I think, to include -- I
mean, your suggestions is sensible except that
some funeral homes could say, no, we don't
want anything to do with preneed, and, yet,
the regulation that you're talking about could
force them to become providers when, in fact,
they did not want to be.
MR. KRAUS: And then they would have to meet all the --

MR. SPEAKS: They've got no preneed contracts, they never sold for whatever reason, and just don't want anything to do with it, so I would hate to, I guess, force them into that bucket when they didn't want to be.

MR. KRAUS: And then they would have to meet all the requirements for that and pay the fees for that.

MR. SPEAKS: Right. Pay the fees, and they don't do it, so that would be restrictive.

MR. MAHN: Do you have an example of someone that don't do it?

MR. SPEAKS: No.

MR. MAHN: I never heard of it.

MR. SPEAKS: But it could be -- you know, it could happen.

MS. DUNN: There is one.

MR. MAHN: I actually think it would save them money, you know, combining two licenses -- it would combine the two. It would be a lesser --

MR. McCULLOCH: If you just said that,
if you combine them, how do you think --
because I think you're right. I think there
could be someone out there who says, hey,
given the --

MR. SPEAKS: Right. And if we move
forward, we may see more of that.

MR. McCULLOCH: Yeah. We're not
messing with this at all. But what else do
they have to do if they aren't really selling
anything, even though it says establishment
and provider --

MR. MAHN: Oh. If they don't want to
be a preneed, they don't have to. It just --
they just have -- hold the license.

MR. McCULLOCH: Would it hurt them in
any way, though? The fee is going to be the
same, I guess.

MR. SPEAKS: Yeah. I guess not.

MR. McCULLOCH: Just a thought. I'm
just talking out loud.

CHAIRMAN: Yes, Bill?

MR. STALTER: The way I was looking at
it is differently than -- the provider, you
want a broader definition because you're
thinking of, like, a casket store. In other
words, they're not funeral establishments, but they can sell their caskets preneed. And as long as they comply with 436, they're not going to have an establishment license.

CHAIRMAN: Okay.

MS. DUNN: That's true.

CHAIRMAN: Don Otto?

MR. OTTO: Well, that's what I was going to say.

CHAIRMAN: Okay. Well, I was even thinking, you've got a guy that says I'm not going to provide any preneed. Somebody walks in the door and says I have a preneed at XYZ Funeral Home and I want you to service this thing. He's got to say no.

MR. MAHN: Yeah. Doubtfully, they'll say no.

CHAIRMAN: Doubtfully, he's going to say no.

MR. MAHN: He'll service the contract, break the law.

CHAIRMAN: So, then the inspectors, through a random inspection, just when they're there doing their regular inspections -- (inaudible) -- he serviced a preneed from XYZ
Funeral Home and he's not a provider, so now he's noncompliant. Don?

MR. OTTO: I would say, though, somebody that accepts a preneed after the time of the beneficiary's death is not a provider because it's no longer preneed. So, you know, if you say I've got this contract that I originally signed with a guy down the street, my dad died, I'd rather have you do it, that doesn't trigger 436 for funeral home #2 because they are not the preneed provider, they're just now -- they're, perhaps, the transferee of funds at need.

CHAIRMAN: I understand what you said, but it's still a preneed.

MR. McCULLOCH: Yeah. But they're not a provider in the sense, I think he's saying, that you have to be signed up with the State Board and you've got to have paid a fee and all that. You're just going to service this contract. Is that what you're getting at?

MR. OTTO: Yeah.

MR. McCULLOCH: Yeah.

CHAIRMAN: And what if something goes wrong in it somewhere?
MR. MCCULLOCH: I don't see where that -- I mean, I don't think anything changes. I mean, there may be complaints and lawsuits and things like that.

CHAIRMAN: Right. Okay.

MR. MCCULLOCH: But I don't think that it'll matter whether he's preneed or not, you know. You're just saying maybe they didn't fulfill the contract role -- first off, they're not obligated to; you know what I mean?

CHAIRMAN: But what if they agreed to?

MR. MCCULLOCH: So, it's really negotiation.

CHAIRMAN: I know we're totally what-iffing.

MR. MCCULLOCH: If they agreed to it and then they don't, well, that -- I'm sure there's --

MR. KRAUS: If they obligate themselves -- I mean, he comes in and says I want -- I've got this other provider designated, but it's at need now. I'm mad at them. I don't want them to do it anymore, I want you to do it, and you obligate yourself to do it, then have you become the obligated
provider under that contract and, therefore, 
fall into 436?

MR. McCULLOCH: I think so.

MR. KRAUS: Maybe.

MR. McCULLOCH: I mean, I think just 
from a contractual standpoint, they're 
obligated to fulfill the contract, you know, 
what they agreed to do.

MR. KRAUS: Right.

MR. McCULLOCH: Because they may say, 
well, look, you know, we'll take care of this, 
but it's going to -- we know -- maybe they 
know and they check it out and say, well, this 
thing is going to fall short, so you're going 
to have to pay us the additional funds. And 
if they both agree to that, then no harm there.

CHAIRMAN: Have you got a question, 
Don?

MR. OTTO: I'll just say a preneed 
contract -- I don't know if we -- (inaudible) 
-- defined as a contract for a funeral, goods 
or services were such -- goods or services are 
not presently required. So, if the 
beneficiary has died, it's no longer a preneed 
contract, it's now -- (inaudible.)
(Several people talking simultaneously.)

MR. OTTO: It's now an at-need situation for which they're, theoretically, the money is sitting out there. So, like I said, I don't mean -- I could definitely see, going forward, that there will be funeral homes that at least want to take the position I don't do preneed. Now, if you -- if the beneficiary has died and you come to me with somebody else's preneed contract, I'm going to treat this like an insurance policy, and this is now an at-need situation as far as I'm concerned and this just is how you're trying to fund it. So, I mean, I could --

MR. KRAUS: So, you're saying you're not agreeing to be obligated under a preneed contract, you're agreeing to be obligated under an at-need contract.

MR. OTTO: You're agreeing to be obligated under an at-need contract.

CHAIRMAN: Questions, board?

MR. McCULLOCH: So, we're back to the real question is, do you want to combine them or keep them separate? I forgot what we --

MR. KRAUS: Well, that's kind of my
question that grew out of this. The initial
one was whether we want to do further
explanation of the definition of provider by
rule.

CHAIRMAN: Do you see that we need
that, personally? Do you?

MR. KRAUS: I think given the amount of
discussion that there's been on that point,
that might be worthwhile.

CHAIRMAN: Okay.

MR. KRAUS: We could at least draft
something, and if everyone dislikes it, then
toss it aside.

CHAIRMAN: Okay. We'll look at the
thought of that. Anybody with input, you know
the drill on the e-mail by Friday. That
answers that, doesn't it?

MR. KRAUS: It does. I mean, there
was the other question that Todd brought up
about combining the two, which is kind of
another question. I don't know if you want to
address that now or address that at another
time.

CHAIRMAN: Any question into the
thought of that -- combining them?
MS. DUNN: I think Brad and Don brought up some points that might prevent the consideration of not doing that; right?

CHAIRMAN: Uh-huh.

MS. DUNN: Yeah.

CHAIRMAN: I'd say no at the point. Let's just leave it that way unless -- because nobody seems to think so, so --

MR. KRAUS: All right. No strong feelings on that. All right. I guess we also had in there in provider, defining any or all of the terms there, if you think that's needed or not. Final disposition, funeral burial services or facilities, funeral merchandise.

CHAIRMAN: So, that would, basically, just be more definitions.

MR. KRAUS: Funeral merchandise is already defined.

CHAIRMAN: Okay.

MR. KRAUS: Everyone seems to know what final disposition means, although I don't know that that's defined.

CHAIRMAN: Yeah. Do you think we need to define those?
MR. KRAUS: I don't know.

CHAIRMAN: Yes, sir.

MR. OTTO: Final disposition is defined under Chapter 193 under the Health Department regulations, if you want to make a reference to it.

MR. KRAUS: To the extent -- yeah. And the rule could simply say that final disposition means as defined in section so-and-so.

MR. OTTO: And there's also regulations under that that expanded it to, for example, to include the delivery of the body to an educational institution that the Health Department added.

CHAIRMAN: Comment, Board? Good enough as it is or work on a definition?

MS. DUNN: What about consideration of referencing to the Department of Health definition; is that okay?

CHAIRMAN: I suppose.

MS. DUNN: We'll just give those -- (inaudible.)

CHAIRMAN: (Inaudible.)

MS. DUNN: I think it's a clarity
issue. (Inaudible.)

MR. KRAUS: We could easily draft that
and bring it back.

MS. DUNN: Okay.

CHAIRMAN: All right. Guys, we need
yeas and nays here.

MR. KRAUS: And if there's a number of
them where there's no strong feelings about
doing something, then we can just go -- we can
just move right on. Because we really did
include a lot of comments, and many of them
were just for brainstorming purposes, really.

MR. McCULLOCH: Will a lot of the
current rules just be -- (inaudible) -- or
we've got to do that individually?

CHAIRMAN: Say that again.

MR. McCULLOCH: Well, you know, like,
in the current law, you've got all these rules
which obviously there's been a lot of thought
put into this through that time. Does a lot
of that kind of move over, or can we look at
this?

MR. KRAUS: Well, we're currently going
through the old rules and seeing --

MR. McCULLOCH: If they match up?
MR. KRAUS: -- what we're going to
want to do -- what we would suggest doing with
those.

MR. McCULLOCH: Okay.

MR. KRAUS: And whether they apply at
all anymore or not.

MR. McCULLOCH: Okay.

MR. KRAUS: So, again, that's a good
question.

CHAIRMAN: Mark, you had a question?

MR. WARREN: Yeah. On the very back
of this handout, there -- this is Mark Warren
with Preneed Coalition. There was a comment
-- (inaudible.) I'm not aware of any of my
clients, anyway, who are actually self
preneed. I think there may have been a
misunderstanding that some forms that are
provided as a courtesy by the preneed
insurance companies -- or not preneed
insurance, but the insurance companies that
fund preneed may have been mistaken as preneed
contracts or offers to sell preneed contracts.
I'm going to get copies of those
documentations to provide to you all to show
that that's what it is. But we would oppose
any effort to make us get, you know, a
seller's license if, in fact, we don't sell
preneed, we simply provide the funding
mechanism for it, so --

CHAIRMAN: Okay.

MR. STALTER: I'd like to step in,
because with the banks, we have the same
issue. If you're going to make the insurance
companies a seller, the banks -- the trustees
will have the same issue. They just said
we're there -- we'll facilitate and help with
compliance, but we're not the sellers.

MR. WARREN: We're not in that
business.

CHAIRMAN: Okay.

MR. STALTER: Can I interject
something at this point? I think we're going
to lose Representative Meadows here in about
ten minutes. Are there any issues with
something, or are there sections that you're
asking for some -- looking for any insight or
anything?

CHAIRMAN: Do we have anything
specific that we were --

MR. KRAUS: Not anything specific, I
don't think.

CHAIRMAN: Okay. Actually, we might next week. I would reiterate: We knew this was going to be grueling guys, line by line, comment by comment. Do we want to address it, do we not want to address it, is it fine just as it is? So, we're here.

MR. KRAUS: If you wanted to, I mean, before Representative Meadows leaves, we could go ahead and look at the draft rules that we came up with from last week, but that's a big change in gears; if you wanted to, we could.

CHAIRMAN: Would you like for us to do that just for your benefit or look at that? We can do that. All right.

UNIDENTIFIED: (Inaudible.)

CHAIRMAN: So -- do what?

UNIDENTIFIED: (Inaudible.)

CHAIRMAN: I guess, if he wants to give a public definition of what he thought.

MR. MCCULLOCH: Well, the law is the law.

CHAIRMAN: The law is the law.

MR. McCULLOCH: Just like you're trying to change the one that you made before. I
don't think we can sit up here and say, well, I think that this is what this means. I mean, you want it to be that everybody gets audited?

    REPRESENTATIVE MEADOWS: I do.
    MR. McCULLOCH: Yeah.
    REPRESENTATIVE MEADOWS: Absolutely, I do.

    MR. McCULLOCH: So, you can't go changing it now.
    REPRESENTATIVE MEADOWS: I didn't change it.
    MR. McCULLOCH: You might change it that it's legislation.
    REPRESENTATIVE MEADOWS: I'm not changing it, John.
    MR. McCULLOCH: It sounds like you were changing the definition of it.
    REPRESENTATIVE MEADOWS: I think what it is, there is some issue, since you brought that up now -- this is Representative Meadows in response to your comment. I think that there was a lot of people here. This Board has rule-making authority, does it not? Yes, it does. So, therefore, there was some issue
because some people were not left out or
defined in here as funeral directors are. If
I'm a funeral director, that I'm left out of
that. What I'm saying is if I'm an employee
of a funeral home and I wish to be on the
State Board, then I wholeheartedly believe
that that funeral home should be inspected or
should have had their books audited. It's the
same difference. That's my interpretation.
Again, like you and like everybody in this
room has their own interpretation as to how
the law is. Are we not sitting here doing
that? That's what we are doing right here
this morning and that's what you did last
week. That's my interpretation. Being as how
it's not actually defined, it is what it is.
That's just my position on that, and that's
always been my position, and I feel that you
or whoever sits on this board should be held
to a higher standard in the industry. I feel
that that person needs to be looked at and
that he needs to have passed that type of
regulation. I don't think I'm asking for
anything other than that. So, if you --

MR. MCCULLOCH: I wasn't disputing
that. That's what it said.

REPRESENTATIVE MEADOWS: Well, exactly.

MR. McCULLOCH: But you can't go changing it now.

REPRESENTATIVE MEADOWS: I did not change that.

MR. McCULLOCH: Well, it sounded like that's what you were wanting to do.

REPRESENTATIVE MEADOWS: No. Heavens no. Not in the very least.

MR. McCULLOCH: Because you're saying, well, it really didn't mean just owners, you're trying to broaden that. It says it has to be owners.

REPRESENTATIVE MEADOWS: I feel that this Board -- the reason why I made that comment this morning, because I feel this Board has the right, under their rule-making authority, to clean that up. And if not, we can gladly go back and clean it up in legislation next year. I don't have a problem with that. But the bottom line is to throw the whole thing out and say it's unconstitutional, as I have heard other people speak around the state --
MR. McCULLOCH: I haven't heard that at all until you mentioned it today.

REPRESENTATIVE MEADOWS: Well, I heard that coming back from a lot of people. So, whether it was said here, I know it's being said elsewhere, so --

MR. McCULLOCH: I think you may have to clean it up to get anybody on the Board.

REPRESENTATIVE MEADOWS: Absolutely.

MR. McCULLOCH: Okay.

REPRESENTATIVE MEADOWS: And I'm willing to do that.

MR. McCULLOCH: But when your goal was originally to keep people from getting on the Board, then that's --

REPRESENTATIVE MEADOWS: That's not my goal, no. I'm -- my goal here is, is that everybody that's a funeral director or works for a funeral home, in a funeral establishment licensed to do business in the State of Missouri, is held to the highest standard and the highest regard and they should also have their financial house in order to serve on this Board. And I think anybody that's on this Board would agree with me, and I think
everyone sitting in this room would agree with me. That's just my personal opinion, but maybe there are some that don't agree with me.

MR. McCULLOCH: No, I don't think anybody disagrees with that.

REPRESENTATIVE MEADOWS: No. And that was the whole intent and purpose, when I sat with Representative Dixon and we talked about his amendment as opposed to my amendment, he said absolutely.

MR. McCULLOCH: But what you don't understand is no one is going to do it because they cannot afford it. They're not going to want to afford it. They're not going to want to afford that because you know what goes into getting a full-blown audit of your personal, at-need, and preneed?

REPRESENTATIVE MEADOWS: I'm certain it --

MR. McCULLOCH: It's hundreds of thousands of dollars if you can get someone to do it.

REPRESENTATIVE MEADOWS: Well, and again, I feel that the Board -- this Board has the right under your -- under this rule-making
authority to decide on what that is. I'm just saying that they need to have passed through some type of -- have their books looked at. I wasn't talking, per se, bam, like you have got to have all this. I feel as this process goes, and as a person --

MR. McCULLOCH: But that's what the law says.

REPRESENTATIVE MEADOWS: I understand that. And what did I say --

MR. McCULLOCH: Okay. But I don't think this Board, if I understand right, can change or make a rule that changes the law.

REPRESENTATIVE MEADOWS: I'm not saying that, but maybe you can clarify where you're going, John. I think that's what we're sitting here today is clarifying each and every word and each and every phrase as we move forward through this process. That's why I'm here today is to try to help.

MR. McCULLOCH: And I think there's a definition of audit. That's what I'm getting at. I think there's a definition out there of audit, and I don't think you can change that.

REPRESENTATIVE MEADOWS: Well, from
what I was given for my definition of audit -- and, again, I'm sitting between two attorneys here and there's an attorney at the end of that table there. Everybody has their own interpretation as to what is what and what is this and what is that and what is this. By the way you look at something and by the way I look at something, it could be two different things. Now, when I was given a sheet by -- when it was defined audit, and I don't have that paper -- that sheet with me, but it was defined as an audit that depends upon as you look at it. The description that I was given that day by the gentleman that was working with me in legislative research did not define it as you would define it. So --

MS. DUNN: If I may interrupt, the -- Sharon Euler suggested there might be a definition of audited financial statement somewhere.

REPRESENTATIVE MEADOWS: Yes. That's what I have.

MS. DUNN: And so, we could certainly look into that and bring that back to the Board.
REPRESENTATIVE MEADOWS: Yes.

MR. STALTER: But before we break up, if I can, I've had this situation, and I have to agree with John. I have an archdiocese that we got into the situation where we're trying to show compliances of the state, compliance with the state law -- I don't remember if it was a bank or the archdiocese asked that question, "Can we rely upon the audited financial statement," because they get one done every year. And so, we brought in the audit firm and here's our issue. All we were looking for is compliance with the delivery of vaults. And I'll tell you, I could -- and after two hours, what we got, that auditor said there is no way I'll do that. All I do is I go look at their financial statement and look to see whether it accurately reports their income, revenues, and expenses. I don't want to go any further than that. And so, I know what the intent was, you know, the intent, but it doesn't -- you know, audited financial doesn't show any of you whether you comply with 436. And so, in a sense, we've got to work through this, find...
some way -- I know what you're trying to get to, but this doesn't do it. And, you know -- and it does; those audits cost a lot of money and it -- you know. And the issue is here is we want to make sure whoever is on the Board understands and complies with the statute, and how do we do that? I'm not sure, you know.

CHAIRMAN: Don Otto?

MR. OTTO: I don't think there's anything wrong, and somebody correct me if I'm wrong, if it's possible, since audited financial statement is not defined anywhere in the statute, for the regulation to say for purposes of 333.151, audited financial statement shall mean blank. I'm just thinking off the top of my head. We need to get an accountant or somebody in here to use the right words. But a balance sheet provided by the funeral establishment that has been reviewed by an independent certified public accountant or something like that, and just say when it says audited financial statement in this sentence, this is what we mean. A -- and, again, I'm just making stuff off the top of my head here. A balance sheet of the
funeral establishment that shows its at-need
and preneed business that has been reviewed by
an independent accountant and signed off on.
You know, we do -- I mean, I know we have an
annual statement every year that is reviewed
by an accountant and signed off, and they've
got that page at the front that, you know,
disclaims anything from the accountant saying,
you know, I disclaim anything in here, but I'm
signing it anyway. But I think that's within
the Board's power to say this is what we mean
by audited financial statement since it's not
defined anywhere else. And just spell out
what it is the Board physically wants. Or it
could be a financial -- you know, an audited
financial statement means a financial
statement form that will be created by the
Board that the proposed person is going to
have to fill out and have reviewed by -- you
know, signed off on by an accountant. But I
don't think we are locked in to some
accountant textbook definition of what audited
financial statement is here, and I think if
somebody that understood accounting better
could come up with some language where it
would not be -- you're right. A full-blown audit, people aren't going -- it's not going to happen. But it doesn't say a full-blown audit, it says an audit of financial statements, which isn't defined. So, if you guys come up with what you think is appropriate and not onerous, you define it and say this is what we want to have the funeral -- and then that would be like paragraph 1. Paragraph 2, you're thinking still of the regulation. You still have to do thinking to address the issue of their funeral establishment. I think it would be -- I mean, I don't know if you want to do this, but I don't think there is anything wrong with saying that this requirement only applies to somebody who is the owner of a funeral home. I mean, the statute can't require something that's impossible. And it's one of the purposes of regulations is to save statutes that on their face might look impossible. So, I don't think there's anything off the top of my head saying that this -- when it says their financial -- their funeral establishment, we are interpreting that to mean that this is
only required if you are the owner of the funeral establishment because that's what "their" means. If you're the employee, if you're the stockholder, you don't have to do it. And I'm not saying you want to do that, but I think that is a possible loophole.

MR. McCULLOCH: Well, some folks may not want to have their place of business go through that just to get -- just because one of their employees wants to become -- sit on the State Board.

MR. OTTO: That's right. And like I say, you work for an SCI firm, you know, does that -- you know. So, again, I think it's within the realm of possibility for this Board to make a regulation to say that sentence only applies if you own a funeral home because it says "their funeral establishment." So, if you don't own a funeral home, this sentence doesn't apply to you. Now, the downside to that is now you've got people that own a funeral home are being held to a higher standard than somebody who doesn't own a funeral home, but --

MR. McCULLOCH: Maybe they should.
MR. OTTO: It is what it is.

CHAIRMAN: Backup?

MR. KRAUS: I was going to say I'd certainly agree that there's opportunity here for those terms to be defined. I think one other thing to think about -- and I don't know the answer to this, but with regard to 333.151 that we've been talking about, that regards the Board membership and appointment of Board members to the Board, which, in that process, the Board itself doesn't have a role. So, is -- with regard to making rules with regard to that section, I think it should be considered since, of course, all rule-making goes up through the Division, through the department, so all the agencies are consistent in the rules that they propose, is that section something that the Board should be making rules on or maybe that -- or should that be the entity that makes those appointments -- the governor's office? I don't know the answer to that. I'm just throwing that out there as something to consider. I mean, maybe they are considering some rules, and what we would come up with is different than what they
would come up with. I don't know, but I think that's important to think about.

MR. OTTO: And kind of off what you just said -- Don Otto again. It doesn't say you have to pass an audit or it's a very good audit or the auditor did a good job. It doesn't say any of that. The governor can appoint whoever the governor wants, and the Senate approves them, whoever they want. So, I mean, I think it's the Realtors Board -- I'm not -- Sam is not here. I think he would know. I think the Realtors Board, they have to go through an audit after they're appointed and confirmed. Well, what do you -- they've already been appointed and confirmed, so what do you -- so, to some extent, it may -- I mean, it says you submit an audit. As long as you define it in a reasonable way, somebody submits it, well, you don't have the authority under the -- this Board does not have the authority under the statute to say, no, sorry, you can't be on the Board because we don't think this is a good enough audit. That's up to the governor's office to decide whether or not you've done a good enough audit, and even
if they don't like the audit, they can still
appoint you, because you can't constrain the
-- I don't the constitution would constrain
the governor, anyway, and I don't think this
does that. So --

MR. McCULLOCH: Well, just so you know
my position on this, I think it's a good idea
to expand the Board; okay? My problem was,
and the way I read what originally came out of
this, was that you're trying to keep that from
happening; okay? So, now, everybody has
realized that that's a mistake, and so, we're
going to try to manipulate everything and make
it work. That's fine by me. And we'll do it
here under this rule-making. It sounds like,
you know, you listen to these folks that are
smart, and they know how to do that, and they
can make it work.

REPRESENTATIVE MEADOWS: I'm sitting
between two attorneys.

MR. McCULLOCH: Yeah. They know how
to do that, and that's good.

(Several people talking simultaneously.)

MS. DUNN: Brad, you're acting as such.

REPRESENTATIVE MEADOWS: Regretfully,
I have to leave. My meeting with the governor
starts in about 23 minutes, so --

CHAIRMAN: Well, we appreciate you
coming today and the dialogue and I'm sure
we'll have more.

REPRESENTATIVE MEADOWS: And thank
you. I'll see all next week. And I strongly
concur on what these gentlemen were saying
here. I mean, I think that they're -- the
audited financial statement was the actual --
where we were actually going with this, and it
wasn't that I was trying to -- we were trying
to restrict the Board. That was not the case.
We just felt that the people that are on this
Board should be held to a higher standard, and
I wholeheartedly agree with that and --
wherever you're at. And that's why all of you
gentlemen are here -- and ladies are here for
that reason.

CHAIRMAN: I think everyone in this
room would agree with the thought that it
leads to the higher standard, but --

REPRESENTATIVE MEADOWS: Yes, sir.
Absolutely.

CHAIRMAN: That's where we need to be,
so --

REPRESENTATIVE MEADOWS: Thank you very much.

CHAIRMAN: We appreciate you coming.

MS. DUNN: Thank you.

CHAIRMAN: All right. I know some of you took a break, but let's take an official one for about -- really fast, and come back.

(Off the record)

CHAIRMAN: I've been reminded and asked to announce we're going to have a lunch break at noon, so the Board will be going back into closed session, too, at that point, and then we'll pick it up at 1:00; is that what you said? So, there will be a break from 12:00 to 1:00 and then come back.

MR. STALTER: How long do you plan on going this afternoon?

CHAIRMAN: Well, we had 22 pages of all that. I don't know if we'll get to the end of that or not, but --

MR. SPEAKS: We're on page 1.

CHAIRMAN: Well, actually, about four.

(Several people talking simultaneously.)

MS. DUNN: Don has a question.
MR. OTTO: Yes. It's been a dozen years since I served on a Board. Do you still have to fill out that financial-disclosure form?

MS. DUNN: Every year.

MR. OTTO: Well, I'll draft something to throw out to people and get it to you Friday, but what if we define audited financial statement as the form that is required -- that form that's required except you get a CPA to sign off on it or something, says this is audited, see if that -- see what people think about that.

MR. McCULLOCH: The problem is with a CPA, when you say audited, that's a full --

MR. OTTO: Yeah. But we wouldn't -- we would just say we defined audited as this form that has been reviewed and signed off on. Because on that form, don't you list here's all my stocks? I mean, here's anything that could be a conflict of interest. And, of course, you would -- obviously, people need to know that you're a stockholder of APS. That's a disclosure thing. And I'll try drafting something up and see if people like it. But
what I'm thinking is to say, for purposes of this definition, audited financial statement is the disclosure form that's already required that has been reviewed by an independent accountant or a CPA to verify the statements on there.

CHAIRMAN: Okay. That's fine.

MR. OTTO: And see --

MR. REINHARD: Well, it's not going to fly in my book because I think the governor is in charge of that and that's part of his -- let him take care of it. Why are we going to make a rule about something he's going to do? I'm not doing that. That's disrespectful to the governor, and the Board. I don't want to see anything he writes, period.

MS. CLARKSTON: I'm not an attorney --

(Several people talking simultaneously.)

MR. OTTO: Connie, what I said is I'm going to draft something up. Well, my thought was -- I mean, I'll draft it up so nobody --

(inaudible.)

(Several people talking simultaneously.)

MR. OTTO: For purposes of 333.151, audited financial statement shall mean the
disclosure form that is currently used or
something like that.

(Several people talking simultaneously.)

MS. CLARKSTON: Based on the
discussions I heard a while ago and what I've
heard from Earl, I don't think that that's a
far stretch at all to clarify it. But, again,
I also recognize that we also probably need to
run it through the governor's office because
-- (inaudible.)

(Several people talking simultaneously.)

MS. CLARKSTON: Now, if you said -- if
the board said audited financial statement
shall mean full-blown audit and the results
of, that might be --

MR. McCULLOCH: I think you'd have a
hard time.

MS. CLARKSTON: I think so.

MR. OTTO: I'll come up with a couple
different versions and submit them as things
for people to think about.

(Several people talking simultaneously.)

MR. REINHARD: Well, I think we need
to hire a firm to read the audit report from
the first firm so they can verify that it was
a right and good audit and then we'll go from there, so it takes two to actually get this done. So, that adds more expense to the individual, so we're up to about $150,000. We're definitely on the Board for the rest of our lives.

(Several people talking simultaneously.)

CHAIRMAN: Okay. Let's get back on track. I know we were, but we aren't. All right. Which section is actually the next section? Are we at 333.091?

MS. DUNN: Yes.

MR. KRAUS: Yes. Hopefully, this is fairly straightforward, about displaying a license. It must be displayed and recorded. I think most boards do set out in rule what that means so that it makes it easier on the inspectors when they go -- when they're out there. What the person does have to do and what they don't have to do, and then --

CHAIRMAN: Mr. Reinhard?

MR. REINHARD: I definitely say ring binders are out on tables.

CHAIRMAN: I agree.

MR. REINHARD: Okay. How about put
the damn things on the wall someplace in a
public area?

CHAIRMAN: Actually, I think, now,
this may have to be addressed in this
specific, but I know at some point in time, we
addressed that in another issue that said
that's where they had to be. Now, will that
automatically fall under this or has this got
to be something special? We addressed that
issue. We had problems with that and we had --

MR. KRAUS: And addressed that by rule
or --

CHAIRMAN: And we -- well, did we
address that by rule? How did we do that,
Becky?

MS. DUNN: The rule doesn't say not in
notebooks. It just says displayed.

MR. REINHARD: Well, then we're going
to define displayed -- on a wall.

CHAIRMAN: I thought we did. I
thought we got to the wall.

MR. KRAUS: And some boards say on the
wall in a prominent location in an area
accessible to the public, those types of
things.
MR. EGGEN: I thought it said in public -- in a public area.

MR. REINHARD: In a public area.

MS. DUNN: Yeah.

MR. EGGEN: In an area accessible to the public. I thought that's what it said. I don't have it here in front of me, but --

MR. REINHARD: See, we really kind -- (inaudible) -- on this because this hits a little sore point with the Board. There have been some licensees that just don't want to put them licenses up.

MS. DUNN: Very few people argue with -- about this. Some argue because they think that license is ugly, and 400,000 licensees that are licensed by the this Board, including doctors and CPAs, use the same format of the license.

MR. OTTO: My favorite is the ones that have them right here and the door is open.

MS. DUNN: So, we can define that and we'll -- moving on.

(Several people talking simultaneously.)

CHAIRMAN: So, look at that. Look at that. Check current law.
MR. McCULLOCH: I know when I go into a place that's licensed, I -- the first thing I do is go try to find that license hanging on the wall. Then I know they're real.

MR. MAHN: Well, you've always been an advocate of everybody being licensed.

MR. KRAUS: Very nice.

CHAIRMAN: Any other questions on licensure display from the Board? Moving on.

MR. KRAUS: 333.101. Board may enter premises to inspect. Let's see. May want to clarify this includes any place where records are stored regardless of the format including electronic records, and also address consent to off-site -- access off-site locations where files may be stored. And then employees may allow such access and consent, and also time frames within which access must be granted.

CHAIRMAN: Does anyone see that the word "enter" needs broadened? Comment, or do we have enough authority just with that?

MR. KRAUS: When enter is really just a place to stick the comments.

CHAIRMAN: Right.

MR. REINHARD: I think it's good.
CHAIRMAN: Go on or define it? Yeas, nays?

MR. MAHN: Yea.

CHAIRMAN: Define it or go on?

MR. MAHN: Go on.

CHAIRMAN: Go on? John?

MR. McCULLOCH: Go on.

CHAIRMAN: All right. So, go on.

They say it's good enough.

MR. REINHARD: What do you think, Don?

Sorry, Chairman. I mean, you've got to go in these places. What do you -- is that broad enough?

MR. EGGEN: Well, I mean, it's written here and it's also on their renewal and application that they are giving up -- that they sign that their premises will be inspected, so I don't think it needs to be clarified. I think if you clarify it, then you may restrict it.

MR. REINHARD: Sorry, Chairman, but I thought I would just ask the guy that's got to go in.

CHAIRMAN: That's okay. That's why we're all together here. The next page.
MR. KRAUS: And we kind of talked about this section, 333.151, some already. Do you want to do any more on that now? I mean, what I think -- I think it would be a good idea to clarify with the department and the governor's office as to where they're coming from on this, because if they say, well, we're going to do a bunch of rules on that, then should the Board do anything? I don't know what they'll say, but that's what I would suggest.

MR. McCULLOCH: So, just wait and see what they opt to do; is that what you're saying?

MR. KRAUS: We can check to see if there's any direction at all from the department or the Board as to what other plans are.

MR. McCULLOCH: Okay.

CHAIRMAN: Go on?

MR. REINHARD: Go on.

CHAIRMAN: Everybody, go on?

MS. DUNN: So, we were okay with that, what -- okay.

CHAIRMAN: Everybody says fine, so
check it out.

MR. KRAUS: 333.221, Board compensation and employees. Let's see. This was the change including legal counsel. I mean, you could consider defining qualifications for legal counsel, but I really don't know that that's necessary because if they're an attorney, they're going to have to be a member of the bar already and in good standing. But if you want to set out any particular criteria, that's where it would go or what it would be associated with.

MR. REINHARD: Go on.

MR. MAHN: Go on.

CHAIRMAN: They say okay. John, you okay?

MS. DUNN: That was okay?

CHAIRMAN: Yeah.

MR. KRAUS: Retail exception on page 8, 333.251, retail exception. May want to spell out casket stores are okay and define them, spell out that a preneed is needed to do a preneed, preneed license is needed to do preneed, covered in statute, but may be useful or may be confusing, so very broad thought.
there.

CHAIRMAN: Any comment? Leave it broad or narrow it up? Don Otto?

MR. OTTO: Well, you're right. You may not want to touch this, but that's really bad language there. "Simply." What does simply mean?

MR. KRAUS: Not complicated.

MR. OTTO: Yeah. I mean, this does not apply to any person simply engaged; does that mean if that's all they do, that's easy, but what if -- you know, I don't know.

That's just a bad word in there.

CHAIRMAN: Are you good at looking at that to see what we might --

MR. KRAUS: And, I mean, the "simply" language was there already. It was there before. I mean, I'm happy to do whatever you want. I don't know if there's a big need for changes there, but --

MR. OTTO: It's probably better not to change it.

CHAIRMAN: You guys' comment was what?

MR. OTTO: I don't now. I just wanted to throw out the word "simply" if anybody
thought something needed to be done about that, because I hate that word in there, but I don't know if there's anything you can do about it, with a further definition, or if it might make it worse, but I just wanted to raise it that that --

CHAIRMAN: So, "simply" comment raised. Anything else? Not hearing much issue, just move on and leave it?

MR. MAHN: Move on.

MR. MCCULLOCH: Leave as is.

MS. DUNN: Leave it. Okay.

CHAIRMAN: Okay. The next page.

MR. KRAUS: Cemetery exception, page 9. Except cemeteries to the extent they fall under endowed care in Chapter 214. Of course, there are a number of proposed changes to that section that did not pass into law.

MS. DUNN: Connie, do you have any comments on this because this was discussed more at the 214 meetings that we were not at.

MR. STALTER: Sorry.

MS. CLARKSTON: No. Go right ahead.

MR. STALTER: Bill Stalter. You know, we were looking for parallel exemptions, you
know, one in 214 that kind of mirror what we
get in 436. And, really, at the time, we
didn't know which -- where everybody was going
to go. And the next time we got a 214
exemptions, they didn't make it. They got --
you know, it's probably such that they didn't
make it. With regard to this one, you know,
the issue is, okay, if you have a cemetery
preneed contract, payments don't go in endowed
care. I mean, endowed care is for the care
of the space, so you don't put in payments on
a preneed contract for endowed care. Now, you
do have segregated accounts, but they got
wiped out in the new statute, too. So, in a
sense, you know, what we've got here, we've
got in what cemetery -- how do we exempt
cemeteries from 436 or under what
circumstances, and how can you make it work
under this language?

MR. OTTO: Are they coming back to
214, I assume, again this year?

MR. STALTER: I would think so.

MS. CLARKSTON: You know, I have not
heard.

MR. STALTER: What?
MS. CLARKSTON: I have not heard.

MR. STALTER: And it really kind of depends as far as whether they can work out their own problems and so forth.

MR. KRAUS: Yeah. They may come back again, and then if we're in the middle of trying to do some rules to try to mop that up, then I don't know. That's potentially very messy.

MR. STALTER: You're going to have enough people that sign up for licenses that you're -- I mean, do you really want to have cemeteries under there, too?

CHAIRMAN: Say that again.

MR. MAHN: Do you want to license cemeteries?

MR. STALTER: Yeah. I mean, how far do you think you're supposed to regulate a cemetery and preneed?

CHAIRMAN: Well, from a knee-jerk reaction, I guess I would say if they're providing services that are required that a funeral director -- if they're preneed funeral director required -- I don't know if "required" is the right word I want, but
mirroring the same thing the funeral director
would require, then I would think they would
fall under that.

MR. STALTER: Well, and are you saying
that if they provide services, that would be
defined as funeral directing?

CHAIRMAN: Yes.

MR. STALTER: Or are you talking about
all the other merchandise that they also sell
that you also sell?

CHAIRMAN: Well, but we can't control
that thought, can we, as I understand it?

MR. STALTER: Well, are you saying
that -- can you control whether -- caskets for
sales?

CHAIRMAN: That's what I said. You
can't control that thought.

MR. STALTER: You can -- for 436, you
sure as hell can.

MR. OTTO: If it's preneed.

MR. STALTER: Yeah.

CHAIRMAN: Oh, well, yeah. Preneed.

MR. STALTER: That's all we're talking
about.

CHAIRMAN: Okay.
MR. STALTER: I mean, because you're --
there's two things here, licensing, because
you have to address that under 333, and then
436 when they're exempting them for regulation
of the preneed transaction.

CHAIRMAN: So, I would follow suit
with -- if we were in a preneed sense be the
casketing store thought, I would sure think we
would do the same thing at a cemetery.

MR. STALTER: Well, but, you know, if
they've got regulations under 214. In other
words, you know, does the cemetery have to
comply with both 436 and 214?

CHAIRMAN: I don't now how to
challenge that one, so --

MR. McCULLOCH: My only deal on that
would be that if the cemetery is going to sell
an outer container or a casket or -- they
would have to fall under the same restrictions
I do; correct?

MR. STALTER: Well, that's what we're
trying to figure out. I mean, if they've got
-- cemeteries under 214 have trusting laws. I
mean, why should they have to also then comply
with 436? That's the question. Because you
can look at other states, you know. You can look at Illinois.

MR. McCULLOCH: Well, I mean if they don't mirror, I mean, that's going to be a problem because I'm going to become some kind of a cemetery if their laws are better; you know what I mean?

MS. CLARKSTON: Through the roundtable discussions this summer, that was where the conversation went was if they were selling preneed, they would become -- go under Chapter 436. If they were not, they stayed under 214. The minute they crossed, they need to become licensed by the Board. That was the thought process. Now, their law didn't pass, so --

MR. McCULLOCH: Yes.

CHAIRMAN: But wasn't the key word --

MR. McCULLOCH: And they were in agreement with that; right?

MS. CLARKSTON: That was where the --

(Several people talking simultaneously.)

MS. CLARKSTON: The majority there --

MR. STALTER: Define what substantial -- are you saying identical or similar or what?

CHAIRMAN: Give him no idea.
MR. McCULLOCH: Well, I mean, it just seems that it would be fair if they're going to go out and sell and preneed arrangement just like I would as a funeral home or a preneed company, whichever, they should have to follow -- have the same trusting requirements and the same guidelines I would have to follow.

MR. STALTER: And maybe I'll take their side in this. The difference between a funeral preneed sale and a cemetery preneed sale is that that guy has come in and bought a space first. He's made a decision, he's going to do a traditional funeral. But, I mean -- and he also knows where he's going to go for the burial. It's going to be a lot more difficult for him to change his mind about what he's going to do. So, you know, each is a different thought process after there's been a cemetery preneed sale, and after we've done that, they might buy -- they might add things to it, but down the road. Plus, they also can deliver before death, which you cannot.

MR. McCULLOCH: But, I mean, if you
deliver, then it's not preneed again; right?

    MR. STALTER: Is it? Is it?

    MR. McCULLOCH: Well, I mean, in my simple mind, it's not.

    MR. STALTER: There are different types of cemetery preneed, and some of them do them differently. I mean, some, once you -- you know, this is how we got into it with segregated counselors for Newcomers, basically, is if you didn't want to make a delivery because the family didn't want to see the marker on the space, so you just segregated the funds, you know, and just held it out there till they were ready to take it. So, under those circumstances, what do we have to do? I mean, do we -- you know, do we have to trust wholesale, you know. We know they're going to come in at some point and take delivery, you know. Why should we have to deliver -- have 80 percent or 85 percent and accrue all the income?

    MR. McCULLOCH: If they've already purchased the stone and it's there; is that what you said?

    MR. STALTER: Yeah. Yeah. They've
paid all the families, but the family says I
don't want to see my name on a marker when I
go to --

MR. McCULLOCH: Well, the marker,
that's not part of this, is it -- of the
preneed part?

CHAIRMAN: It could be.

MR. McCULLOCH: Do they include
markers?

MR. STALTER: Look at the funeral
merchandise in your definition.

MR. McCULLOCH: Do they include
markers?

MR. STALTER: Yes, it does.

CHAIRMAN: Yes. How did -- you were
talking about segregated accounts or something
there. I mean, I'm trying to think backwards
from funeral director. I mean, yeah, they're
going to take delivery on it someday or
whatever you just said there, and I'm
thinking, well, yeah, they're going to take
delivery of the preneed someday.

MR. STALTER: Yeah. Well, what
happened was segregated down. It was written
in the '90s. I wrote the statute, what it
was that prior to about 1990 or '91, 214 said
that if you sold the marker, you had to
deliver it within a reasonable time after the
purchase price was paid in full.

CHAIRMAN: So, the key words being a
reasonable time.

MR. STALTER: Yeah. I mean, you had a
lot -- you know, reasonable time, and we're
always arguing about what that meant, 90 days
or, you know, whatever. But then it got to a
point where, you know, actually, I drafted
these forms, you sent it out to the family and
say here's what we call our installation
instruction, you know. We want to use this to
order the marker and delivery it, and the
families wouldn't return it. They'd say I
don't want to set it yet. So, then we'd say,
okay, we can't comply with 214; what can we
do? We didn't want to create a trust because
we don't pay a trustee's fee, so what we did
is, we segregated the funds. If we could put
over here in a bank account, not a trust, just
a bank account, and we had 110 percent over
here, the auditor for the cemetery come in and
take a look and say, yes, they've got enough
to cover their markers; okay? And that's what
the segregated account was for, to cover the
marker costs that we could show you that we
had enough setting in a trust in a bank. But
that got -- that was eliminated in this latest
fiasco. It's not out there anymore.

MR. McCULLOCH: So, you can't do that
anymore?

CHAIRMAN: Okay. Well, just from a
knee-jerk reaction and only my own personal
thought, yeah, I think probably there are
going to be some circumstances where a
cemetery is going to have to conform to 214
and 436. That may not be -- that may be a
legal challenge and may not be right, but, I
mean, I don't see how you can just say it's
one way or the other, at least at this point.

MR. STALTER: Better start talking to
that guy.

MR. REINHARD: He's the chairman. He
can do anything he wants to.

MR. STALTER: You know, and that's
what got you in trouble when you were the
chairman.

MR. REINHARD: That's why I'm not
chairman anymore.

CHAIRMAN: I may not be, either. So --

MR. McCULLOCH: So, what do you think is fair? Since you understand both sides of it, I don't quite understand all the cemetery side --

MR. STALTER: I think that when we talk about substantially similar -- well, first of all, I don't know if anybody has been paying attention, but when in 436 we said identical, there were a couple of us saying no, no. I mean, it will never be identical. I mean, there are differences in the way cemetery sales are trust and so forth. If you say substantially similar, what are you talking about? Are you talking about trusting or are you talking about oversight? Two different issues. And I think that you can make an argument that cemeteries can make a very valid argument about trusting percentages should be different. Then it comes down to -- and what you're all saying -- are they playing by the same rules? You know, basically, we have to do these things. Should they have to do these things? But you have to understand,
cemetery accounting for preneed is a hell of a lot more difficult than what you have to do.

CHAIRMAN: Don?

MR. OTTO: I would say for purposes of trying to get regulations out in a short time frame that you have, that this would not be a good one to do regulations on right now.

MR. STALTER: Now, I beg to differ because I've got a bank that's trying to -- who has cemetery accounts out there trying to figure out what to do with them. Do I have to put them into 214 or can I put them in 214 and not 436?

MR. REINHARD: Then we need to address it.

MR. MAHN: Bill, what kind of things are they are they prefunding? I mean, I don't own a cemetery and I don't get this headache. What are they --

MR. STALTER: Well, here's -- we've got one and it has what we call six buttons. So, you know, you've got opening and closing.

MR. MAHN: Right.

MR. STALTER: So, you've got opening and closing.
MR. MAHN: So, they've preplanned an opening and closing.

MR. STALTER: You've got -- (inaudible) -- markers.

MR. MAHN: Right.

MR. STALTER: Engraving.

MR. MAHN: Right.

MR. STALTER: Urns.

MR. MAHN: Right.

MR. STALTER: And I've got some that want also then to do a separate opening -- installation, like, for the marker or on the bronze, so they've got, like, seven buckets.

MR. MAHN: As a cemetery owner, I think anything that they're going to not do that day when they sell the grave and all that that's going to be done down the road, whether it's when the person dies or when they decide that it's okay, I think it ought to go right into a mirror prearranged just like 436.

MR. STALTER: But you see a lot of cemeteries --

MR. MAHN: Well, I know what a lot of cemeteries want to do, they want to rob the money.
MR. STALTER: Well, I would say that --

MR. MAHN: And that's what happens.

That's why all these cemeteries around
everywhere nobody wants to take care of, or
you've got the Cassity ones over there in
Illinois that they squandered all the money.
Why would the next owner want to come in and
have to do all that stuff wholesale because
they've skimmed all the money off the top?
They don't want to, you know.

MR. STALTER: See, the smaller
cemeteries, they'll never want to be in the
trust because what they're going to do --
they're not going to sell all those seven
buckets.

MR. MAHN: Well, they shouldn't be
selling at all, they ought to stay out of it
altogether. They ought to sell graves and
headstones and mausoleums. They don't need to
be in vaults and caskets and all that other
stuff. As an owner, why just complicate
things? I mean, it really does. I mean,
they just -- I think they're stepping over
their line. That's just my personal opinion
as a cemetery owner.
MR. OTTO: Not that this is controlling, but I can tell you everybody we talked to over at the Capitol when we were doing Senate Bill 1, when the question came up, if two people are doing the exact same product or service, they ought to be treated the same way. And that was voiced time and time again over there, that if you're selling -- you know, if you're selling a preneed XYZ thing and the guy across the street is selling a preneed XYZ thing, you ought to follow the same rules on keeping -- on protecting the consumer's money. Now, that's not controlling, but I can tell you that that is, in my opinion, was the sentiment over there this year, is that if, you know, a funeral home is selling a vault preneed, then a casket store is selling a vault preneed, or a church is selling vault preneed, and you're taking somebody's money, they all ought to follow the same rules.

MR. McCULLOCH: So, that was really my question. How is it different then for the cemetery when they sell that vault than if I do?
MR. STALTER: Before 296, and the
cemetery bill was 296, it is that we didn't
have a trusting provision under 214. All you
had was -- (inaudible.) And if a cemetery
wanted to sell vaults, then they could
establish a 436 account to do so.

MR. MCCULLOCH: Okay.

MR. STALTER: So, now you -- now, with
296, segregated accounts are wiped out and you
have an 80-20 trusting, but that's basically
all we've got there. We don't -- you know,
where is the mechanism around that that you
all are grappling with with SB 1? Part of it
is, I mean, if you decide that you're going to
govern this transaction, and then cemeteries
get their act together and get it all passed,
then you have one year of regulating cemetery
sales that will be gone next year. You know,
when we have conflicting statutes like these
two exemptions somebody -- Earl has to be able
to interpret them so that they may be done
consistently, you know. They have to find a
way that they will not conflict. So, you
might think that you should regulate cemetery
sales. Cemetery Division might decide you
shouldn't. Some way or other, Earl, he's got
to figure out how to enforce both of those
without a conflict.

CHAIRMAN: And maybe this is a good
time to acknowledge, we've been kind of
conversing here on a couple of this. Explain
what you just said about a couple ways to do
that.

MR. KRAUS: Well, we talked about a
number of different things, so I'm trying to
focus in on what -- the -- I mean, I would
expect that everyone probably thinks that
people doing the same thing that is the same
thing should be treated the same way. Now, as
to whether people fall into this exemption or
not, I mean, one approach could be when an
individual situation comes up, look at them
and see if they fall within the exemption as
set by the statute. Another way to approach
that is to talk about a lot of the potential
situations as we are now and try to come up
with a rule that we hope will cover all of
those. I kind of think that, you know,
especially with the potential for -- you know,
since there was legislation this last session
and may very well be legislation about it this next session, if we -- and the fact that if a rule is done that explains what this statute means according to the Board, and whatever group isn't happy with that, whatever it is, then it's wide open to challenge the rule because you say, well, you're going beyond what the statute says. You're making up law because you're going beyond the statute because the statute doesn't mean that, which would be, essentially, the same challenge -- your interpretation of challenging your interpretation of the statute if you address it in an individual case that comes before the Board, and then the Board says, well, in this case, we think it means this. No, that's not what the statute means. Here's a challenge. So, I think you can face the same challenge in either event. I personally -- not that it matters because I'm not a Board member, but I personally could see so many different fact patterns coming into this exception, not meeting the exception, maybe they do and maybe they don't depending on what they're doing and what their situation is, that it would be hard
to promulgate a rule that is effective or helpful today.

CHAIRMAN: I see Bill going a lot like this.

MR. STALTER: It is. I mean --

CHAIRMAN: Amen.

MR. STALTER: -- getting into that.

In one sense, if you read this set, this provision very literally, it's really impossible to comply with. And you can exclude postsales to the extent that the funds went into a segregated account, but going forward, that's not an option. I mean, it's gone.

MR. REINHARD: Well, how do you address it then? I mean --

MR. STALTER: That's why I was just hoping we would get to this when Tim was still here.

MR. KRAUS: Legislatively.

MR. STALTER: Yeah.

MR. KRAUS: That is the way to address it.

MR. OTTO: That's why -- I mean, I
don't think you can do a regulation that
solves the problem, and if you try, you might
find out halfway through it they've submitted
legislation which would make everything you've
done a waste of time.

MR. KRAUS: And if you try, then you
have a problem with your regulation and you
have litigation, so you have two problems.

CHAIRMAN: So, it sounds to me like
there is no fix at the moment.

MR. STALTER: I think you have to give
it thought. I don't know the answer.

CHAIRMAN: In this immediate, what do
we do right this minute.

MR. McCULLOCH: So, currently, a
cemetery, if they go out and sell a casket and
a vault --

MR. STALTER: Let's just say -- leave
that casket out of there because that's -- you
know, I think most of what we're talking about
here is on that vault sale, you know.

MR. McCULLOCH: Some do caskets and
they certainly can if they want to; right?

MR. STALTER: Yeah. If they comply
with 436.
MR. McCULLOCH: So, wanting caskets --
(inaudible.)

MR. STALTER: Well, let me say this.
Under the old law, the only thing you had was
a marker, you know. If they sold vaults or
caskets, under the old -- under old 214, they
should have been under 436.

MR. McCULLOCH: Fell under that?

MR. STALTER: Yeah.

MR. McCULLOCH: Okay.

MR. STALTER: And now, you know, it's
that -- you're going to -- you've got a
broader definition of merchandise -- cemetery
merchandise under 214.

MR. McCULLOCH: But, anyway, right
now, if they would sell that vault, do they
have to fund or put into a trust 80 percent?

MR. STALTER: Under the new one, if
they sell a vault under 214, 80 percent goes
into trust. And will accrue the income? Huh?

MR. McCULLOCH: I mean, that cemetery
is selling -- (inaudible.) No. Just kidding.

MR. STALTER: I know. I know.

CHAIRMAN: Okay, guys. Input?

MR. KRAUS: Well, I mean, you could
decide to move on for now and --

MR. MCCULLOCH: I think we definitely have to move on for now.

MS. DUNN: Because we're stuck.

MR. KRAUS: Yeah. But not that it won't be revisited.

CHAIRMAN: So, yeses?

MR. MAHN: Well, most of the cemeteries that's selling all that stuff will really stir up a lot of things in their communities. I mean, they're doing it just to be a thorn in the side of the funeral home. I know it has nothing to do with this law or reg, but most people commenting on it don't own a funeral home or a cemetery or understand this being some apple butter. So, let's move on.

MR. REINHARD: Well, we need to help him. We need to help him or do something about it.

MR. MAHN: Yeah.

MR. STALTER: Who is that? Help who?

MR. REINHARD: To help you --

MR. STALTER: I mean, I've got -- I tell the banks what to do. I think I've
heard enough today to know how to advise my
banks, so --

MR. REINHARD: Okay. So, you can get
through this?

MR. STALTER: Yeah.

MR. OTTO: Yeah. Tell them to wait.

(Several people talking simultaneously.)

MR. REINHARD: And, Brad, how many --
what did you say? How many thousand is he
charging?

CHAIRMAN: So, the words were move on.

MR. REINHARD: It's that last class,
how to charge.

(Several people talking simultaneously.)

MR. KRAUS: All right. Page 10,
Section 333.315, provider license
requirements. And just a few comments out to
the side there. Now, this was discussed to
some extent last meeting and we did come up
with a draft rule -- emergency rule. Do you
want to start with that?

CHAIRMAN: Sure.

MR. KRAUS: Does everyone have that or
--

CHAIRMAN: Does everyone have that?
Is that the application-to-apply thing?

MS. DUNN: Which document?

MR. KRAUS: I'm talking about the -- well, the application to apply goes with it.

CHAIRMAN: Okay.

MR. KRAUS: But there is actually a draft --

MS. DUNN: Is this it?

MR. KRAUS: Yes, that's it.

MS. DUNN: Okay. It's a document that will say proposed emergency rule for notice of intent to apply.

CHAIRMAN: Everybody got it?

MR. KRAUS: All right. So, we discussed last time the need for dealing with the transition from August 28th up until the Board has something in place for people who have to be licensed or registered to be licensed or registered by the Board under the new statute. So, this sets out how -- and this, of course, isn't how the rule will finally look, it's just the language itself. Sets out how someone who intends to conduct business, they will provide a notice of intent to the Board. There is a draft form, also,
which I think you have. It's notice of intent
to apply for licensure/registration. It looks
like this. Let's see. We're looking at the
same version; right? I see a number of
versions. All right. You'll notice under sub
7, it has anyone who files a notice of intent
shall be authorized to engage in the practice
provided that they have timely filed their
application for licensure and/or registration
which shall -- then the authorization to
practice will be effective from the date the
Board receives the notice of intent and will
end when the Board issues a license or
registration or denies license or -- the
application, or -- and this is something that
I don't know that the Board talked about last
time, but will want to talk about -- or until
midnight on December 31st, 2009. And that's
to put in an outside here's a drop-dead, this
is when it ends, whether the Board does
anything or not. I don't know if that's
something the Board wants, so I wanted to
point that out.

MR. McCULLOCH: Is this where we were
talking about giving you extra time, though,
or is this different? We didn't want to tie it down the end of October?

MR. KRAUS: This is the one where we plugged in dates. Like, for example, under sub 5, the notice of intent to file, has to be completed and with the Board no later than October 1, 2009. Now, that date is very tentative. That's just a date that's plugged in there, so we know we need to come up with a date.

MR. McCULLOCH: Okay.

MR. KRAUS: You all may decide some other date is much better.

MR. McCULLOCH: I got you. Okay.

MR. KRAUS: And that's the same with the December 31, 2009, date on sub 7 is a made-up date for whatever the Board wants to use if the Board even wants a drop-dead time. You may just not want to do that and just leave that open and say it's effective until the Board decides grant or deny.

MS. CLARKSTON: Do you have any idea how many agents that are out there that would be applying -- how many applications you would be looking at?
MR. KRAUS: That's probably for Becky.

MS. CLARKSTON: Do you have any idea about how many agents there would be?

MR. MCCULLOCH: Do the insurance folks have to file, also, if they an insurance license?

MR. KRAUS: Anyone who intends to be a seller, provider, or agent.

CHAIRMAN: I got the idea -- I had the idea every funeral director that's going to sell, every licensed insurance agent that's going to sell, everybody; right? Everybody -- Don?

MR. OTTO: Yeah. I think somebody -- if all they're selling is insurance, no. I mean, if they're an insurance agent and they're just selling insurance -- if you're a State Farm Insurance agent, no.

CHAIRMAN: Oh, right.

MR. OTTO: And, you know -- but if they are selling it in conjunction with a preneed contract, yes.

MS. DUNN: So, if it would say Dunn's preneed funeral contract --

CHAIRMAN: Yeah.
MR. OTTO: But I might suggest if you have a drop-dead date just for -- I would throw out for consideration the July 1, 2010, date which is the -- in Senate Bill 1, a number of these provisions are not -- you're not in violation. In Senate Bill 1, there is already provision for a number of different provisions that you're not in violation until after July. I think it's July 1 or is it June 1?

MR. McCULLOCH: July.

MR. STALTER: July.

MR. OTTO: July 1, 2010. I mean, just for consistency purposes, that's just something to think about.

MR. McCULLOCH: You know, I asked that question last time, and Sharon didn't want to discuss that. So, I mean, I wasn't sure why.

MR. REINHARD: Well, bring it up and ask now. She's not here.

MR. McCULLOCH: Because I thought that kind of took care of all this stuff, when we were trying to figure out -- we really got to that point. And you can do the emergency rules. I understand all that. I mean, you
MR. KRAUS: Well, I mean, there's a very particular provision that talks about that. That's in 436 --


MR. KRAUS: -- 435.

MR. OTTO: To the extent that any provisions of this chapter which come into effect on August 28, 2009, apply to trusts governed under this chapter which are in existence, so if you're a trust that already exists, such trust shall be in compliance with this chapter no later than July 1, 2010. So, anybody that's got a trust out there that exists already, they've got, theoretically, until July 1, 2010, to be in compliance with the statute. A new trust that wanted to open up on August 30th would have to comply with the statute immediately.

MR. KRAUS: And, of course, that date in that -- in subsection 1 of 436.435 is talking about trusts, it's talking about Chapter 436. I mean, there are some limiting language with regard to January 1, 2010,
whereas with regard to this proposed rule, we're talking about implementing licensure as set out in 333, which requires you to be licensed if you're going to be a provider or a seller or registered if you're going to be an agent.

MR. McCULLOCH: Okay.

MR. KRAUS: And I think you're -- you know, people are required to do that as of the effective date of the law. So, I think it matters what we're talking about as to when the compliance comes into effect.

MR. McCULLOCH: That makes sense.

MR. OTTO: But I was just thinking if you do have a drop-dead date, why not make it the same.

MR. STALTER: Give yourself some more room.

MR. KRAUS: That's an option. That's an option.

MR. OTTO: Yeah.

MR. KRAUS: As to when people are required to do things and what the Board -- how the Board is going to consider the interim time. I think we built some proposed language
in that talks about discipline in sub 8,
because we talked about, well, just what about
just having a free period saying, well, until
this date then the Board is not going to do
anything. Well, the danger of that is, what
if you have some just awful offender doing
something that everyone just goes, oh, I can't
believe they're doing that. That's against
the law. It's a violation. It's terrible.
Well, yeah, but the rule says you're not going
to do anything to anybody until such and such
a date and we haven't reached that date yet,
they're scot-free. So, we tried to weigh that
and still build in the ability for the Board
to consider what it's going to do. I'll be
quiet now and let everybody read that language
since I don't know how much ahead of time
you've been able to look at it, so --

MR. McCULLOCH: You're talking about
eight?

MR. KRAUS: In sub 8, yeah.

MR. McCULLOCH: Yeah. That makes
sense.

MR. KRAUS: But, again, like Don was
saying, the dates are whatever you want the
dates to be.

CHAIRMAN: The only thing that I'm
hearing concern with is the drop-dead date;
right?

MR. OTTO: I'm just saying, just to be
-- I mean, since there are, clearly, some
things that don't kick in till July 1, it just
might be easier for everybody to use the same
date. I don't -- it's not necessary, but --

MR. SPEAKS: That way, you can keep it
straight.

MR. OTTO: Yeah. It's easier to
explain to people; they have one date to
remember instead of -- but it's not critical,
I don't think, but it's just easier.

MR. McCULLOCH: Does that help you,
Becky, by giving you more time to try to get
everything geared up and ready?

MS. DUNN: We'll just -- we'll have to
--

MR. KRAUS: And, I mean, and you don't
have to have a drop-dead at all. You could
just leave it as -- until the Board decides
grant or deny, and then they are either

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denied and they don't, or you haven't decided yet, in which case their notice of -- their authority under the notice of intent continues.

CHAIRMAN: But that limits us then where the other gives us -- expands our ability; right? What you just finished, your last statement there?

MR. KRAUS: It does.

CHAIRMAN: If we take that out, it's just ongoing; right?

MR. KRAUS: That's true. That's true. Of course, if you end up in a situation where, you know, the Board doesn't have a quorum for a period of time or there is some other problem where the Board can't act or it doesn't act, someone could end up operating under a notice of intent for a long time, which, you know, I think the Board intends that to be a temporary thing.

MS. DUNN: Yeah. I'd say that was --

CHAIRMAN: (Inaudible.)

MR. KRAUS: So, it's just kind of a fail-safe, but, yeah, there's advantages and disadvantages to that.

MS. DUNN: John, I think what we have
to think about is #5. We haven't determined what that is yet. We have to kind of think about what we have to do, and we're short staffed, and what we can really accomplish.

MR. McCULLOCH: So, this would be the one that would cause you problems?

MS. DUNN: Yeah. We have to think about that one.

MR. McCULLOCH: So, that's -- I mean, that would be -- (inaudible.)

MS. DUNN: Uh-huh. That was just a date they put in.

MR. McCULLOCH: Yeah.

MS. DUNN: That would probably not be the date.

MR. McCULLOCH: Okay.

CHAIRMAN: Okay. We've really identified two potential areas, I guess I'll say, that we need to address those two dates. Anything else in that emergency rule of intent to apply that we need to at least address?

MR. STALTER: Referring to comments?

MR. McCULLOCH: I suggest that we move the date of July of 2010.

CHAIRMAN: We can. You guys -- and
the drop-dead date; right?

   UNIDENTIFIED: (Inaudible.)

   CHAIRMAN: Oh, sorry.

   MR. STALTER: Yeah. Just about the
   content, not about the -- I mean, go ahead and
   resolve that issue.

   CHAIRMAN: Okay. Are you guys ready
   to go with that?

   MS. DUNN: Where is that date going to
   be?

   CHAIRMAN: This one.

   MR. KRAUS: Sub 7.

   CHAIRMAN: At least -- yeah. In sub 7.

   MS. DUNN: Do you see any problem with
   that, Earl?

   MR. KRAUS: No. I think that's
   whatever the Board wants it to be.

   CHAIRMAN: Do you see, potentially, an
   issue?

   MS. DUNN: No. I've got to think
   about this, what -- that makes you liable, but
   I don't know the answer to that at the moment.
   (Several people talking simultaneously.)

   MR. KRAUS: Well, I don't -- I
   wouldn't expect today that there be, okay,
final approval, here's how we're going to file this. I would expect that as we go through the different meetings and the different sections, that, you know, we may have -- come across something that gives us reason to refer back to one that we've already addressed. And then at the end, once we get through the meetings and all the different sections, then the Board say, okay, all those we talked about and thought were good, yes, go forward and have a vote at that time.

MS. DUNN: Okay.

MR. KRAUS: For final marching orders, I guess.

MS. DUNN: So, other than dates, I guess my question is, does this look good?

CHAIRMAN: Okay. So, the question is being answered, other than the dates on this, does anyone have any concerns -- well, I know Bill had the question, or we'll say Board first -- with this proposed rule?

MS. CLARKSTON: The only question I have from a rule-making standpoint is we try not to limit so much when it says in sub 1 a pdf document. Can pdf just be removed and
say, you know, notice of intent in document on
its Web site and not limit it to pdf in case
something goes awry?

MR. KRAUS: Sure.

CHAIRMAN: Actually, I think, just
from what the conversation was a while ago,
let's just circle those things that we think
needs to be carefully considered to be dealt
with later in that way. So, not that we're
trying to postpone anything, but we -- there's
just more information that has to be looked
at, so --

MR. STALTER: Just a suggestion.
You're going to -- this is -- you know, this
is one document that, you know, your licensees
are going to be looking at. Prompt them to
take a look at SB 1 by maybe asking a
question or two. Not that you're going to
actually answer them or review their answers,
but, you know, this is the first time, you
know, that they may actually have a cause to
go look at SB 1, you know. It may be a trick
question, you know. Can you name the section
that names the Cassitys and their home
addresses and so forth, you know. But it's
just something to prompt them to go in and
look at the SB 1 before they sign it.

MS. DUNN: Good suggestion.

CHAIRMAN: Okay. Have you got that
down?

MR. REINHARD: That's why he's got a
law license and we've got a funeral director's
license.

CHAIRMAN: It's kind of like when
you're on the computer and it says do you
agree to these terms -- (inaudible.)

MR. KRAUS: I certify I have read the
entire SB 1 --

CHAIRMAN: That's right. Click.

MR. KRAUS: -- and agree to --

(inaudible.)

(Several people talking simultaneously.)

MR. STALTER: That's what I do on my
CLE stuff; yeah, I attended each of those
classes and paid attention.

MS. DUNN: And, Bill, when we started
this, we thought it was going to be a simple
form, but when you've got all the disclosures
in there, it ended up being longer than what
we anticipated.
MR. STALTER: I know. I know.

MS. DUNN: And this is purely a draft that Lori put together very quickly.

MR. REINHARD: It's very good, Lori.

MR. MAHN: She did a great job.

CHAIRMAN: Obviously, again, all of the -- we're not going to settle this today from what I'm seeing and feeling.

MR. REINHARD: We've been told.

CHAIRMAN: So, we at least know what direction to move towards, though. So --

MS. DUNN: Uh-huh. And no other opposition.

CHAIRMAN: Any other thoughts there? Anything else we need for that?

MR. KRAUS: There are dates within the filing of annual reports, also. Well, I guess, not any that you would want to deal with, though. Yeah. I think that's fine. No.

CHAIRMAN: Okay. Then those thoughts under advisement and -- Mr. Otto?

MR. OTTO: I just -- yeah. I just had one -- when you're doing the form -- and this is great that this got whipped out so quick.

But most of the -- I mean, correct me if I'm
wrong. Won't most of the sellers be a corporation?

CHAIRMAN: Are sellers corporations?

MR. KRAUS: Maybe. I don't know.

MR. OTTO: I mean, I'm just saying if most of your sellers are the corporation, that should be block one as opposed to you go down to little E at the bottom if you're a corporation. I mean --

MS. DUNN: Okay.

MR. OTTO: I'm just saying maybe gear the form towards what most people are, which is a corporation, and then it'll be -- if you're not a corporation, fill out this section.

MS. DUNN: Right. Okay.

MR. OTTO: It works either way, it's just a thought.

MS. DUNN: Yeah. I mean, that's why --

CHAIRMAN: That's why we're here.

MS. DUNN: And this is the time.

MR. OTTO: And when it says list providers associated with the applicant, is there anything on here that says see attached?

I mean, so -- I mean, we've got, what -- we
probably have several hundred of them with
Missouri Funeral Trust.

MR. KRAUS: Like attach additional
pages as needed, or something like that.

MR. OTTO: Yeah.

MS. DUNN: We have a standard language
for that on our establishment renewals.

MR. OTTO: Yeah. Whatever is standard
language.

CHAIRMAN: Okay. I think we're moving
on.

MR. KRAUS: All right. So, that's the
proposed rules that we discussed to implement
this. Were there any other comments with
regard to that section?

CHAIRMAN: Now, we're back to the
entire page, whatever it is, 333.315.


CHAIRMAN: Ten.

MS. DUNN: Our document isn't page
numbered, so --

MR. KRAUS: Oh, it's not?

MS. DUNN: Just so you know.

MR. KRAUS: Oh, I'm sorry.

MS. DUNN: Yeah. That's okay. I
don't know how we --

(Several people talking simultaneously.)

CHAIRMAN: Is there anything else in
the comment boxes that was not addressed by
the rule, the form, all of that, that we need
to look?

MR. OTTO: I don't know if you can.
Don Otto, again. It's kicked off on the
bubble at K23, that -- I mean, I don't know
if you need to or if you can, but, for
example, if the seller is a corporation and
the controlling stockholder is a corporation,
the controlled stockholder has to be eligible
as if they were an individual? Or what if
there is no controlling stockholder? I guess,
if there's no controlling stockholder, it
doesn't matter, if everybody owns a third.

MR. KRAUS: I mean, that's a good
question.

MR. OTTO: I mean, I think you can
interpret that to say that that means if the
controlling shareholder of a seller is an
individual, but --

CHAIRMAN: So, basically, you're
saying that it does need to be clarified?
MR. OTTO: Well, I think it probably does. I'm not sure how. Because in a -- you know, and too bad we don't have these guys here, but I'm sure a lot of the sellers, including Missouri Funeral Trust, is owned by another corporation. So, 100 percent of the shares of Missouri Funeral Trust are owned by the Missouri Funeral Directors and Embalmers Association. So, how can we -- you know.

MR. SPEAKS: So, every single person must, in that group --

MR. OTTO: Well, if there was one that was a controlling shareholder, there would be. But -- and, of course, there is no single controlling shareholder in that, so -- I mean, I can see how we can skate, but that one might need to get some legal eagles on that to clarify that because --

MR. KRAUS: Yeah. I mean, I agree that there's room for some clarification there. As to what that clarification is, I -- I mean, I think we want some direction from the Board as to what the Board thinks this means instead of the attorney -- or we can make up what we think it means and then bring it back to the
Board and see if you agree.

MR. REINHARD: Do that.

MR. KRAUS: Okay.

MR. STALTER: Who made you chairman again?

MR. KRAUS: Because, I mean, that could mean a lot of different things, so --

CHAIRMAN: I would agree.

MR. REINHARD: I've got my license in a ring binder on the table. I don't have it on the walls.

CHAIRMAN: Anyone else with comments or directions on 333.315?

MR. KRAUS: There are fees referenced on there, but we're going to hit that in a subsequent meeting.

CHAIRMAN: So, are we ready to turn the page?

MR. KRAUS: All right. So, we're on 333.320, which, of course, are a lot of the various similar concerns transitionwise to the provider that we just talked about, and I think the emergency rule covers that, also -- or covers those issues, also. I think there was a concern raised about whether we need a
rule to determine what proof is required to show the age, which you can either set out specifically in rule or you can look at whatever is submitted and determine if that proves their age or not. Although, I think sometimes it's helpful for staff to know what's acceptable and what's not.

CHAIRMAN: Should we do something with that now?

MR. McCULLOCH: It's helpful for them to do what, now?

MR. KRAUS: For staff to know what's acceptable and what's not acceptable.

CHAIRMAN: I mean, I guess the question here is, like, do you need a copy of their birth certificate or does that -- do you want to go that far?

MS. DUNN: No. No, we don't do that now, and I don't think --

CHAIRMAN: But I said, do you want to?

MS. DUNN: I don't think so unless the legal think it was required, but we don't do it now.

CHAIRMAN: Does anyone here think that is a sticky point? Do we need to start
getting birth certificates or something from people to prove their age?

MR. KRAUS: Is copy of driver's license sufficient?

CHAIRMAN: Copy of their driver's license?

MR. McCulloch: Can you do a copy of driver's license?

CHAIRMAN: I mean, something.

MR. KRAUS: Provide a visa or is an expired visa sufficient?

MR. McCulloch: What happens when people don't have a driver's license? What other --

(Several people talking simultaneously.)

CHAIRMAN: Hey, Lori? Is there a copy of driver's license on applications now?

(Several people talking simultaneously.)

MR. KRAUS: Yeah, some will get --

CHAIRMAN: Just with a picture?

MS. DUNN: But we don't require it.

CHAIRMAN: Okay.

MR. KRAUS: If they have a valid work visa or something like that. I don't know that this Board runs into all of that all that
much, but other Boards do.

      MR. McCULLOCH: So, we need to spell
out what those types would be then; is that
what you're saying?

      MR. KRAUS: No. I'm saying that was
suggested that's something the Board may want
to do. If no one is excited about it, we can
--

      MS. DUNN: But we don't do it
currently.

      MR. McCULLOCH: We don't ask for
anything? If they say they are, they are, and
you go on?

      MR. REINHARD: I think we ought to
fingerprint them.

      MS. DUNN: Yes. Because if they lie,
then we can go back and discipline their
license.

      MR. McCULLOCH: Okay. So, don't worry
about it.

      MR. KRAUS: All right.

      CHAIRMAN: Okay. Don't worry about it?

      MR. REINHARD: I'd fingerprint them.

      MS. DUNN: We haven't talked about
that yet.
CHAIRMAN: That's coming.

MR. KRAUS: It's coming. All right.

Down in sub 7 there, I guess it's sub 2, sub 7, K34, it refers to a certifies to the Board. Will the Board want people to just certify in their own language or do you want to provide draft language or actually provide a form to you to be used, or just leave it as it is and take whatever they provide and see if it complies?

MR. REINHARD: Don't you think you ought to give them a form?

CHAIRMAN: You're being serious; right?

MR. REINHARD: Seriously.

CHAIRMAN: Yeah. Well, I would think something.

MR. REINHARD: Because I don't think -- it would be easier for them to have some kind of form to fill out.

MR. KRAUS: I could see having language, and whether you put that in a form or not or just make that language -- this is acceptable language.

MR. REINHARD: We've got to do something for them.
CHAIRMAN: But how are you going to certify it if you don't invite something back that says this is what I'm doing? Go ahead.

MR. OTTO: Well, you -- Don Otto again. You might need a rule, if you're going to do a rule on this, to clarify what if the seller is selling both insurance funded and joint-account funded, but that's all.

CHAIRMAN: Check this box, check this box, check this box.

MR. OTTO: Yeah. But the way this is -- yeah. But I'm just saying a rule might need to clarify that because it says you don't have to do a trust if you certify you're only selling insurance-funded or joint-account funded preneed contracts. So, somebody could interpret that to say that if you're selling both insurance and joint accounts, you have to establish a trust.

MR. KRAUS: Because you're not doing one or the other; you're doing both.

MR. OTTO: Yeah. Not doing one or the other. But, I mean, there's court cases out there that says or means and, and and means or, so I think it's perfectly legit in a rule
to say that's what we mean. If you're not
selling a trust, you don't have to have a
trust.

    CHAIRMAN: Right. Right.
    MR. REINHARD: That's -- and a form
and check one or the other, or both.
    MS. DUNN: Right.

    MS. DUNN: So, clarify and then have
some type of draft language on the form for
certification.
    MR. REINHARD: I just think it works
out better.
    MR. OTTO: I just don't want to have
somebody having to establish a trust who is
not selling trusts like we've got right now.
    MR. REINHARD: I'm selling gift cards.
    CHAIRMAN: Did you all hear what Jim
said? I mean, he -- the form. Just say yes.
    MS. DUNN: A certification.
    MR. KRAUS: Certification language on
the form and check boxes.
    MS. DUNN: And a check box so that
it's clear what you're doing as a seller;
correct, Don?
MR. OTTO: Yes.

MS. DUNN: Okay.

MR. REINHARD: And you're good to go. I was taking care of you.

MS. DUNN: So, we're good on that page.

CHAIRMAN: That's unanimous.

MR. KRAUS: All right. Let's see.

K36, I think there was a question -- or there was a comment or question brought up whether it could be every other year -- every two years as opposed to each year, where it says each year or a date established by the Division. I need to know if that's something the Board wants to consider or not, but that was brought up.

MS. DUNN: What we need to do is make sure that we have adequate funds every year to pay our bills and, right now, we have establishments, and the next year we have funeral directors and embalmers, and we've had providers and sellers every year even though that amount of money is not an excessive amount right now. So, if everyone would just allow us to review our financials which Shari and Connie are working on, just so that we
have an appropriate budget every year. So, what we're trying to do is alternate everything so that we have enough money within that year to pay our bills, and enough staffing to process everything.

CHAIRMAN: And, currently, it works well as it is?

MS. DUNN: Yes. And the Division does set the renewal dates. That's in their statute -- or statute? Yeah.

MS. CLARKSTON: Yeah. It's by rule.

MS. DUNN: Okay.

CHAIRMAN: So, I guess we need to look at the money, but, ultimately, this could just be left alone; correct?

MS. DUNN: Yes. But I think we'll address that in the future when we look at our financials and --

MR. KRAUS: You mean, because you will want it to be every other year?

MS. DUNN: Well, I'm just trying to --

MR. KRAUS: The reason I ask that is because if you do, then I think we do need to do a rule on this.

MS. DUNN: Right. Exactly.
MR. KRAUS: Okay.

MS. DUNN: And so, what I'm trying to think of right now is the financial impact or projections that we have right now. We have funeral directors and embalmers one year, we have establishments the next year, and possibly we could do providers and sellers every other year when we do establishments. I don't know.

MR. KRAUS: So, you want to touch back on this --

MS. DUNN: Yes.

MR. KRAUS: -- once we talk about fees and budgets?

MS. DUNN: Projections and fees. Yes.

MR. KRAUS: Okay.

CHAIRMAN: Okay.

MS. DUNN: That would be a lot easier process. I just want to make sure the money comes out okay.

MR. KRAUS: All right.

CHAIRMAN: So, that pretty much covers all of those bubbles at the top. Does anybody else have any comments? Let's see -- didn't look. Okay.
MR. KRAUS: All right. Some of the additional comments there at the end in K39, someone mentioned subcategories of sellers at one point. I guess this would be the time to talk about that some more if anyone is interested in that. What I'm referring to there is subcategories of licensure where your license would be seller, joint accounts only; seller, trusts only; and actually have different levels of licensure. That's just the idea that was thrown out. I see John shaking his -- or Don shaking his head, but --

CHAIRMAN: Is there -- even though the idea was thrown out, is there some issue that -- I don't even know -- I kind of remember that thought, but is there some issue that we really should look at this? Somebody sees there's an avenue here where this really makes a big difference in some way? To start, my knee-jerk here is to start dissecting licenses, but all we've got ahead of us and all the rest of it, that's like --

MR. McCULLOCH: I can't imagine. I can't imagine doing that.

MR. REINHARD: What do you think, Bill?
MR. STALTER: You know, there's a thing about as you get down the road and talk about reviews and exams, as you look -- you know, somebody only doing joint-account contracts or something like that, you'll go in and just looking for that. I mean, how do you approach down the road? And if they're only doing insurance, then, you know, you would have a different format for doing those exams. So, basically, I'm just thinking, you know, in terms of, you know, how you go in to make it more expedient. You don't want to go in with a full audit program if they're just doing one thing or the other because, you know, that cost is going to be pretty expensive. I mean, we've got to start thinking ahead, you know, how to categorize these guys and how you approach them down the road. And in one sense, I kind of like that. I mean --

CHAIRMAN: Okay.

MR. REINHARD: Only is this something that we would have to -- this wouldn't be in the formal emergency rule with this; right?

MR. STALTER: No. No. It would --
MR. REINHARD: So, I mean, this is something we can actually think through a little deeper down the road.

CHAIRMAN: Okay. Makes sense to me.

MR. REINHARD: Because we're talking about the audit process of -- like, you could have Lori go in, pull so-and-so many files, match them up against CDs or whatever, so on and so forth. I mean, you don't have to have somebody -- an accountant go in there, particularly -- unless we find something, and then you have an accountant go in; correct?

MR. KRAUS: To do what, again?

MR. REINHARD: I mean, if you're doing the audits.

MR. McCULLOCH: In other words, you're not going to go out and just, all of a sudden, say, hire some accounting firm and say go in there and audit, like if they're in services or some funeral home, you're going to start off by going in and trying to find out, probably, this is the way it should be done, looking through their files and making sure that everything is in order, the contracts are signed, that sort of stuff. If they do find
problems, then you go to the next level, the
next level, and, ultimately, if there's
problems, you just -- you're doing a
full-blown.

MR. REINHARD: Yeah. I mean, I don't
think you need to start -- I agree with you.
I don't think there's any reason to have the
expense of somebody -- it would be, like,
okay, Don, a lawyer goes to the facility, you
have a format of, okay, you pull 15 contracts
over the last so many years, you know, back to
2000 -- or 1982 or '3, whenever it started,
look them over, see if they've got them right,
match them up against the funds at the bank.
I mean, you know, I've got joint accounts.
You can take my contracts, go to the bank,
pull -- you know, pull the CD. Here it is.

CHAIRMAN: But somehow that thought
gets broken into how your licensed as a seller?

MR. REINHARD: Oh, I think that jumps
ahead a little bit.

CHAIRMAN: No. You're on track, but
what he's saying is that somehow we categorize
our license to fit at least one angle of what
you just said.
MR. REINHARD: Okay.

MR. McCULLOCH: But wouldn't you do that when you look at the form, though?

MR. STALTER: Yeah. I think that's exactly it. It's on the application when you -- for the license --

MR. McCULLOCH: Yeah. It's on the application.

MR. STALTER: -- is to check the boxes. It's kind of like what Don said earlier, you know, is that they're going to certify you, and if they want to check insurance and joint account, your form will say -- will include the certification that eliminates the trust requirement, so I think that's the first document to start with.

MR. REINHARD: Well, I think that jumps a little --

MR. McCULLOCH: So, before you go out, someone has got to look at the form and say this gentleman here is strictly joint account, so we know that that's what we're going for. We're looking for joint accounts, we're not looking for -- we're not going to go in and say, now, where is your trust --
MR. REINHARD: Right.

MR. McCULLOCH: -- and why don't you
tell us, and kind of hold --

MR. KRAUS: But does that mean that
that person who does only joint accounts is
not licensed to do anything else, or they just
happen to not do anything else?

CHAIRMAN: Yeah.

MR. McCULLOCH: Well, I thought your
license, you can do whatever.

CHAIRMAN: You're subcategorizing the
seller license.

MR. REINHARD: Oh.

CHAIRMAN: Instead of one seller
license hanging up here, now do you have to
have both? Do you have to have a seller and
then --

MR. STALTER: No. No. No. We're not
talking about multiple licenses. I think
we're just talking about how you license these
people, that you get the right information to
start with. I don't even see this as an
emergency rule --

MR. REINHARD: No.

MR. STALTER: -- I just see this as
just thinking ahead.

    CHAIRMAN: Oh, okay.

    MR. STALTER: How to identify what they're selling.

    CHAIRMAN: So, we're almost back to the certification.

    MR. EGGEN: So, it's still one license as a seller, but when I go in there, we would know from the application process that we're only looking for joint accounts in this establishment.

    MS. CLARKSTON: Maybe not looking for, that's all you should find.

    MR. REINHARD: Yeah. There you go. Yeah. We're coming around to the thing.

(Several people talking simultaneously.)

    MR. KRAUS: All right. But, of course -- but the comment towards this section was going towards whether there should be consideration of different licenses.

    MR. STALTER: Yeah, that -- you know.

    MR. KRAUS: Which is whole another thing.

    MR. STALTER: Yeah.

    MS. DUNN: Yeah, I don't --
CHAIRMAN: I don't see that one.

MR. STALTER: Yeah.

MS. DUNN: I mean, we don't even have that for funeral establishments.

MR. KRAUS: No, I'm not for it. I just feel that I should bring them up because they were brought to me, so --

CHAIRMAN: Okay. Lori has a question.

MS. HAYES: I'm going where Connie was going, and what if you classify -- okay. My -- I'm a seller, I'm only doing joint accounts that I'm telling you. I have my trust at the bank that you know nothing about, so you come in and you're looking at my joint drawer that says, hey, all these contracts are joint accounts. Nobody is ever going to know that I have a trust account. Nobody is ever going to look at those contracts to know if my trust is where it should be.

CHAIRMAN: Okay.

MR. REINHARD: Complying. Right.

MR. MCCULLOCH: But you wouldn't know that anyway if they -- if that's the route they're going to take because they could -- again, they could hide all that, you know, or,
you know, I could talk about -- (inaudible) --
all the time, you know. Those never get into
a file anywhere, it's just that --
(inaudible.) Those, you're never going to
find anyway.

MR. EGGEN: Exactly. There's no
paper trail.

MR. MCCULLOCH: Yeah.

CHAIRMAN: Isn't that kind of that
certification, though, that we're talking
about that you're going to actually say I'm
doing this, I'm doing this, I'm doing this,
I'm doing all of these, and then you're
certifying to the Board in writing that that
is what I'm doing, but my mind just caught --
remembered something. I think I'm right.

Under the joint accounts, under the trust,
even under the insurance, the reporting of
that at the end of the year and the annual, I
mean, it's going -- it's supposed to show
everything that you did; right?

MR. STALTER: Yeah. But you might be
talking about three different annual reports.

CHAIRMAN: Okay. So, the annual
report then almost needs to tie with the
certification where you could cross-reference those.

MR. McCULLOCH: Well, like Lori said, if someone was out to try to hide that, they're just never going to send in any annual reporting on it, either, so you're never going to know that. The way it will come up is when they can't afford that funeral when that person comes in there and then you get in the middle of it.

CHAIRMAN: Right. And then you go look at all of it and see if --

MR. EGGEN: They're not going to fund it to begin with.

MR. McCULLOCH: They aren't going to fund it, but if they can't take care -- like Ms. Fincher, if she can't take care of the funeral -- (inaudible) -- will collapse on her.

MR. OTTO: Right.

MR. McCULLOCH: People will say, hey, she won't provide, she can't do a casket, you know.

MR. EGGEN: Right.

MS. CLARKSTON: I think something else that should assist with that is the sequential
numbering of the contracts that's required further back in the -- I think it's like 460. Not that that's going to be the catchall because you could run two different sequential contracts for joint -- I should -- (inaudible.)

MR. McCULLOCH: Well, I'll use Jane again. What she did to all of us -- I say all of us -- to us, because I don't know what happened with the other guys, but to us, we do number all of our contracts, have for a long time. But what she did is she took her applications and she just made a photocopy of them, and it was that same contract 0001, you know. And so, everybody that came in, I don't know what she did, but if someone questioned it, I'm sure she said, yeah, you know, I ran out. I just made a copy. This is fine. They trusted her. So, that really doesn't help us.

MS. CLARKSTON: And I -- as I said that, you're right, because somebody could just --

MR. OTTO: They just make copies.

MS. CLARKSTON: -- make copies or run two different sequential numbers for whatever
kind of funding they're using.

MR. McCULLOCH: Exactly.

CHAIRMAN: Well, they would almost have to. They've either got -- they would either have to run different sets of -- if you're using preprinted forms, you almost have to do that or you're going to have to have a check-mark system built into one form that says this number is this, this number is this, this number is this, which would not, in the reporting process, come up with the numbers being in sequential order. So, you would have to have different runs of numbers.

MR. McCULLOCH: Yeah. Because you have multiple people out selling --

CHAIRMAN: I'm going to do it all. Personally, I'm going to do it all. I'll have insurance, I'll have trusts, I'll have joint accounts, I'll have it all, so --

MR. REINHARD: Well, good for you.

(Several people talking simultaneously.)

CHAIRMAN: Well, but I will. I'm thinking personally. I will have to run a different set of numbers.

MR. REINHARD: I'll send my insurance
contracts to you then because I'm not doing
insurance. Oh, I'm sorry, Todd. I'll give
him one and you one.

(Several people talking simultaneously.)

MR. REINHARD: But what about -- okay.

Let me ask this question: If you're going to
go back and do --

(Several people talking simultaneously.)


MR. REINHARD: If we're doing audits
five -- not five years back. Like, if you're
doing audits and you go back, I mean, don't
you think we ought to have a record these guys
were in a trust to begin with, and in 2009,
they went -- in August, they went to joint
accounts or vice versa, they went from joint
accounts to -- I mean, so you know what
they've done in the past so when you went back
and audited them, what you could pick up from
the records, I guess, that they send in that
they had trusts and where it was, or joint
accounts and where they are. Do you see what
--

CHAIRMAN: The current record or
seller report actually already says that. I
did this many trusts, this many, you know, this, this many this, so --

MR. REINHARD: In the past.

CHAIRMAN: In the past.

MR. REINHARD: So, are you looking for today? I mean, like, what are you doing now, or what have I done before, or what am I going to do?

CHAIRMAN: Good question. Where do those numbers start? Do you start with #1?

MS. CLARKSTON: I'm just sitting here thinking. When you get to that, that's really going to require some more clarification.

CHAIRMAN: Yeah. I know.

MS. CLARKSTON: For your scenario and then just what John had indicated with agents, because the agent gets contracts one through ten in their packet and then go on. I mean --

MR. REINHARD: Well, you're talking about two different things. What I'm talking about, like, you know, how you clarify that on a form if you just have a form sent to them, like, when did I start the trust, you know, is it still current, you know, when did you start joint accounts, are, you know, you starting
from August the 29th or 28th on. There's, you know --

CHAIRMAN: The gift that keeps on giving.

MR. REINHARD: Well, you've got -- I mean, these -- you know, somebody that's going to do the inspections or -- not audits, but whatever you're going to do, is going to have to know something when they walk in and say, okay, Mr. Reinhard, we have a record that you had a trust between 1982 to 2009, and we want to pull some of those contracts out and -- you know. Or like you say, we're going to be all three. Well, okay, I've got -- you do some joint accounts; let's pull a sampling of those. Let's see your, you know, insurance.

CHAIRMAN: You had something to respond to that.

MR. STALTER: No. I mean, I do, but I'll make a submission. We're kind of battling with this in Kansas, too, with cemeteries. I mean, how can you, you know, do an efficient inspection? I mean -- (inaudible) -- because they don't get paid enough to do it. But, basically, how do you
cover all these bases the quickest way, and
then turn it over to somebody like him to know
what he's looking for?

(Several people talking simultaneously.)

MR. STALTER: Okay. I'm just trying
to make a point.

MR. MCCULLOCH: No. That's a good
point. (Inaudible.)

MR. STALTER: And we're talking -- and
part of it is on the cemetery side, too, is
that these contracts -- I mean, that -- we
were trying to get rules about what a contract
should even look like. In other words, when
you send it in -- and, you know, if you guys
decide you're going to do cemeteries, what is
-- you know, what -- we know what a preneed
funeral contract looks like. You know, what's
this thing over here?

MR. REINHARD: Yeah. The card.

CHAIRMAN: Any other comment?

MR. REINHARD: Lunch.

CHAIRMAN: I think it's time to go to
lunch.

MS. DUNN: Well, we don't have lunch
here, but go ahead.
CHAIRMAN: Okay. I thought we were ready, so --

MR. KRAUS: Well, let's see. Well, there's a couple of other things in K39 that you can talk about or not. Let me see. I was looking at one awhile ago. Would you want to provide explicitly in rule that a new license is required if there's a change in ownership? I mean, I think you can imply that from the statutes, but if you want to explicitly set that out in rule, that could be helpful.

MS. EULER: To mirror the way it is for funeral establishments.

MR. KRAUS: But if a seller sells their business, the license doesn't go with it. They've got to come in and get a new license.

MS. EULER: They can't sell the license.

MR. OTTO: Well, that depends.

MS. EULER: Right.

MR. OTTO: If you want to mirror funeral establishments, it's pretty easy because that's set out in funeral establishments. But if it's a sole -- if
eliminating one owner does not create a new license, adding a new owner does, but the sale of stock does not. So --

MR. KRAUS: Yeah. And setting that out.

MR. OTTO: The funeral-establishment language is pretty easy.

CHAIRMAN: Do we need that?


CHAIRMAN: Okay. All right. Becky says we need that, so just prepare something.

MR. KRAUS: All right.

MS. DUNN: There doesn't appear to be opposition.

MR. KRAUS: Set out that the seller is the one responsible for the money. That was suggested.

MS. EUWER: So that if the agent doesn't get the money to the seller, the seller acknowledges that they are the one on the hook; they're responsible. I mean, that's implied in the new law, but, again, a rule to just say that very straightforward and clearly.

MR. KRAUS: And it's implied in
agency, too, but --

MS. EULER: Right.

MR. KRAUS: -- not explicit.

MS. EULER: Right.

CHAIRMAN: Do you want to set that out more in detail? One more time, Sharon.

MS. EULER: To make it very clear in a rule that the seller is ultimately responsible for the money of their agent. So, if the agent collects the money, but never gives it to the seller, the seller is on the hook for it. I mean, that's --

MR. McCULLOCH: Well, that's why you guys wanted to license the preneed people, to put them on the hook. We were always on the hook. (Inaudible.)

MS. EULER: Right. And it still is. It still is that way because --

MR. McCULLOCH: No, you took us off the hook by giving them --

MS. EULER: No, we did not. Under agency law --

MR. McCULLOCH: That's what you wanted.

MS. EULER: No. Under agency law, that's the way it works. And so --
MR. REINHARD: (Inaudible.)

MS. EULER: -- what this suggest is, is that a rule is clear.

MR. McCULLOCH: Then why do you want to make these poor counselors who never did anything have to have a license and fees and all that stuff?

MS. EULER: It wasn't me. The legislature did that.

MR. McCULLOCH: Well, yeah. But I heard you guys up there going to try to help us on that.

MS. EULER: But the law is what it is.

MR. KRAUS: Well, the law is the law now, and that's what we're talking about implementing.

MS. EULER: Right.

MR. KRAUS: And --

MR. McCULLOCH: The preneed company was always -- or the seller was always responsible for what they did. You're right.

MS. EULER: Right.

MR. KRAUS: Yes. I agree.

MS. EULER: And that's what we are suggesting be in a rule and that that's said
very clearly and distinctly so there is no
question about it.

MR. McCULLOCH: It is -- (inaudible.)

MS. EULER: Then what?

MR. KRAUS: Right. But if someone
asked me, well, what section in 333 or 436
says that, well, I would probably have to
point to three or four sections and connect
them up and explain how they relate instead of
just saying, well, rule so-and-so says they
are.

MS. EULER: Right.

CHAIRMAN: Don Otto?

MR. OTTO: If you do do a rule like
that, keep in mind that although this is not
explicit in Senate Bill 1, it sure is pushing
people in that direction, is for the consumers
to be sending the money straight to the bank,
and that's how a lot of ours do it; you know,
there's a coupon book or payment book or --
so, the agent -- just be careful how you word
the regulation because it may be very well
that the consumer is sending the money
straight to the trustee.

MS. EULER: And that's fine.
MR. OTTO: Yeah. I'm just saying, if you're going to add -- if you're going to try to codify the common law on agent principal stuff, be careful.

MS. EULER: We just wanted to make it clear that the seller is responsible for the acts of their agents.

MR. OTTO: Yeah. I'm just saying, I can see a wording of that that made it sound like you're also responsible --

MS. EULER: No.

MR. OTTO: -- if the consumer is putting in the mail a check to the bank, and I don't want that, for sure.

MS. EULER: No. No.

CHAIRMAN: So noted. Anybody else?

MR. REINHARD: Lunch.

MS. EULER: (Inaudible.) It's not here yet.

MR. REINHARD: Well, maybe these guys will want to go to lunch.

MS. EULER: We can break for lunch anyway.

CHAIRMAN: Well, let's finish the -- if there is more thought from our others. Two
more points in that last bubble and then we
can turn the page and stop.

MR. KRAUS: All right. Comments

regarding provider. Licensure may apply here,
too. Oh, that's just think of what we did
before, which we have done. If you fail to
renew and two years pass, it becomes void.
Have to reinitiate application process.

CHAIRMAN: Now, that's been an issue
because when they don't get their renewals in
and then we're out how many do you perform --

MR. MAHN: Doesn't that mirror the
other licenses?

MS. EULER: Yeah.

MR. MAHN: Doesn't that mirror all the
other licenses, though?

MS. EULER: Yeah.

MR. KRAUS: Then they do; right?

MS. EULER: Yeah.

MR. MAHN: Leave it like it is.

MR. KRAUS: And everyone agrees?

MS. EULER: We always want to be
consistent.

MR. REINHARD: Second.

CHAIRMAN: Okay.
MS. DUNN: So, it's okay.

MR. KRAUS: So, we're agreeing that that's clear and we don't need to do a rule?

MS. DUNN: No. We want to do a --

MS. EULER: We want to do a rule to mirror --

MR. KRAUS: We want to do a rule. All right.

MS. DUNN: Is that what you were saying, Jim, that we will do a rule?

MR. REINHARD: Yes. Yeah.

(Inaudible.)

MR. KRAUS: Have we hit everything in K39 then?

CHAIRMAN: I think so.

MR. KRAUS: Did we talk about sellers not licensed at the time of need? Did we talk about that one?

CHAIRMAN: Well, I thought we did, because there's the category and we talked about everything else under it, if the seller is not licensed.

MR. KRAUS: I think that goes towards the license at the time the contract is entered into, but then at the time of need,
they're no longer licensed for whatever reason, and what happens? Was that --

    MS. EULER: Uh-huh. I think we want to make it clear that if the seller is responsible for the money, and they can't escape their responsibilities by not just -- by just turning in their license.

    MR. KRAUS: By not renewing or surrendering.

    MR. OTTO: Well, this is on Chapter 333. I'm not sure you can do anything. I mean, if they don't have a license, you can't take their license away. But, I mean, under 436 -- under Senate Bill 1, 436, I think there's already a provision in there that says --

    MR. KRAUS: That you're practicing without a license.

    MS. EULER: Right.

    MR. OTTO: -- we're coming after you whether -- you know, we're coming after you no matter what.

    MS. EULER: Right. And my thought on this rule was just to restate and make that very, very clear.
MR. OTTO: I think that should be under 436 regulations, not 333, though. That is -- like I say, you can't take somebody's license away that doesn't have a license, so -- and just before you break, one thing -- I think this kind of falls under there, maybe, sort of. But it was really part of this emergency rule that we passed out, just something to throw out. You know, although the annual report is due October 31st, the seller gets to pick what 12-month reporting year they use, so you can use December 1 to January 1 or whatever. You just hand your form in on October 31st. What we're planning to do is to close off our -- to use for your reporting year this time August 28th so that we'll have a year report under the old law, and then our next year will all be under the new law. Now, that's certainly not required that anybody does that, but I would urge that that be a consideration or a suggestion for people because you get to pick what your reporting year is --

CHAIRMAN: Right.

MR. OTTO: -- and just file it on
October 31st or before October 31st. So, we're just going to make our reporting year end August 28, 2009, so that we have one year under the old law, and then our next time we report, it'll be a full 12 months under the new law. It makes life a lot easier and I think --

MS. DUNN: I think consistency for everybody would be better.

MR. OTTO: Yeah. And if there would be a way to require that, that would be a great thing. I don't know if you can, but we're going to do it as long as you don't have a problem with that, and that's what we thought we would do.

CHAIRMAN: I think that makes a lot of sense myself.

MS. EULER: I have an update on the NPS situation if you would like that at this time.

MR. REINHARD: Oh, they found the money?

MS. EULER: No.

MR. REINHARD: Oh.

MS. EULER: That's not the update I have.
MS. DUNN: Are we finished with that page?

CHAIRMAN: Are we finished with that? Is everybody okay with this? Okay. So, look into the thought of that. I think that makes a lot of sense, the August 28th and what we can do with that. Okay. Sharon has a report that she would like to give and, I guess, by the smile on her face, we're going to like that report, maybe. I don't know.

MS. EUER: Oh, no. I didn't say that.

CHAIRMAN: Oh, okay.

MS. EUER: This is not the update you're hoping for. This is a little bitty update. I talked with -- I told you I talked with the SDR's counsel this morning about people getting claim packets who don't have NPS contracts. They have looked at a few that have come in and, thus far, every one they've looked at does, indeed, have an NPS policy. Some of them have NPS cemetery policies, but they haven't found anyone yet who sent in a claim form who doesn't have an NPS contract. They haven't looked at a lot. They're not going to look at a lot, but the ones they've
looked at, so I just wanted to report that.
So, if you're getting calls from people saying
I don't have an NPS contract, well, they might.

MS. DUNN: But it could be a
cemetery-related --

MS. EULER: It could be a
cemetery-related. And, again, the folks from
Texas, Rachel called me back this morning, as
well, confirmed that, you know, the law
requires that they send out to everybody in
their database, and so, that's who they sent
out to, so that's it.

CHAIRMAN: All right.

MR. REINHARD: They still haven't
found the money?

MS. EULER: I don't know.

MR. REINHARD: Okay.

MS. EULER: I didn't get that update
yet. They haven't told me if they have.

MR. MAHN: (Inaudible.)

MR. REINHARD: Get a backhoe and start
digging.

MR. MAHN: (Inaudible.)

(Several people talking simultaneously.)

CHAIRMAN: Need a motion to go into
closed.

MR. MAHN: Motion.

CHAIRMAN: Second?

MR. McCULLOCH: Second.

CHAIRMAN: John second.

MR. REINHARD: They got along for once.

(Off the record)

CHAIRMAN: Let's go.

MR. KRAUS: Agent registration.

First, on the transition initial. A notice of intent will fall within what we've already discussed. And K42, we've already talked about. Of course, we'll need a form. Do we already require notification of any change of info within 30 days of the change? That's in K43.

CHAIRMAN: Mimicking, again, funeral director, embalmers, that thing.

MR. KRAUS: For everybody.

CHAIRMAN: I would assume, yes.

MS. EULER: Yes.

MS. DUNN: So, the standard --

MS. EULER: Just because it's a --

MR. KRAUS: All right. We talked about that.
MS. DUNN: B is a big one that we're going to table.

MR. KRAUS: Right. We're going to hit that in a subsequent meeting. K45, we already talked about, respect to the seller and provider. I think K46 we already talked about, too.

(Several people talking simultaneously.)

MR. KRAUS: We talked about potentially coordinating the -- or did we? Did we talk about K47?

MS. DUNN: We were talking about when we look at our projections to see how that will work with our money each year.

MR. KRAUS: Right.

MS. DUNN: And we'll certainly consider that as we talk financials.

MR. KRAUS: Okay. So, we're going to hit that later?

MS. DUNN: Yes.

MR. KRAUS: The first part of K48 set out whether a licensed funeral director must also be a registered preneed agent to sell.

CHAIRMAN: That's established already, isn't it?
MS. EULER: Yes. In subparagraph 4.

MS. DUNN: It's on the next page.

MS. EULER: I mean, it doesn't say it exactly, but it certainly implies it.

MS. DUNN: Any funeral director acting as a preneed agent shall be required to report the name and address of each preneed seller.

MR. KRAUS: Do you think that needs to be explicit in rule or does the statute cover that well enough?

MR. MAHN: I think it should read any -- I'm just -- this is just off from the hip, quick. Any funeral establishment acting as a provider shall be required to report the names and addresses of preneed sellers. That's the way I would think it ought to read.

MS. EULER: This is agent. This is sales agents.

MS. DUNN: Yeah. We're not in that section yet.

MS. EULER: We're not on providers.

MR. MAHN: I know that. I'm just --

MR. McCULLOCH: The establishment is not the agent, though.

MR. MAHN: Yeah. But a funeral
director acting as a preneed agent —

MS. EULER: Yeah. Selling the preneed contracts.

MR. MAHN: -- shall be required to report the names and addresses of each preneed seller?

MS. EULER: Uh-huh.

MS. DUNN: Uh-huh. See, the new law requires --

MS. EULER: Funeral directors need to be on the registry as registered sales agents.

MR. MAHN: I was reading about the -- I got you. Okay. Got you. They may not actually work for a funeral home, they might work for a preneed company.

CHAIRMAN: So, is that saying, in other words, every seller shall --

MS. EULER: Right. Or if you're selling for yourself --

CHAIRMAN: -- show who -- is registered as agents; right?

MS. DUNN: Uh-huh.

MR. REINHARD: Like in my case, since I own a funeral home, I just fill out the form and send it in -- (inaudible.)
MS. EULER: Yes. Yeah. Right.

CHAIRMAN: So, then are we just turning it around and then turning it around and saying every agent has to tell who they're selling for?

MS. DUNN: Any funeral director acting as a preneed agent shall be required to report the name and address of each preneed seller for which he is authorized to sell.

CHAIRMAN: Okay.

MR. McCulloch: I think what they're trying to do, they're trying --

CHAIRMAN: Cross-reference? Is this a cross-reference?

MR. McCulloch: (Inaudible) -- cross-reference and find out who did what and who and --

CHAIRMAN: Does that make --

MS. EULER: Right.

MS. DUNN: See, the agent has to tell what seller he's working for. Well, in this, a funeral director, acting as a preneed agent, would have to say what seller he is working for.

MS. EULER: Right.
MS. DUNN: Same as an agent.

MS. EULER: Right.

CHAIRMAN: So, that's just a cross-reference, going backwards?

MS. EULER: Right. Right.

MS. DUNN: But there is nothing set out on how to do that, so that's why it was suggested a rule would explain how a funeral director can be an agent.

MS. EULER: How funeral directors are deemed to be agents.

MS. DUNN: Yes. Are deemed to be agents. It says it in here, but that's --

MR. MAHN: Shouldn't funeral directors be exempt to be agents?

MS. EULER: No.

MS. DUNN: Well, the law says not, so you would have to get the law changed.

MR. MAHN: I'm just throwing it out.

MS. DUNN: Yeah.

CHAIRMAN: It should be.

MR. REINHARD: But some of them need to take the test, too, Todd.

MR. MAHN: Right.

(Several people talking simultaneously.)
CHAIRMAN: Okay. So, yes?

MS. EULER: Do you want to be the name behind saying that --

MR. McCULLOCH: Okay. Yes on what, now?

MS. EULER: -- every licensee needs to retake the Missouri Law to maintain their licenses?

MR. REINHARD: I'm just quoting -- (inaudible.)

CHAIRMAN: Then we forget all this. No.

MR. McCULLOCH: So, what's the question, again?

CHAIRMAN: That the funeral -- the funeral director, as an agent, has to record -- report who he sells for; is that what the -- did I say that correctly?

MS. EULER: Yeah.

MR. McCULLOCH: But that's part of the law; right?

MS. EULER: Yeah.

CHAIRMAN: Yeah. It's just making it more clear, I guess.

MS. EULER: That the funeral director
needs to check the box that he wants — that
he's going to sell preneed.

MR. KRAUS: And indicate who he's
selling it on behalf of.

MR. McCULLOCH: And that's just going
to be on the application, just another spot
that says, hey, I am going to sell preneed?

MS. EULER: Yes. Yes.

MR. McCULLOCH: And it happens to be
for myself?

MS. EULER: Yeah. And you list who
your seller is, and if that's yourself, then
you list that.

MR. McCULLOCH: That's yourself, yeah.

MR. KRAUS: If you're your only
seller, then you just list you.

MR. REINHARD: Or anybody in the
funeral home that's got -- is the funeral
director would be listed.

MR. McCULLOCH: Yeah. Somebody that's
working for you and you're the seller --

MS. EULER: Yeah.

MR. McCULLOCH: -- then, obviously,
they'll mark it.

MS. EULER: Yeah.
MR. REINHARD: On their licenses.

MR. McCULLOCH: Yeah.

MS. EULER: Right.

CHAIRMAN: That's all yeses, I take it, so yeah.

MR. REINHARD: I don't think you've got enough help to do all this.

MS. EULER: It'll be okay, Jim.

MR. REINHARD: No, it won't. Look at her, she's already faint or something. She's still looking for a mint.

MS. DUNN: No. It gives me a headache, there's so many cross-references.

MR. KRAUS: Let's se. Form --

CHAIRMAN: Just that we need a form.

MR. KRAUS: A new application process, we covered that. Fees, we're going to hit later, K50, K51, first name licensed providers.

MR. McCULLOCH: So, the next one is the same thing. After two years, you're out. You've got to go back and take the test and start all over?

MS. EULER: Yeah.

MR. McCULLOCH: If not, you just catch up with back fees and whatever penalty you
might enforce?

MS. EULER: Yeah.

CHAIRMAN: Well, I guess that only makes sense. But how could they be a provider unless they're licensed?

MR. KRAUS: Well, I mean, someone could be providing and not be licensed, I guess.

MS. EULER: Right. So, you can't name a funeral home as the provider who is not a licensed -- or you can't name Cosco as the provider unless they're licensed as a provider.

CHAIRMAN: So, we need to set that out.

MR. KRAUS: It seems kind of basic, but --

MS. EULER: It's an option, yeah.

MR. KRAUS: Could set that out if you wanted to. Or if you don't think it's a big deal --

MR. McCULLOCH: Now, then they do it, we have to have somebody on this end that checks it to see if they don't match up. I mean, that's going to take quite a lot of work.

MS. EULER: Well, as part of the investigation audit, that's one of the things
that will be checked.

MR. McCULLOCH: But, I mean, as it comes in here, is somebody going to check them? No? You'll just wait until --

MS. EULER: Because we don't get the preneed contracts.

MR. KRAUS: You mean, as cases come to the Board's attention for other purposes --

MS. EULER: Right.

MR. KRAUS: -- then they'll pull those files and that information will be in the file to cross-reference then.

MS. EULER: Right.

MR. McCULLOCH: Got you.

MS. EULER: Right.

MS. DUNN: And what we're going to attempt to do, which this hasn't -- these meetings haven't occurred yet, there is a licensure system utilized by the entire Division. And so, we're hoping to develop licensure relationships for those licenses that corresponded with each other. Now, right now, we have a licensure relationship, like Dunn Funeral Home and 25 funeral directors. So, then when we send out the renewals, we say
please verify that the attached listing still
work with your funeral home, and sometimes
they say, oh, no, they changed, sometimes they
didn't. Then we have to change those
relationships in our licensure system. So,
we're hoping eventually -- you know, through
this process, we're going to develop these
relationships in our licensure system, so if
you're an agent and you're an agent for a
seller and you're -- you know, you're a
provider in an establishment, all those
cross-checks.

MR. McCULLOCH: I'll bring this up.
Are you going to require that they send in the
original and, if they don't, then it gets
kicked out. If they cash their check and do
all that; do you know what I'm talking about?
You don't remember?

MS. DUNN: What, the original?

MR. McCULLOCH: Okay. So, you've all
got these people handle the license and stuff,
and so, the money doesn't actually come into
your office, it goes to another department;
okay? So, we send in our licenses on all of
our funeral homes, and it has to be originals.
So, we make a copy for our file. So, we accidentally -- the person -- the secretary in the office accidentally puts a copy in instead of the original. And so, we get written up, it goes through this whole process that long, wastes everybody's time and effort. You all did that to us.

MS. DUNN: Since I've been here?

MR. McCULLOCH: You cashed our check. Oh, yeah. You were involved. It was on Maupin -- the Auxvasse location. Anyway, we sent them all in at one time, so you figured you got a lot of them. And so, they have to be originals, so that office gets our originals and they notice that Auxvasse is a copy. So, they write us up, but you cashed our check. You didn't notify us, because we could have just ran it over to you.

MS. DUNN: Is it a copy of a renewal?

MR. McCULLOCH: Yeah.

MS. DUNN: A renewal. Okay. When you said license, I was confused.

MR. McCULLOCH: They shouldn't have done that. Someone should have just picked up the phone and said, hey, guys, obviously, they
made a mistake here. There had to be an
original because how do you get a copy if you
don't have an original. Just a little common
sense would go a long way in some of this.

    MS. DUNN: Division? I mean --
    MS. CLARKSTON: Well, part of it's the
process internally. When renewals come in,
they're processed by the central processing
unit, so those individuals aren't aware other
than they are giving -- they don't have a
personal relationship with you to pick up the
phone and call you, obviously, and that's --
(inaudible.)

    MR. McCULLOCH: Well, I was thinking
maybe call then.

    MS. CLARKSTON: Well, there's a
criteria that they kick the renewals out and
that sounds like some of the criteria. They
want an original renewal. If it's not an
original renewal, it's rejected. But all
money, when it comes into the Division, by
policy, and I even think rules and regulations
with the treasurer's office, has to be
deposited. So, there is some of that that's
happened and, you know, it is unfortunate.
I'm not sure. I wasn't involved in the situation with it or how all that came to be, but that's part of it, internally, what happens. It gets here, then it goes here, and it's kind of a long, drawn-out process internally. Now, do I think that we could probably figure out a way to work that out? Possibly, yeah, but I'm not with this Board, either.

MR. MCCULLOCH: Well, it's easy for me to say, but it just seems like if you have this stack where this company sends all this in and there happens to be a copy and they know it's supposed to be an original, then common sense would tell you, well, there's got to be an original somewhere. But what they did is they ran it through your all's process, which causes everybody a lot of extra work, paperwork. To us, it's just frustrating, you know, because now we've got to respond to it, the attorney general gets it, we've got to respond to them, and all those people down the line. Nothing is going to happen, you know. But, still, you just -- it just takes time and effort.
MS. CLARKSTON: That part of it is outside the Division. That’s a Board issue.

MR. McCULLOCH: Yeah.

MS. CLARKSTON: I mean, but depositing and processing, that comes into the Division.

MR. McCULLOCH: Well, our fault was is, yeah, you’re lighting us up because you think we’ve done something wrong, but, yet, you cashed our check; you know what I mean?

MS. CLARKSTON: Yeah.

MR. McCULLOCH: And I understand why they did it.

MS. CLARKSTON: It’s just looking at it differently where we’re at. I mean, I think we’re kind of going to the same direction, but it’s process.

MS. DUNN: We’ll do our best.

CHAIRMAN: I’m curious just in the copy that was not accepted was a copy of the renewal application? Is that what was --

MR. McCULLOCH: Yeah. You know the stuff when you renew your license for your funeral home every two years?

CHAIRMAN: That you fill out. The papers that you fill out.
MR. McCULLOCH: Yeah. Okay. We made a copy for our file.

CHAIRMAN: Uh-huh.

MR. McCULLOCH: But when the lady was doing all of these -- it's not just like one. I mean, there are several funeral homes there -- she accidentally puts the copy in instead of the original. When it hits that office, they're going through those, and then we get written up on the thing.

CHAIRMAN: Okay. I just didn't realize that would get thrown out if it wasn't original. I had never heard that thought, but that's okay. I was curious if that's what it was.

MR. McCULLOCH: Did you say why would it get thrown out?

CHAIRMAN: No. No. I just said I never heard that thought that that would -- that is something the Division would not accept.

MS. DUNN: And I don't remember the circumstances.

CHAIRMAN: I just never heard that. That's why -- I wasn't sure what it was that --
MS. CLARKSTON: It's not the Division that wouldn't accept it.

MS. DUNN: Yeah.

CHAIRMAN: Well, whoever.

MS. CLARKSTON: Yeah. It was criteria for renewal, so if the criteria came in and said everyone had to submit original and XYZ documentation, if the original XYZ documentation isn't received, the Division staff isn't in a place where they can communicate with licensees, so it's rejected back to the Board. So, at that point --

MR. KRAUS: And then each Board decides at that point what they're going to -- how they're going to act on it, if at all.

MS. CLARKSTON: Exactly.

MR. McCULLOCH: Well, that Board took it on to the fullest extent.

MR. REINHARD: What year was that?

MR. McCULLOCH: I don't know. I'd have to go back and --

MS. DUNN: It had to be before 2002.

MR. KRAUS: For untimely renewal or what?

MS. DUNN: Because I don't ever recall
MR. KRAUS: Was that for an untimely renewal; was that the action?

MR. McCULLOCH: Oh, no. No. It was done timely, it was just that we gave them a copy.

MR. KRAUS: No. I mean, when they later took action, was the allegation an untimely renewal because the copy was submitted instead of the original?

MR. MAHN: Fraud?

MR. McCULLOCH: It probably was, now that you mention it. It probably was. And it's, like, but you got our money, so, you know. I mean, obviously, there's an original out there. It just seemed like someone should have known.

CHAIRMAN: Well, we'll --

MR. KRAUS: Yeah. See, I don't know if the Board today would have taken the same way.

MR. REINHARD: Would somebody write him a damn check and give him his money back?

MS. CLARKSTON: No. There's paperwork to that. We can't do that.
MR. MAHN: What did you get for that?
MS. DUNN: Since 2002, we tried to
refine that process.
MR. McCULLOCH: What did you say now?
CHAIRMAN: Let's go on.
MR. MAHN: Did you serve time?
MR. OTTO: It'll show up on the audit.
MS. CLARKSTON: Our processes,

obviously, are not perfect.

MS. EULER: We are the State.
MS. CLARKSTON: We are the State.
MR. KRAUS: Were we doing the form or

a rule or no?

(Several people talking simultaneously.)
CHAIRMAN: K51 is okay. Go as it is.

Turn the page.

MS. DUNN: I thought, yes, we're going
to address it.

(Several people talking simultaneously.)

MS. EULER: I don't think there needs
to be a form.

MR. REINHARD: On what?

MS. EULER: Because there's nothing --

no reporting there.

MS. DUNN: A form developed by rule?
MS. EULER: There is no reporting, so why would you need a form?

MS. DUNN: Oh, that's true.

MR. KRAUS: Well, you have to provide the name and the address, so you have to provide it somehow.

MS. EULER: No. You provide -- oh, the name -- that's on the renewal form.

MR. KRAUS: Right. That's where I was going. We're developing that form anyway, so --

MS. EULER: Right. Okay.

MR. KRAUS: -- address it on that form?

MS. EULER: Yeah. Yeah. It's all one form.

MR. KRAUS: All right. K52.

MS. EULER: Yes.

MS. DUNN: That's kind of what I was addressing earlier.

CHAIRMAN: Okay.

MS. EULER: Or you could do it as a separate page to the funeral-director application license. You could do it -- because I know that form is -- there is not a lot of room to add anything.
MS. DUNN: Is there anything to be addressed by rule?
CHAIRMAN: Is the current form applicable to that now?
MS. EUHLER: No.
MS. DUNN: No. We would have to just make modifications.
CHAIRMAN: Okay.
MR. KRAUS: That's what I would think, we would just modify the form.
CHAIRMAN: So, do you need a rule for that?
MS. EUHLER: Yeah. No.
CHAIRMAN: No?
MR. KRAUS: I think we just modify the form.
MS. EUHLER: We just modify the form.
CHAIRMAN: The question is, do we just modify the form that goes with all of K52?
MS. EUHLER: Yes.
CHAIRMAN: And we're hearing yes. Everybody else in yes?
MR. MAHN: Yes.
MS. EUHLER: I don't have a vote, so --
CHAIRMAN: Yes? Jim?
MR. REINHARD: Yes.

CHAIRMAN: John?

MR. McCULLOCH: Yes.

CHAIRMAN: All yes. So, modify the form.

MR. KRAUS: K53, fees, we're going to hit later. K54, address age and registrations to primarily -- let's see. And we have already covered that. We also need to consider a requirement to take Missouri Law exam in time frames.

MS. EULER: Does that mean that we need to set out the time frame in which you have to have taken the Missouri Law?

MR. KRAUS: I think so.

CHAIRMAN: For preneed agents; correct?

MS. EULER: Uh-huh. So, if you took the Missouri Law 20 years ago, you can't use it to get an agent license? I'm throwing -- that's a question.

CHAIRMAN: Not for -- that statement would be incorrect for already licensed funeral directors.

MS. EULER: So, do you want to make -- put some restrictions on that for agents?
MS. DUNN: Right now, the current regulation says if you haven't completed the Missouri Law in the last 12 months, you have to retake it. That's what the current reg says.

MS. EUER: For funeral directors?

MS. DUNN: And embalmers.

MS. EUER: And embalmers. Do you want to be consistent for sales agents?

MS. DUNN: Now, there is --

MR. REINHARD: A rule change.

MS. DUNN: -- that's -- you know, that's being processed that would change that.

MR. MAHN: To what? What would it change it to?

MR. REINHARD: Any bartender in the state can have a license.

MS. DUNN: If you've ever successfully completed the Missouri Law. That was discussed, I think, when Jim was still chairman. I can't remember. If you ever had completed -- successfully completed the Missouri Law, it would count towards a future license.

MR. REINHARD: What it is, is that an
embalmer -- okay. A guy is a funeral
director, he goes to embalming school, he
completes that school. When he completes that
school, he's got to take the funeral
director's test over again. Well, that's
ridiculous. Why do you have to put him in
double jeopardy, so -- you know, we changed --
the rule is being changed that you don't have
to take the test again after completing
embalming school.

MS. DUNN: And after you have
successfully completed the Missouri Law. If
you --

MS. EULER: So, if you took the
Missouri Law in 1969, and from 19 --

MR. REINHARD: It doesn't have a damn
thing to do with this --

MS. EULER: -- '70 until 2009, you've
been selling used cars, and now you decided
you want to be licensed again, do you have to
take the Missouri Law?

CHAIRMAN: I took the national board
embalming test in school in 1987. I can
embalm anywhere in the state -- United States
with that.
MS. EULER: Right.

CHAIRMAN: And even if I did sell cars
for 15 years later.

MS. EULER: Right. Well, and my
question is: Is what do you want the rule to
be in Missouri?

MR. KRAUS: For agents.

MS. EULER: For agents? Do you want
to --

MR. REINHARD: Well, how are you going
to example this? Like, if an agent has a
funeral-director's license, he's a funeral
director, he's going to work for a funeral
home or whatever.

MS. EULER: But what if he doesn't?

MR. KRAUS: What if he's just an agent?

MS. EULER: What if he's just an
agent? What if he's a counselor? Do you
want to set time frames on when they have to
take the Missouri Law or not? I'm throwing
that out as a question.

MR. REINHARD: No. I'd say if you
take the Missouri Law, you've taken the
Missouri Law. You can be a counselor, you can
be a dog catcher.
MR. KRAUS: So, you're saying --

MS. EULER: So, you're saying --

MR. KRAUS: -- don't set out any time frames?

MS. EULER: -- no time frames?

MR. REINHARD: No.

CHAIRMAN: I agree with that.

MR. REINHARD: I don't think these guys need to be put pressure on like that.

CHAIRMAN: I agree with you. What do you two agree with?

MR. MAHN: I would agree with Jim.

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

MS. DUNN: I don't understand.

MR. REINHARD: It's helping you.

MS. EULER: Jim is saying --

MR. McCULLOCH: I'm for it then.

MR. REINHARD: Okay.

MS. EULER: -- that he thinks the --

MS. DUNN: Okay.

MS. EULER: Jim is saying that he thinks that we don't need a rule that says you have to take the Missouri Law within X number of time before you apply. That if you took
the Missouri Law in 1969 and passed it, and
you're applying for a new license in 2009, the
fact that you passed it in '69 is good enough
for 2009; is that correct?

MR. REINHARD: Yes. Yes.

MR. McCULLOCH: So, does that go back
to the gentleman that's wanting to get his
license renewed then? He took the law at one
time.

MS. DUNN: It's not in effect right
now.

MR. McCULLOCH: Oh.

MS. DUNN: There is a rule that is in
progress. Uh-huh.

MR. McCULLOCH: (Inaudible.) Would
that apply to that individual in that
situation?

MR. REINHARD: Yeah.

MS. DUNN: Uh-huh.

MR. McCULLOCH: Let's vote yea.

MS. DUNN: But, now, on a new
application for an agent, we're not addressing
-- they will have to complete the Missouri Law.

MS. EULER: That's the question. They
would have to have passed the Missouri Law at
some time is what Jim is saying.

MR. MAHN: At some time in their life.

CHAIRMAN: At some time.

MS. DUNN: Okay. And if you're an agent and you've never taken the Missouri Law --

MR. KRAUS: You have to take it.

MS. DUNN: -- what are the time -- in order to become an agent, you need to --

MS. EUER: You would have to pass it.


MS. EUER: At some time.

MR. McCULLOCH: Before you can start selling --

MS. EUER: Before you can have a license.

MR. McCULLOCH: -- or funeral directing or whatever the case might be.

MR. REINHARD: Well, wait a minute now. What if they're -- okay. If they're counselors now out there, do we give them a grace period between now and the time they take the test; is that what you're saying?

MS. EUER: That's what the interim rule will do.
MR. KRAUS: Well, that's built into the transition.

MS. DUNN: That's the interim.

MR. KRAUS: If they do the notice of intent, then they'll be good --

MR. MAHN: Till when?

MR. KRAUS: Until the date that you set --

MS. EULER: Whatever date you set --

MR. KRAUS: -- or until the Board grants or denies their registration but they'll need to apply for registration --

MR. McCULLOCH: So, the 2010 rule doesn't apply to that.

MS. EULER: No.

MR. KRAUS: -- and a part of that would be part of -- would be whether they've taken the exam or not.

CHAIRMAN: Is that where the December 31st, though, would -- it would stop at that point? I mean, if you didn't get around to it and you didn't have it -- after you did your intent and December 31st rolls around --

MS. EULER: Their application is not complete -- well, you could say their
application is not completed until they've
completed the Missouri Law.

MR. KRAUS: Because it's a requirement
of the application.

MS. EULER: Right. Because they can't
have a license until they've passed the
Missouri Law.

MR. MAHN: Isn't there a date --
what's that July date?

MR. KRAUS: 2010.

MS. EULER: That's just for trust
investments.

MR. MAHN: Do we want to mirror that
date to give them time?

MR. KRAUS: That's what you were
talking about earlier with regard to
potentially for the transition.

MR. MAHN: I don't think they've got
enough time to get all these agents between
now and December 31st.

MR. KRAUS: But you could put that out
there for the Missouri Exam, too, if you
wanted to.

MR. McCULLOCH: Someone thought it
would be convenient if you had one date for
everybody to remember instead of, well, we've
got to remember this on October, this is
December, this is --

MR. KRAUS: Right. Okay.

MR. MAHN: I think that was Don.

MR. McCULLOCH: Does everyone agree
with that still?

MR. MAHN: What do you think on that
Missouri Law exam?

MR. OTTO: Well, part -- one of the
issues is when will the Law exam be ready and
revised that covers the new law.

MS. EULER: It doesn't matter. You
can take the law exam now.

MR. OTTO: I know. I know you can,
but, I mean, the purpose is really to try to
make sure people know what the law is. It
would be nice if they took the test that was
covering the Senate Bill 1 version and, if
that's the case, we might need to give them
more time to do it.

MS. DUNN: There should be an exam
format available on August 28th.

MR. OTTO: Yeah. I mean, well, then
that solves that problem, probably.
CHAIRMAN: But that actually only
gives them from -- even with the intent to
apply, it only gives them from August 28th to
December the 31st to be tested and application
in; right?

MR. MAHN: I'd go with the July 2010.

MS. EULER: It's -- they can take the
test any time, any day.

MS. DUNN: Any day of the week, any
time except Sundays, I think.

MS. EULER: Yeah. So --

MS. DUNN: But they now -- right now,
we have to issue a certificate of eligibility
for someone interested in taking an exam, and
that's an internal process. So --

MR. MAHN: Really, it's going to take
some time to do.

MS. DUNN: Huh?

MR. MAHN: It's going to take some
time to work up to about --

MS. EULER: But it's not going to take
a year.

MS. DUNN: No. I mean, certificate of
eligibilities can be issued -- we try to issue
those as soon as we get the -- you know, the
phone call or the interest to take it.

MS. EULER: Yeah.

MS. DUNN: Because as soon as we get that, we send it. And I don't know. Have you had complaints from individuals about their certificate of eligibility, Don?

MR. OTTO: No. Not from that at all. There is -- sometimes is -- I have had people say it's sometimes tough to schedule getting into the computer center to get the Law done because they thought they could walk in any day and do it. But, you know, today that might -- yeah. Today might be accountant's day or whatever else they do.

MS. DUNN: Yeah.

MR. OTTO: So, although it's theoretically possible to take it any day, I guess these computer centers say, no, these are the three days you can take it this month, or something like that.

MS. DUNN: Now, I didn't know that because --

MR. OTTO: Or it's full up or something. I don't know what it is, but I have had -- I've had no complaints with your
office getting the certificate to them.

MS. DUNN: And you know it's better than it used to be because they could only take it once a month.

MR. OTTO: Yeah. But, yeah. I have had a couple of people that said, well, I went in and I thought I could take it, and then they were filled up with real estate agents that day or something like that.

MS. DUNN: Well, anyway, the certificate of eligibility isn't a problem. It doesn't appear to be a problem. The availability in the centers, of course, these centers provide examination service for many professions. Once we set the interim requirements, they should be able to get into their testing -- you know, my intent is not to hold up anyone from furthering -- continuing their career, of course. You don't want to -- because that -- the agents are typically the only ones that are --

MS. EULER: I would think --

MR. MAHN: And you really wouldn't hold up their career, just requiring they take the test by July, is what I was saying. Time
people to study and --

MS. EULER: Why give them so long?

MR. MAHN: Well, I mean, when they decide to take it.

MR. REINHARD: Well, Don Otto has got to get his class up and going.

MR. MAHN: Right. We've got to get things set up, people to teach the class --

MR. REINHARD: How long is it going to take you, Don, to get around to it if you're going to give a class on this?

MR. OTTO: Well, starting -- my plan was that starting in September, I would be teaching in Senate Bill 1 as opposed to the old law because I was operating under the assumption that that's about when the Law test would change and we would start covering Senate Bill 1.

MS. DUNN: That's a good assumption.

MR. OTTO: So, it's not a problem for me at all. Don't worry about me. I just -- I don't want -- I picture a rush of people -- I mean, no matter when you put the deadline, there's going to be a rush the last week.

MS. EULER: Right.
MR. OTTO: But I don't know, you know. I can see the argument with December pretty —
I don't know how many preneed agents are out there or people are going to do it.

MS. DUNN: I have no idea. How many agents —

MS. EULER: I have no idea.

MR. OTTO: You know.

MR. KRAUS: So, Becky, do you think you'll be issuing a certificate like that on everyone who wants to remain a preneed agent?

MR. REINHARD: That's a real good point.

MR. KRAUS: And, therefore, files a notice of intent to continue being a preneed agent?

MS. DUNN: Yes. Yes.

MR. KRAUS: You would issue them a certificate on all of them?

MS. DUNN: All agents. Uh-huh.

MR. KRAUS: Okay. Just to make sure that wasn't going to be a problem.

MS. DUNN: Yeah. And the sad part is we have no way of knowing —

MS. EULER: How many.
MS. DUNN: -- agents because when you create a new profession or a new Board, typically, there is something out there that gives you an idea of how many of those types of licensees there will be, but I have no idea how many agents.

MR. OTTO: As a fact -- I mean, I know a lot of people are aware of this already, but some aren't, you know. See, the law goes into effect August. They figure this out in September. December -- the last half of December is always bad for every -- you know. I don't even know what the testing center's hours are during the Christmas season. I don't know. But -- so, that gives you, really, October and November for everybody to take the tests, and I don't know -- if they have the capacity to do that, great. I don't know if they do.

CHAIRMAN: Is there some assumption here that the test that these people have to take is the new-law test? I mean, like, they just can't take the old-law test?

MS. DUNN: Right.

CHAIRMAN: But is that right?
MS. DUNN: Yeah. Because there is no
-- the law doesn't become effective, and the
agents aren't required to be registered until
the new law goes into effect.

CHAIRMAN: Okay.

MS. DUNN: So, we can't do anything in
preparation -- you can say, hey, if you want
to be an agent, you can take the law now.

CHAIRMAN: But even after the --

MR. KRAUS: Right. Because the
questions are geared towards what the law is
on the day you take the exam.

MS. DUNN: Right.

MR. KRAUS: So, if you take it before
August 28th, you're testing under the old law.
If you take it after, you're testing under the
new law. And we've actually looked at -- well
--

MS. DUNN: But that would be just like
a person coming saying I think I want to be
-- I mean, we don't have the authority to deal
with agents until the new law passes.

MR. KRAUS: Will you need a rule about
certificates for the exam with regard to
agents?
MS. DUNN: Let me -- we can base that on what we do for funeral directors.

MR. KRAUS: Sure.

MS. DUNN: Yeah. Let's do that.

MR. KRAUS: But we'll need one; right?

MS. DUNN: Yes. Yes. But the discussion, I guess, is how long are you going to give an agent to get the ability to be licensed.

MR. KRAUS: Okay. Most are saying no time frame. But, of course, if they want -- if it's part of the application, then I guess you'd have to do it before it's going to be approved.

MS. DUNN: Right.

MR. KRAUS: If you make it part of the application process.

MS. DUNN: Well, or if you apply and then give them within a year of the application date.

MR. KRAUS: And if that's already going to be pushed --

MS. DUNN: I don't know.

MR. KRAUS: Well, but if -- but, I mean, there was talk earlier about the
drop-dead date being July 1, 2010.

MS. DUNN: Uh-huh.

MR. KRAUS: And if that's for the
notice of intent to operate, the date that
that ends by which your application needs to
be approved or denied, that means if the exam
is a part of the application process, you're
going to have to have that done before that
same date anyway, so you do have the same
date, essentially, for the exam; right?

MS. DUNN: Uh-huh.

MR. OTTO: Yeah. Again, my only really
care with it -- and I don't -- it may not
be a problem -- is the capacity of the testing
centers if they get dumped with a lot of
people that, all of a sudden, before December
31, all of a sudden, decide to do it. I
don't know. They may have plenty of capacity;
it may not be a problem. I don't know the
answer to the question. But that would just
be my one concern is that through the, you
know, comment to me -- I don't know. You can
probably find out. How many days a week do
they do let the funeral directors come in and
do it?
MS. DUNN: Okay.

MR. OTTO: Most of the ones that I know that have taken it have taken it on Saturday because I've heard if you want to take -- this may not apply to this -- but if you want to take both the Law test and the arts exam, they schedule on Saturday because they take the two back-to-back. So, I mean, I know that's an issue for some people is that they've got a problem because the testing center would only do it on a Saturday if they wanted to take them the same day.

MS. DUNN: Okay. I'll find out.

MR. OTTO: So, maybe somebody just needs to call them up and see what their procedures are and what their capacity is. It might not be a problem.

CHAIRMAN: Okay. So, in regard to bubble 54 --

MS. DUNN: We'll need a rule to just spell out --

CHAIRMAN: -- we will need a rule to spell that out.

MR. KRAUS: The certification of the agents to take the exam, yes. Okay.
CHAIRMAN: Yes?
MR. MAHN: Yes, what?
CHAIRMAN: That we need the rule to set that out?
MR. MAHN: Well, we need a rule, yeah.
MR. REINHARD: Yeah. Set that out and bring it to us.
MR. KRAUS: Yeah. We'll draft that and bring it back to a subsequent meeting.
MR. REINHARD: Yeah. Let's make a motion on the rest it, you all will just make a rule and bring it back to us and we're done.
MR. MAHN: Second.
MR. KRAUS: Yeah. And then we'll be walking line by line through a whole bunch of rules that you otherwise would have said, no, never mind.
CHAIRMAN: Actually, you're closer than you think to the end of the bill.
MR. KRAUS: Section 333.330.
MR. MAHN: End of this book, you mean.
CHAIRMAN: Today's.
CHAIRMAN: Not the book, today's.
MR. KRAUS: Well, I like to see that.
May not need any emergency rules as it goes towards notice. I mean, most Boards, their authority to deny in discipline statutes are very similar and they operate pretty well without having rules that go into them further, I think. Many Boards have rules with regard to what notice -- how the Board will provide notice, like, of hearings and things. Will they do certified mail, will they do certified mail and regular mail, with they do service process, time frames ahead of time by which they'll provide notice, that sort of thing, and some Boards don't have any. So, I think that's up to the Board as to how you want to spell that out.

CHAIRMAN: You think it's good as it is; right?

MR. KRAUS: I think it can be. I mean, there are advantages and disadvantages to doing that. I mean, if you want to say, well, we're going to serve everybody by certified mail and regular mail, well, that's additional cost. And if you don't do that in some case, someone can say you didn't follow your own rule and give me notice, so that
decision you made at that hearing where I
wasn't there is void. You've got to have a
do-over. On the other hand, you know, it's
not a bad thing to do certified mail because
then you have some indication of if they
refused, or if the person signed for it, you
know for sure they got it.

    MS. DUNN: And this is only --
    MR. KRAUS: But if it goes unclaimed,
    well, then you don't really know if they got
    it not.

    MS. DUNN: Yeah. This is only on
denials and disciplines.

    MR. McCULLOCH: Do we have a big
problem with that, people saying they don't
get them and they try to --

    MS. DUNN: We do it -- well, right
now, on this particular, we send out certified
and postal mail, and we have a lot of good
licensees, so we don't do this very often.

    MR. KRAUS: Yeah. And if it's not an
issue, then maybe you just leave it as it is.
For some Boards, it's a very big issue, so --

    CHAIRMAN: So, I think we're okay.

    MS. DUNN: That's what I currently do.
MR. REINHARD: Yeah.

MS. DUNN: If I have a denial or a discipline, I send it out regular mail and certified.

MR. McCULLOCH: That's just when you do it? That's just your practice now and --

MS. DUNN: Well, our attorneys, who is the office of the attorney general, has suggested that so that they have some type of exhibit when we --

MR. McCULLOCH: So, does this qualify then? It says you will notify them in writing, so that takes care of it; right? And how you send it is up to you currently?

MR. KRAUS: It can.

MR. McCULLOCH: So, this is fine?

MR. KRAUS: It can be.

MR. REINHARD: Well, let's just leave it then.

CHAIRMAN: Move on.

MR. MAHN: Move on.

MR. KRAUS: K56. One of the reasons for discipline there is use of controlled substance or alcoholic beverages such that it impairs a person's ability. One of the
comments was whether the Board should set out
that a DWI qualifies as meeting that criteria.

MR. MAHN: I always have a driver.

MR. KRAUS: For the purposes of
discipline.

MR. MAHN: I always have a chauffeur.

MR. REINHARD: Just the DWI. That's
it. Not like vehicular assault.

MR. KRAUS: That was the comment, yeah.

MS. DUNN: Well, the reason why it
says at --

MR. KRAUS: Well, yeah. I mean, you
have to be clear, I think, in the rule what
DWI meant -- what all that includes.

MR. REINHARD: Well, if it's a DWI,
and no accident and no dah, dah, dah, dah,
dah, I think you could leave it go. But if
it's -- but then if it's got into a vehicular
manslaughter or vehicular assault or whatever,
then you've got to bring them in.

MR. KRAUS: Well, and what I hear you
saying, if you need to look at the individual
situation and what happened and who was
injured and you need to bring them in, then
maybe that's a case-by-case analysis, and
maybe not make a general rule that all DWIs count.

MR. REINHARD: Let's just bring them in on an individual basis.

CHAIRMAN: Mr. Speaks?

MR. SPEAKS: Brad Speaks. I was just getting ready to say what you just said. I think the key phrase is up at the top there, it says the Board may refuse. It doesn't say they have to.

MR. KRAUS: Right.

MR. SPEAKS: So, that gives the Board the leeway to look at individual circumstances.

MR. KRAUS: It does. Even if the DWI certainly falls under sub 1, you still have the option as to whether you --

MR. SPEAKS: Exactly.

MR. KRAUS: -- impose any discipline or deny. That's right.

MR. REINHARD: That would be, yeah, case by case, because if he's a repeater or --

MR. KRAUS: All right. So, no?

MS. DUNN: No?

CHAIRMAN: Leave it as is. This is fine.
MR. KRAUS: Moving along. K57, failure to display, set out requirements for display. And we've kind of already talked about that, I think --

CHAIRMAN: I think we have.

MR. KRAUS: -- in another section.

CHAIRMAN: That's taken care of, yeah.

MR. REINHARD: Yeah. We don't want -- we want you to skip it.

MR. KRAUS: K58, oh, boy. Presigning death certificates. Do we need a rule with regard to doing this electronically?

CHAIRMAN: How do you presign something that's electronic?

MR. KRAUS: You do it on the computer, I guess. I mean, you didn't sit down and go like this, but you effectuated a signature to occur.

CHAIRMAN: Yeah.

MR. KRAUS: I don't know that that's needed. That was just thrown out there.

MR. REINHARD: I don't think it's needed.

MR. KRAUS: I think if you went in and made that happen, you could argue that you did
sign it, you just did this to sign it instead of this.

CHAIRMAN: And the rule would just be agreeing with this statement or setting out that it is or --

MR. KRAUS: I think the suggestion was that the rule would clarify that presigning through electronic means counts.

CHAIRMAN: Okay.

MR. KRAUS: Under this provision.

CHAIRMAN: So, in the idea of presigning in electronic means counts, do we need to address that?

MR. REINHARD: No.

CHAIRMAN: Okay.

MR. REINHARD: How the hell could you do that anyway?

MS. HAYES: Becky, do you know on the death certificates on the new system, are they going to allow you to even get to a death certificate to do anything on it, like presign it without putting in, like, the person's name at the top?

CHAIRMAN: I don't think so. I don't think so.
MS. HAYES: So, it may not even be a --
CHAIRMAN: Because you have -- the
opening screen of that is a very short
fill-in-the-forms, and then it identifies the
person before it'll ever let you go on through
Social Security and other means.
MS. HAYES: So, it may not even be an
issue, that you can just block it.
CHAIRMAN: You can't even get to that
section.
MR. McCULLOCH: So, if you don't fill
in all the boxes, then you don't move on.
CHAIRMAN: Not first. Not first.
There's a very small window first that you
fill in some basic information and then it
goes into Social Security's database, whatever
else's database, and looks and says, oh, yeah,
we found that person. We know they exist.
MR. McCULLOCH: Yeah.
CHAIRMAN: And then you go on with all
the fill-out-the-boxes.
MR. KRAUS: All right. Let's see.
K59, dead human body, includes cremains. Is
that not defined anywhere else?
MS. EULER: No.
MR. KRAUS: Well, it might be a good idea then.

MR. OTTO: That is -- I mean, that's -- be careful with that one. Final disposition is the cremation. I believe that under the Health Department regulations, so the normal rules of final disposition cease after disposition, and disposition is the cremation. At which point then in Chapter 193 or 4 rules as to what you do with the cremated remains again. And there's specific rules on -- some specific statutes on who gets the cremated remains.

MS. EULER: Yes. But this is about not holding cremains hostage.

MR. OTTO: Well, I, frankly, think it's -- if somebody has -- this is my personal opinion now. If somebody has signed a contract saying they're going to pay $5,000 for a full-blown ceremony and a cremation with a beautiful urn, and they come to you and you do all that, and they say I want the remains, but I'm not paying you, I'm sorry, I think we should be able to say no. Now, that's different from the right of sepulchral rules.
and the dead human body. That's a different issue.

MR. KRAUS: Do you think the answer should be, no, I'm not going to give you this fancy urn with the cremains, or, no, I'm not going to give you the cremains in a cardboard box, here you go.

MR. OTTO: My personal with the issue, the answer should be the funeral director has the option of not -- of giving them upon payment.

MR. McCULLOCH: Yeah.

MR. OTTO: Yeah. And I believe, actually, the terms --

MR. McCULLOCH: Yeah. Because they may owe you a lot of money, not just for the urn, you know.

MR. KRAUS: They may. They may. If that person brought suit to obtain possession of those cremains, do you think they would be successful?

MR. OTTO: Not under the right of sepulchral law, because that doesn't apply because disposition has already happened. As long as you're following your contract, which
is what 194 says you do, and your contract
says that you have the right to withhold these
upon payment, I don't think they would be able
to.

MR. KRAUS: So, it would be purely a
contractual matter from your perspective.

MR. OTTO: It's a contractual matter
at that point, I believe, because the Health
Department rules say you shall deliver the
remains as called for in the contract or as
directed by the person, you know, who -- it
actually says directed by the person who is
responsible for making the payment or is
called -- whatever. But in any case, I
actually think there's going to be some
legislation on this this upcoming year, in any
case.

MR. KRAUS: There probably should be.

MR. OTTO: To deal with this exact
issue.

MS. EULER: No. It says a licensed
funeral establishment that cremates or
contracts for cremation of the dead human body
may dispose of the cremated remains by, one,
delivering the remains to or as directed by
another licensed funeral establishment; two, delivering the remains to or as directed by the person who contracted for the cremation; or, three, if not delivered pursuant to scattering or interning unclaimed remains, which is a whole another issue. It doesn't say anything about the money.

MR. OTTO: But as directed by, so if you're as directed by the person who contracted.

MS. EULER: Yeah.

MR. McCULLOCH: Yeah.

MR. OTTO: So, if your contract says I can withhold these remains until payment, then that is as was directed by. I'm the one -- I don't have to sign that contract. I don't have to sign that contract.

MS. EULER: No, I don't -- yes, you do.

MR. OTTO: No, I don't. I can take it somewhere else. I can take it to another place.

MS. EULER: I don't think any court would say that. I think the court would say, well, if Bob said I'll sign this contract, but I'm going to X that part out, would you have
done it, and you would say no. It's an adhesion contract.

MR. OTTO: Can I go to my car dealer and say I want my car back right now, although I owe you $5,000 for repairs?

MS. EULER: That's different.

MR. OTTO: No.

MS. EULER: There's a specific statute that gives the car worker a lien.

MR. OTTO: No. There's a specific statute that tries to codify the common-law lien law.

MS. EULER: Yeah. But you've got no lien on cremains.

MR. OTTO: Who says?

MS. EULER: There's no statute that says you do.

MR. OTTO: Well, the law isn't the statutes. There is no law on the statutes.

MS. EULER: There's a law that says you do.

MR. OTTO: There's no -- there's more to -- between -- (inaudible.)

MR. SPEAKS: Repeat that one.

MS. EULER: First, kill all the
lawyers.

MR. McCULLOCH: Well, why would you not want us to be able to keep it until we get paid; tell me that.

MS. EULER: I'm just saying that this has been --

MR. McCULLOCH: Yeah. But you're fighting awful hard to not let us get paid.

MS. EULER: But this --

MR. KRAUS: Because you'll end up with 15 shelves full of cremains and then you end up going out of business 20 years later and no one knows where they go or who they belong to, and they discover, oh, the cremains weren't ever scattered when they thought they were --

MR. McCULLOCH: Well, that happens anyway.

MR. KRAUS: -- and they want to come back and get them and --

MR. McCULLOCH: That happens anyway.

MR. REINHARD: And there might be -- (inaudible.)

MR. McCULLOCH: We have one right now, you know, in Kansas City, that situation.

MS. EULER: Well, I throw it out.
It's the Board's decision.

MR. OTTO: In any case, as far as this statute goes, the statute just says failure to surrender a dead human body.

MS. EULER: Yeah.

MR. OTTO: I don't think the regulation could expand that under this section to say a dead human body or the cremated remains because the cremated remains are not a dead human body.

MR. KRAUS: Well, someone could argue that portions of a dead human body isn't a dead human body, either.

MR. OTTO: Well, again --

MR. KRAUS: But I think it is.

MS. EULER: Right.

MR. OTTO: But I think the Health Department regulations is final disposition is cremation take care of that. I just don't think you can add under this section, particularly, a regulation that expands that beyond a dead human body.

MS. EULER: Well, what if Joe has paid for the final disposition, but the funeral home refuses to give the cremains?
MR. REINHARD: Because of the NPS contract and they owed them more money?

MS. EULER: Well, for whatever reason.

MR. REINHARD: Very good.

MS. EULER: Would you want to be -- I would think that would be grounds for discipline.

MR. REINHARD: How many times does that happen?

MR. McCULLOCH: Yeah. If they're just holding them up and they've been paid, sure.

MR. STALTER: Why would anybody do that, though?

MR. McCULLOCH: Yeah. Why would you want to put yourself in that situation?

MS. EULER: Who knows?

MR. REINHARD: Yeah. We've had a lot of cases on that. We've had a lot of complaints on that, haven't we?

MR. STALTER: Can I add to this confusion? I thought this was more like for the first call, that the funeral home got the first call and this wasn't what the family wanted, the first call would have to give up the body. I mean, I thought that's what this
was really about.

MS. EULER: That's part of what it is.

I just throw it out there.

MR. STALTER: Okay.

MS. EULER: It's Board's decision.

MS. DUNN: It looks like nobody likes it.

MS. EULER: Yeah. Well, I've been rejected before.

MS. DUNN: Yeah.

MR. REINHARD: (Inaudible.)

MS. DUNN: And I think Don is going to try to work on some legislation this year with --

MR. OTTO: We've already been contacted by several legislators that want this clarified.

MS. EULER: Yeah.

MS. DUNN: Yeah.

MR. OTTO: And so, yes, we are going to be proposing legislation that does two things: one, makes it clear that you can withhold the cremated remains if you haven't been paid, and, two, that makes it clear how to dispose of the ones that haven't been
picked up.

MS. DUNN: Right. Okay.

MR. OTTO: Jay Wasson wants -- that's a top priority for him.

MR. KRAUS: And, I assume, hold onto the remains only if you haven't been paid?

MR. OTTO: Yeah. I mean, otherwise, deliver them to the person who is entitled to them.

MS. DUNN: Or gives you a means to dispose of them.

(Several people talking simultaneously.)

MR. KRAUS: Which is a whole other question.

MR. OTTO: It gets really complicated, yeah.

MR. McCULLOCH: More than not, you can't get anyone to come and get them.

MS. DUNN: Right.

MR. KRAUS: Right. But that's not your fault.

MS. DUNN: So, this legislation is going to address it.

MR. KRAUS: Yeah. You don't control that.
MR. McCULLOCH: Maybe we need to pass something that says they have to take them.

MS. DUNN: So, Don is going to have a scattering pond.

MR. OTTO: Well, yeah. My favorite question I get is, because the law specifically says you can scatter them if they're not claimed, and you follow the steps. And somebody says, well, can I bury them? And I said, sure. That's just really a poor job of scattering them. It's very concentrated.

MR. McCULLOCH: It sounds more of a follow-up.

MR. OTTO: Yeah. It's a very poor concentrated scattering in burying them. But, yeah, these need to be cleaned up because the law on what to do when they're not picked up is really complicated now and includes usually having to publish a notice in the newspaper and all that stuff, which I've never seen happen, so --

CHAIRMAN: Okay. So, now --

MR. OTTO: It needs to be cleaned up.

MR. KRAUS: K60, we've already talked about. K61, is not entitled or has exercised
influence or control over the trustee. And do you want to set out what constitutes control over the trustee?

UNIDENTIFIED: (Inaudible.)
(Several people talking simultaneously.)

MS. EULER: Huh? Payola?

CHAIRMAN: What's an example of why that would need to be set out?

MR. KRAUS: Of what is or is not control? Let me think.

MR. SPEAKS: Isn't that addressing the NPS and affiliated companies where they, you know, single set of a legal entity controlled all these other entities and manipulated the whole thing to their advantage?

MS. EULER: That would be one example, yeah. And maybe it's better to leave control undefined and define it as we go, but that was one of the things that was discussed last summer in the working group. And so, we just throw that in here for consideration. Maybe we don't need to define it. Maybe we don't need to say anything further.

MR. SPEAKS: Well, I think that's a great point when you've got, you know, really
slippery attorneys and you say, hey, you
violated this statute, and they say, well, no,
we didn't. You overdefined control and what
we did does not meet your definition, whereas,
this way, it's so broad, you could make your
case almost regardless.

MS. EULER: Regardless of what Don
says; right?

MR. SPEAKS: Regardless of what Don
and Bill say.

MS. EULER: I assume that's who you're
referring to.

MR. KRAUS: I think both sides could
make a case.

MR. SPEAKS: No. I was thinking of --
(Several people talking simultaneously.)
CHAIRMAN: So, that's just leave that
alone, is what I'm hearing; correct?

MS. EULER: Okay.

CHAIRMAN: Everybody agree? All right.

MS. DUNN: (Inaudible.)

CHAIRMAN: Well, I thought that was
the point.

MS. DUNN: Okay.

CHAIRMAN: And, oh, no. If it's not,
say so.

MR. SPEAKS: Pardon?

MS. DUNN: Did you think it needed to be addressed further?

MR. SPEAKS: No, I just --

MS. DUNN: You're okay?

MR. SPEAKS: Yeah. I was arguing the opposite.

MS. DUNN: Okay.

CHAIRMAN: So, Board all agree? Okay.

As is. Okay.

MR. KRAUS: Let's see. And I think the next one, control is over the trustee or has engaged in any other act that has resulted in a shortage in any preneed trust or joint account, a comment was made about -- I think this was with regard to just regular market fluctuations.

MS. EULER: That --

MR. KRAUS: And if that's the reason for the shortage, that --

MS. EULER: That doesn't qualify.

MR. KRAUS: -- you're not -- you don't have a problem with discipline.

MR. McCULLOCH: What did you say?:

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MR. KRAUS: I don't know if that's really -- that that is not a disciplinary issue.

MR. McCULLOCH: I was going to say, it isn't a disciplinary issue because you have no control over that.

MS. EULER: Correct. Right.

MR. McCULLOCH: Yeah.

MS. EULER: And that's why --

MR. KRAUS: Well, the whole market has to come down.

MR. McCULLOCH: Yeah.

MS. EULER: And that was -- the language of the statute was drafted to make that clear, but I wondered if maybe we needed to say out and out a rule that says changes in the trust account due to market fluctuations don't count. Maybe we wanted to just say that directly so it was clear. Yeah, Don?

MR. OTTO: That's a really good one.

MS. EULER: To say it?

MR. OTTO: Yeah. I mean, I thought I would agree with that one.

MS. EULER: Okay.
(Several people talking simultaneously.)

MS. EULER: Do we need to note that in
the record with a gold star?

CHAIRMAN: So, Don thinks it's a good
idea.

MR. KRAUS: Okay. So, we're not doing
that. No.

(Several people talking simultaneously.)

MR. KRAUS: So, yes?

CHAIRMAN: So, yes, Board?

MS. DUNN: Yes.

CHAIRMAN: Yes? Yes?

MS. DUNN: Yes.

MR. McCULLOCH: So, everybody agrees
and all the funeral homes in Festus and DeSoto
are out of business. Okay.

MS. EULER: Yeah.

CHAIRMAN: Okay. That's it.

MS. EULER: Don is going to put a lock
on their door and all.

CHAIRMAN: License revoked tomorrow.

MR. McCULLOCH: No, he should have
been here.

(Several people talking simultaneously.)

MR. KRAUS: K63. This is the catchall
at the end of this section. We already talked
about sellers and agents actions; control, we
talked about. And -- okay. I think we've
covered those. Injunctive authority. It
looks like we're talking about one there with
regard to health safety or welfare of any
resident. One comment was set out whether
that includes financial welfare or not. I
don't know if that's --

MS. EULER: Two includes money.

MR. KRAUS: Right. Whether it
includes money.

MS. EULER: And we have done that in
the past and argued that the word "welfare"
includes danger to people's money, and we have
been successful on that, but it's always been
a little bit of a stretch.

MR. KRAUS: Probably bearing with the
tribunal you're in front of.

MS. EULER: Yes.

MR. STALTER: But you did so because
you didn't have any other powers under --

MS. EULER: Yes.

MR. STALTER: Okay. But now under SB
1, you should have plenty of powers, so you
wouldn't --

MS. EULER: But this is our authority to get injunction, so -- I don't know -- I would like to see that added just to make it clear, but --

CHAIRMAN: Sharon would like to see it added. Anybody disagree?

MS. DUNN: Doesn't appear to be any opposition.

MR. McCULLOCH: So, how do you see this working out then?

MS. EULER: It's if we got some situation, and I'm not thinking of anything off the top of my head, where there's a substantial probability or danger to people's money. Like, if they've paid for something -- I don't -- I'm trying to think of when we've used this, and I remember the people's names, but not the situations. Because if it's a money issue, that's not a health or safety.

MR. McCULLOCH: Well, if you're talking about preneed, I mean, it gets into whose money is it.

MS. EULER: We're not talking about just preneed. We're talking about preneed and
funeral establishment. Like, we had a guy who
was telling people he was a funeral director
and he was taking people's money for funerals,
but he wasn't a funeral director.

MS. DUNN: And that's public
information in St. Louis.

MS. EULER: Yeah. That's a substantial
probability. It wasn't serious danger to
health or safety, and we argued it was a
danger to welfare because it was a financial
welfare.

CHAIRMAN: Well, due to the possible
unsure thought versus -- we really might need
it. You guys are going to have to look at it
anyway, and they're going to bring it back and
we're going to have to look at it anyway, so
let's go forth.

MS. DUNN: Do it. Do it.

CHAIRMAN: One page left. Rule-making
authority.

MR. KRAUS: 340, K65. Let's see.

Standards of service and practice. So, the
Board shall adopt and enforce rules for the
transaction of its business and for the
standards of service and practice to be
followed by the professions of embalming and
funeral directing for the public good and
consistent with the laws. So, I think we do
need some kind of rule. As to whether it's
an emergency one is up to the Board. But
then as to what that rule should be setting
out what the standards of service are, I mean,
I kind of view that as kind of a code of
conduct, code of ethics kind of a thing.
There are some out there. I think, is it --

MS. EULER: MFDA has them. MFDA has
them.

MR. OTTO: Yeah, we have that.

MR. KRAUS: Yeah.

MR. OTTO: But this is already in
there. I mean, this was rewritten to expand
to include -- (inaudible.)

MS. EULER: Right. Right.

MR. OTTO: (Inaudible.)

UNIDENTIFIED: (Inaudible.)

MS. EULER: But what the proposal is,
is that even though it's been there, that
maybe while we're looking at this, maybe we
should think about an ethical rule, a rule of
conduct for funeral directors, embalmers, and
preneed folks.

MR. McCULLOCH: Do we have a lot of
problems with funeral directors in that area?
Do we have a lot of complaints?

MR. REINHARD: Yeah. Like, give us an
example.

MR. McCULLOCH: Yeah.

MS. EULER: No. That's -- Earl?

MR. KRAUS: I mean, that -- honestly,
that could be as simple as adopting a set
that's out there in the world. Or you could
start from one of those and adapt one, or it
could be a very basic statement of to follow
the laws and conduct your business with
highest regard to the --

MR. REINHARD: So, you could insert
the ten commandments.

MR. KRAUS: Sorry, what?

MS. EULER: Well, I mean, you could
use -- there are times -- from time to time,
the Board gets complaints where the Board --
the consensus of the Board is this funeral
director has clearly done something wrong. It
doesn't fit within our categories, but it's
wrong. I mean, and then --
MR. KRAUS: Yeah. Like, they just didn't treat people very well.

MS. EULER: They didn't treat them right.

MS. DUNN: What about the --

MR. KRAUS: It's not subject to discipline, it's not anything you're going to get an injunction on --

MR. McCULLOCH: Yeah. But, you know, when we go through those deals, it's always, like, well, maybe it was bad. Maybe they made a bad business decision, but if that's the way they want to run their business, the market will control that.

MR. KRAUS: That's true. That's true.

MR. McCULLOCH: People would not know the --

MR. KRAUS: And this wouldn't be putting any requirements on anyone that will then come back to bite them later through action of the Board. It would be more of a statement by the Board, here's how we expect the members of our profession to act and that's it.

MS. DUNN: Like, one would be, like,
desecration of a dead human body.

MR. KRAUS: Timely responding to
inquiries and concerns raised by your
consumers. You know, things like that. But
nothing is going to happen to you if you don't
do this other than market repercussions.

MR. MCCULLOCH: Yeah.

MR. KRAUS: But then the Board has set
out here's how we, in our profession, think we
should act and perform our duties and services.

MS. DUNN: Very obvious to most
people, I would say.

MR. MCCULLOCH: Sure.

MR. OTTO: Well, I think it can get
real dangerous, though. I mean, we really
push our ethics stuff really big --
(inaudible.) But it says the Board may
prescribe a standard of proficiency. Well, if
the Board says you have not met that standard
of proficiency, doesn't that sound like the
Board should be able to do something about it?
But you can't regulate morality, and you can't
regulate somebody being nice to somebody on
the phone, or you shouldn't try, I don't think.

MS. DUNN: Well, what about the
example I provided?

MR. OTTO: Well, if that needs to be something in -- under the 21 things that you can have your license pulled for, desecration of a body should be in there.

MS. DUNN: Yeah. Okay.

MR. OTTO: But if you say here's a standard that we think you should uphold, but we're not going to do anything if you don't uphold them, that doesn't sound right.

MR. STALTER: As a matter of law.

MR. OTTO: As a matter of law. I mean, yeah. I mean, this is the standard -- I mean, yeah. As a matter of law.

MR. KRAUS: Well, what do you think the shall adopt rules for the standards and service and practice to be followed by the profession? What does that mean?

MR. OTTO: I think that gives you the authority to require continuing education.

(Several people talking simultaneously.)

MR. OTTO: Actually, I think that gives you the authority to require a whole bunch of stuff, but if you put it under there, I think you're requiring it now.
MR. KRAUS: And that then they may be
-- people may be disciplined for that?

MR. OTTO: Yes. I think so.

MR. KRAUS: Then why wouldn't it also
be under the discipline section?

MR. OTTO: Well, that's why I think
it's dangerous to put anything under there
without thinking about it real carefully.

MR. REINHARD: Table this to further
day. I mean, like, because you've got -- this
is down the road, we can refine this five
years from now.

MR. OTTO: Yeah.

MR. KRAUS: So, no emergency rules?

MR. REINHARD: No.

MR. KRAUS: Okay.

MS. DUNN: No.

CHAIRMAN: No. All right.

MR. KRAUS: These, we're going to
address later, K66, K67, that's the same
standards and service of practice. And K68 is
kind of the same thing, pointing out that
there is a code of professional conduct out
there. So, moving on; right?

CHAIRMAN: Yeah.
MR. KRAUS: Last page.

MS. DUNN: Don -- oh, I'm sorry. I thought you were done. I wanted to address --

MR. KRAUS: There were additional comments at the very end that were kind of a general nature, I think.

MS. DUNN: Okay.

MR. KRAUS: Let's see. Projections of revenue. Well, we were going to talk about fees and revenue at a subsequent meeting, so that's later under A. Optional preneed contract to use. That was thrown out there as a comment.

MS. EULER: And we've gotten requests for the Board to develop a form contract to be used in the past. I think it's not the best idea, but that's just my opinion.

MR. KRAUS: I agree with that, that actually putting out a form contract from the Board is asking for problems -- a whole myriad of problems, but I don't know if there's other comments.

CHAIRMAN: I see lots of heads doing this, that that's asking for problems.

MR. REINHARD: Who's shaking their
head?

CHAIRMAN: That whole back row.

(Several people talking simultaneously.)

MR. REINHARD: They're all lawyers.

CHAIRMAN: I know.

(Several people talking simultaneously.)

MR. KRAUS: All right. So, no?

CHAIRMAN: Is everyone in agreement with scratch that; right? Scratch it.

MR. KRAUS: Okay.

CHAIRMAN: No contract.

MR. KRAUS: Now, there was a comment earlier from --

CHAIRMAN: Hang on. Go ahead.

MR. REINHARD: I mean, I know the statute says what you have to have in a contract, but can't we spell out a little clearer and give them that instead of, like, an actual contract? I mean, the Federal Trade Commission, you can get on their site and find all kinds of stuff.

MS. EULER: There's a federal --

MR. REINHARD: Well, step up a notch and say with the state, not the counties.

MS. EULER: All right. Until we get
sued.

MR. REINHARD: Well, why can't you
break it down, though?

MS. EULER: So, I'll look at that as
job security for me.

MR. KRAUS: I think maybe what you're
proposing is where the statute sets out a
contract shall include this and this and this,
setting out in rules some more specifics what
those things mean and what those may --
examples of what those things may be. I think
that would be much more workable and cause
fewer problems than actually putting together
a draft contract because I think then that --
I think that invites all kinds of problems
because people use that, it's determined down
two years later that the courts say, oh, this
provision in the contract is void. And, hey,
by the way, everyone in the state has been
using this for years, so all those contracts
are void, too, and then we all have a big
problem and it's the Board's fault.

CHAIRMAN: You're saying --

MR. KRAUS: But if you set out
requirements in rules or further explain the
statutory requirements in rules, then you're
not really say what the contract has to be,
you're setting out what parts of the contract
have to be or have to include.

CHAIRMAN: And your thought was just,
like, bullet points. A preventive contract shall
include: one, two, three, four, five, six,
seven, eight, nine.

MR. REINHARD: Right. I mean,
something to simplify this thing --

CHAIRMAN: And forget the examples.

Forget the examples.

MR. McCULLOCH: You would think if all
of this is so clear, you would be able to do
that with no problem, but it's not. That's
what you're saying. It's too --

CHAIRMAN: Good idea. Don?

MR. OTTO: If you take a look at -- if
you've got Senate Bill 1 on page 17 -- if
you've got Senate Bill 1 on page 16 and 17,
it gives a list of required disclosures, and
some of those, it assumes that the Board is
going to come up with disclosure language.
Like, include notice that the Board provides
by rule that the purchaser has the right to
transfer the provider designation to another provider.

MS. EULER: Right. And the Board will be doing that.

MR. OTTO: Yeah. The actual language that should be stuck in the contract needs to come from the Board.

MR. KRAUS: Right. And I think you'll notice throughout the section, wherever there is a comment about certify to the Board or anything like that, we've marked that as does the Board want to provide certification language? Does the Board want to do a form? And when we get to 436, we've done the same thing for those.

MR. OTTO: And that's our real concern -- I mean, from our end -- is on August 29, what contract am I going to have a consumer sign?


MR. OTTO: I can rewrite one, but I don't want to rewrite -- you know.

MR. REINHARD: Insurance.

MS. EULER: Yeah.

MR. OTTO: Yeah. So, that's our...
biggest concern is that when somebody comes into the funeral home on August 29th, I'm not breaking the law by having them sign a piece of paper.

MS. EULER: Right.

MR. McCULLOCH: But you're not going to enforce -- you can just -- we can keep going on with what we're doing; right -- till all this gets cleared up?

MS. EULER: Licensingwise, yes.

MR. KRAUS: If you do your notice of intent to -- you know, and all that.

MS. EULER: Yeah. As --

MR. McCULLOCH: Do you think the contracts would be -- the way they're going to be --

MR. OTTO: We're good for licensing, we're good for trust investments, but the actual language of the contract, I'd sure like to have the Board's required language --

MR. STALTER: Or if we could --

MR. OTTO: -- or --

MR. STALTER: -- or disclosures by an addendum, you know, a subsequent document.

MR. OTTO: Yeah. Say that that's
okay, that until such-and-such a date, you all -- you know, you can use your old contracts with the following attachments until such-and-such a date.

MR. STALTER: Or some contract with at least the minimum revisions or something of that nature.

MR. OTTO: I just don't want to break the law on the 30th.

MR. KRAUS: Right. And --

MR. OTTO: I'm real easy, I just don't want to break the law.

MR. KRAUS: And where the different sections require that this shall be certified and that notification shall be included and requirements like that, then I agree that the Board should set out what complies with that.

MS. EULER: Right.

MR. KRAUS: But I think that's different than preparing a full contract.

MR. STALTER: Oh, yeah. Yeah. We're all on the same page.

MR. OTTO: Absolutely. Yeah.

MR. STALTER: And -- (inaudible) -- didn't get that.
MR. REINHARD: No. It's 95 percent.

MR. STALTER: No. That's part of the 4 percent -- (inaudible.)

MR. REINHARD: Four percent even.

Okay. I'll tell them.

MS. EULER: My guess is that if people want to form contracts, that there are attorneys in the state who would be happy to help them formulate those contracts.

MR. REINHARD: Yeah. Brad said he was going to help me with mine.

CHAIRMAN: So, the answer is yes, though, we -- no on design of the contract, but we do want, like, bullet points and what is included.

MR. KRAUS: And we've marked those as we go through the sections where that comes up that --

MS. EULER: Right.

MR. STALTER: Yeah.

MR. KRAUS: And I think on each of those so far, we've said, yes, we want to put together language for that -- for that certification or whatever.

CHAIRMAN: Okay.
MS. EULER: And we may want to consider doing some of those as emergency rules if we can get the disclosure language put together.

(Numerous people answer yeah.)

MR. KRAUS: Okay. All right. Good. Let's see. I think Mark Warren had a comment on C earlier, set out in a rule that insurance-type companies that sell preneed are sellers under this legislation. I had noted that his concern was some forms that are given out may have been misinterpreted as being —— where they gave out some forms, and doing so may have been interpreted as them being the seller when they're not the seller, they're just facilitating the transaction, so that's the issue.

MS. EULER: Well, if the law is clear that if you are funding preneeds with insurance, that you need to be a licensed preneed seller. And so, when you have an insurance-funded contract, there needs to be a licensed preneed seller in that chain somewhere. And, right now, frequently, there is not.
MR. KRAUS: Because someone is the seller.

MS. EULER: Someone has to be the seller. And my understanding under the insurance laws is that an insurance company can only be an insurance company. They cannot be a preneed seller and an insurance company and keep their insurance-company license.

MR. KRAUS: But you can have someone who is a seller --

MS. EULER: I don't know. I have a call --

MR. McCULLOCH: You're saying you can't have an insurance company and be a preneed seller?

MS. EULER: I have a call into Department of Insurance to get someone to our meeting next week who can clarify that, but that's what I was told.

MR. McCULLOCH: There is nothing that says that.

MS. EULER: Well, I'm just telling you, that's why we need clarification from Department of Insurance -- or Division of Insurance.
CHAIRMAN: So, we need further information.

MR. McCULLOCH: All this is pertaining to -- if they're going -- if you're just a -- if it's Prudential out here, they're not -- they don't come under this. But if it's Homesteaders, they do.

MS. EULER: Yes.

MR. McCULLOCH: Because they're selling it and they're tying it to funeral goods, services, and --

MS. EULER: They have preneed contract.

MS. DUNN: And they have a funeral contract.

MR. McCULLOCH: Yeah. Then they come under this.

MS. EULER: Here's the casket, here are the goods, here are the services, here's this, here's how much it costs, and then you have -- they sell an insurance policy.

MR. McCULLOCH: Right. And, now, they're going to register as a seller, as before, like with the State fee, you put that burden back on the funeral home because the funeral industry just kind of thumbed their
nose at you and said, look, you're not going to make us do that.

MS. EULER: Right. Right.

MR. McCULLOCH: So, we put it back on the funeral homes, and this will be kind of the same way.

MS. EULER: Well, somebody needs to be a seller in that chain.

MR. SPEAKS: Where is the definition of seller here?

MR. STALTER: Oh, we passed that a long time ago. And part of what's driving this is Texas. Texas took a route, they're trying to make the insurance companies assume their responsibility. I don't know whether that passed or not, but that's what scares the insurance companies that will have it in other states.

MS. EULER: Yeah. Well, and that's something that's going to be new for Missouri, you know.

MR. OTTO: I know we have problems right now with a couple situations. I mean, I don't think it's legal problems, but it's confusing problems, where a funeral home has
sold a preneed -- sold -- put that in quotation marks. The funeral home and the consumer, if they have a contract for a preneed that was funded by, as a matter of fact, Prudential where the -- it was a Prudential Insurance agent that sold the policy, but nobody is listed as the seller.

MS. EULER: Right.

MR. OTTO: On the contract.

MS. EULER: Right.

MR. OTTO: The funeral home is listed as the provider, it's paid for by Prudential Insurance Company, and there's not even a line on their piece of paper that says who the seller is.

MS. EULER: Well, and that's the way the Homesteaders contracts and Forethought contracts are, too, so --

CHAIRMAN: So, what do you need to --

MR. OTTO: I've been trying to get Prudential to do it.

MS. EULER: So, I don't think -- I think we need to get input from Division of Insurance --

MS. DUNN: On clarification.
MS. EULER: -- and this really falls under what we're going to talk about next week.

CHAIRMAN: Okay. Further information.

MR. McCULLOCH: Some of us have funeral home -- (inaudible.)

MR. STALTER: Yeah. Right now.

(Several people talking simultaneously.)

MR. McCULLOCH: So, if you've got an agent out there doing that, they're doing half of it right, how does that tie in?

MR. OTTO: I think you could get a rule to fix it.

MR. McCULLOCH: To fix that?

MR. OTTO: I think you can get a little fix-it, but you're right; we better hear from insurance first.

(Several people talking simultaneously.)

MR. KRAUS: All right. Create an overview of all the time-related requirements. I think that was a suggestion to staff or by staff. I don't recall.

MS. EULER: Yeah.

MR. KRAUS: That's something that might be useful to put out there for licensees.

MS. EULER: As part of our educational
MR. KRAUS: Right.

CHAIRMAN: Everyone agrees; correct?

MS. EULER: Yeah. And E, the same.

Something we can address in our educational materials.

CHAIRMAN: Perfect.

MS. CLARKSTON: Sharon, and you mentioned educational documents. How are those coming? We've gotten a court request from a representative's office to include it and mailing to his constituency.

MS. EULER: I need to be in my office to work on those.

MS. CLARKSTON: Okay.

MS. EULER: So, that's on my list of things to do.

MS. CLARKSTON: So, their deadline is this Friday, I need to tell him that --

MS. EULER: They won't be ready by Friday.

MS. CLARKSTON: Okay.

MS. EULER: And you can tell him that, in part, we need to wait until the Board has proposed rules because the rules are going to
be a big part of those educational materials.

MS. CLARKSTON: I've started that conversation already, just wanted to verify they weren't going to be ready.

MS. DUNN: I wanted to address the -- Don, Tab did some checking while we were in the meeting, and she contacted the conference and Pearson Vue contact, and they are not aware of any limitations by profession or licensure type or exam type. They said that they are open Monday through Saturday starting at 7:30, and they may have had days filled up where they'd say, oh, only Monday is available this week, but they don't restrict their examination centers to any type of profession on certain days.

MR. OTTO: Okay.

MS. DUNN: So, if you get examples of a testing center, I would like to know because they said they'd like to know.

MR. OTTO: Yeah. Well, the ones that heard were -- like I said, they want to take both tests, law and arts the same day, and they were told if you want to do that, come in on Saturday. That must be their slow day.
MS. DUNN: Okay. And then, but, also, like -- they're not aware of today we're giving CPAs Wednesday, Thursday, and Friday, and no funeral directors.

MR. OTTO: Okay. If I get any specific names from anybody, I'll pass them on.

MS. DUNN: Yes.

MR. REINHARD: What day do they give the bar?

MS. EUER: It was last Tuesday and Wednesday.

MS. DUNN: Oh. Don Lakin wanted to go on record asking Connie if the Hancock Amendment affects any of this, and he wanted to be on record, and he also told me that he wanted on record that he agrees with most of Bill's comments -- well, 96 percent.

(Several people talking simultaneously.)

MS. CLARKSTON: I don't know that Connie is the perfect person to answer the question about the Hancock Amendment. I think that's a legal question.

MS. DUNN: Okay. So, would that be Earl or Sharon?

(Several people talking simultaneously.)
MR. KRAUS: Well, did Bill have any comments about Don?

MR. REINHARD: Yeah, Bill. Have you got a remark back to him?

MR. KRAUS: Do you have any comments about Don that Don would agree with?

(Several people talking simultaneously.)

MS. EULER: Becky, I suggest that you communicate to Mr. Lakin that the Board would be happy to look at the Hancock issue if he could specify exactly what he sees as the Hancock problem.

MS. DUNN: Can we delegate that to a Board member?

MR. REINHARD: I'll be glad to tell him go jump off a bridge.

MR. KRAUS: I honestly think that his concerns about revenue will be addressed when we talk about revenue projections and fees, and where that money goes and that kind of thing.

CHAIRMAN: All right.

MR. KRAUS: I may be wrong.

UNIDENTIFIED: No.

MR. KRAUS: What's that?
MS. CLARKSTON: So, you're saying it is back over here. (Inaudible.)

MR. KRAUS: Well, I think your normal discussion about those items will answer his questions.

MR. OTTO: Just two things completely -- something completely different. I want to get your mind off it real quick. We talked about the NPS proof-of-claim form earlier. Those proof-of-claim forms went out not only, apparently, to every NPS contract holder in the state of Missouri that they had in their database, but other people.

MS. EULER: No. You missed that.

MR. OTTO: No, I was here.

MS. EULER: No, you weren't.

MS. DUNN: No, you missed --

MR. OTTO: Oh, I missed it. Okay.

MS. EULER: You missed it. I talked to the folks in Texas this morning about that, and I gave them some specific examples, as did Chuck Renn. And so far, everybody who said I don't have an NPS contract that they've checked on, they actually do have an NPS contract.
MR. McCULLOCH: It may have been with
the cemetery.

MS. DUNN: But it could be cemetery
related.

MR. OTTO: Well, that wasn't my point
anyway.

MS. EULER: Okay.

MR. OTTO: Reportedly, a whole lot of
people have gotten these proof-of-claim forms.

MS. EULER: Yes.

MR. OTTO: A bigger universe of people
even than we thought would get them, perhaps
legitimately, but a large number of people got
them. I know that it's generating huge
amounts of calls to my office, to every
funeral home in the state, probably, and I'm
sure this office here has been stocked.

MS. EULER: And my office, as well.

MR. OTTO: What I've asked everybody
for and it is, I am asking, hoping, begging,
that some government agency, whether it's the
attorney general's office, whether it's the
State Board, whether it's the Division, the
Department, somebody, issue a press release to
the public that tries to explain this a little
better, and then perhaps direct them to a
phone number like the hotline or something
like that for more questions. You know, the
key things the information that needs to be
gotten out to the public are, one, this
proof-of-claim form has nothing to do whether
or not you're getting your funeral.

MS. EULER: Some of the funeral homes
seem to be confused about that, as well.

MR. OTTO: I agree with that, as well.
But this has nothing to do with whether or not
you're getting your funeral. This is a
separate matter. Two, if you're making -- if
you're currently making installment payments
to NPS on a contract, don't stop doing that
because of this filing. Now, maybe you want
to stop doing that for other reasons, but
that's your business. But don't stop doing it
because of this filing. And, three, getting
people not to panic and be upset. I mean, I
sent something out, but you all, I'm sure,
read that on the front page of the paper what
I sent out. Ha! No. You know, it's in
somebody's trash can at the AP's desk, I'm
sure. But I would really greatly appreciate
it, and our members would greatly appreciate it if some -- I asked Texas to do it, Texas said they're not going to do it. Flat out, no, no, they're not going to do it. But I think some sort of press release from any governmental body that explains to the consumers don't panic, this is the normal process that's required by Texas. Just because you got these, you know, does not mean you're not going to get your funeral or anything like that. That doesn't matter. And then, also, like I said, I've had a couple people that called me up and thought, well, does this mean I should stop sending my installment payments in because they're bankrupt. No, don't. Now, again, there might be a business decision not to send that down for other reasons, but don't stop making them because of this filing. And I just think that would be hugely beneficial to the public and to a lot of funeral directors, as well.

MR. McCULLOCH: Can the news guy here do that?

MS. DUNN: The only problem I see is, that legal will probably tell me, is if we
make those broad statements, is there going to be something in that statement that could get us in trouble at some point? I don't know. I mean, I'd love to be able to do something like that. Chuck Renn was going to send me some bullets from him that we could utilize that were quoted from him, but he hasn't sent those to me yet. So, if he sends them to me and they're his statements, or if, legally, if you all think we could make some broad statements on clarification, it would be great. It would help all of us, but --

MS. EULER: I don't know. It sounds to me like something to discuss with the Department.

CHAIRMAN: I think I would just say --

MR. MCCULLOCH: I think you need to do it because that's what should be done to clarify all this. And if somebody wants to try to sue on that, then you guys, that's what you do -- handle that.

MS. EULER: To sue -- who's going to sue who?

MR. MCCULLOCH: The AG would just handle that, just say go away, leave us alone.
What I'm getting at is --

MS. EULER: I missed the first part of --

MR. McCULLOCH: It's what we should do. It's the right thing to do for the residents here. You need to try to clarify all this and get this information out.

MS. EULER: Right.

MR. McCULLOCH: We can't not do things because we're afraid we're going to get sued. That's my point.

MR. SPEAKS: Nice point.

MR. McCULLOCH: I mean, they've just got to do what needs to be done.

MR. MAHN: Shouldn't that come out of the AG's office, though?

MS. EULER: We are getting a lot of calls and we are clarifying things for people.

MR. MAHN: No. But I mean the statement? Shouldn't the statement come out of the AG's office?

MS. EULER: I can take that up.

MR. MAHN: I think that's where it needs to come. They're the ones that's been fighting it.
MS. DUNN: I'll also follow up with Chuck to see what --

MR. McCULLOCH: I think it needs to be done timely, though.

MS. DUNN: Right.

MR. McCULLOCH: I mean, sooner than later.

CHAIRMAN: Everybody take it up and follow it up and see where it can go.

MR. MAHN: I think sometimes the people expect us, the Board, to be able to do things over and above what we're here for, you know. We regulate license, establishment, funeral directors, embalmers, and now preneed agents eventually. A lot of these other miracle things they expect us to do, like we should have kept from all these letters being sent out, we have no jurisdiction over this stuff. I mean, I would have loved to not seen them letters go out, either. I'm getting phone calls, texts, and we're getting several phone calls and people walking in a day, but, you know --

MS. DUNN: The problem is, the consumers and the funeral homes don't know
where to go.

MR. MAHN: Right. But the consumers
should be notified, the statement -- the
public-relations statement should be made from
the attorney general's office, not the State
Board.

UNIDENTIFIED: Since we're out of
business over there, I've got 15 counselors
that are calling -- (inaudible.)

CHAIRMAN: Have you got something else?

MR. OTTO: No. I just had a couple
other little things that I wanted to --

CHAIRMAN: Okay.

MR. OTTO: We have some good news --
well, a little bit of good news. Our -- the
Funeral Directors and Embalmers Association
has received a grant of almost $420,000. It's
Homeland Security money directed to the
Department of Health to purchase disaster
supplies, so that -- because our disaster team
is part of the State Emergency Management
Agency plan.

MR. MAHN: Is that out of the stimulus
money?

MR. OTTO: No. It was before that, so
it's, basically, 9/11 money.

MR. MAHN: Got you.


So, we'll be -- we'll soon -- I'll soon be sitting, literally, on top of 10,000 body bags.

MR. REINHARD: For everybody in the state of Missouri, just not the association members; right?

MR. OTTO: Yeah.

MR. REINHARD: Okay.

UNIDENTIFIED: (Inaudible.)

MR. OTTO: Yeah. Well, yeah. We are -- we received the grant. Our association received the grant for our disaster team to buy these supplies.

MR. REINHARD: But it should be for any funeral home in the state that's going to have a disaster in their county.

MR. OTTO: We're activated by either -- we're annexee to the State Emergency Management Plan. We're activated either by the county coroner or the SEMA emergency operation center and they tell us what to do, so that's easy. There's that, and then the other thing that, at some point in time, I
would hope -- I mean, you've got too much on
your plate already, but I know some of the
Board members attended the
electronic-death-certificate demonstration and
we did get a couple bombshells dropped on us,
in my opinion, at that meeting. One was the
confirmation the first time that was said
blatantly that doctors are not going to be
required to use the system, ever. And,
secondly, that after January 1, 2010, if the
doctor is not on the system, you will have to
-- the field director will have to start the
process on the computer, start the
death-certificate process, then print off a
piece of paper, which you will then take to
the doctor and have them sign physically by
hand, and then mail it to Jefferson City where
they will process it and let you know when
your death certificate will be available. So,
you will lose the option which is currently in
194 of going to your local registrar or health
department within the first 24 hours and
getting a death certificate.

UNIDENTIFIED: That's a bad plan.

CHAIRMAN: Actually, a funeral
director can play that same game. He -- not
just doctors. He doesn't have to apply by the
electronic system. He can just drop it to
paper and go on and just --

MR. OTTO: But you're going to have to
be on the electronic system to drop it to
paper.

CHAIRMAN: Well, that's true.

MR. OTTO: I mean, you're going to
have to have a computer, you're going to have
to have a log-in name, and you're going to
have to start the process.

CHAIRMAN: Why?

MR. OTTO: Because they're requiring
it.

CHAIRMAN: Why? If you have to drop
it to paper, why can't you just fill out the
old form, or will they not produce the old
forms any longer?

MR. OTTO: No. Yeah. Eventually,
they won't have them.

CHAIRMAN: Well, I've 10,000 of them
in a file drawer, so stock up now.

MR. OTTO: Yeah. Stock up now.

(Several people talking simultaneously.)
MS. DUNN: Connie, is Healing Arts going to try to get this on their agenda in October?

MS. CLARKSTON: Yes, they are.

MS. DUNN: For open agenda?

MS. CLARKSTON: That's my understanding.

MS. DUNN: Okay. So, I will keep in touch with Healing Arts and get that on our Web site and out to everyone about Healing Arts talking about this at their next open agenda.

CHAIRMAN: Okay.

MS. DUNN: Now, did somebody -- somebody called me the other day and said -- and I haven't talked to Ivra, that now they've realized they have to have a statute change?

MR. OTTO: I heard that same conversation probably from the same person.

MS. DUNN: Okay.

MR. OTTO: But I don't know. I mean, the statute that created the electronic-death-certificate system, such as it is, does not abrogate the Health Department law that's currently on the books that says
within the first 24 hours, you can get a certified copy from your local registrar or as designated by them. So, how can she say as of January 1, you can't do that anymore when the statute says you can? Good question.

MS. DUNN: Okay.

CHAIRMAN: Anything else?

MS. DUNN: Housekeeping.

MS. EULER: I have nothing. I'm done.

CHAIRMAN: Okay.

MS. DUNN: Yeah. I am, too.

CHAIRMAN: So, just adjourn. Motion to adjourn?

MR. MAHN: First.

MR. McCULLOCH: Second.

CHAIRMAN: Jim?

MR. REINHARD: Yes.

CHAIRMAN: All right. We are adjourned. Thank you all. It's worse than going to the dentist.

(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 August 5, 2009; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 26th day of August, 2009.

Kristy B. Bradshaw

KRISTY B. BRADSHAW, CCR
(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/request fines and penalties under Chapter 407. A concern was raised by MPDEA that proceed licenses may be subjected to double penalties if an action is initiated by the Board as well as through the Attorney General's Office. MPDEA and Meierhofer suggested 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: 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.
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.
Additional Handouts – August 5, 2009
August 3, 2009

Becky Dunn  
State Board of Embalmers and Funeral Directors  
3605 Missouri Boulevard  
P.O. Box 423  
Jefferson City, MO 65102-0423  

Re: Upcoming meeting 8-5-09  

Dear Becky:  

In preparation for the upcoming meeting this Wednesday, I am sending you some of my comments and questions.  

333.151  
The last sentence begs for clarification, but can the State Board pass regulations regarding this section? The audited financial statement requirement is problematic in at least three ways.  

1. The intent was to require independent verification that Board candidates own or operate a business that complies with Chapter 333 and Chapter 436. However, the section seems to preclude funeral directors that do not own a licensed funeral establishment.  

2. Another other issue relates to the grammatical error made in describing “at-need preneed business”. The intent was that the financial statement would have to cover both at-need business and preneed business.  

3. The more significant issue is that the audited financial requirement imposes a significant cost that does not accomplish the goal of proving compliance with Chapter 333 and Chapter 436. Audited financials are intended to prove that the business is accurately reporting its revenues and expenses, which is not the same as compliance with the statutes.  

333.310  
SB1 contains two ‘cemetery exemptions’ (Section 333.310 and Section 436.410). Section 333.310 was intended to exempt cemeteries from the State Board jurisdiction and Section 436.410 was intended to exempt cemeteries from Chapter 436. In the initial drafts of SB1, these provisions mirrored each other. Through the legislative process, the ‘mirror’ was broken. While the Chapter 436
exemption is slightly broader (it contemplates a preneed contract with merchandise), both have the same fundamental problem.

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

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

The State Board exemption references contracts or arrangements for services, without reference to merchandise. Consequently, the State Board has jurisdiction over cemetery merchandise sales and licensing requirements. Both exemptions define an arrangement where the purchaser’s preneed payments are deposited to an endowed care fund or a segregated account. Preneed payments are not deposited to endowed care trusts, and the segregated account for markers/monuments was eliminated by SB296.

333.315

Will there be any special requirements of corporate providers with multiple locations?

333.315.2 (2)

With regard to the third party seller context, will the Board establish what ‘books and records’ will be required of the Provider?

333.315.2(6) (and 333.320.2(3))

Is the purpose of this paragraph to clarify that a corporate provider license does not impact the right of the corporation’s officers, directors and shareholders from also being licensed?

333.315.3(d)

This paragraph provides the Board flexibility to expand the Provider’s annual report form by reference to other statutes and regulations. Eventually, the Board will want to promulgate an individual regulation for each of the new annual reports (provider, seller and trustee).
333.320.2(7)

As point of clarification, the Section 685 qualified funeral trust is not a grantor trust.

333.320.2(8)

How must trustee changes be documented with the Board? When?

333.325.1

It would be redundant to require funeral directors who sell for their own establishment to register as a preneed agent, but what about the preneed salesman who gets a FD license?

333.330.2(8)

Granted, the Board needs powers to act quickly, but due process protections could be violated depending upon the stage of "disciplinary action" or the nature of the alleged violation. In the absence of a formal adjudicative proceeding, a complaint (based solely on a disciplinary action in another state) that is without additional facts and circumstances added to Missouri business practices would be improper. Similarly, the disciplinary action unrelated to preneed may not be an appropriate basis for a complaint on the licensee’s seller license.

Sincerely

William Stalter

WRS/kd
The Working Group unanimously approved the following recommendations:
  - Sellers should be required to issue receipts to the purchaser for prepaid 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).

![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 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.

![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 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
    - DIFP
• Twenty percent of face value
  o Mike Meierhoffer
  o Kutis Funeral Home
  o John McQuiloch
  o Mike Winters
  o 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 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.

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.

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 Stalter 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.

(Homeowners' comment: The banning of term insurance as a trust investment is clearly recalled, as is the recommendation to ban the trust investment in life insurance on any life other than the purchaser, but no recollection is made on the clear ban of all insurance products as trust investments. Under prudent person guidelines there should be no need to restrict the trustee from investing in life insurance or annuities that the trustee deems to be prudent investments.)

• 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;

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

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

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**Comments:** 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 NPS 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.

Dated August 17, 2008 at 5:00 p.m.
The Working Group adopted the following unanimous recommendations:

- Currently, Chapter 436 does not clearly authorize 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 initial 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 an assignee. (Homesteaders comment: Since the assignee stands before the beneficiary in claiming rights under the insurance policy, based on the assignee's performance, there is no reason the designate the provider or seller as beneficiary under the policy) 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: MFDA 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. MFDA 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:

Working Draft
Dated August 17, 2008 a. 5:00 p.m.
o Terms for cancellation by the purchaser or seller;
o Notice that cancellation of the preneed contract will not cancel the life insurance policy funding the preneed contract.
o Notice that insurance cancellation must be made in writing to the insurer.
o 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;
o Notice that the purchaser has the right to reassign the right to receive policy benefits to another funeral home contingent upon performance. (Homesteaders comment: Since the assignee stands before the beneficiary in claiming rights under the insurance policy, based on the assignee’s performance, there is no reason the designate the provider or seller as beneficiary under the policy.)

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 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.

(Homesteaders comment: The Model preneed disclosure regulations adopted by the National Association of Insurance Commissioners (NAIC) and many of the states provides for a disclosure of the fact that a commission is paid but it does not require the disclosure of the amount of that commission since the amount is often not known at the point of sale.)
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. (Homesteaders comment: This should apply only to contracts funded by trust or joint-accounts, not contracts funded by life insurance, since in the later insurers will pay direct to providers and not through sellers.) Sellers should not be prohibited from also requiring submission of a death certificate or other documentation sufficient to meet the insurer's requirements for proof of death. (Homesteaders comment: Certified death certificates are not required in the majority of jurisdictions due to the amount of time often required to obtain them. Most claims are paid following the submission of a copy of a death certificate, though not a certified copy, or other documentation of proof of death as required by insurance regulations.)
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/providers should be entitled to payment as provided in the contract and the related income or funding appreciation, on guaranteed preneed contracts. (Footnote: Readers comment: We should make the distinction on retaining income/appreciation that it may only be justified by the assumption of risk under the contract as determined by price guarantees?)

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**B. Transfer of Providers:**

The Working Group approved the following unanimous recommendations:

- Chapter 40 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 new 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 MFEDA 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.

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

Comments: BPI Stated 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 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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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 available death benefit of each policy in force at the time of the report.

(Homeowners comment: The only pertinent status that needs to be reported is in-force. The cash surrender value under the policy is immaterial to the preneed transaction and of no interest to the Board.)
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. (Homesearchers comment: this should be required only for trustees or holders of joint-accounts, not for insurance policies or insurers governed by insurance requirements.)

- 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 prepaid 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). (Homesearchers comment: this should be required only for trustees or holders of joint-accounts, not for insurance policies or insurers governed by insurance requirements.)
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/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/depositing 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 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.
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.

![Comment: 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 DAFP, 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, DAFP, 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.
1 Comment: The Working Group unanimously agreed that examination/audit costs should not be charged to the licensee. Depending on the scope of the audit/examination, costs may be excessive and would be difficult to determine prior to the audit/exam. As a result, charging costs to licensees may have an overwhelming impact and could potentially result in licensee bankruptcies.

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 496 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;

(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 496 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 496 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 496 regulating preneed] which the licensee knows to be false or knowingly failing to make or file a report required by [the provisions of Chapter 496 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 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.

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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 preneed 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 333.061.
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 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 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 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

WORKING DRAFT

Dated August 17, 2008 at 5:00 p.m.
(7) Any person with a filed Notice of Intent shall be authorized to engage in the practice of preneed selling, providing or as a sales agent, as so indicated on the Notice of Intent, provided that the Applicant has timely filed his/her Application for Licensure and/or Registration. This authorization to practice shall be effective from the date the Board receives the Notice of Intent and shall end on the date the Board either issues a license or registration or denies the application for licensure/registration or until midnight on December 31, 2009, whichever comes first. The Board shall promptly notify the Applicant of its decision to issue a license/registration or its denial of same.

(8) Any conduct that may be cause for discipline that occurs between August 28, 2009 and December 31, 2009 shall be considered by the Board in its decision to issue or deny any Application for licensure and/or registration. In addition, if the Board issues a license or registration and later discovers conduct that would be cause for discipline occurred between August 28, 2009 and December 31, 2009, the Board shall have authority to seek discipline against the licensee or registree for that conduct as if the person were fully licensed or registered while operating under the authority of the Notice of Intent.

Authority: 335.011, 333.315, 333.320, 333.325 and 333.340

**Proposed Emergency Rule Regarding Filing of Annual Reports**

**Title:** Filing of Annual Reports

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

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

Authority: 333.340 and 436.460
August 5

Public Comments

Amy Battagler email August 5 2009 comments
From: Battagler, Amy  
Sent: Tue 6/4/2009 5:37 PM  
To: Dunn, Becky  
Subject: Comments to the board

Becky, I have attached some comments for the board. I will not make the meeting tomorrow but will have representation there on the 11th.

I wanted also to comment on the Information emailed out yesterday. In the attachment SB1 Implementation Group I: Notice of Intent to Apply - it looks as if the need for the fee is required on this, although the rule states that a fee does not have to be submitted with it. Also, in the rule, it doesn't state anywhere the time frame that the PN agents will have to pass an exam set by the board. It only addresses the notice of intent and the formal application.

Comment K2: Is there a reason that a corporation cannot represent themselves? I don't see the need for an attorney in every case when the corporation is a small one.

Comment K6: To remind you of the definition of a “Person” - any individual, partnership, corporation, cooperative, association, or other entity. It is any or all of these that can be licensed as a provider. The statute requires that a provider be authorized and registered to conduct business in the state. You would be requiring all licensed funeral directors to have to form their own business entity. Most funeral directors work for a business that is licensed or registered to do business in the state, and it is the business (funeral establishment) who handles the books and records, not the individual funeral director who acts on behalf of the provider. It is the responsibility of the provider, not the funeral director, to handle annual reporting, bookkeeping, files, etc. The funeral director may be employed by one establishment and then move to another but the contracts, books, reporting, etc. stays with the responsibility of the provider. Also, contracts may be signed by a funeral director and a purchaser, but the funeral director is acting on behalf of the provider and the contract is between the provider (registered business) and the purchaser.

Comment K17: The reference in Ch. 333 and 436 to exempt cemeteries does not quite exclude cemeteries clearly. A rule should be made to include cemetery merchandise as defined in ch. 214 as part of the exemption.

Comment K41: Are you going to require licensed insurance sellers to be registered agents to be able to sell trusts? How much time are you going to give PN agents to take the exam?

Comment K48: 333.325.1 specifically states that a licensed funeral director does not have to register as a PN agent.

Comment K60: Requiring an attorney is extremely expensive for any corporation. Can a corporation choose someone to represent them without it being required that it is an attorney?

Thank you.

Amy Battagler  
Stewart Enterprises  
Compliance & Safety, WD-Central
August 5

Public Comments
Amy Battagler Stewart Enterprise Comments 8-5-09
August 4, 2009

Becky, here are some comments for upcoming meetings. Sorry for the late notice.

436.430.2 - the requirement to deposit “all payments received”. Not only would there be a concern regarding finance charges being included in some of these payments but also administrative fees or the state preneed contract fee. The rule needs to clearly specify that excluded from trusting would be collection of any late fees, finance charges, administrative fees, etc.

436.425.1(12) – include the name and signature of the purchaser, the provider or its authorized representative, the preneed agent responsible for the sale of the contract, and the seller or its authorized representative. Requiring both the provider and the seller’s signatures for each contract is difficult. The seller and provider already will have a contract/agreement between them but now they require both the seller and provider’s signatures on every contract. It can’t be done at the time the contract is written especially when the contract is written at the home of the family. Also, if a 3rd party seller is signing a contract with a purchaser, who, of the provider’s location, would be responsible for signing such contract?

Section 436.430.11 requires that a certificate of performance be provided to the seller, signed by both the provider and the individual who made the arrangements for the beneficiary. Is this a separate certificate of performance or would the signing of the at-need contract suffice since such contract would be signed by both parties and in such contract they agree to deliver the merchandise and services for the beneficiary?

Section 436.430.3 states that the seller may request the distribution of an amount up to the first five percent of the total amount of the contract at any time AFTER five percent has been deposited. Considering that this is an origination fee, it would make more sense to be able to request the money that has been deposited into trust until an amount not to exceed 5% has been withdrawn for an origination fee. This would address situations where, for example, a contract is signed but the customer only pays three percent and then stops making payments. The seller has already incurred certain administrative expenses (commission to the counselor, booking the contract, funding 100% of such amount received, etc.) for which he should be entitled to the origination fee. Based on the current language, he would not be able to withdraw anything because the five percent has not been reached. This language would also be consistent with article 436.430.4.

Section 436.435.1 – it is unclear what provisions of the law should be made into compliance no later than July 1, 2010. The only section that appears should remain intact would be
436.031 as it relates to disbursements to the seller from the trust and payment of trust expenses based on the exclusion language of 436.412, but the rules should clarify this.

436.458 - Once a customer selects a different provider from the one selected on the original contract, the seller has the option to either establish a trust where the new provider receives credit for all principal or pay principal and income to the new provider? Please clarify who is entitled to the income under the first scenario. Also, subsection 2 states that “seller shall pay... all payments owed to the original provider under the contract” so please clarify that as much as 15% can be retained by the original provider based on section 436.430.

Sincerely,

Amy Battagler
August 5

Public Comments
Bill Stalter comments for August 5 2009 meeting
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, 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 Bohrer
- 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

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1 Open meetings were hosted on July 8th, July 15th, July 24th, July 29th and August 2nd.
* 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 Reinhard, Chairman, 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, Lobbyist, SCI
Jim Moody
Michael Meierhoffer, Rep. Meadows' Office
Barbara Newman, Charter Life Insurance Co.
Darlene Russell, Executive Director, Funeral Consumer Alliance
Josh Slocum, Stalker Legal Services
Bill Staker
Bill Trimun
Jo Walker
Don Otto, Executive Director, Missouri Funeral Director and Embalmers Association/Missouri Funeral Trust
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
Jean Groose, Administrative Assistant to Director of Budget & Legislation, Division of Professional Registration
Kimberly Grinston, 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

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Dated August 17, 2008 at 5:00 p.m.
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 I - 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
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X. Payments to Providers ................................................................. 27
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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.
DEFINITIONS

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

- "Funeral Beneficiary (Funeral Recipient also acceptable)", 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. (Homesteaders comment: The use of the term “beneficiary” here has a high potential for confusion with the insurance term “beneficiary”. Thus, the term “Funeral Recipient” is preferable.

- "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 in the contract. A guaranteed contract may contain some non-guaranteed items as well as limitations on guarantees, however, these must be disclosed within 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.

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
• **"Non-Guaranteed Contract"**.- A preneed contract in which the costs for the disposition, facilities, services or merchandise are not guaranteed 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 merchandise, where such disposition, services, facilities or merchandise are not immediately required. **Homesteaders comment:** If burial associations or other entities are to be given unique considerations under the contract, these considerations should not be included in the definition of preneed contract. Their obligations should be the same under the preneed contract, though they may stem from a membership for which a fee is charged.

• **"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. **Homesteaders comment:** The seller may not need to remit payment to the provider, for example, when the insurance funding is paid directly 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.

  ! Comments: John McCulloch (ABF) 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 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.

> Comments: Although MFDA 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 or other public assistance programs (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.

WORKING DRAFT
Dated August 17, 2008 at 5:00 p.m.
Be signed by the purchaser, and the seller which will be obligated to perform under the contract or the seller's representative. (Homesteaders comment: Limit the required signatures to those who are present at the time of contracting.)

- Preneed contracts not in compliance with Chapter 496 should be rendered void [should this be voidable by the purchaser] (Homesteaders comment: Yes, this should be voidable at the purchaser's option) 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 (e.g., 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 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 Hatred Legislators and the Funeral Consumer Alliance agreed with this suggestion.
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.
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. (Homesteaders comment: Is this notification in itself helpful to the Board? This could be determined by the annual report if properly constructed.)

- 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 any preneed fund payments received by the provider on trust or joint-account funded contracts.
  - Consent that all insurance premiums must be paid directly to the insurer by the consumer without the involvement of the seller or 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.
333.221. Board compensation and employees

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

5. The board may employ such board personnel, as defined in subdivision 6 (4) of subsection [10] 11 of section 324.001, RSMo, including legal counsel, as is necessary for the administration of this chapter.

Comment [K15]: May not need to do any rules, but might consider:
- define qualifications for legal counsel and/or terms of employment (Mo license, good standing, at will, etc.)

Related reg: 20 SCR 2120-1.020, p. 22, board booklet
20 CSR 2120-1.010, p. 21, board booklet
333.251. Retail exception

Nothing in this chapter shall apply to nor in any manner
2 interfere with the duties of any officer of local or state institutions, nor shall this
3 chapter apply to any person engaged simply in the furnishing of burial
4 receptacles for the dead, but shall only apply to persons engaged in the business
5 of embalming or funeral directing] at the time of need.

Comment (K10): May want to spell
out that cash or stores are ok and define
them.
May also need to spell out that a preneed
license is needed to deal with.
These are covered in statute but would it
be useful for industry to have explicit in
rule? Or would that confuse things?
333.310. Cemetery exception

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

Comment [K17]: This exempts cemeteries to the extent they fall under endowed care in chp. 214. Need to look at current 214 (as proposed changes to 214 last legislative session did not pass into law) and see if any rules needed. May consider setting out in rule that so the extent not exempt under this section, then you fall within chp. 333.416. Goal toward defining when exempt and when not.

Comment [K18]: How does cemetery statutes impact the beast?
333.375. Provider license requirements

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

7. 2. An applicant for a preneed provider license shall:

8. (1) File an application on a form established by the board and
9. pay an application fee in an amount established by the board by rule;
10. (2) Be authorized and registered with the Missouri secretary of
11. 11 state to conduct business in Missouri;
12. (3) Identify the name and address of a custodian of records
13. responsible for maintaining the books and records of the preneed
14. relating to preneed contracts;
15. (4) Identify the name and address of each seller authorized by
16. the provider to sell preneed contracts for which the provider is
17. designated or obligated as the provider;
18. (5) File with the state board, a written consent authorizing the
19. state board to inspect or order an investigation, examination, or audit
20. of the provider's books and records which contain information
21. concerning preneed contracts sold for or on behalf of a seller or in
22. which the applicant is named as a provider; and

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

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

31. (1) File an application for renewal on a form established by the
32. board by rule;
33. (2) Pay a renewal fee in an amount established by the board by
34 rule, however, no renewal fee shall be required for any funeral
35 establishment whose Missouri license is current and active;

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

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

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

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

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

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

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

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

7.2. An applicant for a preneed seller license shall:

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

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

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

16 (4) Meet all requirements for licensure;

17 (5) Identify the name and address of a custodian of records
18 responsible for maintaining the books and records of the seller relating
19 to preneed contracts;

20 (6) Identify the name and address of each licensed provider that
21 has authorized the seller to designate such person as a provider under
22 a preneed contract;

23 (7) Have established, as grantor, a preneed trust or an agreement
24 to utilize a preneed trust with terms consistent with sections 436.400 to
25 436.520, RSMo. A trust shall not be required if the applicant certifies
26 to the board that the seller will only sell insurance funded or joint
27 account funded preneed contracts;

28 (8) Identify the name and address of a trustee or, if applicable,
29 the financial institution where any preneed trust or joint accounts will
30 be maintained; and

31 (9) File with the board, a written consent authorizing the state
32 board to inspect or order an investigation, examination, or audit of the
33 seller's books and records which contain information concerning
34 preneed contracts sold by or on behalf of the seller.

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

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

42 (2) Pay a renewal fee in an amount established by the board by
43 rule; and

44 (3) File annually with the board, a signed and notarized annual
45 report as required by section 436.460, RSMo.

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

Comment [K36]: Same as for provider above. Are renewals required
each year or does "a date established by
the division" provide authority to require biennial renewals (every 2 years)?
Should the date be changed? If so, how
Comment [K37]: need a form. Will likely need a rule for renewal process.
Comment [K38]: Need to set fee.

Comment [K39]: additional consideration:
- What if seller is not licensed at time of
  need?
- Consider subcategories of sellers (e.g.,
  3rd party only, joint account only,
  insurance company, etc.)
- Limit to those involved in a large corp.?
- Require new license if change of owner
  (or transfer of license)?
- Set out that seller is the one responsible
  for the money?
- Comment regarding provider licensure
  may apply here too
- If fail to renew and 2 years pass and
  becomes void, have to reinstate
  application process?
333.325. Agent registration

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

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

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

14 (2) Be eighteen years of age or older;

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

16 (4) Have successfully passed the Missouri law examination as designated by the board;

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

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

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

28 (2) Pay a renewal fee in an amount established by the board by rule which shall not exceed fifty percent of the application fee established by the board under this chapter for a funeral director license renewal;

32 (3) Provide the name and address of each seller for whom the preneed agent is authorized to sell, negotiate, or solicit the sale of preneed contracts for, or on behalf of.
Any funeral director acting as a preneed agent shall be required to report the name and address of each preneed seller for whom the funeral director is authorized to sell, negotiate, or solicit the sale of preneed contracts as part of their biennial renewal form. Each funeral director preneed agent shall be included on the board's registry.

Any registration which has not been renewed as provided by this section shall expire and the registrant shall be immediately removed from the preneed agent registry by the board. A registrant who fails to apply for renewal may apply for reinstatement within two years of the renewal date by satisfying the requirements of subsection 3 of this section and paying a delinquent fee as established by the board.
333.330. Authority to deny/discipline

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 chapter 333, RSMo, 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:

15 (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;

19 (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;

26 (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;

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

32 (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;

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

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

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

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

48 (10) Misappropriation or theft of preneed funds;

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

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

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

57 (14) Violation of any professional trust or confidence;

58 (15) Making or filing any report required by sections 436.400 to
59 436.520, RSMo, regulating preneed which the licensee knows to be false
60 or knowingly failing to make or file a report required by such sections;

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

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

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

67 (19) Violation of any of the provisions of chapter 193, 194, 407, or
68 436, RSMo;
69. (20) Presigning a death certificate or signing a death certificate on a body not yet embalmed by, or under the personal supervision of, the licensee;

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

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

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

79. 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 action is not, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend for a period not to exceed three years, or revoke any certificate of registration or authority, permit, or license issued under this chapter.

89. 4. In addition to all other powers and authority granted by the board, the board may seek an injunction, restraining order or other order from the Circuit Court of Cole County to enjoin any seller from engaging in preneed sales upon a showing by the board that the seller has failed to make deposits into the preneed trust, has obtained funds out of the trust to which the seller is not entitled or has exercised influence or control over the trustee or has engaged in any other act that has resulted in a shortage in any preneed trust or joint account which exceeds twenty percent of the total amount required to be held or deposited into the trust or joint account under the provisions of sections 436.400 to 436.520, RSMo. In addition to the power to enjoin for this conduct, the Circuit Court of Cole County shall also be entitled to suspend or revoke the preneed seller's license and any other license issued pursuant to chapter 333 RSMo, held by the seller.

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

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

Comment [K63]: Additional
considerations:
- Set out that seller is responsible for its
agents’ actions?
- Set out what constitutes “control” over
trust?
- Maybe address these under other areas
of SBI
333.335. Injunctive authority

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

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

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

16 (3) Engaging in any practice or business that presents a
17 substantial probability of serious danger to the solvency of any seller.
18 2. Any such action shall be commenced in the county in which
19 such conduct occurred or in the county in which the defendant resides
20 or, in the case of a firm or corporation, where the firm or corporation
21 maintains its principal office or in Cole County.

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

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

8. The board shall set the amount of the fees which this chapter
9 authorizes and requires by rules promulgated under section 356.021,
0 RSMo. The fees shall be set at a level to produce revenue which shall
11 not substantially exceed the cost and expense of administering this
12 chapter.

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

18. Any rule or portion of a rule, as that term is defined in section
19 356.010, RSMo, that is created under the authority delegated in this
20 section shall become effective only if it complies with and is subject to
21 all of the provisions of chapter 356, RSMo, and, if applicable, section
22 356.028, RSMo. This section and chapter 356, RSMo, are nonseverable
23 and if any of the powers vested with the general assembly pursuant to
24 chapter 356, RSMo, to review, to delay the effective date, or to
25 disapprove and null a rule are subsequently held unconstitutional,
26 then the grant of rulemaking authority and any rule proposed or
27 adopted after August 28, 2009, shall be invalid and void.
Additional comments:
A. Projections of revenue produced from applications, renewals, etc., will be needed
   a. What about revenue for this year?
   b. Use to set fees

B. Design an optional preneed contract to use?

C. Set out in rule that insurance type companies that sell preneed are sellers under this legislation?

D. Create an overview of all the time related requirements (e.g., 10, 15, 20 and 30 day requirements) throughout the chapters?

E. Create an overview relating to pre and post 08/28/09 for requirements in chapters 333 and 436?
August 5

Board Meeting Addendum Working Documents
Draft - Emergency Rules re Notice of Intent and Report
Proposed Emergency Rule for Notice of Intent to Apply

Title: Filing of Notice of Intent to Apply

Purpose: This emergency rule describes the Board’s procedure for filing a Notice of Intent to Apply for Licensure/Registration under the new requirements contained in Chapters 333 and 436 which will become effective on August 28, 2009 and the result of filing the Notice.

(1) Any person wishing to conduct business as a preneed seller or preneed provider or wishing to register as a preneed sales agent (the “Applicant”) must fully complete and file with the State Board a “Notice of Intent to Apply for Licensure/Registration” (“Notice of Intent”) prior to engaging in any conduct for which a preneed seller license, a preneed provider license or a preneed sales agent registration is required. The Board shall provide the Notice of Intent as a .pdf document on its website. No fee shall be required to accompany the Notice of Intent. Only the official Notice of Intent form shall be accepted by the Board.

(2) Applicants may file the Notice of Intent with the Board by hand delivery, by mail, by fax or by other electronic means such as e-mail. If the Notice of Intent is filed by fax or other electronic means, the Applicant shall also provide the original signed document to the Board by mail or other delivery method.

(3) All Applicants must meet the requirements for licensure as set forth in Chapter 333, RSMo, and must certify that, to the best of their knowledge, they are eligible for licensure/registration.

(4) If the Board determines that the Applicant lacks the statutory qualifications for licensure/registration, the Board may terminate the temporary authorization to practice under the Notice of Intent by notifying the Applicant in writing of the termination and the reason for the termination. An Applicant may apply for full licensure or registration even if the Board has terminated his/her authority to practice pursuant to the Notice of Intent.

(5) Any Applicant who has filed a Notice of Intent must file their completed Application for licensure or registration with the Board no later than October 1, 2009.

(6) The Applicant shall keep a copy of the Notice of Intent and shall prominently display this Notice of Intent as if it were a license or registration issued pursuant to Chapter 333, RSMo.
24 hours and getting a death certificate.

UNIDENTIFIED: That's a bad plan.

CHAIRMAN: Actually, a funeral director can play that same game. He -- not just doctors. He doesn't have to apply by the electronic system. He can just drop it to paper and go on and just --

MR. OTTO: But you're going to have to be on the electronic system to drop it to paper.

CHAIRMAN: Well, that's true.

MR. OTTO: I mean, you're going to have to have a computer, you're going to have to have a log-in name, and you're going to have to start the process.

CHAIRMAN: Why?

MR. OTTO: Because they're requiring it.

CHAIRMAN: Why? If you have to drop it to paper, why can't you just fill out the old form, or will they not produce the old forms any longer?

MR. OTTO: No. Yeah. Eventually, they won't have them.

CHAIRMAN: Well, I've 10,000 of them in a file drawer, so stock up now.

MR. OTTO: Yeah. Stock up now.

(Several people talking simultaneously.)

MS. DUNN: Connie, is Healing Arts going to
try to get this on their agenda in October?

MS. CLARKSTON: Yes, they are.

MS. DUNN: For open agenda?

MS. CLARKSTON: That's my understanding.

MS. DUNN: Okay. So, I will keep in touch with Healing Arts and get that on our Web site and out to everyone about Healing Arts talking about this at their next open agenda.

CHAIRMAN: Okay.

MS. DUNN: Now, did somebody -- somebody called me the other day and said -- and I haven't talked to Ivra, that now they've realized they have to have a statute change?

MR. OTTO: I heard that same conversation probably from the same person.

MS. DUNN: Okay.

MR. OTTO: But I don't know. I mean, the statute that created the electronic-death-certificate system, such as it is, does not abrogate the Health Department law that's currently on the books that says within the first 24 hours, you can get a certified copy from your local registrar or as designated by them. So, how can she say as of January 1, you can't do that anymore when the statute says you can? Good
question.

MS. DUNN: Okay.

CHAIRMAN: Anything else?

MS. DUNN: Housekeeping.

MS. EULER: I have nothing. I'm done.

CHAIRMAN: Okay.

MS. DUNN: Yeah. I am, too.

CHAIRMAN: So, just adjourn. Motion to adjourn?

MR. MAHN: First.

MR. McCULLOCH: Second.

CHAIRMAN: Jim?

MR. REINHARD: Yes.

CHAIRMAN: All right. We are adjourned.

Thank you all. It's worse than going to the dentist.

(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 August 5, 2009; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this _____ day of _____, 2009.

__________________________
KIRSTY B. BRADSHAW, CCR
August 5

Board Meeting Addendum Working Documents

Date
DRAFT Notice of Intent for Licensure Registration Agent Seller Provider
Draft Emergency Rules SB 1 Implementation Group 1 Follow-up of August 5 Meeting
Draft - SB 1 Implementation Group I
Draft - Emergency Rules re Notice of Intent and Report

Public Comments
Date
Amy Battagler email August 5 2009 comments
Amy Battagler Stewart Enterprise Comments 8-5-09
Bill Stalter comments for August 5 2009 meeting
August 5

Board Meeting Addendum Working Documents

DRAFT Notice of Intent for Licensure Registration Agent Seller Provider
NOTICE OF INTENT TO APPLY FOR LICENSURE/REGISTRATION
AGENT/SELLER/PROVIDER

I HEREBY MAKE APPLICATION TO THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS, OF THE STATE OF MISSOURI, FOR LICENSURE/REGISTRATION UNDER THE LAWS OF THE STATE OF MISSOURI, AND SUBMIT THE FOLLOWING STATEMENTS:

INSTRUCTIONS TO APPLICANT

<table>
<thead>
<tr>
<th>FEE $</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>LICENSE NUMBER</th>
<th>DATE LICENSED</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>FER RECEIVED</th>
<th>DATE DEPOSITED</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>OXO</th>
<th>INITIALS</th>
</tr>
</thead>
</table>

Applicant must complete all applicable sections below. The proper fee, as set by the Board, shall accompany each application. Good money order shall be made payable to the Missouri State Board of Embalmers and Funeral Directors.

1. Any Applicant who has filed a Notice of Intent must file their completed application for licensure or registration with the Board no later than October 1, 2009.

2. This authorization to practice shall be effective from the date the Board receives the notice of intent to practice and shall end on the date the Board either issues a license or registration or denies the application for licensure/registration or until mid-December 4, 2009, whichever comes first.

If you have a disability and require accommodations addressed by the Americans with Disabilities Act, please notify this office at the time of application to ensure that reasonable accommodations are made for your needs. Notification must be made in writing or mailed to the Missouri State Board of Embalmers and Funeral Directors, P.O. Box 423, Jefferson City, Missouri 65102. Notification of special needs must be received at least thirty (30) days in advance of any scheduled examination date. The test telephone number for the hearing impaired is 1-800-536-8666.

PLEASE READ ALL CORRESPONDENCE THAT YOU RECEIVE FROM THIS OFFICE; IT CONTAINS VERY IMPORTANT INFORMATION.

Please check the box indicating the type of license you are applying for:

- [ ] Preneed Agent
- [ ] Preneed Provider
- [ ] Preneed Seller

A. GENERAL INFORMATION

1. Last Name (Suffix Name (Middle Name (First Name If Applicable))

2. Social Security Number (Required)

3. Present Address (Street, City, State, Zip)

4. Telephone Number

5. Mailing Address (Street, City, State, Zip)

6. Email Address

7. County of Residence

8. Date of Birth

9. Gender

B. If a “YES” response is provided for questions A through D, applicant must provide a written explanation on a separate sheet of paper with the applicant’s signature notarized.

   a. Has your license ever been suspended by that state or territory? If yes, explain fully.

   b. Have you ever 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 whether or not sentence was imposed (includes suspended imposition of sentence (SIS)). If yes, explain fully.

   c. Have you ever been arrested, charged with or found guilty, or entered a plea of guilty or nolo contendere of a violation of any federal, state or municipal, drug or alcohol laws or rules whether or not sentence was imposed (includes suspended imposition of sentence (SIS)). If yes, explain fully.

Yes No
C. If this is a Corporation please complete this section:

Corporations Registered Agent:  
Person in Charge of the Entity:  

D. List Preceded Sellers/Providers Associated with the applicant: (If necessary you may attach additional documents may be attached)

<table>
<thead>
<tr>
<th>Name of Licensee</th>
<th>Type of License (Provider/Seller)</th>
<th>Type of Funding Used</th>
<th>This section must be completed</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Provider Seller</td>
<td>Trust</td>
<td>I hereby certify that I meet all statutory requirements to be eligible for licensure/registration.</td>
</tr>
<tr>
<td></td>
<td>Provider Seller</td>
<td>Joint Insurance</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Provider Seller</td>
<td>Trust</td>
<td>I hereby certify that I meet all statutory requirements to be eligible for licensure/registration.</td>
</tr>
<tr>
<td></td>
<td>Provider Seller</td>
<td>Joint Insurance</td>
<td></td>
</tr>
</tbody>
</table>

E. Preceded Sellers must complete this section: (If necessary you may attach additional documents may be attached)

<table>
<thead>
<tr>
<th>Type of Funding Used</th>
<th>Insurance Company(s)/trustee(s) currently used</th>
<th>Address of Insurance Company(s)/trustee(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

F. AFFIDAVIT OF APPLICANT

I, __________________________ (APPLICANT SIGNATURE) (PLEASE PRINT NAME),

being first duly sworn upon my oath, state as follows:

- That I have personally completed the foregoing application truthfully and completely, without omission;
- That all the information and answers contained in the foregoing application and any attachments thereto are true and correct to my best knowledge and belief; and
- That I realize that I made this statement knowingly and that a false statement or material omission herein subjects me to criminal penalties for making a false statement (Section 575.050, RSMo 2000, as supplemented).

G. NOTARY SECTION

STATE OF MISSOURI

COUNTY __________________________________________

SUBSCRIBED ANDSwORN TO/MASED BEFORE M.E. __________________________________________

DAY OF __________________________ 20________

NOTARY PUBLIC __________________________ (VOCATION) __________________________________________

NOTARY PUBLIC NOT MIRRORED OR PRINTED __________________________

DRAFT
August 5

Board Meeting Addendum Working Documents
Draft Emergency Rules SB 1 Implementation Group 1 Follow-up of August 5 Meeting
Emergency rules for Group I following 8-5-09 meeting

Emergency rule: Corporation must be represented by an attorney

Title: Practice by a licensed attorney

Purpose: This rule states when and how a party must be represented by a licensed attorney in a matter involving a licensee or applicant of the Missouri State Board of Embalmers and Funeral Directors.

(1) Any individual may present that individual’s own case without a licensed attorney in a before the Missouri State Board of Embalmers and Funeral Directors in which the individual is contesting a decision of the Missouri State Board of Embalmers and Funeral Directors regarding denial or discipline of a license.

(2) Any individual may file an initial complaint on behalf of another person, including a corporation or other legal entity in a matter involving a licensee or applicant of the Missouri State Board of Embalmers and Funeral Directors but any and all proceedings and filings following the filing of the initial complaint shall be conducted by a licensed attorney.

(3) Except as set forth in section (2) of this rule, only a licensed attorney may represent any other person, including a corporation or other legal entity in matters before the Board. The filing of any document in a matter involving a licensee or applicant of the Missouri State Board of Embalmers and Funeral Directors by a licensed attorney, unless stated otherwise therein, shall be deemed an entry of appearance. An attorney not authorized to practice in Missouri shall enter an appearance in accordance with Missouri Supreme Court Rules.

Authorized by: 333.340 and 333.011(6)

Emergency rule: Payment is not determining factor of "practice of funeral directing"

Title: Practice of funeral directing; payment not determining factor

Purpose: This rule explains that the receiving of payment for providing funeral services is not the determining factor in identifying the practice of funeral directing.

(1) In determining whether a person, pursuant to 333.011(6), is engaging in the practice of funeral directing pursuant to 333.011(8), the Board shall consider all activities listed in 333.011(8).

(2) Receipt of payment by any person for any or all services provided pursuant to this Chapter or Chapter 436, RSMo shall not be a determining factor.
in determining whether the person is engaging in the practice of funeral directing.

Authorized by: 333.340 and 333.011(8)

Emergency rule: Pre-need seller and agent must be licensed in Missouri

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

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

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

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

Emergency rule: "Final Disposition" as defined in Chapter 193

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

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

(1) For purposes of Chapters 333 and 436, RSMo, final disposition shall be defined in accordance with the definition contained in Section 193.015(3), RSMo.

(2) Use of the term final disposition in Chapters 333 and 436 shall be consistent with its use in Chapter 193, RSMo.

Authorized by: 333.340 and 333.011(10)

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

Title: Provider to include funeral establishments engaged in pre-need
Purpose: This rule explains that a provider in a pre-need contract includes, but is not limited to, a funeral establishment that has agreed to undertake the obligations of a pre-need contract under Chapter 436, RSMo.

(1) As defined by Section 333.011(10), the provider of services under any pre-need contract pursuant to Chapter 436, RSMo shall include any licensed funeral establishment that has agreed to undertake the obligations of a pre-need contract pursuant to Chapter 436, RSMo.

(2) A provider who is a licensed funeral establishment who has agreed to undertake the obligations of a pre-need contract pursuant to Chapter 436, RSMo, must meet all requirements of both a licensed funeral establishment and a pre-need provider pursuant to Chapters 333 and 436, RSMo.

Authorized by 333.340 and 333.011(10), RSMo

Emergency rule: Display of License

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

Purpose: This rule states that licensed establishments, funeral directors, embalmers, pre-need sellers, agents and providers must prominently display their license to practice issued by the Missouri State Board of Embalmers and Funeral Directors.

(1) All licenses and any and all duplicate copies thereof, issued by the Missouri State Board of Embalmers and Funeral Directors shall be prominently displayed at all times in a conspicuous location or manner easily accessible to the public for each office or place of business of the licensee.

(2) All licenses shall be available at all times for inspection by any duly authorized agent of the Missouri State Board of Embalmers and Funeral Directors.

(3) The Missouri State Board of Embalmers and Funeral Directors may cause a complaint to be filed with the Administrative Hearing Commission pursuant to Section 333.330, RSMo, for the failure of a licensee to display his or her license as required by Section 333.091 and this regulation.

Authorized by 333.340, 333.091 and 333.330

Emergency rule: Corporate ownership of a corporate licensee

Title: Corporate ownership of a corporation holding a pre-need provider license.
Purpose: This rule prescribes the requirements regarding corporate ownership of a corporation that holds a pre-need provider license.

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

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

(b) at least one owner, director, manager or controlling shareholder of the owner corporation shall be eligible for licensure as if they were applying for licensure as an individual.

Authority: 333.340 and 333.315

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

Title: New license required for change of ownership

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

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

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

(B) A corporation is considered by law to be a separate person. If a corporation holds a Missouri pre-need seller's license, it is not necessary to obtain a new pre-need seller license or to file an amended application for a pre-need seller license if the owners of a minority interest in the stock change. However, as a separate person, if the corporation begins ownership of an entity which holds a Missouri pre-need seller license or ceases ownership of an entity which holds a Missouri pre-need seller license, a new pre-need seller license shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

Authority: 333.340 and 333.320

Emergency rule: Failure to renew a license within 2 years requires completion of application process

Title: Failure to renew a license within 2 years; process required.

Purpose: This rule describes the process for a licensee who fails to renew his or her license within 2 years.

(1) Any pre-need seller issued a license pursuant to Section 333.320, RSMo shall renew his or her license biennially and meet all requirements established pursuant to Section 333.320, RSMo;
(2) Any pre-need seller shall be issued a new license by the board within two years of the renewal date upon completion of all renewal requirements contained in Section 333.320 and payment of appropriate fees set by the Board.
(3) Any pre-need seller license not renewed within two years of the date of renewal shall be void.
(4) Any pre-need seller whose license becomes void for failure to renew within two years of the renewal date who wishes to be licensed by the board must file a new application and meet all requirements of a new application pursuant to Section 333.320 and any corresponding validly promulgated rules of the board.

Authority: Section 333.340 and 333.320
Emergency rule: Licensed funeral director must report each seller for whom he or she is an agent.

Title: Funeral Director agent registration

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

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

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

Authority: Section 333.340 and 333.325.4

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

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

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

(1) All pre-need seller agents applying for licensure with the board shall achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam. Successful completion of the Law exam shall be a prerequisite to licensure. This exam may be taken any time after filing the Notice of Intent to Apply. Pre-need agent applicants must successfully complete the Missouri Law exam on or before December 31, 2009, prior to the expiration of the Notice of Intent to Apply. The Missouri Law exam covers knowledge of Chapter 333, RSMo and the rules governing the practice of embalming, funeral directing and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition and transportation of dead human bodies. The Missouri Law section also contains questions regarding Chapter 436, RSMo relating to pre-need statutes and Chapters 193 and 194, RSMo relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations and Occupational Safety and Health Administration (OSHA) requirements.
as they apply to Missouri licensees. Notification of intent to take this examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination.

Authority: 333.340 and 333.325.5

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

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

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

(1) Pursuant to Section 333.330.4, RSMo, the Missouri Board of Embalmers and Funeral Directors shall not be entitled to seek injunctive relief against a seller of a pre-need trust if there is a shortage greater than twenty percent of the total amount required to be held or deposited into the trust or joint account pursuant to Chapter 436 in the pre-need trust or joint account that is exclusive of the result of normal fluctuations in the market.

Authority: Section 333.340 and 333.330

Emergency rule: Financial welfare cause for injunction

Title: Danger to financial welfare is cause for injunction.

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

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

(2) For purposes of Section 333.335, RSMo, serious danger to the welfare of any resident or client or customer shall include, but is not limited to, the financial welfare of the resident, client or customer.
Authority: Section 333.340 and 333.335.
August 5

Board Meeting Addendum Working Documents
Draft - SB 1 Implementation Group I
SENATE BILL NO. 1
95TH GENERAL ASSEMBLY
2009
0404L.09T
AN ACT
To repeal sections 333.011, 333.091, 333.101, 333.121, 333.151, 333.221, 333.241,
333.251, 436.005, 436.007, 436.011, 436.015, 436.021, 436.027, 436.031,
436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 436.055,
436.061, 436.063, 436.065, 436.067, 436.069, and 436.071, RSMo, and to enact
in lieu thereof forty new sections relating to preneed funeral contracts, with
penalty provisions.
Be it enacted by the General Assembly of the State of Missouri, as follows:
Section A. Sections 333.011, 333.091, 333.101, 333.121, 333.151, 333.221,
2 333.241, 333.251, 436.005, 436.007, 436.011, 436.015, 436.021, 436.027, 436.031,
3 436.035, 436.038, 436.041, 436.045, 436.048, 436.051, 436.053, 436.055, 436.061,
4 436.063, 436.065, 436.067, 436.069, and 436.071, RSMo, are repealed and forty
5 new sections enacted in lieu thereof, to be known as sections 333.011, 333.091,
6 333.101, 333.151, 333.221, 333.251, 333.310, 333.315, 333.320, 333.325, 333.330,
7 333.335, 333.340, 436.400, 436.405, 436.410, 436.412, 436.415, 436.420, 436.425,
10 436.520, and 1, to read as follows:
333.011. Definitions

1. As used in this chapter, unless the context requires otherwise, 2 the following terms have the meanings indicated:

3 (1) "Board", the state board of embalmers and funeral directors created 4 by this chapter;

5 (2) "Embalmer", any individual licensed to engage in the practice of 6 embalming;

7 (3) "Funeral director", any individual licensed to engage in the practice 8 of funeral directing;

9 (4) "Funeral establishment", a building, place, crematory, or premises 10 devoted to or used in the care and preparation for burial or transportation of the 11 human dead and includes every building, place or premises maintained for that 12 purpose or held out to the public by advertising or otherwise to be used for that 13 purpose;

14 (5) "Funeral merchandise", caskets, grave vaults, receptacles, and 15 other personal property incidental to the final disposition of a dead 16 human body, including, grave markers, monuments, tombstones, and 17 urns;

18 (6) "Person" includes a corporation, partnership or other type of business 19 organization, any individual, partnership, corporation, cooperative, 20 association, or other entity;

21 (6) (7) "Practice of embalming", the work of preserving, disinfecting and 22 preparing by arterial embalming, including the chemical preparation of a dead 23 human body for disposition. Practice of embalming includes all activities leading 24 up to and including arterial and cavity embalming, including but not limited to 25 raising of vessels and suturing of incisions of dead human bodies for funeral 26 services, transportation, burial or cremation, or the holding of oneself out as 27 being engaged in such work;

28 (7) (8) "Practice of funeral directing", engaging by an individual in the 29 business of preparing, otherwise than by embalming, for the burial, disposal or 30 transportation out of this state of, and the directing and supervising of the burial 31 or disposal of, dead human bodies or engaging in the general control, supervision 32 or management of the operations of a funeral establishment;

33 (8) "Preneed agent", any person authorized to sell a preneed...
34 contract for or on behalf of a seller;

35 (10) "Provider", the person designated or obligated to provide the
36 final disposition, funeral, or burial services or facilities, or funeral
37 merchandise described in a preneed contract;

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

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

Comment [K6]: See out whether every licensed funeral director is a "provider"? (and must pay the fee?)
Comment [K7]: Could define any or all of these terms – with some examples

Comment [K8]: Seller must use agent registered in Mo
333.091. License must be displayed and recorded

Each establishment, funeral director or embalmer receiving a license under this chapter shall have [the] recorded in the office of the local registrar of vital statistics of the registration district in which the licensee practices. [The licenses or duplicates shall be displayed in the office(s) or place(s) of business.] All licenses or registrations, or duplicates thereof, issued pursuant to this chapter shall be displayed at each place of business.
333.101. Board may enter premises to inspect

The board or any member thereof or any agent duly authorized
2 by it may enter the office, premises, establishment or place of business of any
3 [funeral service licensee in this state] licensee or registrant, or any office,
4 premises, establishment or place where the practice of funeral directing [or],
5 embalming, preneed selling or providing is carried on, or where such practice
6 is advertised as being carried on for the purpose of inspecting said office,
7 premises or establishment and for the purpose of inspecting the license and
8 registration of any licensee or registrant and the manner and scope of training
9 given by the licensee or registrant to the [intern] apprentice operating
10 therein.

Comment [K11]: May want to clarify
that this includes any place where records
are stored, regardless of format (including
electronic). May also want to address
consent to access off-site locations where
files may be stored and that employees of
licensee or registrant may allow access.
May want to set out timeframe of some
kind within which access must be granted.
333.151. Board membership and appointment

1. The state board of embalmers and funeral directors shall
2 consist of six members, including one voting public member, appointed by
3 the governor with the advice and consent of the senate. Each member, other than
4 the public member, appointed shall possess either a license to practice embalming
5 or a license to practice funeral directing in this state or both said licenses and
6 shall have been actively engaged in the practice of embalming or funeral directing
7 for a period of five years next before his or her appointment. Each member shall
8 be a United States citizen, a resident of this state for a period of at least one
9 year, a qualified voter of this state and shall be of good moral character. Not
10 more than three members of the board shall be of the same political party.
11 [ The president of the Missouri Funeral Directors Association in office at the time
12 shall each, at least ninety days prior to the expiration of the term of a board
13 member, other than the public member, or as soon as feasible after a vacancy on
14 the board otherwise occurs, submit to the director of the division of professional
15 registration a list of five persons qualified and willing to fill the vacancy in
16 question, with the request and recommendation that the governor appoint one of
17 the five persons so listed, and with the list so submitted, the president of the
18 Missouri Funeral Directors Association shall each include in his or her letter of
19 transmittal a description of the method by which the names were chosen by that
20 association. The non-public members shall be appointed by the
21 Governor, with the advice and consent of the senate, one from each of
22 the state's congressional districts be of good moral character and
23 submit an audited financial statement of their funeral establishment by
24 an independent auditor for the previous five years. This audited
25 financial statement must include all at-risk and preneed business.

26 Each member of the board shall serve for a term of five years. Any
27 vacancy on the board shall be filled by the governor and the person appointed to
28 fill the vacancy shall possess the qualifications required by this chapter and shall
29 serve until the end of the unexpired term of his or her predecessor, if any.
30 [ The public member shall be at the time of his or her appointment a
31 person who is not and never was a member of any profession licensed or regulated
32 pursuant to this chapter or the spouse of such person; and a person who does not
33 have and never had a material, financial interest in either the providing of
34 the professional services regulated by this chapter, or an activity or organization
35 directly related to any profession licensed or regulated pursuant to this chapter.
36 All members, including public members, shall be chosen from lists submitted by
37 the director of the division of professional registration. The duties of the public
38 member shall not include the determination of the technical requirements to be
39 met for licensure or whether any person meets such technical requirements or of
40 the technical competence or technical judgment of a licensee or a candidate for
41 licensure.