OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

August 11, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Tuesday, August 11, 2009 – 7:30 a.m. to 7:31 a.m.
The meeting of the Missouri State Board of Embalmers and Funeral Directors
was called to order by Martin Vernon, Chairman, at 7:30 a.m. on Tuesday,
August 11, 2009, at the Division of Professional Registration, 3605 Missouri
Boulevard, Jefferson City, Missouri.

Roll Call
Board Members Present
Martin Vernon, Chairman
Gary Fraker, Vice-Chairman
James Reinhard, Member

Board Members Absent
Todd Mahn, Secretary
John McCulloch, Member
Joy Gerstein, Public Member

Staff Present
Becky Dunn, Executive Director
Lori Hayes, Inspector
Sharon Euler, Assistant Attorney General
Don Eggen, Chief Investigator

Closed Meeting
Motion was made by Gary Fraker and seconded by Jim Reinhard 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 records 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, Gary Fraker and Jim Reinhard voting in favor with no votes in opposition. John McCulloch was absent for this portion of meeting. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

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**Tuesday, August 11, 2009 - 9:00 a.m.**

The meeting of the Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 9:09 a.m. on Tuesday, August 11, 2009. The meeting was called to order by Martin Vernon, Chairman, at the Division of Professional Registration, 3605 Missouri Boulevard, Jefferson City, Missouri.

**Roll Call**

**Board Members Present**

Martin Vernon, Chairman  
Gary Fraker, Vice-Chairman  
John McCulloch, Member  
James Reinhard, Member

**Board Members Absent**

Todd Mahn, Secretary  
Joy Gerstein, Public Member

**Staff Present**

Becky Dunn, Executive Director  
Lori Hayes, Inspector  
Earl Kraus, Senior Legal Counsel  
Sharon Euler, Assistant Attorney General  
Connie Clarkston, Director of Budget and Legislation  
Don Eggen, Chief Investigator  
Mark Stahlhuth, Division of Finance, joined at 1:00 p.m.

**Public Present**

Stephen Zell, ACM  
Dale Westby, ACM  
Matt Whaley, SCI  
John Moore, Mcore Funeral Home  
Representative Tim Meadows, State Legislature  
Darlene Russell, CFL Preneed  
Esther Bateman, Stewart Enterprise
Approval of Agenda
Motion was made by Gary Fraker and seconded by John McCulloch to approve the open agenda. Motion carried with Martin Vernon, Gary Fraker, John McCulloch, and Jim Reinhard voting in favor with no votes in opposition. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Approval of Minutes
No minutes were available for review.

Executive Director’s Report
Becky Dunn had nothing to report at this meeting.

Future Meeting Dates
Future meeting dates are scheduled as follows:
- August 19, 2009, 9:00 a.m.
- August 25, 2009, 9:00 a.m.
- September 2, 2009, 9:00 a.m.

Financials/Projections
Nothing to report at this meeting.

Brad Speaks/Scott Lindley Appearance (Robert Cowherd by Phone)
Brad Speaks addressed the board pursuant to an email request relating to the claim process and timely payout from National Prearranged Services, Inc (NPS). Mr. Speaks stated he had filed claims from NPS for 35 funerals and hasn’t been paid for any of them. He is asking the State Board to make a formal request of the Attorney General to enforce the law. Mr. Speaks further requested that the State Board hire Robert Cowherd as the board’s attorney so that he can work on this ongoing issue for the consumers of Missouri and the funeral providers who have been harmed.

Attorney General Update
Sharon Euler, Assistant Attorney General, provided the Board an update regarding National Prearranged Services Inc. (NPS). The Attorney General’s website has a Consumer Alert regarding the NPS claim packets. The Special Deputy Receiver has filed a lawsuit to begin asset recovery process in the NPS liquidation action. Ms. Euler also advised that Randy Sutton was indicted on NPS related charges. This was provided for informational purposes only.
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:
- 436.405 (2) Definition of Guaranteed Contract
- 436.405 (7) Definition of Preneed Contract
- 436.412 Grandfather Clause - clarify who gets paid what
- 436.415.1 Provider/Seller obligations
- 436.415 Provider/Seller obligations – clarify obligations
- 436.420.3 Provider/Seller contract
- 436.425.1 Consumer contract requirements
- 436.425.1(5) Consumer contract requirements
- 436.425.1(12) Consumer contract requirements
- 436.425.1(13) Consumer contract requirements
- 436.425.1(14) Consumer contract requirements
- 436.425.1(15) Consumer contract requirements
- 436.425.3 Consumer contract requirements
- 436.425.4 Consumer contract requirements
- 436.435.6 Trustee duties

12:00 p.m. – 1:05 p.m. – Closed Meeting
Motion was made by Gary Fraker and seconded by Jim Reinhard 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, Gary Fraker, John McCulloch and Jim Reinhard voting in favor with no votes in opposition. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Reconvene
The State Board of Embalmers and Funeral Directors reconvened in open session at approximately 1:05 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.

Open Discussion – Dialogue with General Public Attending Open Session
Continuation and/or Completion of any Unfinished Open Session Business
Nothing further to report.

Adjournment
A motion was made by Jim Reinhard and seconded by Gary Fraker to adjourn. Motion carried with Gary Fraker, John McCulloch and James Reinhard voting in favor with no votes in opposition. The meeting adjourned at 4:32 p.m. on Tuesday, August 11, 2009. Todd Mahn and Joy Gerstein were absent from the meeting in its entirety.

Executive Director: Sandy Sebastian

Approved by the Board on: 6/14/16/10
MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

TRANSCRIPTION OF MEETING

DIVISION OF PROFESSIONAL REGISTRATION
3605 MISSOURI BOULEVARD
JEFFERSON CITY, MISSOURI

AUGUST 11, 2009
9:05 A.M. - 4:40 P.M.

RECEIVED
SEP 09 2009
STATE BOARD OFFICE
CHAIRMAN: Call the meeting and good
time together to order this morning, so we'll
take a roll call. Gary Fraker?
MR. FRAKER: Yes, sir.
CHAIRMAN: John McCulloch?
MR. McCULLOCH: Here.
CHAIRMAN: Jim Reinhard?
MR. REINHARD: Here.
CHAIRMAN: Joy Gerstein.
MS. DUNN: Absent.
CHAIRMAN: Todd Mann?
MS. DUNN: Absent.
CHAIRMAN: All right. So, go around
the room and make introductions. Well, we'll
do the approval of the agenda first. Need a
motion for approval of the agenda.
MR. FRAKER: So moved.
CHAIRMAN: So moved, Mr. Fraker.
MR. McCULLOCH: Second.
CHAIRMAN: John seconds. So, that
takes care of that. So, now, we'll go around
the room and introduce. I'm Martin Vernon,
Chairman of the Board. To my right around the
table we have Earl Kraus, senior legal counsel
for the Division. You heard Gary Fraker say
here, Board member. Lori Hayes, our inspector; our court reporter. Tell us your name.

THE REPORTER: Kristy Bradshaw.

CHAIRMAN: Kristy Bradshaw. Glad to see you today. Connie Clarkston, if I get it right. I never can remember your exact title. Say what that is, please.

MS. CLARKSTON: Director of budget and legislation.

CHAIRMAN: Director of budget and legislation. Of course, John McCulloch, Jim Reinhard, Board members; Sharon Euler, assistant attorney general, and who really runs the ship; our executive director who we cannot get along without, the best, Becky Dunn. So --

MS. DUNN: Thank you. And Don.

CHAIRMAN: Oh, yes. Don just walked in -- our central investigative unit, Don Eggen here with us today. So -- and then we'll go around the room and introduce, but I'll introduce. We have Representative Tim Meadows with us here today. We're always glad to have him with us. And then Darlene, just
take it away, and right on around.

MS. RUSSELL: Darlene Russell, CFL
Preneed; Esther Bateman, Stuart Enterprises;
Brad Speaks, Speaks Funeral Home; Jim Moody,
Moody & Associates and SCI; Chris Moody, Moody
& Associates and SCI; John Moore, Moore
Funeral Home; Matt Whaley, SCI Funeral
Services of Missouri; Dale Westby, Associated
Cemeteries -- (inaudible) -- St. Charles
Memorial Gardens; Bill Stalter, Stalter Legal;
Stephen Zell -- (inaudible) -- Cemetery and
Chapel; Don Otto, Missouri Funeral Directors
and Embalmers Association, Missouri Funeral
Trust.

CHAIRMAN: All right. We're very glad
to have all of you with us today, so -- just
as a footnote, I would just say that we've
been -- or I personally have been very proud
of how these meetings have went. We knew it
would be like pulling teeth and going to the
dentist for a long grinding, grueling ordeal
through each one of these sessions, and if you
haven't been to one yet, you'll agree with
that whenever the end of the day is here, but,
yet, very informative and very good, in my
opinion. So, a couple of ground rules for the
day for some of us that haven't been here.
When we start the line-by-line, so to speak,
process, the legal counsel will kind of guide
that discussion. They've put a lot of effort
and footnotes and notes that you all have sent
to us, and has been very good for helping with
that. We need to stay focused microscopically
so we're not chasing rabbits all over the
place, and then we'll move it through section
by section, and that helps greatly. So, we
will also be breaking at noon for lunch with
an hour out and then back at 1:00, so
everybody is aware of that and can be thinking
in turn of that. So, I'm going to give it to
Becky for just a second because she has some
thoughts on how we have to address things with
the court reporter and all that.

MS. DUNN: So, for those new to the
group today, please only speak one at a time
and when you do speak, say your name and
organization for the court reporter so we can
have those reflected accurately. If you do
want copies of the minutes, please make sure
to contact the court reporter, give your name
and organization. They're working weekly. They don't have them done yet, but if you do, you'll have to get those from the court reporter.

CHAIRMAN: Okay. So, did you say we want the future dates just to be posted?

MS. DUNN: All of our future dates are on our Web site at this time. What we're trying to do is those that -- I think everyone is on our e-mail group. We put everyone's comments under that week's meetings. If you could just refer to our Web site, it's very helpful to us, and we try to keep that as updated as we can by the minute.

CHAIRMAN: Any comments that you choose to express, we may hear it vocally today, but if you really want the legal counsel to look at that, add it to the next week's -- what we'll be referring to as bubble notes as we go along through here in the second section where maybe we back up and look at something, there is a process for that and you know it better than I, so comments would be e-nailed to Becky by --

MS. DUNN: Well, we'd like to have
them, you know, the Friday before the meeting
if at all possible. I know that that's very
difficult. We're not getting our comments
back to you in that time frame, but as soon
as you can e-mail them to myself or prembalm
-- I think that's our generic e-mail which is
on our Web site -- we'll get those posted.

CHAIRMAN: Okay. So, on the agenda
for the day, there was a #3 there. It says
financial/projections. That part is that we
weren't sure if there was really going to be a
presentation of that. We thought there was,
but that's coming at a later moment, so that's
been postponed. So, the next thing on the
agenda, we had listed Brad Speaks/Scott
Lindley/appearance, whatever; is there
anything in that thought at the moment?

MR. SPEAKS: Well, I've prepared an
interpretive dance.

CHAIRMAN: Okay. Do you want on the
table? We'll back up. We'll back up, move
the microphone.

MR. SPEAKS: I guess this mike can
pick me up okay? Brad Speaks, Speaks Funeral
Home. I had submitted a formal request to the
Board and I suspect everybody has copies of that. Very briefly, I'll just explain a little bit. There's two issues here, really. They are not mutually exclusive in the sense that they're related, but you could do one or the other or neither or both. The first has to do with the special master in Texas. There's seven issues here that I've listed. Does everybody have copies of this letter?

MS. DUNN: We have some at the end of the table. Connie, would you --

MS. CLARKSTON: Actually, they're over there, and his aren't in there, are they?

MS. DUNN: Oh.

UNIDENTIFIED: Uh-huh. Yeah. They should be.

MS. CLARKSTON: Okay. Never mind. I'm good.

MR. SPEAKS: Well, I guess, for the group's information that is not aware, I am one of the harmed parties; in other words, our funeral home is a victim of the NPS events, and have been receiving face amount on some of our contracts, have received nothing on other contracts, and, to date, I have probably
provided approximately 35 funerals where I have not been paid a dime. And our position is that represents felony violations of Chapter 436. We have requested the attorney general to do something about that and were politely informed that that probably did not fall within their strategy. And so, we are asking the State Board to make a formal request of our attorney general to enforce those laws. In addition, here is the seven points: Payment of claims from NPS, ongoing issues, and I know Don appeared in court in Texas, arguing these same points, the timing of the claims payments. They're supposed to be doing this, you know, within a certain time period, and their position is, well, the average is that time period. Don made the point, well, that means half of them are not in compliance. We would like to have something done about that. We're concerned about ongoing consumer payments on the contracts in the event that consumers are still paying under threat of, well, you'll lose your funeral if you don't. To date, there is no guarantee of what's happening to
that money. There's also questions about what
happened to the money that was sent in prior
to the settlement agreement and, Don, I
understood that they gave you an answer, it's
just an unacceptable answer.

MR. OTTO: Yeah. Well, there's two
issues there. One is back in May, they said
they would have an official report on that
within a month. That was in May. And I said
in Texas everything is bigger in Texas,
apparently, including the months, because we
don't have that yet. Chris Fuller, however,
on a phone conference with Donna Garrett and
Kaylene Summerville, our president, said the
following: And there's three time periods.
There's the time period after they went under
court supervisor, but before the receivership
was appointed officially. Then there was a
time while it was under receivership
reorganization, not yet liquidation, and then
there was a time after liquidation. This is
what he told us on the phone. All money that
was sent in before the receiver was appointed
is gone. Kiss it good-bye; okay? You know,
and that includes there was a number of
contracts. Now, they -- NPS was under court orders to stop doing business, and a number of states had ordered it to stop doing business, but, yet, some still go through. There were some -- I call them the March contracts, although that's slightly inaccurate. But the March contracts, they accepted money, including some that were paid in full. That money is gone. Then the time period -- now, then, so, that one's clear. The time period after the liquidation order was signed, what Mr. Fuller said was that although the installment payments that are coming in are not being physically segregated, which is, I believe, is contrary to what they had indicated earlier, but I'd have to go back and actually read the transcripts. It is being accounted for and that in the event that those contracts are determined to be orphaned and that -- that money will be returned to them. Then you've got the trickiest time period between the date the receivership was appointed, but before the liquidation order was in effect when people were saying that -- Donna Garrett and others were saying continue
to send your money in or you'll lose your contracts, and people were sending the money in. Now, I will not try -- I will -- until something is filed, I will not say that this is the final word, and I will not say this is official. This was in a phone conversation. But what we were told is that those consumers will not get those installment payments back if it's determined that they don't have a contract -- (inaudible) -- orphaned. They will get the money back after October 28th when the liquidation order went into effect. So, if anybody is sending money in now on an installment contract, that money is "safe," because you're not going to lose it. But for that money that was sent in between, what was it, April 9th, I think it was, and October 28th, it looks like that that money will not, under any circumstances, be refunded. Now, that does not say that they aren't working on a way to try to reduce the number of contracts that are orphaned. I think they are. I think they are trying to work -- figure out a way so that more and more of those are not orphaned so that it doesn't matter, they can
continue to make payments and they'll get the Guaranty fund payment. But what he said was if it's an orphan contract so that there is no Guaranty fund payment, the money between April 9th and the liquidation order would not be returned to them, and I expressed my extreme unhappiness with that, and he said he understood. He didn't disagree with my emotions on that, but he said that was their view, under Texas law, as to how it had to be. And I pointed out, well, you're the ones saying send the money in. And he goes, well, that's no different than NPS. And I'm going, yeah, but I'm hoping they're all in jail soon, and you're the Texas court. And he said, well, that's -- you know, I understand your point, and when we file this -- of course, they haven't filed this yet. When we file this, you'll have an opportunity to make objections to that, and he urged us to do so when that came out. Now, again, that's -- that was in a phone conversation. I can't hold him to it because, obviously, he's not the decision-maker. There's a lot of other chiefs in that, and not as many Indians as you
think. A lot of chiefs, not many Indians. And so, that may change and it may not be as big a deal as I'm concerned about because they might be able to figure out a way to make these not court -- potentially orphan contracts not orphan, in which case then, well, that's all right, maybe. I mean, not perfect, but it's better than what it is, but that is what we were told. And to describe my vehement opposition to that result, if, in fact, people had sent money in to Texas under the representation from the special deputy receiver that if you don't send this in, you're going to lose your contract, and then to find out a year later, well, you've lost your contract anyway, even though you've never missed a payment, plus all that money you sent in during the summer, we're keeping, I said is pretty bad.

MR. SPEAKS: Yeah. I guess I'm just a stupid funeral director that grew up in a town of 1,500 people, but where I'm from, we would call that stealing, and we're concerned about that, and we would like our attorney general to do something about that. Thank you, Don.
Point #4, Missouri banks and their liability
class-action lawsuits, you know, since I wrote
this, there have been developments in terms of
the lawsuits; however, we're still very
concerned that the purpose of one of those
lawsuits may be to push us out and that's not
right. We are the harmed parties. Point #5,
our expenses in pursuing this matter, it's
kind of like if your baby gets kidnapped and
the FBI tells you you need to pay for this
yourself, you know. Well, you do what you've
got to do because it's your kid, but I don't
think that's right. We'd like to have access
to the teleconference reports. You know, at
one point, we were allowed to do that. As a
result of somebody's barking dog, we got
kicked off of that call. That was
unfortunate. Perhaps there is a way, though,
for us to gain access back. And then,
finally, the SDR's attempt -- you know, this
is kind of past news, as well -- to send this
letter out to all consumers. I think we've
all been besieged by phone calls and, you
know, I would hope that that could have been
avoided because it stirs up the public. The
number-one call has been is my funeral safe, and there is really no good answer to that. The answer we've given them is, well, we intend to provide your funeral whether we get paid or not. And, you know, that's just where that stands. The second issue has to do with the Board's newfound ability to hire legal counsel, and I think that's great. I'd like to suggest that you hire Mr. Robert Cowherd to work on these issues. In my opinion, at least, there is no bigger issue. The implementation of Chapter 436 is big, but with over half the funeral homes in this state suffering from these other issues, to me, that's the biggest issue facing the State Board, and I'd like to recommend that you hire Mr. Robert Cowherd as your legal counsel to work on this issue. That's not to say that you cannot have other representation in terms of other ongoing issues that are not Mr. Cowherd's expertise, but I don't think there is anybody that is more well-versed in what's going on in this case than Robert. So, those are the two requests. I don't expect an immediate answer, but I would like you to take
that under consideration, and we appreciate all that you're doing Mr. Chairman, I have high hopes for the current regime, and congratulations.

CHAIRMAN: Well, thank you.

MR. SPEAKS: It's all fallen in your lap.

CHAIRMAN: It has, hasn't it?

MR. SPEAKS: Thank you.

CHAIRMAN: Well, Brad, thank you. So, Board members, anybody have a specific question or thought on any of Brad's statements or comments? Okay. Well, Brad, we thank you for that presentation and I guess, at the moment, we'll say taken under advisement and we'll go forward.

MR. SPEAKS: Thank you.

CHAIRMAN: So, all right.

MS. DUNN: I have one question.

CHAIRMAN: Yes, ma'am.

MS. DUNN: As individuals send in their comments, we're very careful about sending out e-mails. I apologize, maybe Amy's e-mail was posted. Does anyone that's sending comments have any problem with us on putting your
e-mail on the Web site with your comments?
Well, if you do that, when you send in your
comments, would you just say that you've given
us authorization to use your e-mail, and,
Bill, we may have done the same for you.

MR. STALTER: Yeah. I just found out
they're posted.

MS. DUNN: Okay. I just wanted to
make sure.

MR. SPEAKS: I don't have any secrets.

CHAIRMAN: Okay. Put you on the spot
for the moment, Tim, but last week, you asked
for a minute or two just -- do you have
something today because I forgot to ask you
that.

REPRESENTATIVE MEADOWS: No. I'm very
fine. Thank you, Mr. Chairman.

CHAIRMAN: All right. Just wanted to
make sure.

MS. EULER: Mr. Chairman?

CHAIRMAN: Yes, ma'am?

MS. EULER: May I give the Board and
everyone here just a little bit of an update?

CHAIRMAN: Absolutely.

MS. EULER: First of all, I'd like to
let everyone know that on the AG's Web site, there is now a consumer alert that we posted last week that provides just some basic information for consumers about the NPS claim packets, so I wanted everybody to know about that. And, also, I assume everybody has gotten the word that the SDR has filed a lawsuit. This is a copy of the complaint -- 140 pages of fun-filled reading -- and this is their first effort to begin the asset-recovery process in the NPS liquidation action. And, also, I assume everybody has heard that Randy Sutton was indicted this week on NPS-related charges, so --

MR. SPEAKS: Do you have copies of that?

MS. EULER: I have a couple.

REPRESENTATIVE MEADOWS: Can I have one of those, Sharon?

MS. EULER: Yeah. I think Tab was going to make some more copies.

CHAIRMAN: That's on the Web, isn't it?

MS. EULER: It's -- well, are you going to post it to our Web site, Becky?

It's available through the PACER System, but
you have to have an account, and there's a slight charge for it.

CHAIRMAN: Okay.

MR. OTTO: I posted a pdf link earlier.

MS. EULER: Okay.

MR. OTTO: If anyone doesn't have it, let me know and I can send it out, and then you'll have to pay for it.

MS. EULER: We have to pay for it?

MR. OTTO: Yeah.

MS. DUNN: I can post it.

MS. EULER: Okay.

UNIDENTIFIED: (Inaudible.)

MR. OTTO: Well, yeah. All of it. There was links to all of it, I think. Somebody had it posted somewhere else, so -- but it would be easier if you could do it.

MS. EULER: I expect that this will be the first of a long line of indictments we'll see.

MR. OTTO: And it's hit the AP national press this morning. I mean, so it's beyond the "Post Dispatch" now.

MS. EULER: Yeah.

CHAIRMAN: Anything else?
MS. EULER: That's all I have unless someone has questions for me.

CHAIRMAN: Anybody have a question for Sharon?

MS. EULER: Okay.

CHAIRMAN: Okay. We'll get started with meeting #2, Senate Bill 1 implementation process.

UNIDENTIFIED: Number three.

MR. KRAUS: Meeting #3, group #2.

CHAIRMAN: Oh, that's right. Group #2. The way we have done this is we have just pretty much let legal counsel, they've worked and kind of put a presentation of section by section together. We've taken comments after that, looked through the bubbles at comments that you all have addressed that we need to -- or what you think we need to look at, and they've tried to consider all that, too. So, I guess, Earl, Sharon, whoever.

MS. DUNN: This is the one that we'll start out with.

UNIDENTIFIED: Start at this point, 400, Becky?
MS. DUNN: Yes.

CHAIRMAN: Yeah. There we go. Yeah. Starting at 436.400.

MR. KRAUS: All right. So, the document you should be looking at starts off with ASB Senate Bill 1 implementation/group #2.

CHAIRMAN: Does everybody have that? Okay.

MR. KRAUS: And I think that's copied double-sided, so don't forget to look at both sides there as we're going through this. And what we've tried to do last week and this week, too, is assemble people's comments and insert them close to what they're talking about through these different sections, and then just walk through section by section this whole group of sections. And, hopefully, the comments will prompt discussion among the Board and also among those of you here attending so that then the Board can decide how it wants to go forward in implementing these various sections, be that through rule or not, so that's what we're hoping to do. So, unless there are some other thoughts, we'll just dive right in.
MS. EULER: Just dive in.

MR. KRAUS: All right. Title of the act, 436.400, we didn't have any specific comments about that. I don't know if there are any thoughts or comments about that one, so unless there are, we'll just move on to the next section. The pages are not numbered, so I'll be referring to them by section, and also you'll notice the bubble comments are numbered either with a K and then a number or just a number, so we'll use those to keep track of where we're at. Definitions, Section 436.405, comment K1, we've got we could end up with an -- let's see. We could end up with additional terms to define by rule cannot be inconsistent with the statutory definitions. I think that's a general comment just for the Board to keep in mind that as we're going through and developing a number of rules, that we may use terms that aren't identified in statute, and if they're terms we use consistently throughout the rules, we may want to define those in rule. That being said, there are a number of rules -- the draft potential rules that we talked about last week that we have
and that we'll talk about later today, too, as part of this process. So, moving on down, comment 02 at the bottom there -- let's see. Preneed contracts. Maybe we need to set out the rule where there is no delivery, there is no preneed.

    MS. EULER: Earl?
    MR. KRAUS: Yes.
    MS. EULER: I think that's a typo.
    MR. KRAUS: Is it?
    MS. EULER: Historically, one of the way the Board has been determining whether a contract is a preneed contract or not is if there is delivery of the goods and services, then it's not a preneed. If there is no delivery of goods and service, then it probably is preneed.

    MR. KRAUS: Then there is preneed.
    MS. EULER: Uh-huh.
    MR. KRAUS: And is that something that you think we need to set out in rule or --
    MS. EULER: If the Board wishes.
    CHAIRMAN: Board?
    MR. REINHARD: Well, you better make it clear. Yes.
MS. EULER: Yes?

CHAIRMAN: John? Gary?

MR. McCULLOCH: So, what's it going to say now?

MS. EULER: That one of the ways to determine whether there is a preneed contract or not is if -- for instance, if you are selling caskets, if you -- if Jim signs on the dotted line saying, you know, I want the special super-duty casket and it's $13,000, and if Jim gives me the money, but I don't give him a casket, then that's preneed. If Jim gives me the money and I give him the casket, then it's not preneed, whether Jim is alive or dead.

MR. McCULLOCH: Okay.

MS. EULER: And that's one of the bright lines the Board has used in years past. Whether we want to continue to use that or not is a matter of discussion.

MR. McCULLOCH: I'm okay with that.

MR. KRAUS: Just to try to distinguish just a sale versus a preneed contract.

MS. EULER: Right. Right. Because it's really do I get the casket now or do I
have to wait till I'm dead, so --

CHAIRMAN: So, what other criteria would there be other than that?

MS. EULER: I don't know.

CHAIRMAN: I mean --

MS. EULER: But we can set forth that that's one of the things to look at.

CHAIRMAN: Okay. Makes sense to me. So, I think that's pretty much unanimous and everybody here that we would at least say that. Okay.

MR. STALTER: Is it open for comments now?

CHAIRMAN: Yes.

MR. STALTER: As you go?

CHAIRMAN: Sorry.

MR. STALTER: This is Stalter. I mean, there's always an issue about when you're talking about delivery, are we talking about current delivery or deferred delivery. And as we get into the cemetery exemption, we talked about, you know, you define funeral merchandise into markers and monuments and so forth, so what is it that the Board perceives as a contract for a marker? When does it
have to be delivered for it to be an at-need contract versus a preneed contract?

CHAIRMAN: Good question.

MS. EULER: What the Board has traditionally looked at -- and the context of this has come up infrequently. It hasn't come up so much in the markers issue, but there is a group that was selling caskets, plain box caskets, and if you bought it now before you were dead, they would sell it with shelves so you could use it as a bookshelf until the time you needed it. And there was some discussion as to whether that was preneed or at-need because -- it's true.

MR. REINHARD: So, you got one.

MS. EULER: -- you weren't dead yet, so you didn't need it as a casket. But since they were delivering it to your doorstep and you could store it in your own basement, put shelves in it -- (inaudible) -- whatever, then that was a sale and not a preneed contract.

So, Don?

MR. OTTO: That rule will also be useful dealing with the sales-tax issue --

MS. EULER: Yes.
MR. OTTO: -- I might add, which we're still in discussions with Revenue on how to handle that with monuments, a rule that would be helpful there, too. But what if -- as you're working on the rule, I don't know, do you need to have -- if I order a custom-made casket and it's going to take 60 days before it's delivered to me, you know, I pay the money today, but I'm not getting it for 60 days, do you need to -- is that something you need to think about in the rule?

MS. EULER: Yeah, probably, because you're -- but you're getting it before death.

MR. OTTO: Yeah. Yeah. I know, but you could -- you know, you could -- people could start fudging it saying I'm going to deliver this to you ten years from now and try to get around the rule.

MS. EULER: Right. Right.

MR. OTTO: So, I don't know. It's just something you might want to think about.

MS. EULER: Well, and that's why I think we make the rule saying that this is one indicator. This is one criteria, and not make it a hard-and-fast rule so that -- because
people will do things like that.

CHAIRMAN: It's almost like intent is the issue.

MS. EULER: Yes.

CHAIRMAN: Yes, sir.

MR. WESTBY: I have another -- this is Dale Westby, and that says provides for final disposition in Missouri of a dead human body. Do we want just Missouri there because if you have a funeral home near a border, you could have a funeral in Missouri and the internment out of Missouri. Should that be modified somehow?

MS. EULER: That's a good point because we have an issue and we may have put this somewhere else. You know, we've had some issues on each side of this state about when is it a Missouri preneed contract and when is it not a preneed contract. If you are in Illinois and selling to Missouri residents, are you -- does Illinois law cover or does Missouri law cover? And we've got some ways to address that, so that's a good point to address that here.

MR. KRAUS: What section are you
looking at?

MR. STALTER: I don't know really --
kind of elaborate on that. What you're
talking about is defining final disposition?
In other words, whether we're talking about
just the funeral or the burial or both or --

MS. EULER: Is the contract for final
disposition required to be made in Missouri or
is the final disposition in Missouri? I think
that's really what you're asking is, because
if the final -- if the contract is signed in
Kansas City, but the burial is to be in
Kansas, is that a Missouri preneed or not? Is
that the question you're asking?

MR. WESTBY: Correct. That's my
question.

MS. EULER: Yeah. And I think it's
good to define that because I think the
position we've taken before is if it's a
Missouri resident, then it's a Missouri
preneed contract.

MR. OTTO: Sharon?

MS. EULER: Yeah.

MR. OTTO: Under the other -- under
the Health Department regulations, final
disposition includes removal from this state.

So, if the body is in Missouri and it's buried in Kansas, final disposition is the removal from this state.

MS. EULER: Okay.

MR. OTTO: It's not the burial, and that's what you should be putting under this anyway. So --

MS. EULER: Is that a rule or a statute?

MR. OTTO: No. That's a statute.

MS. EULER: Okay.

MR. OTTO: Final disposition is defined as burial, internment, cremation, removal from this state, and then there's also a rule that adds on donation of the body to an educational institution where the body is not being returned.

MS. EULER: Okay.

MR. OTTO: So, there still is issues, though, where a Missouri funeral home sells the contract to somebody living in Kansas. At the time, maybe they were planning to be buried in Missouri, but they wind up being buried in Kansas. I mean, it can still get
tricky, but --

MS. EULER: Uh-huh. Yeah. And we have those issues on the other side of our borders, as well.

MR. OTTO: Yeah. They've got the same problem.

CHAIRMAN: So, I think the thought is you all will be revisiting this and bringing back --

MS. EULER: Yeah.

CHAIRMAN: Okay. Yes, sir.

MR. WARREN: Mark Warren. I have a couple of comments on 405(2) and (6) with respect to the definitions of guaranteed contracts. And one question that some of my clients had is whether or not the definition could be expanded to allow a funeral home -- extending the rule to allow a funeral home to collect if the cost of the at-need bill with the theory being that if there is a -- or the funeral home could accept as payment in full the proceeds from, like, a life-insurance policy or an annuity or a trust if they're funded fully prior to death, which would then allow the funeral home to use the current
preneed -- or at-need price and receive the
amount of money needed to complete the
contract. However -- go ahead, Sharon.

MS. EULER: I think that that is on
the next topic that we -- it suggested that we
have a rule that defines the difference
between preplanning and prepaying.

MR. WARREN: Okay.

MS. EULER: Because I think the
situation you're talking about is more
preplanning because the funding is there, but
the contract isn't entered into until at-need,
and that's a preplanning situation as opposed
to a prepaid situation.

MR. WARREN: Okay.

CHAIRMAN: Anybody else?

MS. EULER: Does the Board agree we
need to -- just to clarify that as to what is
preplanning and what is prepaid?

CHAIRMAN: You guys --

MR. McCULLOCH: I think so.

CHAIRMAN: Comments?

MR. REINHARD: I agree.

CHAIRMAN: Gary?

CHAIRMAN: Everybody says yes.

MR. OTTO: Sharon, that final disposition is 193.015, sub 3.

MS. EULER: Okay.

MR. WESTBY: What was that, Don?

MR. OTTO: 193.015, paragraph 3, is the definition of final disposition.

MS. EULER: All right.

CHAIRMAN: Ready to move on.

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

The trust, insurance, and joint accounts are only ways to finance a preneed contract in Missouri without violating the statute, and that preneed contracts financed in other ways are still preneed contracts. They just wouldn't be valid ways in Missouri. They wouldn't be exempted from being a preneed contract and, therefore, not subject to any regulation. No?

MR. FRAKER: Are you struggling with that?

MS. EULER: I don't think I understand that rule.

UNIDENTIFIED: Say that again.

MR. KRAUS: I think there's two
different things going on there from this comment. I don't actually recall where the comment came from, but I think it's that there are three types of ways to finance any preneed contract, which is in the law. I don't know if we need to reset that out again in rule, but that there are three ways. But that if, let's say, someone enters into a preneed contract and they finance it some other way that's not one of those three ways, that they can't then come before the Board and say you don't have any authority over me because it's not a preneed contract because we didn't use one of the three required ways. We're using some other way; therefore, we can do whatever we want. So, I think that's what that comment is going towards.

MS. EULER: Okay. Okay.

CHAIRMAN: Comments?

MR. KRAUS: And maybe that's needed and maybe it's not.

MS. EULER: I think it is needed.

CHAIRMAN: Board, do you all -- the chairman thinks it's needed. Do you guys agree?
MR. REINHARD: No.

MR. MCCULLOCH: So, how do you fix that?

MR. KRAUS: You try to explain that in a rule.

MR. MCCULLOCH: That it is pertaining to these three methods; is that what you're saying?

MR. KRAUS: That the three ways are required, but if someone does enter into a preneed contract that's not financed by one of those three ways, you still fall within a preneed contract that is subject to the jurisdiction of the board.

MS. EULER: And you're violating the statute.

MR. KRAUS: And you're violating the statute.

CHAIRMAN: Violating the statute in that you only can use the three ways?

MR. KRAUS: Yes.

MS. EULER: You're violating the statute in that you are using -- you are selling a preneed product, but not from one of the three State-approved methods.
MR. REINHARD: Like a barter or something.

MS. EULER: Huh?

MR. REINHARD: You mean, like a barter.

MR. McCULLOCH: So, you think it's okay to do that?

MR. REINHARD: (Inaudible.)

MR. KRAUS: No, I don't think it's okay to do that.

MS. EULER: Well, no. We've had some companies come up -- they say, well, this is an insurance, this is a trust, this is a unique product.

MR. McCULLOCH: No. I mean, you think it's okay for you to try to make something so broad that it's going to bring everything in that we haven't even thought of at this point? I mean, somebody hasn't thought of?

MR. KRAUS: Well, I think it's clear in the statute that the authorized ways to fund a preneed contract are trust, joint account, and insurance. I think that's absolutely clear. And what I think this comment is going towards trying to avoid is someone saying that they're not -- that the
Board can't do anything to them because they're funding it in some other way and, therefore, they're not a preneed contract.

MS. EULER: So, for example, if you came up with this idea that you would have an investment club and everybody who belonged to the investment club would get a contract that would be -- you know, that would be paid for, and it looks like a preneed contract, but you're saying it's an investment club and not a trust or a joint account or insurance situation, we would be able to go and say, no, you're selling preneed. You need to do it one of these ways.

MR. McCULLOCH: Again, we need to do it one of those ways, or you're just going to come under all these guidelines?

MS. EULER: You need to do it one of these three ways. If you're going to sell preneed in Missouri, you have to fund it with one of these three ways. You can't say if you're an investment club --

MR. McCULLOCH: Well, then that's what you want to say then.

MS. EULER: Right. Right.
MR. McCULLOCH: We're just going to say if you're going to do it, you have to fund it this way.

MS. EULER: Right.

MR. FRAKER: Yeah. We need to be specific on how this thing is -- yeah. I mean, there is no alternative, we've got to be specific and say this is --

MR. McCULLOCH: So, that's how you'll fix that.

MS. EULER: Right.

MR. McCULLOCH: That's pretty simple.

MS. EULER: Right. Because over the years, we've had some very creative marketing take place in this state because people are trying to avoid the preneed laws.

CHAIRMAN: Bill?

MR. STALTER: This is Stalter, and I'll give you more of a concrete example and it's not being creative because it's been out there a long time. You sell a marker under 214 and you put it in an escrow account. We use -- and an escrow arrangement has been used in other states for years, so -- and, really, what you're going to say is that if we have a
marker -- a preneed marker sale and they're using escrow under 214, then it's a violation of 436.

MS. EULER: You know, the cemetery-exemption statute, we'll address that there.

MR. STALTER: Okay. Because, I mean, lots -- we've got to -- we addressed that last time and decided that that didn't work, so -- okay.

MS. EULER: Because what the -- the point here is to make sure that people who are fly-by-night, people who are going to come in and try to steal money, that we have some tools to stop that. And we -- our goal is not to put all the cemeteries out of business or send all the cemetery operators to jail.

MR. STALTER: I'm just playing the devil's advocate.

MS. EULER: Yeah. Yeah. And that's good because we need to address that.

MR. ZELL: Sharon?

MS. EULER: Yes.

MR. ZELL: Stephen Zell. What about the guy who trades a cow for a funeral
service? I'll give you my best cow and you
give me your funeral service. How can you
stop that from going on, because that would be
restrained --

MS. EULER: If you do that at-need,
it's no problem.

MR. ZELL: What?

MS. EULER: If you do that at-need,
that's no problem.

MR. ZELL: No. On a preneed basis.
When I die, you're going to do my funeral, but
you have my cow.

MS. EULER: That's preplanning and not
prepaid. That's no different than having an
insurance policy that would pay at the time of
death.

MR. REINHARD: What if I took his cow?

MR. ZELL: I give you -- I've given
him a cow.

MR. REINHARD: Yeah. He's paying me
-- he's giving me the cow.

MR. ZELL: Take my cow.

MS. EULER: March the cow down to the
bank.

MR. ZELL: I'm just asking --
(Several people talking simultaneously.)

MS. EULER: That would be a joint account. But that's a good point.

MR. ZELL: Can you stop someone from doing that?

MS. EULER: The intent is to have -- because there is no way to insure that that cow will be around when the person dies.

MR. REINHARD: No, I took the cow.

You're saying I took the cow.

MR. ZELL: He took the cow.

MR. REINHARD: I took the cow in trade for his funeral.

MR. ZELL: He's milking it or doing whatever he wants to do.

MS. EULER: Then that's fine. Then you should take some money and put it into a trust account -- sell the cow.

MR. ZELL: I'm just saying that would be a preneed contract. Would you have jurisdiction over that because it wasn't one of the three ways -- how are you going to stop that from going on?

MS. EULER: You know, let's make a note of that and let's see if we can come up
with a solution to that.

MR. REINHARD: What about, like, a
radio station have an auction of a funeral and
--

MS. EULER: And that's the same
category.

MR. REINHARD: Okay.

MS. EULER: There's got to be a
decision -- you've got to look at that and see
-- say is this a preneed contract or is this
an at-need, or is this just a preplanning with
a method of funding identified at the time of
need as opposed to giving you the money now
and saying, Jim, I want you to take care of
this money so that there's money to pay for my
funeral when I die. But those are all good
points.

MR. KRAUS: Yeah. Because, again, I
think that there is a prepaying versus
preplanning question there.

MS. EULER: Yes.

MR. KRAUS: But then as to whether the
person is paying through money that you go out
and put in your barn or a cow that you go out
and put in your barn, it's the same thing.
It's some kind of asset worth some amount of money.

MS. EUER: Right.

MR. KRAUS: But under these requirements, you would still be required to do the same thing with that asset, whether it's a cow or money.

UNIDENTIFIED: My banker isn't going to be happy, I walk in and want to put that cow in the safety tin.

MR. KRAUS: Get a big safety deposit box.

MS. EUER: One of the things I learned in law school is never execute on anything you have to feed.

MR. OTTO: Oh, I did that. Don Otto again. I think, obviously, a rule is necessary, but when you -- be careful with the -- I'm worried about the distinction between preplanning and prepaying. The easiest distinction would be if you don't enter into a contract that obligates the funeral home to provide the goods and services.

MS. EUER: Right.

MR. OTTO: But here's the loophole
that would pop up then. I give funeral home
X or cemetery X $10,000. You give me a
promissory note in exchange. We're not
signing a contract, you're not obligated to
provide the funeral, but I've given you this
money and wink, wink, nod, nod, we know what
that's for when the time comes. And if you
don't give it to me, well, I've got this
promissory note I can execute on you. That
would be a real easy way to try to get around
436 real quick because we've never signed a
contract. I'm not obligated to provide you
the goods and services. You've just given me
money and I've given you a promissory note.

MS. EULER: Hmm. Okay. All good
things to think about.

CHAIRMAN: One of the things that I
just -- okay. That was, I guess I'll say,
legitimate, to some extent, that the cow does
work, and the radio station, but -- and I may
be off the mark here, but for some reason,
there is something that, in my inside, says
why would we limit ourself to saying you're
out of compliance if you've just done those
three ways. What if somebody came up with a,
really, a valid way to do preneed, and then this thing just says, well, I'm sorry, you're just out of luck?

MS. EULER: Then they can come to the Board and the Board can contemplate making an exception for that method.

CHAIRMAN: Okay. So -- okay.

MR. STALTER: Well, I have a comment to that, is how many different types of transactions do you want to provide oversight to? You know, the joint account is meant to be -- facilitate from the smaller operators because they can't afford a trust, or maybe they don't want to become licensed insurance sellers. So, what you're saying is, here are three types of funding mechanisms that the State will provide oversight to. Maybe there's others, but we don't see enough of them to authorize them. I think that becomes the issue. You look at maybe an escrow, that's -- you know, I don't know what other kinds of plans there are -- surety bonds -- and maybe those are the two that we don't cover, but do we get enough of that business to really say that you'll authorize it and
want to provide oversight?

       CHAIRMAN: I guess if there's just a
legal way to say that we're not going to be
backed into a corner that says that's the only
three ways.

       MR. STALTER: Well, and that's what
we're doing right now. And, basically, is
that wrong? You're saying here's -- this is a
preneed transaction, but we're going to say,
you know, define the preneed transaction.
Then over here, we're going to say here are
the three permissible ways of funding that
transaction. Do we need to have more? Yeah.
But -- and I know what Earl's version is. If
somebody comes up with an escrow arrangement,
is it not a preneed transaction? I don't
think so. I think it's still a preneed
transaction, but it's a valid point is, you
know, just because of the way I funded it, did
it fall outside the law.

       MS. EULER: Well, the legislature has
told us that these are the three methods of
funding preneed contracts in Missouri.

       MR. STALTER: Yeah.

       MS. EULER: And so, that's where we
are. And I don't think that anybody wanted to say that, you know, Mabel can't go buy her own life-insurance policy and assign it to the funeral home so there's money at the time of her death, or Mabel can't go out and open up some sort of other account and assign it to the funeral home so there's money at the time of her death. But what we do want to do is to leave that in Mabel's hands to make that decision, and not have Mabel give her money to the funeral home and say, funeral home, you take care of my money and not have any way to check to make sure the funeral home is really taking care of Mabel's money. Representative Meadows, do you concur with that?

REPRESENTATIVE MEADOWS: That is correct. That is correct. We've had that discussion.

MS. EULER: Okay.

CHAIRMAN: Okay. Mark?

MR. WARREN: Mark Warren. Kind of along the same lines, the 436.405.3 defines insurance-funded -- did you say a single-pay annuity? Does that mean -- (inaudible) -- pays are still allowed, but not under the act,
MS. EULER: You know, Mark Stahlhuth is going to be here this afternoon from Department of Insurance. Why don't we ask him for further clarification on that?

MR. WARREN: Okay. Works for me.

CHAIRMAN: Okay. Anybody else? I think the Board commented pretty much on everything, Earl.

MR. KRAUS: I think so.

CHAIRMAN: All right.

MR. KRAUS: All right. Moving over -- does anyone have anything else on Section 436.405?

MR. OTTO: I'm not saying you should do this, but is there any contemplation of a rule that would prohibit a funeral home from accepting a life-insurance designation without there being a preneed contract?

MS. EULER: No. That's preplanning.

MR. OTTO: So -- but, okay. I preplan. I say here's what I would like to have for my funeral. We never sign a contract.

MS. EULER: Uh-huh. Right.

MR. OTTO: I make the funeral home the
beneficiary of my life-insurance policy.

MS. EULER: Right. Right.

MR. OTTO: We're not going to regulate that?

MS. EULER: That's preplanning.

MR. KRAUS: Yeah. That's preneed.

MS. EULER: Not if you do it on your own accord and there is no guarantee.

MR. OTTO: Well, I go into my --

MS. EULER: I mean, I'll use me as an example. I see lots of people's preneed contracts, you know. I could get a blank statement of goods and services, and I can fill it out just what I want, and I can give that to my family and I can say, you know, I've got a funeral policy -- or, I mean, I have an insurance policy and I've assigned it to Becky's Funeral Home, and give my family a copy of the statement of goods and services and says here's what I want.

MR. OTTO: Yeah. That is one -- yeah.

MS. EULER: That's not a preneed contract.

MR. OTTO: There's a difference where I do that on my -- I mean, I'm just wondering
if anyone sees a difference between where I do that on my own, where I just write down in a little book here's what I would like, and I, without the funeral home's knowledge even, because this happens, make the funeral home the beneficiary of my insurance policy, as opposed to I go into the funeral home, the funeral home says here's how we're going to do it. We're going to -- you're going to assign the funeral -- your life-insurance policy to me, we'll write down all your wishes, but we're not going to sign a contract.

MS. EULER: And that is the distinction. In order for there to be a preneed sale, there has to be a preneed contract, because until there's a contract, it's just an advisory, it's just a suggestion, it's just a recommendation.

MR. OTTO: But the funeral home is still the irrevocable beneficiary now of somebody's life-insurance policy.

MS. EULER: Well --

MR. SPEAKS: Yeah, but that's okay.

MS. EULER: -- that's a matter of --

MR. OTTO: I'm not saying it's bad,
I'm just saying do you understand that's a change from the way it is -- the law is today?

MS. EULER: Right. Because that's Mabel's choice. Because this is all about putting this in the hands of Mabel to decide as opposed to the funeral home or the insurance salesman or whoever -- not picking on funeral homes. So, if Mabel decides to do that, and there is no contract between the funeral home and Mabel, then it's not a preneed contract.

MS. RUSSELL: Sharon?

MS. EULER: Yeah.

MS. RUSSELL: If Mabel goes into the -- Darlene Russell. If Mabel goes into the funeral home with a John Deere insurance policy and she wants to sign that over to the funeral home to go on public assistance or whatever, and she says I want to go on public assistance, I want this to take care of my funeral, that is preneed because --

MR. REINHARD: But there would be a contract with it.

MS. EULER: She has to do a contract.

MS. RUSSELL: Yeah. But the funeral
home getting around not doing a preneed contract doesn't mean it's not preneed.

MS. EULER: But it's not an exempt asset unless there's a contract.

MS. RUSSELL: Correct. But I've seen creative ways that they will just take a sheet and say an irrevocable assignment and they send that in and some agencies accept that.

MS. EULER: Right. And that's --

MS. RUSSELL: But the clear thing needs to be that if a funeral home takes an assignment -- an irrevocable assignment of an insurance policy that is preneed, it falls under the State Board.

MS. EULER: We'll look at that.

MS. RUSSELL: Okay.

MS. EULER: Because I understand what you're saying, and -- but we need to make this workable.

MS. RUSSELL: Okay.

MS. EULER: We need to make it workable and feasible for everybody, and Earl and I will talk about that and see if we can come up with something.

MR. OTTO: Yeah. Worst-case scenario,
you know, little old lady assigns -- makes the beneficiary -- not just assigns, but makes the funeral home the beneficiary, but they never enter into a contract. The little old lady dies, I don't have to give you a funeral. I was good friends with this woman and she wanted me to have the money.

MS. EULER: Uh-huh. And we have seen that. I can name names. Nobody in this room.

UNIDENTIFIED: But if it originates at my desk and I sell the contract, I sell the life insurance, that's a little bit different than when somebody walks in and wants to give me that CD or give me that life insurance.

MS. EULER: Right. And that's a different situation than I go to Jim, who I've gone to church with for the last 40 years, because I know Jim sells insurance. And I say, Jim, I want to buy an insurance policy and Becky's Funeral Home has always done such a nice job with everybody, I want to assign it to go to Becky's Funeral Home so there's money to pay for my funeral on my death. Becky knows nothing about it until Mabel dies. That's not a preneed contract.
MR. KRAUS: Now, if Mabel came to --
MS. RUSSELL: Because the funeral home
didn't know.
MS. EULER: Right. The funeral home
wasn't involved in the transaction.
MS. RUSSELL: Yeah. Well, that's
different, yeah.
MS. EULER: Yeah.
MS. RUSSELL: The difference, if the
funeral home doesn't know.
MS. EULER: Right. Yeah.
MR. KRAUS: Now, if Mabel came to me
and said, Earl, would it be a good idea for
me to get this nice insurance contract and
assign as my beneficiary this funeral home who
either does or doesn't know anything about it
with no guarantee of anything in return, I'd
say, well, no, don't do that. But if she
wants to, she can.
MS. EULER: And people do it all the
time from what I see. I mean, funeral
directors, is that true? Don't you see that,
or you're made pay on death on their bank
account so there's money to pay for the
funeral?
MR. FRAKER: Yeah. We've had it, but you never know about it. Yeah.

MR. REINHARD: Oh, yeah. Never knew the thing -- the account -- well, never knew the account was there and never knew the insurance was there.

MS. EULER: Right.

MR. REINHARD: Yeah.

CHAIRMAN: Representative Meadows?

REPRESENTATIVE MEADOWS: Just in discussion now, we had this discussion, Senator Scott, Representative Wasson, and myself, at length. And what I wanted to do was to allow that senior citizen to bring their -- they had a life-insurance policy, because right now, or prior to this law being written, in many small towns across this state, there were people that were coming into the funeral home and they would have a life-insurance policy, and when they were going on State aid, so they could turn that over to the funeral home as part of their insurance, as part of their funeral. And I did not want to stop that provision from happening. We realized that this was
something -- and, Don, you may have been
involved in this conversation a time or two.
I know, Connie, I think you were in there, and
we had had different discussions, but I was
very adamant about allowing that to happen.
We wanted to make sure that we locked that in
statute. When we were talking about the three
ways to pay, we wanted to make sure that that
was still allowed for many senior citizens
because many of them, that's all they may
have. So, just to try to clarify, that was
one of the things that we said that we would
set out that we would hope we would maintain
that. But I don't think we actually really
sat down and defined it verbatim, verbatim.

MS. EULER: No.

REPRESENTATIVE MEADOWS: But we wanted
to say that we wanted to allow that for many
of our state's consumers. So, hopefully, I
didn't cloud the issue, but it was discussed
at length.

MS. EULER: And maybe what we do is we
define preplan. We'll write up a definition
for preplan.

CHAIRMAN: That's probably what --
REPRESENTATIVE MEADOWS: Because that was a part of that. We wanted to make sure that that senior citizen or that family or that little old lady, Mabel or Sam, were going to be taken care of. And if they had a $10,000 policy, that's all they had, that that could be acceptable. Or if it was to the family, that they could bring it into the -- okay. My mother is in the funeral home and I have been left with power of attorney. I can actually take that $10,000 and put that towards Mom's funeral. That's why we left it like that.

MS. EULER: Right.

REPRESENTATIVE MEADOWS: So -- okay? Hopefully, that clarifies it.

CHAIRMAN: That helps. I actually want to follow his statement there for a minute and, actually, it'll follow yours, too, in the clarifying of preplanning. We've talked a lot about the need for the contract because it's a $10,000 life-insurance policy and that kind of thing. The thing that I see probably more in all of that is somebody comes in and they’ve only got $2,500 worth of life
insurance. It will not pay for the funeral or
will not pay for the merchandise. So, you
still want to help them get beyond the --

MS. EULER: But it's a start.

CHAIRMAN: -- family services thing,
and it's a start. And so, you go through
enough motions that it will allow that to
solve their problem. It does go towards
preplanning as opposed -- I mean, it's -- they
have to have something in their hands, so they
have a, you know, written document, so there
is teeth in it --

MS. EULER: Right.

CHAIRMAN: -- but you've still got to
help them out, too.

MS. EULER: Right.

CHAIRMAN: So, okay. Anybody else?
All right. Obviously, we have to address that.

MR. KRAUS: We'll address that. All
right. Moving on then. 436.410, the cemetery
exception. Comment 03 kind of gets to the
point. Consider defining what's exempt here
and what's not. Let's see. See if K4 is the
same or something different. Yeah. I think
this relates back to our discussion at the
last meeting, we were talking about the
cemetery exception and, of course, there were
a number of cemetery provisions as proposed
legislation. Last session, that did not pass,
but we still have this exception here. I
assume we would want to try to explain to the
extent we can what is exempted and what is
not, but -- any discussion on that?

CHAIRMAN: Further comments?

MR. WESTBY: What is your question?

It was 410; right?

MR. KRAUS: 410; right.

MR. WESTBY: What is it that you did
last week that you're talking about?

MR. KRAUS: Well, we essentially said
that there, apparently, is a cemetery
exemption and it would be a good idea to
explain what is exempt and what is not, and
then said, well, we're going to talk about
that when we get to Section 410, which is
today.

MR. WESTBY: Well, I don't think the
cemetery -- this is Dale Westby again. I
don't think the cemetery portion has anything
to do with -- you know, anything that comes
under 436 should go under 436. I do agree with that. But, you know, what our concern was, if the cemetery wants to sell a grave opening and closing, a grave space, and a vault, they could do that under 214, and you have the endowed care, put those funds in, you have a segregated escrow account to put the other funds in, and you could still track it. But our opinion is, as long as it's not anything that needs to be an embalmer or funeral director to sell, you know, then it comes under 436. Is that how you guys and gals would look at that or not?

MR. McCulloch: Say that last part again.

MR. WESTBY: If I sell a funeral service, a vault, and a grave space on one contract, well, in my opinion, under 214 -- that would all go under 436 then. If a cemetery wanted to sell a grave space, a vault, and an opening and closing, you could do that under a cemetery contract and fund it through 214, through the endowed-care portion and the segregated counterescrow account.

MS. Euler: And, again, I think the
defining characteristic there is defining what
is preneed and what is not --

MR. WESTBY: You're having the funding
for it. Under 214, we've got some of those
definitions passed, and in there, it defines
burial services -- what is included in there.

MS. EULER: Because when we took out
of the definition of funeral merchandise grave
lots. And so, what's in the definition of
funeral merchandise right now -- caskets,
grave vaults, receptacles, other personal
property incidental to final disposition of
the dead human body, including grave markers,
monuments, tombstones, and urns. As a
cemetery -- and I don't know much about the
cemetery business, so I hope you can help
educate me -- somebody comes in to the
cemetery wanting to buy a lot, wanting to buy
a marker. How do you -- when do you actually
do the marker? Do you wait till the person
is dead and then buy the marker, or do you do
the marker at the time they come in and buy
it and put the person's name on it and leave
the end date blank?

MR. ZELL: Well, it's up to your
choice. You can actually give them a choice. You can provide a memorial for them now with no final dates, or, at their request, if they want to -- you can put the money in escrow. It's in an escrow fund, not a segregated account we're trying to go through. And then when they die, Richardson Memorial will have their dates put on then, so it's your choice to do what you want.

MS. EULER: Because I know that part of the intent behind this was to eliminate the conflict between 436 and 214 as to what cemeteries did with the money. And since the other part of the cemetery bill that we passed, we may have made things worse rather than helping things, which is what we wanted to do.

MR. WESTBY: Say that again. What was that? What did you just say?

MS. EULER: The original intent, it's my understanding, was to eliminate the current conflict between 436 and 214 in terms of where you put the money to make it clear that the cemetery money goes under 214 and the funeral-services money goes under 436, but we
have this gray area of overlap that we need to
figure out what to do with. So --

MR. WESTBY: Well -- (inaudible.)

Currently, the way it is now, I don't know
anybody in their right mind that would put
funeral merchandise on a cemetry contract. I
mean, it's just not done. You use two
contracts; otherwise, you've got a question
under 436. (Inaudible) -- we own that. We
own that, and we're giving you the --
(inaudible) -- rights to it.

MS. EULER: Right. Right.

MR. WESTBY: So, you know, that's what
we try to do under 214 is to have a funding
mechanism there to put those funds in the
escrow account or the endowed-care fund,
whatever one applies. And I don't know why
that was difficult to understand. We've got
the grave space out of there -- funeral
merchandise.

MS. EULER: Right.

MR. WESTBY: I don't know why that was
ever in there anyhow. When you stop and think
about it, why is opening and closing in there
where funeral merchandise is?
MS. EULER: Yeah. I don't know.

That's why we took it out.

MR. WESTBY: Yeah.

MS. EULER: But what's left is grave markers, monuments, tombstones, urns, and grave vaults. Are the vaults sold by the cemetery? I've seen the vaults on the funeral contract -- the goods and services contract.

MR. WESTBY: It can be. But you don't have to be a licensed embalmer or funeral director to sell a vault.

CHAIRMAN: That's correct.

MR. WESTBY: So, a cemetery --

(inaudible.)

CHAIRMAN: That's right. But I have a question.

MR. WESTBY: Okay.

CHAIRMAN: Now, you may all throw everything at me because I'm sure this discussion has been had somewhere else, but I wasn't there. Why is it then that -- and you used the word "escrow" a while ago. Just explain the thought to me. If the cemetery can sell the vault, the monument, even the grave space, whatever, do you put that money
in an escrow account that somebody is
overseeing, because if I sell it on a preneed
contract, I've got to have 80 percent of it
somewhere.

MR. STALTER: Eighty-five now.

CHAIRMAN: What -- 85 now. That's
right. I need to get my language right.

MR. REINHARD: August 28th.

CHAIRMAN: That's right. It's not
August 28th yet. So, if I do that today.
So, what's the difference? Why --

MR. WESTBY: The cemetery may not have
a funeral home, and if they want to market
their products, as well. They may have a
funeral home on the property, and still sell
it -- the vault through the cemetery or the
funeral home. If they have the funeral home
and cemetery they both own, well, what
difference does it make, in your right pocket
or your left pocket, you know. But if you
have just a stand-alone cemetery, which we
have a lot of, and they want to get into that
market, they should be able to do that, and
they can legally do that, but you've got to
have the funding of 214, which -- (inaudible)
-- to put that money and have it tracked so that when we get --

CHAIRMAN: And that goes where under 214?

MR. WESTBY: In the escrow -- (inaudible) -- I believe it is.

CHAIRMAN: And that's in an escrow account?

MR. STALTER: You actually have either an escrow account or a trust account. The escrow account is really kind of a keeper device for the smaller operators.

CHAIRMAN: Okay. And it's all of it -- all of the money goes there or a portion of the money goes there -- of the vault sale?

MR. WESTBY: All the money goes there. In the escrow account, the 80 percent would have to go in to cover that, but now, it's only 40 percent. Till the 28th, it'll go to 80 percent.

MS. EULER: I think what Martin is asking is, if Mabel comes in to a cemetery and buys a grave lot and wants a vault and orders a grave marker from you, but Mabel is 60 years old, she's got a long life ahead of her, what
do you do with Mabel's $10,000? I think that's the question Martin is asking.

    MR. WESTBY: Well, it would go to his fund that he just talked about.

    MR. ZELL: Well, the grave is a separate item, and that's going to be a deed transferred to her for the right of internment. And money is going to go to endowed care -- 10 percent goes to endowed care.

    MS. EULER: How much?

    MR. STALTER: Ten percent.

    MS. EULER: Okay.

    MR. ZELL: That's a separate issue.

    MR. STALTER: There's a distinction between the endowed care and preneed. The endowed care -- and it's part of -- based on the sales price, but it goes in the trust for care forever.

    MR. ZELL: Endowed care forever with the cemetery -- for the grave. The opening and closing and the -- to be delivered at a later date and/or the memorial would go into an escrow or a trust account until time of need.
MS. EULER: A hundred percent?

MR. ZELL: Eighty percent.

MS. EULER: Eighty percent.

MR. ZELL: The memorial, you have the option to say I can freeze this price for a few months, a year, or three years, and then we're going to make it and you can decide what you want to do on those options, so that's one way that you can not have to leave that in there forever. But the opening and closing, that's a promissory to deliver later, will be 80 percent in trust or escrow account until the time of need. So, the money is all split up different ways. Again, if you are all done on one contract with the embalming and casket and everything, we agree you would be an idiot and you should have to put all that into 436 and lose your grave sale and lose your marker and everything into trust till they die. So, the old provision that we had was separate contracts, and I would write a separate contract for all those things.

MS. EULER: Well, what the law says is that the provisions of this section shall not apply to any contract or other arrangement.
sold by a cemetery where the payments are
required to be placed into an endowed-care
fund or for which a deposit into a segregated
account is required under Chapter 214,
provided that the cemetery operator shall
comply with these sections if the contract
includes services that may only be provided as
a licensed funeral director or embalmer. So,
I read that to say that if you are a cemetery
selling cemetery stuff -- grave markers,
vaults, tombstones -- that if you were taking
that money and putting it into an escrow or
trust account under 214, then you don't have
to comply with 436.

UNIDENTIFIED: That's correct.

MS. EULER: But if you are selling a
funeral service or you are selling embalming,
then that does fall under 436.

MR. WESTBY: We agree with that, so
there's -- (inaudible.)

MS. EULER: So, it seems to me that
the law says already that if you're a
cemetery, doing cemetery stuff, you don't have
to comply with 436. But if you cross the
line and start doing funeral-director stuff,
then you have to comply with 436.

MR. WESTBY: And I think that's what
you folks want to hear, isn't it?

MR. REINHARD: I think that's what it
says. That's what it says.

MS. EULER: That's what this section
says.

MR. WESTBY: Well, yeah. But, I mean,
you know, if it's funeral stuff, you need to
be involved. If it's not, if it's cemetery
stuff, you don't need to be involved.

MS. EULER: Right. And that's what
this law says.

MR. WESTBY: Yeah. We agree with that.

MR. STALTER: Now, what it says is if
we put it into a segregated account. There's
two things; escrow account/escrow trust,
segregated accounting. There aren't any more
segregated accounts; they're gone. So, I
mean, if we are depositing burial-space funds
in an endowed-care trust, that's true. But
payments toward the marker?

MS. EULER: Where is that money going,
though?

MR. STALTER: Well, it would go into
either an escrow account or a trust account.

MS. EULER: And I would say that that would be a segregated account.

MR. STALTER: Now, we can go look back at the old 214, and there is a segregated account out there.

MS. EULER: Right. I know under old 214, but that money is set aside. It's not part of the cemetery's general operating expense. And, to me, that says segregated account.

MR. STALTER: Basically, that's what I think the cemetery industry is looking for, a regulation that clarifies --

MS. EULER: Okay.

MR. STALTER: Okay.

MS. EULER: And I think we're all saying the same thing.

MR. STALTER: Well, I know last week, it wasn't. We didn't see -- the vote was, you know, not to address this, to clarify it. And that's why they're here to hear -- okay. They want to hear clarification about what they can do going forward.

MS. EULER: Yeah. Well, I think the
statute that's what -- I agree we need some
clarification. I don't know. Board, what do
you think?

CHAIRMAN: I think --

MS. EULER: The statute seems pretty
clear to me.

CHAIRMAN: Do you think? Yes, sir?

REPRESENTATIVE MEADOWS: Mr. Chairman,
again, I can remember this, also, and I was
just listening through the discussion. Again,
having conversations with Representative
Wasson and Senator Scott, we -- because this
fragmented it out, and what Sharon is saying
is partially correct. However -- and this was
talked about at length -- if the cemetery
sells vaults or caskets, then they should be
held to the standards of Chapter 436.

MS. EULER: Right.

REPRESENTATIVE MEADOWS: So, if they're
selling that as part of the funeral, then they
should have to enter into Chapter 436.

MS. EULER: Right.

REPRESENTATIVE MEADOWS: Outside of
everything else that what Sharon was saying,
the vaults and caskets would also apply.
That's why it fragmented itself out. We had had a long discussion about this because, in all honesty, I didn't want -- I was very much against some of that. Yeah. So --

MS. EULER: Well, it sounds like we need a rule to clarify that because it's not clear to people.

(Several people talking simultaneously.)

REPRESENTATIVE MEADOWS: The vault -- and I think, Don, that you were probably involved with it a little bit of the discussion, but vaults and caskets were talked about.

MR. OTTO: Yeah. I spoke a little bit for you last time, I'm afraid. I hope I -- it was my impression that the general consensus was it didn't matter whether you were -- who you were, if you were selling the same stuff, you ought to be treated the same way.

REPRESENTATIVE MEADOWS: Exactly.

MR. ZELL: Representative Meadows, can you explain that -- why vaults and caskets? What is the distinction?

REPRESENTATIVE MEADOWS: Well, it was
a part of the funeral merchandise. Yeah. We had a long discussion about this clause.

MS. EULER: I'm sorry. Because the cemetery can't use a casket without a funeral director involved, usually -- not always, but usually.

MR. KRAUS: That's kind of what I was looking.

MR. ZELL: That's not true.

MR. KRAUS: This language talks about --

MR. ZELL: Because there's independent casket sellers and they deliver it to a funeral home.

MS. EULER: Right.

MR. ZELL: So, if that cemetery sold caskets, they're acting as an independent casket seller.

MS. EULER: Right. Which they can do, but if they're selling caskets or the casket store is selling caskets preneed, they fall under 436. Because everybody who is selling the same product should be treated the same way. Funeral homes aren't going to sell --

MR. ZELL: Okay. Now, why are you --
then why vaults?

    MS. BATeman: I mean, the vaults are

            clearly under 214.

    MR. ZELL: The vaults are never

            delivered to a funeral home.

            (Several people talking simultaneously.)

    MR. KRAUS: Well, what I see as the

            line on this -- and, I mean, you can disagree

            -- is that there is an exception for the

            cemetery operators if what they're doing falls

            under 214. However, they can be pulled back

            into 436 if they're including in what they're

            providing a service that may only be provided

            by a licensed funeral director. If they're

            doing that, meaning they can't independently

            provide that under 214, they would have to be

            a funeral director to provide that, and if one

            of those things they're providing falls into

            that category, they're no longer exempt.

    MS. EUler: And 214 doesn't cover

            caskets specifically.

    MR. WESTBY: That's correct.

    MR. ZELL: But it does vaults.

    MS. EUler: Yeah. And I think vaults

            are a real gray area because we've had
problems in the past with preneed vault issues, so --

MR. KRAUS: I mean, and we can look at 214 again and see how that addresses vaults.

MR. WESTBY: Well, we did get that definition of funeral merchandise which is in there. And we also got the cemetery prearranged contract under 214.270. We've got some -- tried to get some clarification there. And if you have that with burial merchandise is a monument, marker, memorial, tombstone, headstone, urn -- (inaudible) -- or a similar article which may contain specific lettering, shape, color, or design as specified by the purchaser, that is their definition of burial merchandise -- (inaudible.) And then the cemetery prearranged contract is any contract with a cemetery operator for goods and services covered by this chapter, which includes the sale of burial merchandise in which the delivery of the merchandise is a -- (inaudible) -- under section 214.270 to .550 -- (inaudible) -- purchaser, which will also make the contract for goods and services covered by the sections 270 to 550, which
includes the sale of burial services to be performed at a future date.

MR. REINHARD: So, let me ask this.

MS. EULER: Yeah.

MR. REINHARD: Bill, how will we -- or anybody know how we could solve this or, like, clear it up in a rule to help everybody?

MR. STALTER: Yeah. I think your bickering points are over the casket and the vault, and that's where the overlap will be. I mean, there are two issues about what's the trusting percentage you're going to apply to the overlap items, and then the other issue is oversight. I mean, you've got -- that has to be one in a whole slew of stuff. 214 -- I mean, it was going to, but it -- I mean, it got carved out, so there have to be some issues about, you know, what oversight is going to be provided over the escrow or the trust funding on the other side.

MS. EULER: Here's a question for the cemetery folks. Do you see much of -- I mean, somebody could -- Mabel dies. Mabel's daughter goes down to Costco, buys a casket, goes down -- goes and picks Mabel up from the
nursing home, puts her in the casket, brings
her out to your cemetery and say I want to
bury Mom. Do you see that much?

MR. ZELL: It's illegal; you can't do
it.

MR. REINHARD: Why can't you do it?
MS. EULER: No, it's not illegal.
MR. ZELL: Describe it again.
MS. EULER: Mabel dies --
MR. REINHARD: Mom dies, I buy a
casket at Costco, put her in it, take her to
the cemetery, and you would open the grave,
put her in your vault, and we're done. I did
it, individually, and I was a funeral director.

MR. WESTBY: You don't see much of
that, though, do you?
MR. ZELL: No. I've never seen that,
ever.
MS. EULER: Okay.
MR. STALTER: I think Josh would say
you would see -- it's been an increase, but --
MS. EULER: Josh would like to believe
it happens every day, and the only reason it
doesn't is because of the mean and evil
funeral and cemetery industry.
MS. DUNN: For those that are speaking in the audience -- Dale, I don't know if we got all your comments. We didn't get all your comments a while ago, so, as you comment, if you would kind of move up towards the microphones.

MR. WESTBY: Oh, I'm sorry.

MS. DUNN: We just want to make sure your comments are reflected accurately in the minutes.

MS. EULER: Because, to me, I see vaults as a gray area. Because I know the cemetery sells vaults. I think some cemeteries want a specific kind of vault in their cemetery. Do the funeral homes sell vaults as much as the cemeteries do? Do you sell vaults?

MR. REINHARD: Well, yeah. But, see, we don't have a cemetery -- we've got -- they're all like this little cemetery.

MS. EULER: Yeah.

MR. REINHARD: So -- and in their cases, they sell vaults, where we wouldn't see it in a rural area.

MS. EULER: Because it seems like
there is some overlap on the vaults. The caskets doesn't seem, to me, to be an overlap area because people, 95 percent of the time, are going to use the services of a funeral director when they buy a casket. And if the cemetery is selling a casket, they should be treated like the casket stores or anybody else who is selling a casket preneed.

MR. REINHARD: Right.

MS. EULER: But the vaults may be a gray area. It is in my mind.

MR. REINHARD: It is.

MS. EULER: That we need to look at that. Yeah, Don?

MR. OTTO: Just one thought; okay? In a regulation -- and I don't know how anybody else feels about this. If the vault is sold in conjunction with a burial plot. You know, we already have the supreme court case in October 2003 that defined that as not sales taxable because it's an appurtenance to real estate.

MS. EULER: Right.

MR. OTTO: Not personal property. So, we already have a supreme court decision that
says a vault is not personal property if it is
going to be put onto the ground -- into the
ground before delivery to -- you know, before
constructed -- you know, before delivery to
the consumer, whatever -- however they worded
that. It's real complicated. But -- so, you
could have a distinction where -- because I've
seen this, you know. If you're selling a
vault preneed, but we'll put it wherever you
want whenever you want it, that's one thing.
But if you're selling that in conjunction with
-- that it's going to go into this piece of
ground here, that's something else. And it
seems to me to fall under the supreme court
case that says -- because that's the exception
to the supreme court case.

MS. EULER: Right.

MR. OTTO: You know, if it's attached
to this piece of ground, it's not personal
property anymore.

MS. EULER: Jim, in a smaller
community where you've got a lot of rural
cemeteries, how do you handle that? I mean,
Mabel dies, her daughter comes in to make the
arrangements. Do you sell her the vault?
MR. REINHARD: Right.

MS. EULER: Or does the cemetery --

MR. REINHARD: No, we sell it.

MS. EULER: Okay.

MR. WESTBY: This is Westby again. I think I ought to clarify some things, if I may.

CHAIRMAN: Go ahead. Go ahead.

MR. WESTBY: You're not going to find too many of the situations where these small, rural cemeteries -- and it don't have to be rural. We've got a lot of church cemeteries in St. Charles, they don't sell vaults, they don't -- all they do is opening and closing.

MS. EULER: Right.

MR. WESTBY: That happens statewide all over. You're not going to find very many cemeteries selling vaults on their own. Some of them may have a funeral-establishment license, I would think, to be able to sell caskets along with it, so then they're a funeral establishment. But I'm talking about stand-alone cemeteries.

MS. EULER: Right.

MR. WESTBY: You're not going to find hardly any, I don't believe, that will sell
caskets. They're going to just sell vaults and opening and closing, and most of them don't sell vaults. But we want to have a funding mechanism, should they choose to do that, that it goes to so that we can track the money and know that 15 percent went into endowed care --

MS. EULER: Right.

MR. WESTBY: -- this 80 percent went into the escrow account, that sort of thing, and we have that through what we have in 214.

MS. EULER: Right.

MR. WESTBY: Now, one of the concerns that you mentioned when we came up here that we understood that this Board wanted to regulate the cemeteries, and we don't feel that's necessary.

MS. EULER: We don't, either.

MR. WESTBY: Good, and we heard that, too, and we're relieved to hear that.

MR. REINHARD: We'll be clear on that. I'm speaking for the chairman, but I don't think -- he might want to regulate them, but there's three or four of us don't.

MR. WESTBY: Well -- you know. But we
just want to make that clear. If this is the
talking time, we want to make that clear that
we -- you know, nothing against the Board
here, but we don't think you should regulate
our cemeteries. And some of that came up with
some licensing and issues, when I heard the
rumors the last week is why I'm here. But as
long as you're not interested in that and we
can clarify it that cemeteries can make these
sales and has a funding mechanism to fund
them, that an audit will come in and track it,
that's really all we're concerned with, I
believe. And as you should be concerned with
the same on the funeral side.

CHAIRMAN: And the question I have is
when you just said audit, trail, and all of
those things, is: And that thought is with
escrow; is that how that's done with the
cemetery?

MR. WESTBY: If it's the merchandise,
yes. And opening and closing.

CHAIRMAN: And that being the vault,
whatever.

MR. WESTBY: The vault, opening and
closing, yes.
CHAIRMAN: Okay. And then the percentage of that is what?

MR. WESTBY: Eighty percent come August 28th.

CHAIRMAN: Okay.

MR. WESTBY: It's 40 percent right now.

CHAIRMAN: So, equality thought is where my mind mainly is there. It's, like, why do I have to have 85 percent of everything that is on the list, and you guys don't, and it's the same thing.

MR. WESTBY: Well, let me give you a little bit of history on that, and I'm a funeral director, too. I've been a funeral director for a few years longer than I've been a cemeterian. In 2002, we fought NPS. They wanted 15 percent to go to the trust, and we fought for 80 percent. And after the whole session come to a conclusion, Senator Howard says it's going to be 40 percent and that's it, which we thought was way inadequate and we've been waiting for an opportunity to get it corrected, and we did get that part corrected this year. It's up to 80 percent. I think 80 percent is a good amount for
cemeteries and funeral homes. I know there's a lot of different opinions around the table on that, but I think 80 percent is a good amount and it should stay there. And I'm sorry you guys got stuck with 85.

CHAIRMAN: Us, too. Do you have a reporting process on that at the end of the year of where that goes -- into the --

MR. WESTBY: We're audited on that, as well, and at one of the hearings a few months ago, at Representative Wasson's hearing, they asked about auditing, and Tom Richards, the executive director of the Endowed Care Cemeteries reported that at that date, as in the past 18 months, every cemetery had been audited, and we created that funding ourselves many, many years ago -- over 20 years ago -- and we're kind of proud of the fact that we created the funding for the audits. When the death certificates could start coming out of the counties, we wouldn't get that, so we went in and we charge ourselves a dollar for interment and that goes into the audit fund so we do have funds to do the auditing. And I'm trying to search. Now, Tom told us -- I
think about 80 percent of the funding comes
from the death certificate and 20 percent from
the dollar for internment.

    CHAIRMAN: Okay.

    MR. WESTBY: But we do have the money
for the auditing, and then that's what's
critical. I'm not going to give off line, but
your every five years, I don't think is enough.

    REPRESENTATIVE MEADOWS: Just one final
comment with the cemetery folks. If the
cemetery sells a vault and, in conjunction,
also sells a grave space with that vault, then
I can see that that -- that it should fall
under Chapter 214. But I think where we get
into the gray area, it's like Sharon was
saying, vaults are in a gray area because this
was discussed. But if they sell the casket
with it, then I think we're entering into
another situation then. But if they're just
selling the grave space and the vault, then I
believe that that's where they belong is under
214, and I think that they would be in
agreement with that. I don't see any of them
saying anything from the end of the table, but
I think, you know, that was part of the
discuss. And I was sitting here making
notes in my mind thinking how did we --
because there was a long discussion about this
because we knew that we were going to run into
a snaf with this. But, Sharon, would you not
agree with that?

MS. EULER: Yes. And also to address
one of the other things you said, my
understanding -- and, Representative Meadows,
you can correct me on this -- is that the
whole point of this Section 410 was to make
clear that this Board doesn't want to regulate
the cemetery industry.

REPRESENTATIVE MEADOWS: That's true.

MS. EULER: Just like we did with the
insurance. And that this Board's legislative
directive is to regulate what's under its
authority. We don't want to regulate the
insurance companies; we don't want to regulate
the cemeteries; we don't want to regulate the
banks, because there are other State agencies
that do that. And to help clarify what this
Board's scope of authority is.

MR. WESTBY: Thank you very much.

MR. ZELL: Is that going to be a rule somewhere
written down?

MR. OTTO: Well, the problem is both
this language and the definition of
funeral-merchandise language literally came
from the cemeterians. The problem was -- I
mean, so the cemeterians wrote this language.
The problem was they wrote it in anticipation
that 214 was going to have some stuff in it
that turns out didn't have some stuff in it.
So, that was the problem. I mean, this -- I
mean, literally, this language was faxed to
Senator Scott's office -- I was there when it
came in -- from the cemeterian -- from your
guy. So, it was, like, this was written with
-- the intent was what you want. Now, the
problem was, at that point in time, everybody
thought 214 was going to be no problem and you
were going to get everything you wanted, and
that didn't happen, so --

MR. KRAUS: I had one other point. I
just want to make sure that I'm on the same
page as everyone. I'm reading this exception
as being contract specific, but I wanted to
see what people thought of, let's say, a
cemetery does one particular contract. It
only has things in it that they can do and
nothing that a funeral director only can do, so I think that would clearly fall under the exception. But let's say in their next contract, they add some things that the cemetery can do and that only a funeral director can do, then does that put that entire contract under 436 or just the portions that only the funeral director can do? I think it's the entire contract because of the way it reads.

MS. EUER: Yeah.

MR. KRAUS: I don't know if anyone has any thoughts on that.

MR. WESTBY: Yeah, we agree with that, too.

MR. STALTER: Well, I think --

MR. KRAUS: You could do two separate contracts and take care of it that way.

MS. EUER: Right.

MR. WESTBY: If we do like we're doing now, write two contracts, we'll make those.

MR. KRAUS: Right. Right. Okay.

MS. EUER: And that will make the auditing easier for both the cemetery folks
and the --

MR. KRAUS: Yes, it would. Yes, it would. But if you do it in one contract, you're going to have some complications.

MS. EULER: Right. Right.

MR. McCULLOCH: Well, is the two-contract thing still in effect?

MR. WESTBY: Well, it's the same as it is currently under 436 because if it's sold only as in the two other items and you put it on there, it all goes under 436.

MR. ZELL: Didn't the two-contract part get pulled out of SB 1?

MR. McCULLOCH: No. That was there. That wasn't part of the cemetery. I just remember you all putting that all in place many years ago to try to fix all this.

MR. STALTER: It's written by a second contract?

MR. WESTBY: What's that?

MR. STALTER: No. I don't know, but I don't think that's in there.

MR. WESTBY: No, that's not in there.

MR. STALTER: If it is, you've got it on a unified contract, then what happens?
MR. WESTBY: You just have to be educated as to how you're going to sell and under what contracts. Now, any salesperson would know that if you're sitting before a family and you want to sell funeral services, casket, vaults, opening and closing, and all that, one contract on the preneed is wonderful. You've got one down payment and you can spread out the money as it comes in. That's ideal. But when you get into the two, and you have to trust everything under 436, and, again, we own the grave spaces. We don't need to trust them. That's out there in our cemetery, so you would be stupid -- (inaudible) -- go into a trust and I don't get paid for it until they die 30 years later. That -- it's just kind of common sense that I need to have some of that in as -- you know, I know there's scoundrels out there, but I want to let you know that every funeral director and every cemetery is not a crook.

CHAIRMAN: Thank you. We agree.

MR. KRAUS: The Board would agree.

MR. WESTBY: Well, I'll tell you what, we came down to those hearings last year and,
by God, we heard every cemetery in the state
was a crook. But, by God, and we went and
stomped our feet a little bit and got that
clarified.

CHAIRMAN: Well, we heard every funeral
director was, too, so -- all right. Any other
quick comments? Let's take a break.

(Off the record)

CHAIRMAN: 436.412.

MS. DUNN: Sharon?

MS. EULER: Yes. Oh.

MS. DUNN: You've got the floor.

MS. EULER: All right. This is the
grandfather clause to give people some time
and to explain transition between the old law
and the new law. The first comment, K5, when
drafting rules and particularly when
addressing the time period immediately
following 8/28/09, we want to keep in mind the
prior statutes can still come into play, which
I think you all have found. Comment 6, can
we set out in rule some things from the prior
law? Seller gets 20 percent, financial
advisor takes out of his trust expense. I
know that this statute -- I know it's
generated a lot of questions. I've gotten a lot of questions about it in terms of what does this really mean. Does this mean that the old law continues to stay in the cracks, what's governed by the old law, what's governed by the new law. And so, the comment-6 rule, I would suggest that we set out a rule as to what this grandfather provision covers. And it says it shall continue to govern disbursements to the seller from the trust and payment of trust expenses. So, to clarify that this means that contracts that are currently in place regarding payments from the trust to the seller remain governed under the old law or until a new contract is done, and payment of trust expenses, but everything else is under the new law. And that if you are currently registered as a preneed seller and you have a violation of 436 outstanding, that you can still be disciplined under the old law and that that discipline can take -- the type of discipline is under the new law, but it's for violations of the old law, so that the whole probable-cause process and all of that goes away under the new law.
Joint accounts remain the same, so if you have a joint account currently in existence, then you don't have to change that under the new law. So, does anybody have any thoughts on that, Board?

CHAIRMAN: I'm assuming that there will be thought process put into that, something brought back to the Board to look at?


CHAIRMAN: All of that.

MS. EULER: But does the Board agree that it would help to have a rule setting out specifically what this means in terms of what parts of the old law continue and what parts the new law applies to?

CHAIRMAN: Yes? No?

MR. FRAKER: Oh, I think so.

Absolutely.

CHAIRMAN: Very good. I think yes, for sure.

MS. EULER: Do you have a thought?

CHAIRMAN: Do you have a thought?

MR. McCULLOCH: I don't know. Most of it, I understand. I think it says what it says and --
MS. EULER: Okay.

MR. McCULLOCH: But if you want further clarification, is that all you're saying?

MS. EULER: Yeah.

MR. McCULLOCH: Just so everybody can understand.

MS. EULER: Just to clarify it.

CHAIRMAN: Or at least to just look at ways to clarify it.

MS. EULER: Yeah.

CHAIRMAN: Okay. I'm seeing lots of heads nod. Anybody out there got some comment? That seems easy then.

MS. EULER: Okay. And the next comment is related. Maybe set out a ruling under the new law, all money in a trust fund including must go first to the trust. That's kind of the corollary of what the new law provides and what the old law provides. So, we'll put something together for the Board to look at on that.

CHAIRMAN: Okay.

MS. EULER: Earl, why don't you take back over.

MR. KRAUS: You're doing an excellent

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MS. EULER: But my voice isn't going
to hold out.

MR. KRAUS: Okay. 436.415,
provider/seller obligations. Let's see. It
looks like we have some terms there that we
may need to define. I think those are similar
to ones we have seen before; final disposition
and such, which, actually, I think we have a
-- one of our draft rules from last week that
we'll be talking about later goes towards that
and I think refers to section 193 as was
suggested last week, but we'll see that later.
I guess, before I move on from K8 to K9, did
anyone have any thoughts on that? No?

MR. WARREN: I do, Earl.

CHAIRMAN: Oh, Mark?

MR. KRAUS: Yes?

MR. WARREN: Mark Warren. It's
probably a very similar comment to it and the
way it was suggested that a rule would allow
the insurance premiums be sent directly from a
policy owner to the insurance company instead
of through, you know, someone else, the seller
or a funeral home, and that's the way they
work anyway, generally speaking.

    MS. EULER: Yeah. And I think the
same for a trust-funded account so that
consumers can send their money directly to the
trust without having to go through the seller.

    CHAIRMAN: Don?

    MR. OTTO: No. That's exactly --
that's safer anyway.

    MS. EULER: Yeah.

    MR. OTTO: And it doesn't prohibit
that in the statute, so --

    MS. EULER: Right. But we can enact a
rule to --

    MR. OTTO: Make it clear that that's
permissible would be great.

    MS. EULER: Yes. And give people the
idea that this would be a really good idea.

    MR. OTTO: Uh-huh.

    MR. ZELL: Have you talked to -- oh.
I'm Stephen Zell. Have you talked to the
trust companies? Are they going to accept
them?

    MS. EULER: I don't see why they
wouldn't not.

    MR. MCCULLOCH: Probably not.
MR. ZELL: It's a heavy burdensome for them to open mail and stuff. It's not their job.

MR. McCULLOCH: They're not in the preneed business, guys.

MR. KRAUS: I assume we're talking about permitting this to happen, not requiring it to happen.

MS. EULER: Right. Not requiring.

Right.

MR. ZELL: I understand, but --

MR. KRAUS: So, they wouldn't have to.

MR. ZELL: But you're going to permit them, but my trust company won't accept it.

MS. EULER: Really?

MR. ZELL: I don't know.

MS. EULER: That's interesting.

MR. ZELL: I'm not saying they won't. I'm saying what if they don't.

MS. EULER: Well, that's why we're not going to require it, but we're going to allow it and clarify that it's allowed.

MR. KRAUS: Right. So, then that trustee either wouldn't, and whoever uses that trustee, if they want to go find someone who

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will, then they could do that, or just don't have that available to their consumers.

MS. EULER: And I would expect that under this new law, that some of the bank trustees will want that because this new law gives them more accountability. But, again, we're not going to require it, we're just going to throw it out there as it's allowable -- (inaudible.)

MR. STALTER: I think the question -- Bill Stalter. But when you say all payments have to go to the trustee --

MS. EULER: No. Not have to, but may.

MR. STALTER: Where does it say that?

MS. EULER: It doesn't. That's why we're talking about enacting a rule that says it's permissible for payments to be paid directly to the insurance company or directly into the trust.

MR. STALTER: Okay. Let me ask you this question: Can the funeral home -- the seller -- then pool what it receives on payments and then just turn around and make a single payment to the trustee?

MS. EULER: Yes.
MR. STALTER: Okay.

MS. EULER: But they will have to provide the trustee with sufficient documentation as to whose money it is. And, Don, doesn't that -- isn't that the way MFT does it now?

MR. OTTO: We -- the Missouri -- at the Trust, we prefer, and when we sign up a new provider, require that the consumer send the money directly to the bank, preferably --

MS. EULER: And has that been a problem?

MR. OTTO: No. We give them payment books if they want to do it by check. Our preferred method is automatic, you know, transfer -- ACH is the preferred method, but, of course, we, by contract, couldn't require our current people to do that, so we do have a lot of people that aggregate it and send it in, but they have to send in the paperwork that makes it very clear here's how much for each person, but, yeah, we prefer the money to go straight to the bank from the consumer whenever possible.

MS. EULER: Does the Board think
that's a good idea?

    CHAIRMAN: Are you in favor of that?

    MS EULER: John?

    MR. McCULLOCH: I don't have a problem

if you're just going to say that they can.

Sure, that's fine.

    MS. EULER: Yeah.

    MR. McCULLOCH: If they want to do it

that way.

    CHAIRMAN: All right.

    MR. KRAUS: K9, with regard to

third-party sales, is the funeral home

obligated even if the seller is incapable of

performing due to insolvency according to the

terms of the seller/provider agreement? I

guess that's kind of a question that could be

answered and/or dealt with by rule if you

wanted to.

    MS. EULER: Well, under .520, it says

pretty clearly that they are.

    MR. KRAUS: Yeah. Do we need to say

that again in a rule?

    MR. REINHARD: No.

    MR. KRAUS: No? Okay.

    CHAIRMAN: Anybody else?
MR. FRAKER: I'm good.

CHAIRMAN: Everybody is good.

MR. KRAUS: All right. K10, what about insurance premiums? We did that already.

ELEVEN, they want to set out in rule a couple of things. Provider obligations, funeral director in charge is responsible.

MS. EULER: And as a corollary to that, do we want to ask that the seller name for the State Board someone who is the equivalent of the funeral director in charge for the seller as a contact person who is the responsible party -- the responsible person for the seller?

MS. DUNN: From my perspective, it would be helpful because now you look up corporation officers or I think it would be a very good thing to have someone designated as your contact in lieu of looking up your corporation president or --

MR. KRAUS: For the seller?

MS. EULER: Uh-huh.

CHAIRMAN: And that would just be on the registration?

MS. EULER: Kind of the manager in
charge?

MS. DUNN: Application for license.

CHAIRMAN: Yeah.

MR. FRAKER: Or a secondary -- is this what you're asking?

MS. EULER: For a preneed seller to name who their manager in charge is so --

MS. DUNN: Kind of like your funeral home, your funeral director in charge. Right now, the seller -- you know --

MS. EULER: We don't know.

MS. DUNN: -- we go to a designated corporation.

MS. EULER: And we guess. And sometimes we've sent letters out to our best guess as to who it was, and we've got a nasty letter back from somebody else saying why did you send it to Bob. Don't you know I'm in charge and Bob has nothing to do, and so, if you ask them to designate, then we would know who.

MR. FRAKER: So, are you asking the funeral homes that are the sellers to designate their control --

MS. DUNN: The seller to designate
someone.

MS. EULER: The seller. The seller to designate who the manager in charge would be.

CHAIRMAN: This would be any seller.

MR. FRAKER: Any seller.

MS. EULER: Any seller.

MR. FRAKER: Okay.

MS. EULER: And at a funeral home, that would probably be the same person as the funeral director in charge, but not necessarily.

MR. FRAKER: Not necessarily. Okay.

I got you.

CHAIRMAN: Makes sense to me. I see all yeses. Do you have a comment?

MR. OTTO: Well, just make the distinction between a contact person who you're supposed to contact in that little sentence there that says funeral director in charge is responsible. I mean, I don't want the regulation to add more penalties to a funeral director in charge than is already in the statute.

MS. EULER: Right. But we would ask each provider and each seller to name --
MR. OTTO: A contact person --

MS. EULER: Yeah.

MR. OTTO: -- that all correspondence and stuff --

MS. EULER: Right.

MR. OTTO: Yeah. That's fine, but, I mean, just -- that little --

MR. KRAUS: For notice, is what you're saying. For notice, is what you're saying?

MR. OTTO: Yeah, for notice.

MR. KRAUS: Okay.

MR. McCULLOCH: Are you going to -- like, the funeral home would be responsible. The provider is responsible for the funeral, not the funeral director in charge; is that what you're trying to distinguish?

MR. OTTO: Yeah. Yeah. I don't want the funeral director in charge to be personally liable for something that it's actually the funeral establishment's responsibility. That's -- you're right.

MR. McCULLOCH: Yeah.

MS. EULER: Right.

MR. McCULLOCH: Is that what you mean?

MS. EULER: Because that -- what we
mean is somebody for the provider and the
seller to designate as to who we should
contact. I mean, those are two separate
ideas, but I think what we're talking about
right now is if there is a problem, who is
the person we should contact.

MR. STALTER: Something to the effect
that you don't --

MR. MCCULLOCH: I understand that.

Yeah.

MR. STALTER: -- you don't designate an
individual and then, automatically, it's FDIC
as the -- is that what you're suggesting there?

MS. EULER: What Don is saying, he
doesn't want to see there to be someone who is
responsible for misconduct of the seller, but
he's okay with naming a person as a contact
person for the seller.

MS. DUNN: So, Don doesn't want to be
designated as the --

MR. OTTO: Like a registered --

MS. EULER: Like a registered agent.

MS. DUNN: Yeah.

MR. OTTO: Registered agent, yeah.

Yeah.
MS. EULER: Yeah. Like a registered agent.

MR. OTTO: Yeah.

MR. STALTER: But you can designate somebody -- (inaudible) -- in the absence of the designation -- (inaudible.)

?

CHAIRMAN: Anybody else? I think the idea is yes.

MS. EULER: Okay.

CHAIRMAN: Okay.

MR. KRAUS: Seller and provider obligations apply to all contracts old and new. Do we need to address that in a rule?

MS. EULER: I think it's a good idea. Again, to help clarify what the new law covers and what the old law covers.

MR. FRAKER: We may be saying it again and again to establish a clarification as you have a problem that needs to be addressed.

MR. SPEAKS: Brad Speaks. So, it's not suggesting that seller and provider obligations would apply retroactively?

MS. EULER: No.

MR. SPEAKS: It's saying to
differentiate between old and new obligations?

MS. EULER: It means that -- yeah.

CHAIRMAN: So, I'm getting the idea yes on that. Everybody agree?

MR. McCulloch: Explain further, I guess. I just got lost with your statement, I think.

MR. Speaks: Well, Brad Speaks again. What that says is, seller and provider obligations apply to all contracts, old and new. That statement by itself sounds like somebody is suggesting the Board interpret the statute to be retroactive.

MR. McCulloch: Oh, okay. I see what you mean.

MR. Speaks: And that's illegal.

MR. McCulloch: And that's -- yeah. I get it.

MR. Kraus: And I think that's set out throughout the statute what's prospective and what's retrospective.

MR. Speaks: But, instead, they're suggesting let's differentiate between what the old obligations were and what the new obligations were.
MS. EULER: Right.

MR. SPEAKS: Yeah.

MR. FRAKER: And maybe we can't say it enough.

MS. EULER: Right.

CHAIRMAN: Any other comment? Like I said, I got the idea yes, so --

MR. REINHARD: Right. Right.

MR. McCulloch: Yeah.

CHAIRMAN: Okay.

MR. KRAUS: 436.420. Let's see.

There's a reference there about in sub 3, a provider shall provide -- shall notify the Board and do we want to set out any specifics about that notice?

MS. EULER: I think I would suggest that you require the notice to be in writing within -- I would just think that you would want it to be written notice, signed by the person in charge and provided to the Board. Do you want to allow them to provide it to you electronically, so, you know, written either by letter, e-mail, fax?

MS. DUNN: Will that e-mail be from the designated agent?
MS. EULER: It would need to be from the designated person.

MS. DUNN: Yes. I mean, just so someone doesn't get on --

MS. EULER: Yeah.

MS. DUNN: -- the computer from someone's --

MS. EULER: Right. I think we need to --

MR. McCULLOCH: That's what we do currently; right?

MS. EULER: Yeah.

MR. McCULLOCH: You're supposed to notify.

MS. DUNN: Right. It wasn't done in the past.

MS. EULER: There wasn't any guidelines for when or how.

MR. McCULLOCH: Aren't they supposed to be? Aren't they supposed to?

MS. DUNN: well, no, but -- I mean, what we understand is this is happening frequently in this profession with one of your previous third-party sellers. You know, a provider didn't always know that --
CHAIRMAN: That they were providing?

MR. McCULLOCH: Well, I disagree.

MS. DUNN: -- that they were being designated as a provider.

MR. McCULLOCH: I would disagree, but okay.

MS. DUNN: Well, now, if -- well --

MR. McCULLOCH: I think they knew.

MS. DUNN: That -- well, we're -- we understand that's --

MR. McCULLOCH: It's pretty hard for them to be out selling without you knowing about it, but that's a different subject, different argument.

MR. KRAUS: Is there certain minimum information that should be included in the notice?

MS. EULER: They -- I would think so.

MR. KRAUS: I would think so.

MS. EULER: (Inaudible.)

MR. KRAUS: Name of seller?

MS. EULER: Yeah. There is -- (inaudible.)

MR. KRAUS: And the same for the provider?
MS. EULER: Yeah. And seller license number.

MS. DUNN: And something about designated by the agent if that's what we're going to write in the previous rule.

MR. FRAKER: Point taken. What did you say?

MS. EULER: Do we want the seller to sign off on that consent? Yes?

MS. DUNN: Yes.

(Several people talking simultaneously.)

MS. EULER: So, both the seller and the provider are jointly providing the notice then.

MR. KRAUS: The seller to sign off on what?

MS. EULER: The notice to the Board.

MS. DUNN: And, many times, the seller and the provider may be one in the same.

MS. EULER: Right.

MR. KRAUS: But they can e-mail it?

MS. EULER: Yeah.

MR. KRAUS: Okay. So, like a pdf is what you're thinking or --

MS. EULER: Yeah.

MS. DUNN: Oh, okay. So, it won't be
just an e-mail from Brad Speaks Funeral Home?

MS. EULER: Right.

MS. DUNN: Okay.

MS. EULER: But he could e-mail a
scanned document that's signed by both parties.

MS. DUNN: Okay. Okay.

CHAIRMAN: But it does require the
document?

MS. EULER: Yeah. And you want the
original signed document to follow by mail?

MS. DUNN: Well, that's the way
everything else is done.

MS. EULER: Okay.

CHAIRMAN: Don Otto, have you got a
question?

MR. OTTO: Yes. Well, one, you know,
the seller is required to notify this Board of
every provider it uses, and the provider is
required to notify the Board of every seller
it uses. If we could get that under just one
standard form --

MS. EULER: Yeah. Okay.

MR. OTTO: -- that would be extremely
helpful. And we had a pretty good question
over here. This is a problem in the current
law, but it's more explicitly a problem under
the new law, is when the provider and the
seller is one and the same --

MS. EULER: Uh-huh.

MR. OTTO: -- and it's a sole
proprietorship --

MS. EULER: Uh-huh.

MR. OTTO: -- how do they do a
contract with themselves?

MS. EULER: They're not required to.

There's an exemption for that.

MR. OTTO: Okay. That's good. It's
right there. It is. It's right there.

MS. EULER: No contract is required if
the seller and the provider are the same legal
entity.

MR. OTTO: But does that need to be
explained then because then the next thing, it
says, "The written agreement required by this
section shall include the following things."
So, does that mean if you're the same legal
entity, you don't have to do any of that?

MS. EULER: Right. You don't have to
have a written agreement, but if you have --
you need to notify the Board that you are
selling for yourself and no one else is
allowed to sell for you.

MR. OTTO: That would be good to make
clearer because this is all in one section --

MS. EULER: Okay.

MR. OTTO: -- that even if you're
exempt from having the contract with yourself,
you still have to do the following things,
just so it's clear.

MS. EULER: Okay.

CHAIRMAN: Any thoughts? Mark?

MR. WARREN: The same comment we had
earlier that it might be nice to put into form
where the insurance premiums are sent to make
it clear to make it directly to the company.

CHAIRMAN: Okay. Everybody okay?

MR. KRAUS: And we say we do want a
form or we don't want a form?

MS. EULER: I think a form would be a
good idea.

CHAIRMAN: All right. All right.

MR. KRAUS: 436.425, consumer contract
requirements. K13, may want to define or
specify the font type and size. Well, we just
have rules on everything, don't we?
MS. EULER: Well, I have to say that easily read means different things to different people. To lawyers, easily read means five-point type, italic, bold.

MR. KRAUS: It's on the piece of paper.

MS. EULER: Got a piece of paper.

Yeah, Don?

MR. OTTO: Oh. Just my suggestion is you don't do a rule on that. I mean, if we -- if you make us put 12-point type on our contract, it's now a 15-page contract.

MR. ZELL: Or a 20-page.

MR. OTTO: Or a 20-page contract. And I think it should be on a case-by-case basis where you -- the Board decides whether this is easily read or legible or not.

MS. EULER: Well, I agree with you in theory, but we will be going to the AHC on this to get discipline against somebody, and I think that the more objective standard we can have, the better it will be for everybody, because I understand your point. Easily read is so subjective of a term that, you know, the AHC commissioner who has 20-20 vision is going to say, well, I can read it, but the
80-year-old woman, our friend, Mabel, who
signed it, you know, she just signs it, and
they're going to just sign it anyway. I mean

--

MR. REINHARD: Right.

(Several people talking simultaneously.)

MR. KRAUS: Well, and, also, I'd be
concerned that on something like that, if the
Board tries to, as cases individually come
before the Board, and they try to be
consistent in how they deal with people, which
they're going to try to be, will they end up
inadvertently applying an unpromulgated rule
in trying to be consistent with all those
folks.

MR. REINHARD: We want a 12.

CHAIRMAN: Brad?

(Several people talking simultaneously.)

MR. SPEAKS: Brad Speaks. I'm
curious, is there precedent for this in other
types of contracts? In other words, if a
person goes into a bank for a consumer loan,
what are the requirements there?

MS. EULER: There are requirements.

MR. SPEAKS: Because, usually, the
back page of that document is, you know, fairly small. It's definitely not 12-point, and probably more like five.

CHAIRMAN: Mark has --

MR. WARREN: There is some case law with respect to what size font and what size type. Most of it applies to disclaimers that may be contained, like, on the back of a contract. One I can think of, there was a case called Allied vs. Vic Chaney, which was like a gym, and the court of appeals talked about --

MR. REINHARD: That's where Don goes.

MR. WARREN: -- disclaimers have to be in big enough type and maybe even a different color, you know, in order to be valid. So, you know, you can argue this -- how many spirits can dance on the head of a pin kind of thing, but there is some case law out there with respect to at least certain themes that you're putting in there that disclaim liability or something like that.

CHAIRMAN: Darlene?

MS. RUSSELL: Isn't the FTC on the -- (inaudible) -- on your notice of cancellation,
isn't that a certain point type? Maybe going
with something with the FTC already has,
because I think they even reference that point
type on the FTC. Wouldn't that make it easier?

MS. EULER: Yeah, they do.

MR. REINHARD: Well, then why don't we
go back to --

MR. MCCULLOCH: I don't think the FTC
does, but the federal government does on their
three-day disclosure.

MS. RUSSELL: That's what I'm talking
about.

MS. EULER: Yeah.

MR. MCCULLOCH: Yeah.

MS. EULER: Yeah. The Truth In
Lending Act has requirements.

MR. MCCULLOCH: Truth in -- it does,
but I think it's -- isn't it like 10-point or
something like --

MS. RUSSELL: I think 10-point is the
--

MR. MCCULLOCH: Because ours is that
way. Even though this Board told us not to
do that, by the way, which -- (inaudible.)

MS. RUSSELL: Well, I was just
thinking for an argument for you, Earl, that
you could say we followed the same as the FTC
and used the 10-point or whatever.

MR. KRAUS: And how could they be
wrong?

MS. RUSSELL: How could they be wrong.

Exactly.

MR. KRAUS: Exactly. "You mean, Your
Honor, you're going to find the entire federal
government is wrong in this matter?"

MR. MARTIN: Well, I hear a lot of
fors and a lot of I don't knows, so what's
the ultimate answer here?

MR. REINHARD: When has this ever been
an issue?

MR. OTTO: This makes it more
complicated, I know, but, from my perspective,
it would be better if the Board said certain
disclosures or the following things should be
in a certain size type. Literally, our
contract right now, I don't know what size
type it is, but it's front and back, legal
size, full up.

MS. EULER: Can you read it?

MR. OTTO: I think you can read it
really well.

MR. MCCULLOCH: Yeah, you can read it real well. I agree with him because they're just going to -- you're going to cause us to have too much stuff. We even do this shading in some areas where we want them to see certain things, which I think is really good, but that's just our own preference. But you're going to get a contract that's way too much --

MR. OTTO: Well, wait. I've got one out in the car.

MS. RUSSELL: I've got one here, front and back.

MR. MCCULLOCH: But yours is easily read, though.

MR. ZELL: I have a question, though. If you went to 12-point -- this is Stephen Zell. If you went to 12-point, you're going to have some numbers on page 1 and 2 and then signature on page 10 or 12. And I just -- I think that's more crazy than trying to give them something usable.

(Several people talking simultaneously.)

CHAIRMAN: What is this?
MS. RUSSELL: It's 10-point --
10-point.

CHAIRMAN: Ten?

MS. RUSSELL: And except for the FTC disclosure; it's got to be bold. Maybe your disclosure should be bold, but in 10-point.

MS. EULER: Well, maybe we set forth a minimum that it has to be more than five-point or it has to be more than six-point or --

CHAIRMAN: Anybody else want to see this?

MR. REINHARD: What's normal type, Becky?

MR. McCULLOCH: What do you think this size is right here?

MS. RUSSELL: Ten, eight.

MR. KRAUS: That's probably ten or eight.

MS. RUSSELL: Ten or eight.

MR. REINHARD: Well, when you turn on word, what's it come out?

MS. EULER: Twelve.

MR. REINHARD: Twelve?

MS. RUSSELL: That is ten.

UNIDENTIFIED: I think the phone book
is printed in four.

(Several people talking simultaneously.)

MS. EULER: I mean, the -- what we have -- what's in the bubble are just comments and suggestions. They're --

MR. KRAUS: Yeah. That's just to promote discussion. I don't think anyone is advocating any particular size.

(Several people talking simultaneously.)

MS. EULER: They're not set in stone. I think it would be good to have some standard because when we go to the AHC, I don't want to have to be arguing with the other side --

(Several people talking simultaneously.)

CHAIRMAN: One at a time.

MS. EULER: -- that three-point type is readable. I mean, how do you prove that up? You bring in an expert that's going to cost money to say I can't read three-point type. It's not easily read. Whereas if you have an objective standard, then it's enforceable.

MR. FRAKER: Maybe we should look at just a minimum standard and let it go. I think we're chasing rabbits.

CHAIRMAN: So, Board? Give us the
thought. It's your decision.

    MS. EULER: Yeah.

    MR. McCULLOCH: Minimum standard, and
what would that be, you think?

    MS. EULER: Whatever you want. It has
to be larger than five-point?

    MR. SPEAKS: No smaller than five or
something like that.

    MR. McCULLOCH: Which is much -- is
this, like, five? What do you think that is?

    MS. EULER: That's eight.

    MR. REINHARD: No. The gray, what
would that be?

    (Several people talking simultaneously.)

    MS. EULER: I don't know.

    MR. McCULLOCH: That's eight? This
is --

    MR. REINHARD: Well, can you call Tab
up and have her do sizes for us?

    CHAIRMAN: Well, Darlene said her
contract was ten.

    MS. DUNN: I've got the Federal Trade
Commission --

    (Several people talking simultaneously.)

    MS. EULER: Can you pull -- do you
have this document on-line? Can you just --

(Several people talking simultaneously.)

MR. McCULLOCH: She's going to bring us some sizes back here.

MS. EULER: So, this is 12 and the bubble is 10?

MR. KRAUS: Really?

(Several people talking simultaneously.)

CHAIRMAN: Okay. They need to know what to do.

MS. EULER: I mean, Don, what size font are your contracts?

MR. OTTO: I don't know. I thought I had a blank one out there and I don't. The ones I've got have got people's names on them, so I can't --

MR. REINHARD: Well, bring them in here. We want to check them out.

MR. OTTO: I'll get you one.

MS. EULER: Because, Darlene, that is --

MS. RUSSELL: Ten.

MS. EULER: -- ten.

(Several people talking simultaneously.)

MS. EULER: So, I'm hearing people say
ten. The contract Darlene has is ten and I
can read it. I don't know.

MR. OTTO: I'm guessing -- I mean, we
include a lot of stuff that we don't have to
include, probably, because we like to spell
out some of the statutes language on there.

MS. EULER: Yeah.

MR. OTTO: And I'm thinking the
smallest type is what's in the bubble if
anybody knows what that is.

MS. EULER: And that's eight.

MR. REINHARD: The bubble is an eight?

(Several people talking simultaneously.)


MR. McCULLOCH: I don't think so.

MR. REINHARD: I think the bubble is
smaller.

MS. RUSSELL: That's eight.

MR. SPEAKS: That's too big for eight.

CHAIRMAN: I think the bubble is
smaller than eight, personally, but I --

MR. McCULLOCH: Connie is going to run
some off for us.

CHAIRMAN: So, do you want to table the
thought for the moment?
MR. KRAUS: The question of the bubble.

CHAIRMAN: The question of the bubble.

MR. KRAUS: And, of course, I --

MR. REINHARD: John also had a point here, too. The person has got to be able to read, so put that in the rule.

MS. EULER: You have to pass a reading test?

MR. REINHARD: Right.

MS. EULER: (Inaudible.)

MR. REINHARD: Well, that's just the way it goes.

MR. McCULLOCH: And you also have to do these in Spanish.

MR. OTTO: Can all our contracts be in, like, Swahili, or --

MS. EULER: Wing-Ding.

MR. REINHARD: (Inaudible.)

MS. EULER: Don, Wing-Ding font.

MR. OTTO: Wing-Ding font.

MS. EULER: Yes.

MR. ZELL: Now, you have 40 pages.

MR. KRAUS: I'm thinking from, you know, once we get to drafting the rule, that that's talking merely about defining what the
font type is referring to, and that easily
read and shall clearly and conspicuously set
out the following are separate criteria in
that you could have a contract that has
10-point font, but nobody is going to be able
to read it because it's been copied 3,000
times and it's all blurred and you can't tell
what it says.

MS. EULER: Right.

MR. KRAUS: Does anyone disagree with
that?

MR. FRAKER: No. I agree with that.

MS. EULER: Yeah.

MR. REINHARD: So, we can't copy the
contract over how many times?

MR. KRAUS: You've got to use a good
copier, 2,874 times.

CHAIRMAN: So, is there a thought?

Table? Move on? Relook at it?

MS. EULER: Do you want us to draft a
rule with some minimum standards and then we
can fill in the blank with the font size?

CHAIRMAN: Okay.

MS. EULER: That's --

CHAIRMAN: Here she comes. You're on,
Connie.

MS. CLARKSTON: Oh.

CHAIRMAN: You saved the day.

MS. CLARKSTON: I can't get Word to go down past eight point.

MR. REINHARD: Do you all want to see that?

(Several people talking simultaneously.)

MR. McCULLOCH: That's smaller than eight.

MR. OTTO: My bank wants me to go -- (inaudible) -- but I said, well, that means we're going to add a third page.

(Several people talking simultaneously.)

CHAIRMAN: I think our ten font is smaller than your ten font.

UNIDENTIFIED: I think mine is actually 12. That's even better.

(Several people talking simultaneously.)

MS. CLARKSTON: Well, and I told John, too, that if you change the font style, it's going to vary -- (inaudible.)

MR. RUSSELL: Yeah. Because Times New Roman --

MR. KRAUS: It does, yeah.
MS. RUSSELL: Times New Roman is the main one. Yeah. You're right.

CHAIRMAN: Well, I think there has to be a minimum standard of something here.


CHAIRMAN: Yeah. Well, I agree.

MR. REINHARD: And that's ten.

MR. WESTBY: I have a question while you're thinking that over.

CHAIRMAN: Oh, yeah.

MR. WESTBY: We're going to have to have these contracts done by the 28th, aren't we? Are we going to have our rules done by then?

CHAIRMAN: Do you think we're going to answer that question?

MR. WESTBY: Well, but you know, I told -- (inaudible) -- put it on a word processor in-house because, you know, once these rules come out, you could have a whole bunch of different things to deal with, you know, just -- (inaudible.)

CHAIRMAN: Yeah.

MR. ZELL: Well, to follow up on that,
is it August 29th or is it July 10th?

MS. EULER: It's August 28th. They go into effect August 28th.

MR. ZELL: So, if someone is using a contract that is in the wrong font, you're going to --

MS. EULER: I would --

MR. ZELL: You can't do that --

MS. EULER: I would suspect if someone uses the wrong contract on August 29th and the Board calls them in for discipline, that you could beg for mercy.

MR. WESTBY: Would that do any good?

MS. EULER: I don't know.

MR. McCULLOCH: Yes, it will from my standpoint.

MR. WESTBY: There you go.

MS. EULER: But the Board -- I mean, and that's one thing about this process is that the new law sets out what needs to be in the contract pretty clearly. The Board is going to have rules ready to go on August 28th to be filed. And even though they won't be in place, you'll be on notice as to what these contracts need to require. Yeah, Don?
MR. OTTO: We talked about this last time, you know. And what I think we need to have is — I mean, personally, is an emergency rule that says for such and such a period of time, you just addendum — a separate addendum page shall be attached to all contracts that spells out the following XYZ things, because it's going to be physically impossible —

MS. EULER: Right.

MR. OTTO: If you had the rule today, there is no way I can have enough contracts out to people by the 28th.

MS. EULER: Right.

MR. OTTO: We can't do it. So, we're either going to have to use the old contract or tell people, sorry, I can't sell you a preneed for a month until I get these contracts worked out. So, I think we need an emergency rule that says until — I don't know; pick a date, whatever -- November 1st or whatever -- that until such and such a date, all contracts shall have the follow — you know.

MS. EULER: (Inaudible.)

MR. OTTO: If a contract was written,
you know, before August -- you know, prepared
before August 28th, it shall have the
following page addendum attached to it.

MR. FRAKER: I think we addressed this
at the first meeting, didn't we?

CHAIRMAN: John?

MR. McCULLOCH: I agree with what he
just said, first thing. Secondly, just a
thought for you. We use -- kind of like the
insurance companies do, we use an application
process that the people fill -- we fill out --
the counselor does. That comes back into the
office, we accept or deny at that point in
time. But if we decide to issue the trust
certificate and accept, then the application
becomes part of the contract. Is that going
to be okay still with everybody, do you think?

MS. EULER: Uh-huh.

MR. McCULLOCH: No problem? Because
we have some things -- some of these things
that are going to be required are on the
application and some are probably the actual
trust certificate, but it becomes part of it.
We say it will become part of it.

MS. EULER: So long as it's clear to
the consumer what constitutes their contract,
I don't see a problem.

MR. McCULLOCH: Well, it is part of the contract.

MS. EULER: Right.

MR. McCULLOCH: Because, like, our irrevocable is on there and some different things.

MS. EULER: Uh-huh. Yeah. If the contract -- (inaudible.)

MR. McCULLOCH: The disclosures about we didn't tell you you had to have a casket, a vault; all that kind of stuff is on there.

MS. EULER: Yeah. Yeah. I don't see a problem with that.

MR. ZELL: I reiterate -- Stephen Zell. I reiterate that it -- not even November. I mean, you're talking a lot of printer time, rewrites, corrections. It's not going to be easy.

MS. EULER: Did we do this before? I think we talked about it.

MR. REINHARD: We talked about it.

MS. EULER: Did we draft a rule on it?

MR. FRAKER: Maybe even January the
1st or later, because we talked about not
putting so much on Becky and the staff to get
this stuff --

MR. REINHARD: Yeah. Gary had, like,
October 1st, and I think that we --

CHAIRMAN: I think everybody is at
least on the train that says everybody
understands that this just isn't going to be
feasible, that this just happens like that,
magically on that date. And there's big
issues to be overcome. Can we just sit here
and flat say that, you know, it's a certain
date or whatever. I don't -- are we?

MS. EULER: I would recommend you do a
rule.

MS. DUNN: (Inaudible) -- emergency
rule.

CHAIRMAN: Okay.

MR. KRAUS: Well, we did talk about --
let me see if I can find it here --
enforcement of the rules and the statutes
going forward and how we're going to do that
in the emergency-rule period and then out
through some date with a notice of intent to
continue business and all that, because, of
course, you're not going to be licensed, either, on the 28th. And we talked about how
the Board was going to address that. And we actually have a draft rule that we talked
about or we prepared, brought back to the Board at the last meeting and talked about --
MS. EUER: The licenses.
MR. KRAUS: -- which addresses that to some extent, and I was thinking that it was
general enough to -- let me see if I can put my hands on it -- general enough to deal with
enforcement of issues across the board, I thought.
MS. EUER: And I think we could add something to it to address that concern because it's a valid concern, I think.
MR. KRAUS: Sure, it is.
CHAIRMAN: Gary?
MR. FRAKER: Let me address this to Tim, in all fairness. I'm sure this was discussed thoroughly in your meetings; is that not correct? What was your take on this, Tim? Is this -- I'm sure you realized --
REPRESENTATIVE MEADOWS: Well, my take is what we were -- we were going to leave
this up to the Board. We knew that it wasn't
going to happen, like, overnight, and we knew
that, you know, first, again, you know, we
didn't --

MR. FRAKER: Well, you must have had
some expectation, at least, of --

REPRESENTATIVE MEADOWS: Right. We
knew that there was going to be some type of
struggle. And when -- Sharon is correct that
you guys need to impose a rule on how you're
going to do that. But I would suggest that
you leave it by such and such a date because
it has to all be conformed with by such and
such a date. Would you not agree with that,
Sharon?

MS. EULER: Yes. Yes.

MR. FRAKER: What would be --

REPRESENTATIVE MEADOWS: I think
that's -- we knew that we weren't going to get
all this done by the time of the end of
session and so forth and so on. I mean, and
we understand that, but, I mean, as long as
you're hitting some of these marks, that's the
high part.

MS. EULER: Did you have a date in
MR. FRAKER: Did you have something in mind, Tim?

REPRESENTATIVE MEADOWS: No, we didn't have a date specific.

MS. EULER: Well, I think --

MR. KRAUS: I think the date that was discussed last time and we were -- I think we were talking about December 31st just as a date that was thrown out for discussion. And then I think some brought up, well, what about just going to July 1st of 2010 because that's the other date.

MS. EULER: But I think you need to set it out in rule, one, so everybody gets the same information and it's clear as to what is covered, because you don't want anybody to come back and say, well, I was at the Board meeting and they said anything goes. Olly ollny oxen free.

MR. McCULLOCH: But we didn't say that. That's clear. No one has said that.

MR. KRAUS: No, we didn't.

MS. EULER: Right.

MR. McCULLOCH: No one is insinuating
that.

MS. EULER: Right. But that's why you need a rule so that everybody gets the same message by the rule and the people who are here don't hear one thing and the people who aren't here --

MR. McCULLOCH: The rumor?


MR. KRAUS: Yeah. And I think I have that back -- I must have that back at my desk since that was last group's, but --

MR. FRAKER: Well, I think we talked, Earl, about setting this in motion ASAP, but not enforcing it until we had a certain time.

REPRESENTATIVE MEADOWS: I have a question, Mr. Chairman.

CHAIRMAN: Yes, sir.

REPRESENTATIVE MEADOWS: Tim Meadows, for the record. Has your Board or have you started the process of implementing the form and this process? Have you done that outside of any type of meeting other than the meetings that we have established here? Has this already started to take roll through the State
Board, what we're talking about here right now?

CHAIRMAN: We have --

REPRESENTATIVE MEADOWS: Have you started that process?

CHAIRMAN: Well, the application of intent to comply, we have.

MS. DUNN: Yes.

CHAIRMAN: We have started that -- working --

MS. EULER: We started working on the forms.

MS. DUNN: Through the direction of this group, we -- last week, we had just a draft form.

REPRESENTATIVE MEADOWS: I see. Okay. I would just caution you that you do this, and I'm just -- I know what the law says and, technically, you would be in violation, so you're going to have make sure that you have some type of rule in place. But I would caution you that you not take it any further than what this gentleman over there was saying, past December 31st. I would hope that you would get it implemented as soon as possible, not that you establish July of next
year because we know in July of next year, are
you going to have it done July of next year?

CHAIRMAN: Right.

REPRESENTATIVE MEADOWS: Then we’re
going to have to extend it again. So, you
know, that you be firm in where you’re going.

CHAIRMAN: Sure.

REPRESENTATIVE MEADOWS: So, the other
funeral homes across the state have some
guidance, as well, so they know, you know,
because if they don't know and then they're
all locked in, not everybody is privy to being
here at this time. So, yeah, I would caution
that you do it ASAP.

MR. KRAUS: Yeah. And this is in a
paragraph that we came up in the proposed rule
that we brought back last meeting, and we
could probably amend this to some extent to
make sure that we're covering this area, also.

But such -- it says any conduct that may be
cause for discipline that occurs between
August 28th, 2009, and December 31, 2009 --
that's just the date that was put in there --
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 that occurred between August 28, 2009, and December 31, 2009, the Board shall have authority to seek discipline against the licensee or registeree for that conduct as if the person were fully licensed or registered while operating under the authority of the notice of intent. And this is part of a rule that talks about how you can file a notice of intent to conduct business and that will essentially act as -- it's not a license, but it enables you to function as if you were licensed until you get a license so that you're not in violation of that provision of the law on the 28th.

CHAIRMAN: So, do you think somehow that includes -- their concern is the contracts in itself. Are you thinking that this can include that or there needs to be some language that goes to include that?

MS. EULER: There needs to be some language added to specifically --

MR. KRAUS: We could add -- we
probably do, yeah.

CHAIRMAN: Okay.

MS. EULER: And if I may make a comment about the dates. I would encourage the Board to set shorter rather than longer time frames because I think we want to get everybody up to speed as soon as possible and get this new law affected. And if we say July 10th or July 1, not lawyers present in this room, of course, but I know that there are some lawyers out there who will say, oh, they don't need that contract until July 1st, so we're going to do it on June 30th. And I think if you give people shorter time frames, then everybody will do what needs to be done within that shorter, but reasonable -- we want to be reasonable -- time frame, and everybody will get up to speed faster. And if there's somebody who has got problems or special circumstances, you know, maybe you could allow for somebody to petition the Board for an extension of time or something. So, you know, if you've got some extenuating circumstance, that that could be taken into consideration. But if you give people a year to get in
compliance, people will wait till day 364.

CHAIRMAN: Right. Okay. So, I'm basically hearing December 31st being that thought, so --

MS. EULER: I think that's a reasonable time frame.

CHAIRMAN: I see lots of heads going like this, so, Board, December 31st?

MR. FRAKER: Yeah.

CHAIRMAN: Yes?

MR. McCULLOCH: I'm okay with that.

MR. REINHARD: Of 2011; right?

MS. EULER: You might specify which year, Martin.

CHAIRMAN: Well, he's outvoted anyway, so -- all right.

MR. REINHARD: Did we decide the font size? Did we get that?

CHAIRMAN: I don't think we ever did totally get --

MS. DUNN: Minimum standards or something.

MR. REINHARD: Ten.

MS. EULER: I'd put eight.

MR. REINHARD: Preferably a ten.
MR. McCULLOCH: So, the minimum is eight?

CHAIRMAN: Well, actually, that's her thought. What do you think?

MR. McCULLOCH: I like that.

CHAIRMAN: Eight or ten?

MS. EULER: We'll put together a rule and bring it back and you can look at it.

CHAIRMAN: Okay.

MR. REINHARD: No. Let's just get it over with. Let's make it an eight and be done with it.

CHAIRMAN: Eight?

MR. REINHARD: Eight.

CHAIRMAN: Eight?

MR. FRAKER: Fine with me.

CHAIRMAN: Eight is what she got.

MS. EULER: All right.

MR. REINHARD: Can you see eight over here? Okay. MR. WESTBY: Which is it going to take longer to do, read the statute or the rules?

MR. McCULLOCH: Good point.

MR. REINHARD: I think the Bible is going to look like the Bible.
MR. STALTER: But you never read that, either, Jim.

MR. REINHARD: That's true. Just parts of it every time I need it.

MR. KRAUS: So, we're past the font.

MS. EULER: Yes. Moving on.

MR. FRAKER: Well, have we established a rule on this date -- is this what we're doing now?

CHAIRMAN: We just did.

MS. EULER: We just did, December 31st.

CHAIRMAN: December 31st.

MR. FRAKER: We just did, so we're done with that.

MS. EULER: We're done with that.

MR. KRAUS: Well, and the plan all along has been, on all these rules, if I understand our process, is that we've been marching through all the sections, having discussion about what rules should be. The board has been making recommendations as to the drafting of rules. Staff then brings back the drafted rules at a subsequent meeting, talk about those, see if that's what you like, if you want any further changes, and then if
it looks okay, then putting that aside. And then when we come back to one of our later, like, more final meetings, saying okay, take all of that forward, proceed with preparing it for filing and actually promulgating it. So, I guess I'm saying there is still room to come back to that if we -- because we thought that we would certainly see other sections that would make us think of things that we've already done that we need to go back and revisit like we just did with making an amendment to the notice-of-intent to apply rule. So --

CHAIRMAN: Okay.

MR. KRAUS: All right. K14, including notice of cancellation. Inclusion of insurance-related provisions in a trust-funded contract and vice versa will be confusing to the consumer.

MS. EULER: That makes sense. If you're doing a trust-funded contract and the consumer reads in there that cancellation of the contracts are not cancelling life-insurance funding, they go, "I don't have life insurance."
MR. KRAUS: "What are you talking about?"

MS. EULER: "What are you talking about?"

CHAIRMAN: Darlene?

MS. RUSSELL: This might make it harder on you as far as more typing, but to be clear in the rule, could you just say a trust-funded preneed contract must include the following. Even though you'll be repeating yourself when you do it again, when you say the insurance-funded contract must include and then a joint-account contract must include. You'll be repeating some of the same things, but it'll be easier for those when you look at it and say, oh, that's an insurance-funded contract goes under these. These things have to be in it.

MR. KRAUS: Just put them in categories on the contracts so --

MS. RUSSELL: In categories on the rule -- on the rule, specify it by categories even though you'll be repeating the same thing, name, address, and all of that thing several times -- all three times.
MR. KRAUS: That makes sense. If you do that, though, then are you omitting -- are you requiring less in the rule than what's required by the statute?

MS. RUSSELL: No. I'm suggesting that you take the statute and, basically, repeat it three times in rule because all three of them are going to require some of the same things. They'll require all the way up to four. It's going to be -- four is going to be all three of them, then five will be just insurance.

MS. EULER: Right. And kind of put everything all together in one rule for not just this statute, but all of the statutes, and say insurance-funded contracts need to say one, two, three, four, five.

MS. RUSSELL: And that's what I've done. I've done it preneed contracts, insurance, this happens, trust, happens, you know, that type of thing.

MS. EULER: That's a good idea.

MR. KRAUS: Yeah. I like that and I think that makes a lot of sense. What I was concerned about is whether the statute actually requires this statement about life
insurance for all contracts, even trust-funded contracts.

MS. RUSSELL: Oh. I see what you're saying, and that is a legal point.

MS. KRAUS: And if we're not requiring that in the rule, then is that a problem. Where I thought you were going was to put -- to have on your contract this is language for trusts, this is language for insurance, this is language for joint accounts, then it is on the contract, it's just qualified as being in a certain category.

MS. RUSSELL: Well, that would be hard for the consumer, though.

MR. KRAUS: That's a lot of extra language, though.

MS. EUER: Yeah.

MS. RUSSELL: Yeah. But I see what you're saying.

MR. McCULLOCH: I think you're right, though. I think the statute is clear, it's just that it doesn't make any sense at all to do that.

MR. KRAUS: Yeah.

MR. McCULLOCH: But, yeah, it's clear,
but it makes no sense.

    MS. EULER: But we could say that -- how that disclosure is to be done on -- (inaudible.) You know, we could help clarify that. I think people will do it anyway, but --

    MS. RUSSELL: Well, you have a point. If the statute says it, it's going to, basically, be one contract and then all -- everything has to be on it. Wow. I didn't envision that.

    MS. EULER: No.

    MS. RUSSELL: Did you envision that?

    MR. KRAUS: Yeah. I didn't, either. That's just kind of how I think it reads, but -- I mean, we may be able to help that some way in a rule.

    MS. EULER: Yeah, I think we can.

    MR. KRAUS: We'll have to toy with that, see if we can come up with some way to do that.

    MS. EULER: Yeah, I think we can.

    CHAIRMAN: Don?

    MR. OTTO: Well, one problem is you might have multiple sources of funding for a preneed contract, you know. It's not uncommon
for a person to put, you know, $3,000 down --
Don Otto again. Sorry. -- $3,000 down and
say I'm going to pay the rest at time of need
or when -- or later on, I'm going to pay the
other amount, and that might be by an
insurance-contract assignment. I envision on
our contracts -- I've already been working on
ours -- ours says that if -- the disclosure
that I came up with, it says if any or all of
this contract is funded by a life-insurance
policy, the cancellation of this contract does
not cancel that life-insurance policy. That's
how my disclosure reads. But, I mean, that's
one issue is that you can have contracts that
are -- you know, they're partially funding,
and six months from now, they might come in
and say I want to pay off the remainder of
this by signing this insurance policy to you,
which is fine. So, our disclosure that I --
my rough draft on ours just says if any or
all of this contract is funded by a
life-insurance policy, the cancellation of
this contract does not cancel the
life-insurance policy.

MS. EULER: Right. Yeah. And I think
that's fine.

    MS. RUSSELL: Well, that's going to make -- I understand that works good for the trust, but if you're insurance -- Mark, help me out here. If you're insurance and you don't have anything to do with trusts, and you're going to have to now put all those trust revisions in your -- provisions in your contract, plus you're going to have to include joint-account provisions, you're talking taking a one-page contract and it's going to become six pages if you have to make sure you cover everything.

    MR. OTTO: That's why I was pushing for small type.

    MR. KRAUS: Yeah. Do you want to change your vote on the font now?

    MR. REINHARD: We got eight. We got eight.

    MS. EULER: Again --

    MS. RUSSELL: I don't see that necessary. I mean --

    MR. KRAUS: Yeah, I don't either.

    MR. MCCULLOCH: Yeah, but it's the law. It's the law.
(Several people talking simultaneously.)

MS. EULER: Well, again, one of the things we've talked about doing is that the Board putting together a consumer disclosure sheet, and you hand that out with every contract and you staple it to the contract.

UNIDENTIFIED: Yeah. We have talked about that.

MS. EULER: I mean, that's one thing we have talked about doing. And when we get to that part, we're going to talk about that.

CHAIRMAN: Mark, you had a question?

MR. WARREN: Yeah. More language for the contract disclosure sheet, there's an issue of irrevocability of funding to qualify for Medicaid.

MS. EULER: Uh-huh.

MR. WARREN: And somewhere in there -- and this was some language we suggested when the bill was before the legislature that -- and I won't read it all here, but we've got some language that would allow the contract to, you know, irrevocably -- the insurance contract transfer the ownership irrevocably so it would qualify -- it would be used as a
federally mandated two-step process to protect
that person from losing that coverage to fund
their funeral. So, I mean, I could give this
language to you all, e-mail it over or
something, but --

MS. EULER: Yeah.

MR. WARREN: -- it didn't make it into
the final version of the bill, but it's
something that's going to -- you know, it's a
big problem if there's not a way to deal with
it.

CHAIRMAN: Okay.

MR. WESTBY: I have a question for the
chairman and Darlene, as well. We were
talking a little while ago about, you know,
the Division of Insurance has got something
that they come and regulate your contracts.
And I just about bet you're never going to
write a contract.

MS. RUSSELL: No. Not that I -- never
said -- (inaudible.)

MR. WESTBY: And so, couldn't there be
some kind of rule that if you're just selling
only insurance and you're doing it by a way
the Division of Insurance requires them to do
it -- (inaudible.)

MS. EUHLER: It's in here. It's all in here.

MR. WESTBY: Well, then, why are we talking about it?

MS. EUHLER: Because if you're selling a preneed contract and selling insurance to fund it, then it falls under 436. But the insurance part of that is regulated by the Department of Insurance -- the Division of Insurance and not us.

MR. WESTBY: So, then why is he worried about having to put all these three things in our contracts?

MS. EUHLER: Because the contract is under the authority of this Board.

MR. WESTBY: I thought you didn't want to regulate the insurance.

MR. OTTO: There's two separate contracts. There's two separate contracts.

MS. EUHLER: Right.

MR. OTTO: There's an insurance contract, there's --

MR. WESTBY: Well, we're going to have a lot of rules to play with.
MS. EULER: Yeah.

MR. KRAUS: All right.

MS. EULER: Let's move.

MR. MOORE: This is John Moore. Can we just make it simple and have a rule that prepaying is illegal?

CHAIRMAN: That would be easier.

MR. REINHARD: I second that.

MR. SPEAKS: Second.

MS. EULER: Talk to Representative Meadows about that.

REPRESENTATIVE MEADOWS: I hear you. You almost got that, John.

CHAIRMAN: Okay. So, quite frankly, I'm totally lost where we're at with it, but --

MS. EULER: We are ready to go to comment 15.

CHAIRMAN: But you have your thoughts on what we have to do with all that legality stuff?

MS. EULER: Yes.

MR. KRAUS: We're going to try to address it in rule, if we can, and we'll bring something back to the Board -- hopefully, have something to bring back to the Board.
CHAIRMAN: Okay.

MR. KRAUS: Not guaranteeing anything.

MS. EULER: I will.

MR. KRAUS: Sharon will.

MS. EULER: I'll guarantee that Earl will have something to bring back to the Board.

MR. KRAUS: Something brilliant.

CHAIRMAN: Was that 14 or 13; where are we at?

MR. KRAUS: We're on 15, I think.

MS. EULER: Yeah.

CHAIRMAN: So, that one was 14; right?

MS. EULER: And we've kind of already talked about 15, and we've kind of talked about 16.

CHAIRMAN: We kind of have? We kind of have. Do we need to look at it or not?

MS. EULER: That's about similar disclosures.

MR. KRAUS: I think so.

CHAIRMAN: Anybody have any questions there quickly? Okay. What's the next page?

MR. KRAUS: Oh, there's more.

MS. EULER: We're moving into it.

CHAIRMAN: Then this is where we stop.
So, it's 12:00, so here's where we break.

We'll all be back at 1:00.

(Off the record)

CHAIRMAN: Okay. Let's pick it back up where we left off, and we'll keep going from there. But before we do, I hope I will say this correctly: Mark Stahlhuth has joined us from the Department of Insurance. Did I even get close?

MR. STAHLHUTH: That was close.

CHAIRMAN: All right. Give us the correct.

MR. STAHLHUTH: Stahlhuth.

CHAIRMAN: Huth. Okay. All right. So, he will be interjecting his thoughts as we go. All right.

MS. EULER: And do we want to go back? We had a question for Mark from this morning about single-pay annuities.

MR. KRAUS: Yeah. That was on 436.405.


MR. STAHLHUTH: 405.

MR. KRAUS: I don't see Mark Warren. He had asked about that.

MS. EULER: No. He had a trial at
1:30.

MR. STALTER: Yeah. I mean, to pick up his issue, but why make a reference to only the single-premium annuities? I mean, you can do multipay or whatever.

MS. EULER: Yeah. I don't -- Mark, can you shed any light on that?

MR. STAHLHUTH: I think that we -- I think this was something that we had -- that insurance had suggested, that single-premium annuities be the only kind allowed. Otherwise, what you're going to have is multiple payments into annuities, and that's not what anyone expects. I mean, a preneed contract is generally one where you have one payment.

MS. EULER: Okay. Are there any rules we need to do to help define that or --

MR. STAHLHUTH: I don't think so. I think we know what a single-payment -- a single-premium annuity is.

MS. EULER: Okay.

MS. RUSSELL: Mark, may I?

MR. STAHLHUTH: Yes.

MS. RUSSELL: So, you're saying --
because we worked on the legislation and
Representative Meadows said he had been in
contact with the Department of Insurance.
Their concern was variable annuities, and we
understood that. So, that was excluded and it
was fixed annuity was in there, but then the
"single" word was inserted. So, are you
saying that it was your intention not to allow
multiple payments into an annuity, so somebody
making a payment plan, so to speak, on a
funeral contract, cannot -- can only do it in
a lump sum if it's using an annuity?

MR. STAHLHUTH: Because, generally
speaking, as I recall -- I mean, I'm getting
-- I get kind of fuzzy as these issues go by.
But as I recall, annuities are, generally
speaking, not a very good device for funding
preneed funeral contracts. And the only time
that you would agree to it would be those
cases where you have an insurance company as
your funding mechanism and -- but the
insurance company won't issue a life-insurance
policy because the person won't pass
underwriting. So, okay, we'll buy an annuity
for him. But, generally speaking, that kind
of annuity isn't really going to pay like a regular annuity like you think where you buy an annuity and you would expect it to pay amounts over time, lump sums yearly or monthly. Instead, that sort of an annuity that's being bought because of underwriting concerns on the life-insurance side is likely to result in the beneficiary passing away before there's ever any annuitization, and so, what you would have is a return -- basically, a return of premium with some interest. And so, having a multiple-pay annuity in that situation doesn't sound like it would be appropriate.

MS. RUSSELL: A return, plus the interest, is what you get when you do a trust, too. You get a return plus the interest, so it's no different than putting it in a trust. But the Department of Insurance was opposed to flexible payments into an annuity; is that what --

MR. STAHLHUTH: Yes. If there's going to be multiple payments, it might as well be to an insurance policy. If they can pass underwriting enough that one would expect them
to live long enough to make multiple payments, then they should have a life-insurance policy and not an annuity.

MS. EULER: Okay.

MR. STALTER: Did I hear you correctly, too, say that one of the concerns is about the variability, as well?

MR. STAHLHUTH: I think that was one of the concerns, but I'm not sure exactly. I don't recall specifically what the concern was there.

CHAIRMAN: Questions?

MS. EULER: Okay. Does that answer everybody's questions?

MS. RUSSELL: May I ask one more?

CHAIRMAN: Sure.

MS. RUSSELL: Would the Department be opposed if it's a single annuity and an individual added to that single annuity if there was one issued -- an annuity issued and then, later on, they came into another $1,500, spend-down purposes, that they could insert that to that annuity? Would they consider that a payment, also, or would they have to have two annuities then?
MR. STAHLHUTH: They would probably have to have two annuities. They'd have to be two single-payment annuities.

MS. RUSSELL: Okay.

CHAIRMAN: I'll show my ignorance, probably, but why would the Department be against the thought of adding to annuities?

MR. STAHLHUTH: I'd have to go back and think, but it might -- it may have to do with the original concern with -- a life-insurance policy is an appropriate vehicle for payments that you expect to receive on death, and an annuity generally is the opposite; it's payments that you expect to receive during your lifetime.

CHAIRMAN: Oh, sure.

MR. STAHLHUTH: And the only reason to have any kind of an annuity to fund this vehicle would be in the case where you have an insurance company that wouldn't issue the life-insurance policy because it didn't expect -- it couldn't -- the person couldn't pass underwriting standards.

CHAIRMAN: Well, sure.

MR. STAHLHUTH: So, then they would
just take a -- a single-payment annuity then
just becomes, in effect, a certificate of
deposit.

CHAIRMAN: Right. Okay.

MR. STALTER: But there's a legitimate
purpose for that. What they're trying to
achieve, though, is the tax ramifications
under 72U for that -- the taxes of annuity,
deferring the inside buildup. And so, there
are plenty of products out there used for the
multiple-pay annuities within the industry.
And just like the -- you know, the older
insured maybe not qualified for health
reasons, but the insurance company will issue
an annuity, knowing that we have a maturity
age of 90 or so. But, often, it was just to
avoid the taxation where a trust would have to
report the income, but an annuity, then we are
deferring the income aspects until death;
okay? So, I don't think there's anything
inappropriate about how the annuity is used
for that; do you see what I'm saying?

MR. STAHLHUTH: We weren't concerned
about the tax consequences, we were concerned
about the appropriateness of the vehicle to
pay for funeral expenses.

MR. STALTER: And what aspect would that be? I mean, in terms of -- I know there's a lot of criticism about variable annuities and inappropriate -- (inaudible) -- being sold to -- you know, oversold to people in the population. But in this case, I mean, there is a legitimate purpose for an annuity -- a multiple-pay annuity that's part of a preneed contract.

MR. STAHLHUTH: I'm not sure that we followed that.

MR. STALTER: Well, it has to do with the tax implications of the annuity itself, and the annuity can be held -- (inaudible) -- or a trust, and then it gets sent into you, defers the taxation on the inside buildup until the death of the annuitant.

MS. EULER: Well, but, I think we need to stay focused on the fact that the law is what the law is. And while there may be arguments that the law be other than what it is, it is what it is. So --

MR. STALTER: But here's the point. I think Mark is -- and I don't mean to cut you
off, but are we saying then that that's the
only kind of annuity that can be used to fund
a preneed contract, a single-pay-premium
annuity?

MS. EULER: That is what the law says.

CHAIRMAN: That's what it says.

MR. STALTER: Okay.

MS. RUSSELL: And, I guess, my
clarification on that -- and I understand what
the law says, but my clarification was can an
insured -- can a company go ahead, if you've
got a $3,000 single annuity and the purchaser
comes back with $1,500, can they issue a new
one for $4,500 instead of having to have two
annuities out there and causing the insurance
company a lot more trouble? The consumer
could eventually have ten of those. If they
would reissue that single annuity, as long as
it be a single annuity?

MR. STAHLHUTH: I think that's
probably up to the Funeral Board and its
rules, but, off the top of my head, I don't
see any problem with that as long as the
funeral home would be willing to -- or the
seller would be willing to return or cancel
the first annuity for the full premium and
then purchase another one for -- purchase one
annuity for the combined amount.

MS. EULER: And that sounds like
something we need a rule on.

MS. RUSSELL: Yes. Yes. That's what
--

MS. EULER: So, tell me, the rule
needs to say that you can add to an annuity?

MS. RUSSELL: As long as it would
eventually combine to be one is the word.

MR. STAHLHUTH: Or combine to be one
or just cancel the first one and then issue a
replacement. It would be a replacement.

MR. KRAUS: You can replace
single-payment annuities?

MR. STAHLHUTH: Yes. And that's more
appropriate.

MS. RUSSELL: Yeah. Combined.
Because, otherwise, you would be -- you know,
I was just looking at the consumer having ten
of these, you know, for small amounts, you
know.

MR. STAHLHUTH: Yeah.

MS. EULER: Okay.
MS. RUSSELL: So, you get my understanding, so thank you.

MS. EULER: Okay. Okay.

CHAIRMAN: All right.

MS. EULER: And should we go back to where we were? I think we were on comment 017.

MS. DUNN: Please make sure everybody signed in on the sign-in sheet. Connie wanted to make sure I emphasized that because then we have that for our minutes, so --

MS. EULER: Do you want to introduce yourself to the group?

MS. WARREN: Okay. I'm Ann Warren; I'm here for my husband, Mark Warren. And I've been to these meetings before. I'm with Inglish & Monaco. Hi, everybody. But I won't remember everybody's faces. Now, I do have -- Mark did submit comments on everything, so you have that already.

MS. DUNN: Yes.

MS. WARREN: You don't need to hear from me then if you already know it.

MS. EULER: We have the comments, but as we go along, if you want to intersperse if we don't address your issue, you can speak up
when we ask you to.

MS. WARREN: Okay. And which section did you just cover?

MS. EULER: The single-pay annuity, which is in the definitions.

MS. WARREN: Okay.

MR. STALTER: Don't scare her and think that's how far we got.


(Several people talking simultaneously.)

MS. WARREN: We're here then? Okay.

MS. EULER: And we're now on 436.425, sub 12.

MS. WARREN: Okay. Thank you very much.

MS. EULER: Uh-huh.

MR. KRAUS: All right. So, comment 17, looking for sub 12, I think it's talking about -- it mentions there the seller or an authorized representative whose name should be included who should sign. It was suggested that we may want to clarify who all actually has to sign, I think.

MS. EULER: Well, the question, I think, is -- it says seller or authorized
representative. So, do we want to -- I don't know if we want to say who its authorized representative would be.

MR. KRAUS: I mean, can that be anybody --

MS. EULER: And leave that up to the seller.

MR. KRAUS: -- anybody they authorize?

MS. EULER: Yeah. It could be the seller/agent, it could be the preneed sales agent, it could be --

MR. KRAUS: As long as they authorize.

MS. EULER: -- a division director. Somebody from the seller needs to sign -- somebody with authority.

MR. McCULLOCH: It shouldn't be the agent, necessarily, unless they're the same.

MS. EULER: But do you think we need to tell a seller who his authorized representatives should be, or leave that up to the seller to --

MR. McCULLOCH: I think -- yeah. Leave it up to the seller, but I don't think people are going to let the agent or the counselor do it.
MS. EULER: Should we make --

MR. McCULLOCH: The counselor has to

sign it anyway.

MS. EULER: Right. Shall we make a

rule that says that the authorized

representative should be somebody other than

the agent?

MR. McCULLOCH: It could be the same,

though.

MS. EULER: Oh. I thought you just

said not.

MR. McCULLOCH: No.

MS. EULER: Okay.

MR. McCULLOCH: I'm just saying -- I

was just making the statement, generally, your

counselor is not signing on behalf of the

seller.

MS. EULER: Right.

MR. McCULLOCH: Okay. That's all I

was trying to say.

MS. EULER: Okay.

MR. KRAUS: And then that's another

consideration, I think, when the Board is

looking at this later. Is it necessary to set

out in a rule at all with regard to how that
person was authorized? Does there have to be
anything in writing? Do they just say, okay,
I hereby authorize you to sign for me, and,
thereby, you're an authorized representative?
Or the fact that you're signing the document
saying you're an authorized representative --

MR. McCULLOCH: I think that's just --

MR. KRAUS: -- is that all that's
needed?

MR. McCULLOCH: This stands on its
own, yeah.

MR. KRAUS: Okay. So, don't need
anything on that.

MS. EULER: Comment 18 --

MS. BATEMAN: Wait. I'm sorry. The
second piece of the comment was some --
(inaudible) -- if you are signing, like, she
is selling insurance for me, on my behalf,
then you're asking for the purchaser, the
seller, and the provider?

MR. KRAUS: Well, I think it says the
seller or its authorized representative.

MS. BATEMAN: Right. But it says --

MR. KRAUS: So, I think if the seller
authorizes a representative to sign on their
behalf, then that person's signature would be sufficient.

MS. EULER: Right. So, somebody from the seller needs to sign off on the preneed contract.

MS. BATEMAN: And the provider?

MS. EULER: Yes.

MS. BATEMAN: So, the three parties?

MS. EULER: Yes. Yes.

MR. KRAUS: Yes.

MS. BATEMAN: And at what point does the contract take effect, when it's signed by the three parties?

MS. EULER: That is a good question. We should do a rule on that.

MR. OTTO: Well, I missed -- we couldn't hear over here.

MS. EULER: She's asking when the contract takes effect, and does it take effect when all three parties have signed it, or does it take effect when the purchaser signed it, or does it take effect 14 days after somebody signed it? When does the contract take effect?

MR. OTTO: Under the current law -- I don't know if we took this out anywhere. The
current law indicates that it's when the fully
signed contract is delivered to the purchaser.

    MS. EULER: Right. And I don't
believe --

    MR. OTTO: Did we lose that?
    MS. EULER: -- that there is anything
in the current law that says that.

    MR. KRAUS: You mean the new law?
    MS. EULER: Yeah. The new law. See,
I've already -- I'm already living in
September. So, I think a rule there --

    MR. KRAUS: Yeah. I don't remember
anything like that, either.

    MS. RUSSELL: Yeah. Because it does
reference contract was executed, you know,
under -- on line 53 there or 52. So, what is
when the contract is executed? Is that the
time that all three signatures are on there?

    MS. EULER: Well, I think that would
be very appropriate to do a rule.

    MR. OTTO: Don Otto. For what it's
worth, how our contracts currently state it is
it is a nice, big, bold disclosure on there
that says this is not a final contract until
signed by the seller and returned to the
consumer because we don't -- the consumer
signs it, the funeral home signs it, then they
send it to the trust.

MS. EULER: Yeah.

MR. OTTO: And then we sign it and
send it back directly to the consumer, and so,
there's a big thing that says this space is
blank right now and it's not a contract till
we sign it and get it back to you.

MS. EULER: Board, what do you think?
Don, what do you think as to when the contract
should go into effect?

MR. EGGEN: (Inaudible.)

MS. EULER: No.

MR. McCULLOCH: I think all parties
need to have their signature there before it
becomes a contract.

MS. EULER: So, does it become a
contract when all three parties have signed it?

MR. McCULLOCH: I would think so.

MS. EULER: Okay.

MR. McCULLOCH: Just another thing
that came up last time, I believe, was if you
-- getting the provider to sign it; okay?

MS. EULER: Uh-huh.
MR. McCULLOCH: If I'm representing someone, is there a way to avoid having to get the provider, because I have an agreement with them, sign, it's sent into the Board, so do I have to get that signature, too, because that's going to be a little bit of a problem.

MS. EULER: The provider, again, or his authorized representative.

MR. OTTO: You can sign it twice.

MS. EULER: The provider can --

MR. STALTER: Yeah. Isn't it in your associate agreement? That's how you address it there.

MR. McCULLOCH: But what if I'm representing your funeral home?

MR. STALTER: Okay. That's it. I mean, your associate agreement where he would then designate you as his authorized representative.

MS. EULER: Right.

MR. STALTER: As a provider, too.

MR. McCULLOCH: But you have to actually have your name on there twice?

MR. OTTO: Yeah.

MS. EULER: Yes.
MR. McCULLOCH: Really?

MS. EULER: Yes.

UNIDENTIFIED: So, you're the seller and the provider?

MR. McCULLOCH: So, you're going to sign on behalf of -- as the provider and the seller?

MR. OTTO: I think the more likely double signature will be the preneed agent signing -- the counselor signing both as preneed agent and as authorized representative of the provider will be the one you see duplicated most.

(Numerous people answer yeah.)

UNIDENTIFIED: Yeah.

MR. OTTO: I can see that happening a lot.

MS. EULER: Yeah. And that might -- that may be the case, but that's --

MR. McCULLOCH: Say that again.

MR. OTTO: You're going to have a signature block for provider, a signature block for preneed agent. That, I think, in a lot of cases, is going to be the same human being.
UNIDENTIFIED: Yeah.

MR. McCulloch: So, you're saying the funeral home is doing it for themselves?

MR. Otto: Yeah.

MR. McCulloch: I got you.

MR. Otto: Yeah. Or they're selling through our -- Missouri Funeral Trust and --

MR. McCulloch: Yeah.

Ms. Euler: Okay. So, Gary, what do you think? Should the contract go in effect when it's signed by all three?

MR. Fraher: I think so.

Ms. Euler: And do we want to have a rule that the seller needs to provide a fully executed copy to the purchaser?

Chairman: You just said copy --

MR. McCulloch: An original or a copy?

MR. Fraher: Copy.

Ms. Euler: Well, what do you think?

MR. McCulloch: I mean, we do original now, but --

Ms. Euler: We can do original.

MR. McCulloch: But, well, but it may not fit for everybody else. Maybe everybody has a different way of doing it.
MR. FRAKER: Generally, we keep the original in the office.

MR. MCCULLOCH: If you use the copy, you can do either/or, just to make it maybe easy for some folks. I don't know.

MS. EULER: Don?

MR. OTTO: Well, we use a multipart four -- you know, the old-fashioned IBM xeroxed paper, whatever that is, and we send one of those back with the consumer signed.

MS. EULER: Yeah.

MR. OTTO: But is that an original or not? I mean, the -- what I would call the original that actually has the ink on it --

MS. EULER: It would be the blue-ink page.

MR. OTTO: -- we keep in a file for the State Board if it ever wants to come in and see the original original.

MS. EULER: Yeah. I don't think --

MR. MCCULLOCH: Actually, we get two of them signed, now that I think about it.

MR. OTTO: Yeah. We don't.

MR. MCCULLOCH: Yeah. Now that I think about it. We actually have one --
MR. ZELL: We keep the original and send them a copy so that it's in the file.

MR. KRAUS: And I would think that providing the original, if you decided to do that, would satisfy a requirement for providing a copy.

MS. EULER: Uh-huh. Yeah.

MR. KRAUS: If you chose to do so.

MS. EULER: Or if you want to do it -- (inaudible.)

CHAIRMAN: So, the word "copy" actually is the applicable thought here?

MR. McCULLOCH: So, you can do either?

MS. EULER: Yeah.

MR. McCULLOCH: Okay.

MR. OTTO: I like either.

MR. McCULLOCH: Either?

MR. OTTO: Either. I always like either.

MR. McCULLOCH: Either? That's a good word?

MS. EULER: Yes.

MR. McCULLOCH: All right.

MS. EULER: Okay.

CHAIRMAN: Go ahead.
MR. KRAUS: Comment 18 -- nothing else on 17; right? On 18, provide the next-of-kin contact for beneficiary, whether that should be included on the contract.

MR. OTTO: No.

UNIDENTIFIED: It can change. I mean, that's --

MS. EULER: Yeah.

MR. KRAUS: We have a no.

MR. OTTO: Well, Don Otto. First off, the next of kin doesn't control the preneed contract.

MS. EULER: Right.

MR. OTTO: It's the purchaser that controls the preneed contract.

MS. EULER: Well, I think the use of the word "next of kin" there was not the legal term, but what the intent is should you get a contact person for the beneficiary who might be the person making the arrangements at the time or, you know, somebody to contact who might still be alive after the beneficiary is dead. I think that's the thought there.

MR. McCULLOCH: It just may not apply is the problem.
MR. OTTO: Yeah. Once again, you don't want to confuse the issue of who -- who controls the preneed money is not necessarily the person who controls the final disposition.

MS. EULER: Right. And that's not an issue here. The question is: Do you want to have -- when you're doing the contract, do you want the beneficiary to name somebody who is a contact person, somebody who might still be alive, not saying that they're the legal next of kin, but just a contact person as to --

MR. McCULLOCH: I'd hate for you to make it a rule, but we do that a lot, obviously.

MS. EULER: Well, and that's what I thought.

MR. McCULLOCH: But I don't know if I'd like to have it that you have to do it.

MR. OTTO: Because the beneficiary may not know that this contract even exists.

MR. McCULLOCH: Yeah. They may not want anybody to know about it.

MR. OTTO: I mean, the purchaser might buy this for the beneficiary and the beneficiary doesn't even know that the
contract has been purchased, so --

MS. EULER: Yeah. Well, then they could put themselves down as the contact person.

MR. ZELL: What is the purpose of the contract?

MR. McCULLOCH: But that doesn't serve any purpose because they're gone.

MS. EULER: No. No. No. The beneficiary is the one who -- if Mabel's daughter is buying the preneed contract for Mabel, do you want Mabel's daughter to say, you know, you can contact me for whatever reason?

MR. McCULLOCH: But that is who you contact.

MS. EULER: Right.

MR. McCULLOCH: Because that's who is controlling the contract.

MS. EULER: Right. But if -- you know, if Mabel is the purchaser and the beneficiary, do you want the name of her daughter or somebody who simply is a contact person? It's just a thought that was --

MR. McCULLOCH: Not that we have to
do. I mean, I personally wouldn't want to
have to do it --

MS. EULER: Uh-huh.

MR. MCCULLOCH: -- but we certainly
can if we want, and it happens a lot.

MS. EULER: Okay. Okay.

CHAIRMAN: Everybody else agree?

(Numerous people agree.)

MR. KRAUS: Nineteen. Identify when a
contract is guaranteed or nonguaranteed. The
suggestion was that to the extent it's both,
clearly identify what is not guaranteed.

MS. EULER: I think that's a good idea.

CHAIRMAN: Yes, Don?

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

I might suggest that the rules say that that be
identified and on the statement of goods and
services. Because, remember, every one of
these has to have a statement of goods and
services attached. That's the easiest place
to identify --

MS. EULER: I don't now that we need
to tell them where to identify it just as long
as it is clearly identified.

MR. OTTO: We're talking about a mixed
contract now where some things are guaranteed
and some things aren't.

MS. EULER: Right. Right. But what
I'm saying is, I don't think we need to say
it needs to be on the statement of goods and
services, that -- you know, because I could
see somebody doing a one sheet that says this
is nonguaranteed, you know, the opening, the
closing, the flowers, or whatever, and just
attach that. So, I think there might be a
variety of different ways that somebody could
do that so long as it was -- just so that
it's clear.

CHAIRMAN: Just as long as it is.

MR. FRAKER: There's a lot of those old
contracts out there now that people don't --
they think they've got them paid for and they
don't.

MS. EULER: Right.

MR. FRAKER: You know, they thought
their opening was included, and there's
nothing on the contract at all. We see a lot
of these things. I'd just like to see on the
new stuff clearly marked what's guaranteed,
what's there and what isn't, you know. I
think it's a good idea to define it.

Absolutely.

MS. EULER: Okay. Do you agree?

CHAIRMAN: But define it as to specifically where on the contract it says that?

MR. FRAKER: Well, not specifically where, but it just needs to be on there. They need -- the purchaser needs to know exactly what they bought, you know.

CHAIRMAN: I agree with that.

MR. FRAKER: And what's frozen and --

CHAIRMAN: But your question was -- is specifically where; right?

MS. EULER: Don suggested that we require a statement of goods and services, and my comment on that is I don't care -- I don't think it matters where it is so long as it's there and it's clear.

MR. FRAKER: I think that Don -- to agree with Don, probably the goods and services is the right place to do it.

CHAIRMAN: The easiest, anyway.

MR. FRAKER: Because people will look.

People look at numbers and handwritten numbers
and things there that --

MR. McCULLOCH: You can have a
guaranteed contract that has nonguaranteed
things on there, though.

MS. EULER: Right. That's what we're
talking about. That if you're going to do
that, that you need to clearly identify which
things are nonguaranteed.

MR. McCULLOCH: We do.

MS. EULER: Yeah.

MR. OTTO: They'll be in Helvetica
Bold while the others are in New Times Roman.

UNIDENTIFIED: In a five.

MS. EULER: Don't forget Sans Serif.

MS. RUSSELL: Are you saying -- the
way I understood the law that you have either
it's a guaranteed contract or it's a
nonguaranteed contract. What you're saying,
you can have a mix of both?

MS. EULER: Yes. Yes. Certain things
are guaranteed, some things are not.

MS. RUSSELL: Well, I understand on
the cash advances, but you're actually saying
merchandise. So, when you're going to do
audits and stuff, this is how you guys
interpret that?  Okay.

MS. EULER: Yeah. I think you could
do -- (inaudible.) Don't you agree, Board?

MR. FRAKER: Sure. Absolutely.

MR. REINHARD: Maybe you could have
little boxes on the contract in certain sized
letters that says guaranteed, partially
guaranteed, or fully guaranteed.

UNIDENTIFIED: Check. Check. Check.

MS. DUNN: What would you do --
(Several people talking simultaneously.)

CHAIRMAN: I could see a mixed
contract where -- or I could see a contract
where, okay, family comes in, and let's just
say they have $4,000 and they say I want you
to freeze my service charge.

MS. EULER: (Inaudible.) Uh-huh.

CHAIRMAN: I have enough to pay for
that, but I don't have enough to buy
merchandise. So, you're going to say on your
contract that I froze this, but I didn't
freeze this?

MS. EULER: Uh-huh.

MR. McCULLOCH: That's what we do.

CHAIRMAN: You do that?
MR. McCULLOCH: But we don't usually get it -- break it into merchandise and services. It's just really those cash-advance items that you don't include, typically.

MR. SPEAKS: That is the best example right there.

(Several people talking simultaneously.)

MR. McCULLOCH: (Inaudible) -- 99 percent of the time, but you could have that problem, though.

CHAIRMAN: Well, I'm seeing an open end here where you're saying one document can do all of that?

MS. EULER: Yeah.

MR. FRAKER: Yeah.

MS. RUSSELL: I don't think so.

MR. McCULLOCH: It's real clear. It's easy if you can read. If you can't read, you've got a problem.

MR. REINHARD: He's got a document. Get your document out. Show them where the cash advance is on there.

MR. McCULLOCH: I'm sure you guys have plenty of them in here somewhere.

(Several people talking simultaneously.)
MR. REINHARD: Why can't you get it all on one contract? He's got -- he's got a perfect example of it.

MS. RUSSELL: I'm talking about audits. I mean, the cash-advance items are clear. I mean, that's always separate. I mean, every contract I've ever seen and all of yours probably say the same, cash-advance items are not frozen. You put it on your statement of goods and everything else. But when you start talking about the audit process or the exam process, you're going to have your auditors looking -- I always understood it to be you have a guaranteed contract. The consumer knows this is guaranteed. You have a nonguaranteed contract. All the proceeds are going to apply at time of need. Now, all of a sudden, you've got a third type of a contract that can be mixed; okay? These services are guaranteed. The person is paying -- making this contract at one time. You're saying, okay, I'm going to guarantee these services and freeze it, but I'm not going to freeze your casket. It's a mix, so how in the world are your examiners and auditors
going to -- I mean, they're going to have to
pick those things apart to make sure that --

MR. STALTER: I'm not sure I
understand the issue. An audit -- I mean,
they'll come in -- are the payments going into
the trust?

MR. SPEAKS: They just want to know if
the money is there.

MS. RUSSELL: They will also audit the
at-need part of it when they look to see on
the fulfillment of the contracts, is what I'm
talking about.

MR. STALTER: Okay. That part -- okay.
That's different.

MS. RUSSELL: That's what I'm talking
about. I'm not talking about the actual money
part, I'm talking about the fulfillment of the
contract, so I should have made that clear.

MS. EULER: Still, I don't see that as
a huge problem.

MS. RUSSELL: Okay. The next
contract, it is.

MR. McCULLOCH: The family is going to
audit that on the fulfillment side.

(Several people talking simultaneously.)
MR. REINHARD: Yeah. I don't think the auditor needs to be looking at the service contract.

CHAIRMAN: Actually, the bigger issue will be for the family that said I was sure it was all frozen.

MS. RUSSELL: Yeah.

CHAIRMAN: You're telling me now it's not.

MR. SPEAKS: Mama told me it was all taken care of.

MR. OTTO: Which is why I suggest, even if it's not required by rule, that it be on the statement of goods and services, because that's a separate sheet of paper and the family brings that one in, and if you don't have it on the statement of goods and services, this one was guaranteed, this one wasn't, then you're going to have confusion. I know on ours, unless you prohibit it, we're going to put it on the statement of goods and services that says I'm guaranteeing my standard service charge. I'm not guaranteeing you what the casket price -- you know, we're putting three grand away for a casket, but
we're not guaranteeing what it is or whatever
-- nice big box to check.

MR. MCCULLOCH: So, in the preneed
trust, that's where you're saying you guys do
it? You have it right there?

MR. OTTO: We'll put it on the
statement of goods and services. We call it
our Exhibit #A or whatever.

MR. MCCULLOCH: Okay.

MR. OTTO: It'll be right there in each
section, is this guaranteed price or is this
not a guaranteed price on each of these blocks.

MS. EULER: And I think there are --
well, I think there are a variety of different
ways people can do things, and all of them are
acceptable.

MR. MCCULLOCH: Yeah. Because we have
a section that's contingency items and
nonfrozen, and we list all of those there.
And then when you come down and you add up
section one and two, and it says right there
nonfrozen items and anything that falls into
that category goes there, something like that.
That works, I guess?

MS. EULER: Uh-huh. Yeah.
MR. McCULLOCH: I guess I have to
change the names now though; right -- the
headings, I assume?

MS. EULER: Yes. Yeah.

MR. McCULLOCH: I like mine better,
though.

MS. EULER: Well, you can just keep
them that way and we'll visit with you.

MR. McCULLOCH: Oh, yeah. I know.

That's the problem.

MS. EULER: We'll have that
opportunity --

MR. McCULLOCH: I've been getting
visited a lot lately.

CHAIRMAN: Okay. So, that's just good
as it is on 19?

MS. RUSSELL: I just had one other
question. On 13 there, that it properly
identify whether the contract is guaranteed or
nonguaranteed. So, what you're saying, even
if on Don's idea of having it on his Exhibit
#A, it would still -- the contract would still
have to say, unless that's a part of the
contract, it would be okay, unless they make
sure and specify that it's a part of the
contract.

   MS. EULER: Yes. Right. Right.


   CHAIRMAN: No, that's fine.

   MS. EULER: That's okay.

   MR. KRAUS: We are doing a rule on 19?

   MS. EULER: We are doing a rule.

   MR. KRAUS: Okay. That's what I had.

Twenty. I guess that's defining what

prominently identify is. Any interest in

that? We're going to get back into fonts

again, but I think that's kind of what it's

talking about.

   MS. EULER: I think --

   CHAIRMAN: You're on 20; right?

   MR. KRAUS: Yes.

   MS. EULER: I think we covered that in

the rule regarding 19 and, you know, that you

have to clearly identify --

   MR. KRAUS: I think so, too.

   CHAIRMAN: Any comments?

   MR. McCULLOCH: I agree.

   CHAIRMAN: I hear I agree. Move on.

   MR. KRAUS: All right. Twenty-one.
Need to address by addendum in any situation that's pointing to applicable and consumer disclosures required by the Board.

MS. EUER: Right. And that's what we talked about earlier.

MR. KRAUS: About putting together a --

MS. EUER: A consumer disclosure sheet.

MR. KRAUS: -- disclosure sheet?

MS. EUER: Right.

MS. RUSSELL: So, are you saying, Sharon, on that one, you guys are going to do a rule as to what the disclosures will say?

MS. EUER: Yeah.

MS. RUSSELL: Okay. Thank you.

MS. EUER: We talked -- at least that's what we're talking about right now is doing a form.

MS. RUSSELL: Form. Okay.

CHAIRMAN: Everybody agree with that?

MS. EUER: That way, everybody won't have to retype the same stuff.

MS. RUSSELL: Yeah. Thank you.

MS. EUER: We will print it on paper or something.
MR. REINHARD: And you're going to distribute it?

MS. EULER: No, you are; you're the Board.

MR. REINHARD: The Board. But, I mean, you're actually going to sign off on something?

MS. EULER: For the consumer disclosures because --

MR. KRAUS: It's going to have "approved by Sharon" at the bottom.

MS. EULER: Yeah. There are several places where it says "the included disclosures the Board so designates by rule," so, yes.

CHAIRMAN: All okay? Okay.

MR. REINHARD: That's great.

MR. KRAUS: All right. Twenty-two. Decide what these would be, if any, and set out in rule, maybe. It's a binding contract, have a right to have it reviewed by an attorney. Notice of State Board complaint process which are more disclosures that may or may -- could or could not be included in the disclosure sheet, I presume.

MS. EULER: Yeah.
MR. KRAUS: So, we'll hook that in with that one.

CHAIRMAN: Is everybody okay with that? Okay.

MR. KRAUS: Twenty-three. Could be more specific than this in rule of one, two. Maybe provide acceptable language by rule or by form. That's another disclosure, so that's the same thing. Hook that in, too. Twenty-four, the average funeral around $8,000. The small-claims court would have competent jurisdiction and, thus, could determine compliance with 436 and/or 333. I think that's going towards defining further what court of competent jurisdiction is. And whether we need to do that by rule or not, I don't know if we do.

MS. EULER: No. We can't tell the courts what they're --

MR. KRAUS: They're going to decide their own jurisdiction.

MS. EULER: They're going to decide their own jurisdiction. Right.

MR. KRAUS: Are there any other thoughts on that?
CHAIRMAN: Comment?

MS. WARREN: Oh. I hear -- well, small-claims court's jurisdiction is $3,000. I just thought I'd throw that out there. If you have $8,000, it wouldn't be small claims.

MR. STALTER: I think it depends on district to district. Some of them are higher or lower. But the issue here is that we just granted detention. You know, we've always had this precontract. It wasn't in compliance with 436, and it could be rendered void. And this is just trying to flesh that out a little bit that when we talk about court of competent jurisdiction, in some of those counties, it will be a small claims.

MS. EULER: That's okay. The -- and the only -- this doesn't -- this only says is this a valid contract or not. That's what the court would decide in this, you know, is this contract void or not. And I don't care what court does it.

MR. KRAUS: Well, and isn't it right that all -- anything in small claims can ultimately go to circuit court?

MR. KRAUS: As, like, an appeal or, I guess, a do-over, really?

MR. STAHLMUTH: Yeah. It's a do-over.

MS. EULER: Yeah. Because this isn't -- it isn't really a claim for money, it's a court decide whether this contract is void or not.

MR. STALTER: Well, the court is determining whether it applies to 436 or not.

MS. EULER: No.

MR. STALTER: No. You're saying --

MS. EULER: The preneed contract shall be voidable and -- okay. You're right. Voidable and unenforceable if the court of competent jurisdiction decides this contract is not in compliance with this section when not issued by a seller. So, the intent of that section was to allow the consumer to determine -- or a provider or a seller even -- that the determination of whether a contract is void would have to be made by a court, it couldn't just be decided by the provider or the seller or the consumer. Don?

MR. OTTO: We do need a rule on this, though, with that next sentence. And I lost
this battle with Charlie over at the Capitol because sentence one and sentence two in that paragraph are very confusing. Because the first sentence says the preneed contract shall be voidable under -- and, of course, at the option of the purchaser, but you have to have a court of competent jurisdiction say that it violates the law. Then on the second sentence says upon exercising the option by written notice to the seller and provider. So, to make it clear, I think it would be helpful if there were a rule that says here is the steps to void a contract.

MS. EUler: Okay.

MR. OTTO: One --

MS. EUler: You have to file.

MR. OTTO: -- you've got to have a court order -- a court for competent jurisdiction say that it violated 333 or 436; two, you send written notice --

MR. KRAUS: Right. Which makes it voidable.

MR. OTTO: Yeah.

MR. KRAUS: It doesn't mean it is void, it can be voided.
MR. OTTO: Yeah. It just -- yeah.

MR. KRAUS: And then --

MR. OTTO: Step two, then you send written notice; step three, the -- you know --

MS. EULER: Okay.

MR. OTTO: -- the seller returns all the money paid or something like that within X number of days, because it doesn't say number of days on this section, I don't think. But I don't want it -- because of the way this is worded and it's not worded great, I want it -- it would be nice on our end if it were clear that if the consumer wants to void a contract under this clause, he's got to go to court first, get a court order, a ruling, a final judgment saying it's voidable, then send written notice of his option to exercise that to the seller.


CHAIRMAN: All agree; correct?

Correct.

MR. KRAUS: All right. Twenty-five.

Now, let's see. Is that the same? It looks like that one is cut off at the end somehow. If the contract is voided by the purchaser for
nonconpliance, the purchaser is entitled to the entire trust or joint account.

MS. EULER: And that's showing what -- that the -- not just the payments made, but also any income that's in the account.

MR. KRAUS: Do we need to say that in the rule?

MS. EULER: Huh?

MR. KRAUS: Do we need to say that in the rule?

MS. EULER: Well, I think we can say that when it says all payments, that includes not only consumer payments, but any income payments, as well. So, I think that's a good idea.

CHAIRMAN: Any disagreement?

MR. SPEAKS: What about -- Brad Speaks. What about the 5-percent so-called origination fee?

MS. EULER: That's a good point, Brad.

MR. ZELL: What about the $52 for the premium contract -- $45, $52, whatever it is?

MR. REINHARD: You're thinking about $152.

MR. ZELL: $152?
MS. EULER: Just for you.

MR. ZELL: How about that?

MS. EULER: Brad's are going to be $300, yours are going to be $152.

MR. STALTER: (Inaudible.)

MS. EULER: He's pointing at me. So, that's a good point, too. What does the Board think?

CHAIRMAN: Well, this is all under noncompliance, so --

MS. RUSSELL: Noncompliance, yeah.

CHAIRMAN: That's not just a regular deal.

MS. EULER: It should be. I think -- do you want to know what I think?

CHAIRMAN: Yes.

MS. EULER: Do you want to hear what I think? I think that any fees paid to the State Board, the -- I think that if the contract is determined to be void, that the consumer should get all their money back. And if that means that the seller is on the hoof for 5 percent, and on the hoof for whatever fees they have to pay the State Board, that's their penalty.
MR. KRAUS: Because all of the fees are pursuant to contract.

MS. EULER: Yeah.

MS. RUSSELL: As the current law it has right now, you have to pay 10 percent per annum, you know.

MS. EULER: Yeah. Right.

MS. RUSSELL: So, this is really easier than what the current law is. You're getting off easier.

MS. EULER: Right.

CHAIRMAN: True. All agree?

MR. KRAUS: That makes sense to me.

MS. EULER: I mean, I think the customer should be made whole.

MR. WESTBY: Sharon, do you think that would be right to do that? You're going to keep that -- give it all back to them?

MS. EULER: If the contract is void.

MR. WESTBY: But the purchasers don't cancel; right?

MS. EULER: If a court -- upon a court order.

MR. OTTO: This is not just if the consumer changes their mind.
MR. McCULLOCH: Just not regular
cancellation, yeah.

(Several people taking simultaneously.)
MR. KRAUS: This isn't cancellation.
MR. McCULLOCH: This is if you didn't
comply.
MS. EULER: This is not a
run-of-the-mill thing. This is where somebody
did something wrong.
MR. SPEAKS: But, essentially, you're
saying that's their penalty?
MS. EULER: Yeah.
MR. SPEAKS: In regard --
MR. OTTO: Arguably -- the argument
would go the audit fee or whatever we want to
call that is not a contract payment, that's a
statutory payment, arguably. So, I think
there should be, probably, a rule on whether
or not the consumer gets that back.
MS. EULER: But it's a contract
payment owed by the seller, not the consumer.
MR. OTTO: But they can pass that on
to the consumer.
MS. EULER: Yeah. They can pass it on
to the consumer, but as far as the consumer is
concerned, that's just part of the cost of the preneed.

MR. OTTO: But will the seller get that $152 back?

MS. EULER: I think the seller eats that.

MR. OTTO: If the contract is void, so if it's void, it never happened.

MS. EULER: Uh-huh.

MR. OTTO: And if --

UNIDENTIFIED: It's never owed.

MR. OTTO: If the seller -- yeah. If the seller has got to pay to the consumer the audit fee back as part of a void contract, and that audit fee has already been sent to the State of Missouri, I think the State of Missouri should return that back to the seller.

UNIDENTIFIED: Or a credit for it.

MR. KRAUS: Well, but this talks about what the purchaser is entitled to, not what the seller is entitled to.

MS. EULER: Right.

MR. OTTO: I know. But I'm just saying that's why I think we -- to do this, I think we would need a rule, but --
MS. EULER: With the State, we don't refund.

MS. DUNN: We have to clear that with the State auditor.

MS. EULER: Yeah.

MR. ZELL: But in this court, aren't they going to be requiring information from the Board for licensing -- (inaudible.) So, aren't you --

MS. EULER: Depends on what the lawyers do.

MR. STALTER: I'm sorry? What?

MR. ZELL: Is that an interest -- your conflict of interest that you're going to tell someone if they don't have a license, that we're not -- but we did get their money. I don't know if the court is going to do something --

MS. EULER: In that situation --

MR. ZELL: I know it's only 50 bucks, but --

MS. EULER: -- if they don't have a license, they're not going to be paying us their money -- at least, I can't imagine anybody voluntarily paying us money if they
don't have a license because we wouldn't know
what to do with it.

MR. ZELL: You'd find something --
(inaudible.)

MS. EULER: Yeah.

MR. OTTO: I mean, to me, it's no
different than -- and I hate to bring this up
-- sales tax that has been improperly charged.

MS. EULER: And there is a big move
and there has been a movement for some time to
not allow that to go back to the payor because
it's a windfall when it wasn't their money to
start with.

MR. OTTO: But if you're saying that
the -- I'll just make it real easy. There's
a $10,000 contract, $50 audit fee; okay? And
it's determined to be voidable, so the funeral
home has to pay the consumer $10,050.

MS. EULER: Uh-huh.

MR. OTTO: And the consumer has then
-- the funeral home has already sent his $50
up to the State.

MS. EULER: Uh-huh.

MR. OTTO: Now, the consumer -- the
funeral home is out that money.
MS. EULER: Uh-huh.

MR. OTTO: And the State has gotten a windfall. The State has gotten a windfall because if it's a void -- if the contract is void, it's never happened.

MS. EULER: And the problem with that --

MR. OTTO: Is that's -- yeah. That's --

MS. EULER: Because this doesn't talk about the sellers.

MR. OTTO: Patrick Henry brought that up, yeah.

MS. EULER: This talks about what the purchaser is entitled to.

MR. KRAUS: Well, has the State really gotten a windfall? I mean, isn't the purpose of that payment to help the State pay for tracking those contracts, for regulating those licensees --

MR. OTTO: Well, that's fine. Then the consumer doesn't get the money back, then the consumer shouldn't get the money back.

MR. KRAUS: -- and they still have to do that even for contracts that are later
voided.

MR. STALTER: Well, let's say that you
paid a $50 audit fee. Part of it is that
you're going to review these things, and you
didn't catch that this contract was voidable,
too?

MR. OTTO: Yeah. The court had, yeah.

MR. KRAUS: Maybe the Board did, but
what action do they take? It's for the person
to pursue getting it voided.

(Several people talking simultaneously.)

MS. EULER: Or maybe the Board doesn't
have enough knowledge to know whether it's
void or not because the Board doesn't know
that Mabel's daughter took her checkbook and
illegally forged her name to it.

MR. STALTER: That wouldn't be the --
we're talking about the contract form being in
compliance.

MR. SPEAKS: That doesn't happen.

MR. STALTER: We're talking about a
contract form being in compliance with 436.

MS. EULER: Okay. You're right. But,
again, the Board may not have the information.
This is not going to come into play very
often. I mean, I can't -- there have been a few cases we've had where the Board has been asked to look at a contract to determine whether it's void.

MR. STALTER: Let's talk about old law and new law. Old law, yeah, I agree.

MS. EULER: Under -- in the last eight years.

MR. STALTER: Let's look -- going forward, though, it's a different story.

MS. EULER: Well, yeah, I know. But I'm just saying that I think we're giving this -- I mean, it's worth talking about, but I think the time -- number of times this is going to come into play is going to be minimal.

MR. OTTO: I would still go back to the argument I don't think the audit fee is a payment under the contract.

MS. EULER: That's right.

MR. OTTO: And so, I don't think the funeral home has to refund that audit fee to the consumer.

MS. EULER: Well --

MR. OTTO: Because that is a statutory required fee, that's not a fee on the contract.
MS. EULER: But the seller is not statutorily required to charge the consumer that fee. The seller chooses to charge the consumer that fee as part of the contract, so it is a contract payment.

MR. KRAUS: Yeah. If they make it a part of the contract fee, it is.


MR. STALTER: But that's not really an emergency issue right now.

MS. EULER: No.

MR. KRAUS: No, it's not. And if the ultimate question for the Board is whether the Board wants to refund that fee to the seller or not, then, I mean, the Board can decide whether they want to.

CHAIRMAN: And you have asked the question. Mr. Board Member, do you want to refund the fee? Do you want to refund the fee?

MR. McCULLOCH: Certainly not.

CHAIRMAN: Do you want to refund the fee?

MR. REINHARD: Yeah. Because the contract is screwed up. I mean, if they wrote a contract, that's why I'm going to Bill and
get his contracts so I can use them and then he can go to jail.

    MS. EULER: The lawyer never goes to jail.

    UNIDENTIFIED: Well, we don't know about that.

    (Several people talking simultaneously.)

    MS. WARREN: I have a legal question.

    MR. REINHARD: If you've written a contract that's not under accordance of the statute, and you've sold that, why wouldn't - what's wrong with a penalty of $50? Big deal. You better be glad to pay it and get the hell on out of Dodge, but you've already overruled it, so we go -- this is a consumer board, boys.

    MS. WARREN: This is kind of a legal observation. It's not pro or one side or the other, but it's a reality comment. In litigation in the real world, a judge is going to make a determination and has a choice the way the statute is written to declare it void as of today or void ab initio, but then the -- which means from the very beginning date.

    MR. REINHARD: Thank you. She's talking a foreign language.
MS. WARREN: All payments made under this contract shall be recoverable. That gives the court the option to make the determination at the court's discretion whether or not to order a full refund or not, so there's no cookie-cutter set of facts. Everybody hires their own lawyers. You do your best job arguing before the court, unless you're stuck in small-claims court where there are no lawyers.

UNIDENTIFIED: That's right.

MS. WARREN: That's the reality.

MS. EULER: Yeah.

CHAIRMAN: So, all of that is just fine, so let's go.

MR. REINHARD: Turn that piece of paper into these folks.

MS. WARREN: No. That came out of my head.

MR. REINHARD: Oh, okay.

MS. WARREN: It's not written down anywhere.

MR. REINHARD: Oh, I thought you were --

MS. WARREN: And I was worried I was
going to get in trouble with Mark for saying
something that was outside of -- but that's
just the reality of it. I mean, it's written
perfectly for both sides --

MR. REINHARD: Good point.

MS. WARREN: -- to advocate.

MR. REINHARD: That's what they do.

MS. WARREN: Yeah. So, go to court and
decide, so if -- because it doesn't say ab
initio. It's voidable. And in whatever
manner the judge chooses to do it. You just
argue your best case. And if the court
decides to order the Board to refund a fee,
the Board has a right for the opportunity to
be heard and respond and say this is the
reason why we should not. Now, Mark is
shaking his head no.

MR. STAHLHUTH: Because the Board is
not a party to this suit.

MS. WARREN: Well, the Board --

MS. EULER: It says all payments made
under such contract shall be recoverable by
the purchaser from the contract seller,
trustee, or other payee.

MR. STAHLHUTH: So, those are the only
two parties.

   MS. WARREN: Or other payee.

   MR. McCULLOCH: Is that considered a payment?

   MS. WARREN: Yeah. Realistically, it could be.

   MR. OTTO: It's not worth spending another 20 minutes on today.

   MS. EULER: Yeah. No, it's not.

   MR. OTTO: It's not an emergency rule.

   MR. REINHARD: Okay. Thank you, Don.

   MS. WARREN: It's just an observation.

   MR. McCULLOCH: So, we're going to table that?

   MS. WARREN: Real world.

   MS. EULER: I think we're just going to let it go.

   MR. REINHARD: You wait till I get my buddy back in here from vacation.

   MR. McCULLOCH: There you go.

   MR. KRAUS: Twenty-six. Do a rule on public assistance. May want to contact MO HealthNet to collaborate. I think that's referring to the Chapter 208 there.

   MS. EULER: Yes.
MR. KRAUS: Do you see us doing any kind of emergency rule on that?

MS. EULER: Mark had a comment on that. Ann, are you prepared to speak to Mark's comment on that?

MS. WARREN: I'm looking for it. I just --

MS. EULER: It's on the bottom of the first page. I think it would be worth checking with MO HealthNet to see if there's anything we need to do rulewise to make this more workable for folks.

CHAIRMAN: So, do you all agree she needs to do that?

MR. KRAUS: For a regular rule.

CHAIRMAN: For that?

MS. EULER: Or he needs to do that.

MR. KRAUS: Someone in staff needs to do that.

CHAIRMAN: They. They.

MS. EULER: It needs to be done.

CHAIRMAN: Didn't like "she" in there, huh?

MR. REINHARD: Eventually. Eventually.

MR. KRAUS: It will be done.
CHAIRMAN: Everybody said yes; right?

MR. KRAUS: The royal we.

MS. WARREN: And, Sharon, to make sure I'm on the same page, this is under 436. --

MS. EULER: 425.

MS. WARREN: -- 053, irrevocability of funding to qualify for governmental benefits; i.e., Medicaid?


MS. WARREN: Our comment is need to allow the policy owner to meet the qualifications of DHS by making the life-insurance policy irrevocable, not the preneed contract.

MS. EULER: Right.

MS. WARREN: Current language does not do this.

MS. EULER: I think it does, but it's not real clear.

MS. WARREN: Okay.

MS. EULER: Which is why I think it would be helpful to contact MO HealthNet and get their input to make sure that what we're telling people will qualify people for Medicaid.
MS. WARREN: Okay.

MR. KRAUS: All right. Twenty-eight.

Let's see. Irrevocable waiver. Do you want to come up with some acceptable language for that either in a form or a rule?

MS. EULER: No.

MR. KRAUS: No?

MS. EULER: Unless Medicaid -- MO HealthNet has something for us.

MR. McCULLOCH: We've stayed away from that in the past.

MS. EULER: Yeah.

MR. McCULLOCH: Kind of let everybody do their own little thing with it.

MS. EULER: Yeah. Because we want Bill to be able to eat.

MR. McCULLOCH: Exactly.

MR. STALTER: I wasn't paying attention. What did I disagree to do?

MR. REINHARD: You're going to eat damn good after this.

MS. EULER: We don't --

MR. McCULLOCH: Just say yes.

MR. REINHARD: Because they're going to follow you.
MR. KRAUS: You just got more business.

MS. EULER: Yeah. We want the private lawyers out there to have the opportunity to draft the waiver forms for their funeral-home clients.

MR. STALTER: Okay. Do I get to charge for that?

MS. EULER: If you can get them to pay for it.

CHAIRMAN: No.

(Several people talking simultaneously.)

MR. REINHARD: Well, you're going to get a new car, you get a new house.

MR. OTTO: But you're subject to refund on that, you know.

MR. KRAUS: We're putting in the rule that that's for free, so --

MS. EULER: Yeah. These forms may be obtained free of charge from Stalter Legal Services and Inglish & Monaco.

MR. MCCULLOCH: Martin, say yes.

CHAIRMAN: Yes. Yes.

UNIDENTIFIED: What you really need --

MS. EULER: Under equal opportunity.

(Several people talking simultaneously.)
MR. WESTBY: Sharon, what you needed to do is write a form to replace all the other forms; correct?

UNIDENTIFIED: One form.

UNIDENTIFIED: One form.

MS. EULER: The form of all forms.

UNIDENTIFIED: An irrevocable form.

MR. KRAUS: Twenty-nine. The right to cancel or rescind.

CHAIRMAN: Basically, just let it be.

MR. KRAUS: Expose the sellers to a risk of having to return all payments, purchaser can rescind its contract. It's as though the contract has been voided and the seller must return everything, even origination fee. I'm not really sure where that comment is going.

MR. STALTER: Well, it's the rescission. You know, the consumer can always cancel, but when they rescind the contract, I mean, it's like it's -- you know, it didn't happen.

MS. EULER: Void ab initio.

MR. STALTER: Yes.

MR. OTTO: You could just do a
reference to the section that deals with

cancellation that says any cancellation or

rescission under the section shall be done

pursuant to the section that says

cancellation, and that already references the

5 percent.

MR. STALTER: Yeah. I think that's

the issue. You don't get back the origination

free.

MS. EULER: Yeah. We don't want

inconsistency in the statute.

MR. KRAUS: But is the issue how to

rescind, or the result of a rescission?

MR. STALTER: The result of a

rescission.

MR. KRAUS: The result of that.

CHAIRMAN: So, are you guys good?

MR. KRAUS: And just setting out in

rule what happens, I guess, when someone does

a rescission?

MS. EULER: Say that all cancellations

and rescissions shall be done in accordance

with the statute pursuant to whatever.

MR. McCULLOCH: So, you're going to,

basically, treat them as the same.
MS. EULER: Huh?

MR. MCCULLOCH: You're, basically, treating them as the same?

MS. EULER: Yeah.

MR. STALTER: In other words, the cancellation and rescission mean the same thing as cancellation?

MS. EULER: Right.

CHAIRMAN: Everybody good?

MR. KRAUS: It's the same result.

MS. EULER: Yeah. They have to follow the other sections of the statute for internal consistency within the statute.

MR. KRAUS: Okay. Thirty. Will the Board apply this retroactively to preclude sellers from correcting problem contracts for arrangements?

MS. EULER: No.

MR. STALTER: So, we can -- with existing contracts, we can go back and we could -- (inaudible) -- banks a lot of little accounts. I mean, where they have, you know, five contracts or three contracts or something like that. So, I mean, they're not going to have a complete placement of trustee. So,
they're probably going to have to either look
at, you know, putting them into joint
accounts. Switching the funding is really --
you know, I think, by rule, you know -- we
want to be careful about how we do that.

MS. EULER: Okay. So, if what you
mean is will this apply to things that are
changed on old contracts, the answer is yes.
Does this mean we plan to go back to people
who did rollovers last year or the year
before? No. But if you currently have a
trust account with old contracts and you need
to change those to another funding source,
then, yes, you need to get written consent of
the purchasers. And I think that the Board
does need to do a rule on what constitutes
written consent, unless somebody has further
comment on that.

MR. McCULLOCH: A rule on what is
written consent?

MS. EULER: Yes.

MR. McCULLOCH: You can do it.

MR. STALTER: What constitutes
consent; is that --

MR. McCULLOCH: That's -- doesn't that
just mean what it says?

MS. EULER: Yeah. I think we need to
do a rule, though, and say, you know, who this
written consent needs to be given to.

MR. STALTER: Because, I mean, we've
-- some of the old contracts --

MS. EULER: Does it need to be signed
and dated? Does it -- can it be electronic,
those sorts of questions.

MR. ZELL: Excuse me, Sharon. Are you
interpreting that or are you just saying
that's what you want or --

MS. EULER: For what --

MR. ZELL: I don't know how you can go
back to those old contracts, 30, 40 years old,
and say we need you to redo this, sign an
agreement. I don't understand how that works.
A new law is passed and goes into effect, and,
all of a sudden, it's going back to affect
things 30 years ago?

MS. EULER: Not if you're maintaining
them in the same trust -- in the trust, but
if you're changing them from a trust to a
joint account, you need to let the purchaser
know.
MR. FRAKER: And, Sharon, what if they're not -- there's nobody else, you know. There's nobody else to take care of them?

MR. KRAUS: No one to get written consent from, you mean?

MR. STALTER: Yeah. They've declared incompetency. There could be a lot of issues that could come up. And I've got, like, 15 trust accounts where they've all got, like, five contracts, you know. Some of them are old contracts. So, you know, in essence, the bank is going to hit them with a, you know, a minimum fee of $1,500. And it's just prohibitive, so -- and it's -- go ahead.

MR. McCULLOCH: What do you really think the problem is? What do you think is going to happen out there that this is going --

MS. EULER: What's the problem?

MR. McCULLOCH: Yeah. What do you think --

MS. EULER: The problem is people who are now finding out they have NPS contracts when they bought the contract from Becky's Funeral Home.

MR. McCULLOCH: There's people like
that?

MS. EULER: And now they're finding
out that Becky's Funeral Home rolled it over
to Forethought who rolled it over to
Homesteaders who rolled it over to Dignity,
who rolled it over to Bill's Trust Company,
who then sold it to NPS.

MR. McCULLOCH: Okay. But what's the
problem? I don't -- tell me exactly --

MS. EULER: What's the problem with
that?

MR. McCULLOCH: Yeah. What's the
problem with that?

MS. EULER: Because the consumer now
says what do you mean I have an NPS contract,
or what do you mean I have a Homesteaders
contract? I would never do business with that
Jim Reinhard. I bought a funeral plan from
Becky's Funeral Home and I have a contract
right here. It says Becky's Funeral Home and
Becky is going to put it in her own bank.

MR. McCULLOCH: And if she goes back to
Becky's Funeral Home, she'll get her funeral.
That's really all the consumer cares about.
If she goes back there, she gets her funeral.
MS. EULER: Unless --
MR. McCULLOCH: Unless what?
MS. EULER: -- they get --
MR. SPEAKS: Unless Jim went broke.
MS. DUNN: Unless that funeral home closed.
MS. EULER: Yeah.
MR. McCULLOCH: Well, there's no provision for that anyway, so, again, what's the problem?
MR. REINHARD: That's right.
MS. EULER: The problem is, is the customer --
MR. McCULLOCH: You just don't like it?
MS. EULER: No. The problem -- well, one, that's what the law says, and, two, the customer bought a funeral from -- bought a preneed plan from Becky's Funeral Home. If Becky is going to roll that over and, suddenly, the customer is going to be doing business with Jim's Funeral Home, the consumer needs to know.
MR. McCULLOCH: That's going forward.
MS. EULER: Right.
MR. McCULLOCH: And we agree.
MS. EULER: Right. Going forward.

MR. MCCULLOCH: But you're concerned about going backwards.

MS. EULER: No.

MR. STALTER: Well, I've got -- we're still talking about Becky. Becky has sent to me -- Becky has five trust-funded contracts with this bank.

MS. EULER: Uh-huh. Yeah.

MR. STALTER: And then says, you know, we don't want this anymore. We're looking at what we have to do for administration and so forth. We don't want to do this anymore. So, Becky, you're going to have to pay, you know, three times what you paid in the past.

And --

MS. EULER: Well, Becky can roll those over. She just needs to get the consent of the purchaser.

MR. OTTO: I think we're wrong here in the very basic, at least on this section. On this section, you can go from trust A to trust B to trust C without consumer consent.

MR. STALTER: That's right.

MR. OTTO: You just can't take a joint
account and then change it to a trust-funded account, or take that joint account and buy insurance with it. So, the rollover -- a legitimate rollover where you're in trust A and, like you said, the first trustee doesn't want to do it anymore, so you change it to trust B --

MS. EULER: But that's not what Bill is talking about.

MR. OTTO: Well, yeah.

MS. EULER: No. I mean --

MR. OTTO: Bank #1 -- well, arguably --

MS. EULER: He's talking about changing from trust-funded to joint accounts.

MR. STALTER: Yes.

MR. OTTO: Okay.

MS. EULER: And even if somebody is incompetent, those people have somebody who is a power of attorney. Somebody is acting on their behalf. And I know it's a pain, but --

MR. McCULLOCH: But that's what I'm saying. You think that there is going to be people out there that are going to cause a problem by taking it from a trust to a joint account, that that's going to cause a problem?
MS. EULER: Yes.

MR. McCULLOCH: Why?

MS. EULER: The problem is that the consumer doesn't know. The consumer thinks they have a trust account.

MR. McCULLOCH: Yeah. But the consumer has a funeral that's still going to get taken care of, and that's really all they're concerned about.

(Several people talking simultaneously.)

CHAIRMAN: Let me ask this question.

MR. McCULLOCH: Why wouldn't they be? They gave them their money. As long as you give them the funeral, what do they care?

MS. EULER: John, I can give you 50 people to call who I have talked to recently --

MR. McCULLOCH: But they don't have legitimate complaints, though. So, you tell them, you say, look guys, the consumer, if they get their funeral, that's all they care about.

MS. EULER: But that's -- the law is what the law is here.

MR. McCULLOCH: Yeah. But you're trying to go back. Is that what we're
discussing, the going back or --

(Several people talking simultaneously.)

MS. EULER: No. I'm not trying to go back.

MR. STALTER: That's one issue. Retroactive. In other words, we say you cannot change the funding mechanism.

MS. EULER: Right.

MR. STALTER: And what I hear you saying is that we're going to apply that retroactively.

MS. EULER: No. We're not applying it retroactively. Right now, it's a trust account.

MR. KRAUS: And if you take an action today or after the new law -- after the 28th, then you're taking that action under the provisions of the new statutes. You may be changing a contract that you entered into ten years ago, but you're going to change that contract. So, the law the day you're doing that applies, and that's this. So, you would have to get the written consent of the person to change it to a joint account. That's not retroactive.
MR. REINHARD: So, you better get those off the books now before the 28th.

MR. STALTER: Some of them are yours; don't you know that?

CHAIRMAN: If, in a new contract --

MR. REINHARD: I'm burning records every day.

CHAIRMAN: -- front page of there somewhere, big disclosure that says you give Martin Vernon Funeral Home the option to move this contract from joint account to trust to life-insurance policy at the discretion of the funeral home to -- whatever the right words are -- to be a legitimate thing. It's on the new contract. Legal, not legal. They sign it right there.

MR. KRAUS: I think that's something that -- I mean, we were just talking about, you know, whether the rule would state what constitutes written consent.

MS. EULER: Right. Right.

MR. KRAUS: And that would fall --

MR. SPEAKS: That would be legal.

MR. KRAUS: That would fall under, well, what's the rule say.
MS. RUSSELL: It's no different than a trust says that, giving the authorization to change trustees.


MS. RUSSELL: Yeah.

MR. KRAUS: It could be okay if that's what you want in the rule.

MS. EULER: And that's why we need a rule.

CHAIRMAN: And I mean literally from vehicle to vehicle.

MR. KRAUS: Right.

MS. EULER: That's why we need a rule.

CHAIRMAN: Not just trust A to trust B; literally, go from a joint account to a trust or from a trust go buy a single-premium life-insurance policy. I'm talking legitimate deal here now.

MS. EULER: Right. And that's a legitimate thing to put in the rule.

CHAIRMAN: And it's right there on the contract. They sign it.

MS. EULER: Uh-huh.

CHAIRMAN: Their signature on that particular box that says I give you the
authority to do that.

    MS. EULER: Yeah.

    MR. SPEAKS: You could do that.

    MS. EULER: Well, that's something to
    address in the rule, does that constitute
    written consent?

    MR. KRAUS: Right. And that's what we
    were talking about as to when the consent is
    issued, can it be before -- you know, way
    beforehand? Does it have to be at the time?

    MS. EULER: Does it need to be within
    30 days?

    MR. KRAUS: Yeah. Set all that out in
    rule, whether it does or doesn't.

    MR. OTTO: I actually don't have a
    position on Bill's problem one way or the
    other, but -- I really don't. But I don't
    want any of these regulations to get
    challenged and bogged down. And I refer back
    to 435.412 which we've dealt with before.
    Each preneed contract made before August 28th,
    2009, and all payments and disbursements under
    such contracts shall continue to be governed
    by this chapter as the chapter existed at the
    time the contract was made. And I think
that's a pretty clear sentence. And I think
if you do a rule that even arguably goes
against that sentence, you've got a risk of
somebody challenging and bogging this whole
thing down.

MS. EULER: But it's payments and
disbursements under the contract.

MR. OTTO: No. Each premium contract
made before and all payments and disbursements
made under the contract.

MR. SPEAKS: That's right.

MS. EULER: I see what you're saying, Don.

MR. OTTO: And like I said, I really
don't -- this particular issue, I don't have a
position.

MR. McCULLOCH: We need to just leave
it alone, let the going forward, unless you
just think there's a real problem out there
with this.

MS. EULER: Well, the --

MR. McCULLOCH: If these guys have a
problem, it needs to be fixed.

MR. KRAUS: But that's still just
talking about enforcing the contract as it
stands.

MS. EULER: Right. This statute is what it --

MR. KRAUS: Not changes going forward.

MS. EULER: Right. And this statute is what it is, and the question before us today is: Do we need to do any rules to define what written consent means? And if the Board says no, then we don't need to, and we can let it go. If you want to do some rules about it, we can.

MR. SPEAKS: Sharon?

MS. EULER: Yes.

MR. SPEAKS: Brad Speaks. I think the premise underlying your doggedness on this has to do with the fact that National Prearranged Services manipulated the funding vehicles to their advantage. Meanwhile, nobody knew that was going on. And so, if this was placed into effect, going forward on all new contracts, all new trusts, that would stop that, theoretically.

MS. EULER: Uh-huh. Uh-huh. And that's part of it. Not all of it, but it's part of it.
MR. REINHARD: Let's go on.

CHAIRMAN: Okay.

MS. EULER: So, do you want to do a rule or not?

MR. McCULLOCH: No.

MR. REINHARD: No.

MR. FRAKER: No. Let's let it go.

MS. EULER: Okay.

CHAIRMAN: Let it go. All right.

MR. KRAUS: Okay. New section.

436.430, trust-funded contract requirements.

We're up to 32. Should there be a rule on the following things, whether the following are included or excluded from the trusting requirement: Administrative fees, State preneed-contract fee, late fees, finance charges, as a part of all payments.

CHAIRMAN: Anybody got a thought? Yes?

MS. BATEMAN: I just honestly think that you would need to make sure it's clear that -- (inaudible) -- is not related to the preneed contract itself to the merchandise or the services, it's not included in the old payment. So, any kind of financing behind whether it's administrative fees or late fees
or any of those will not have to be

transferred -- (inaudible.)

CHAIRMAN: Okay.

MS. EULER: From an auditing

perspective, the idea behind the statute was

that all the money goes into the trust account

so that it's easy to track.

MR. KRAUS: So, are we talking about --

MR. ZELL: When are you going to get

your 50 new bucks?

MR. KRAUS: I'm sorry. Go ahead.

MR. ZELL: When is the audit fee going
to be due?

MS. EULER: I'm sorry? What?

MR. McCULLOCH: End of the year,

probably.

MS. EULER: End of the year.

MR. STALTER: He's thinking about in

the payment sequence. In other words, at what

point is it, the first payment? Is it the

last payment? When do you require the $150?

MS. EULER: Or whatever? The fees

owed to the State Board will be due whenever,

probably the end of October. And those fees

are payable by the seller, they're not payable
by the consumer.

MR. STALTER: I understand. I think what Steve's question is, though, in the sequence of when you would up and pay the fee out of the first installment received. The contract is -- you know, we sell a contract --

MS. EULER: The -- and I don't think it matters because --

MR. WESTBY: (Inaudible.)

MS. EULER: And that's something that I need to think about.

MR. McCULLOCH: Well, the way it is currently, if you make a contract today, at the end of October, you're going to pay the fee.

MS. EULER: Right.

MR. McCULLOCH: Whether you collected it or not. That's up to you or how you -- you know, in our case, we get it on top of, so -- in addition to, but I don't now how everybody else does it.

MR. KRAUS: Right. I mean, I kind of see them as separate things. I mean, you have the preneed contract, everything that's accounted for in there with regard to costs
and fees, and this is going to be this amount, this is going to be that amount. And then you have obligations as a licensee that you owe this much money to the Board for however many contracts you do. You may have coincidentally collected some of that money through those contracts or not, depending on how your contract is structured, but that has no impact as to when you have to pay it. And where that money comes from, that money comes from the licensee. And if that licensee chooses to recoup some of that money through those contracts, that's up to them, but it's still a part of the contract; right?

MS. EULER: Unless you want to pay the administrative fee on a pay-as-you-go basis, which would be a nightmare for the Board.

MR. OTTO: Don Otto. The issue from -- I mean, I don't think it's a problem all the money going into the trust initially. But it needs to be made clear that the $52.30 fee can be taken out by the seller.

MS. EULER: Yeah. I was thinking that, too.

MR. OTTO: That it was just clear that
that doesn't have to stay in the trust till
the end, that that is a legitimate fee that
can be taken out if you charge the consumer
for that.

MS. EULER: Yeah.

MR. OTTO: Now, you know, if you pass
that along to the consumer, you can -- that's
okay to withdraw that out.

MS. EULER: Yes.

MR. ZELL: So, answer the same
question. Stephen Zell. Which dollar is it?
There are $3,600 payments, 36-month payments
of $100. You have $1,200 the first year.

Guess what? That $50 has to be paid. So,
was that the --

MS. EULER: And I don't have an answer
for your question right now. How's that for
honesty? Let's think about that.

CHAIRMAN: She's got a question.

MR. STALTER: Yeah. Let's be a little
more assertive.

(Several people talking simultaneously.)

MS. RUSSELL: They want you to yell a
little bit. Do a little yelling.

MS. BATEMAN: No. I agree with you on
the fee, but when it comes to things like the
finance charges, if you're charging on an
installment contract to the customer and
you're charging them 5 percent making your
deposit all along into trust, how are you
going to get it out? You don't even have any
provisions in here that allows you to get it
out. So, there is nothing that requires in
here that the money goes directly to the
trustee, either. All it says is you have to
deposit with -- it can come to the seller and
then ultimately do it right. So, I do think
that it needs to be very clear that it's just
on preneed money just on the stuff that is for
funeral merchandise or services.

MR. OTTO: What finance charge are we
worried about here?

MS. BATeman: I charge you on
installment and I'm charging you 5-percent
finance charges for putting it on an
installment payment. So, for every payment
that you're making to me, I'm taking a portion
of that, the stuff that is on the FTC
disclosures. Am I making any sense?

MS. EULER: Yeah. I know what you're
talking about. We'll have to think on that.

(Several people talking simultaneously.)

MR. McCULLOCH: Well, let's think on it because that's important. And you're right, you shouldn't have to put all that in there. The only thing that this is about is the money that's required for the preneed, not anything else.

(Several people talking simultaneously.)

MS. EULER: If you pay today, it's $10,000 flat fee. If you pay over time, it's $10,000 plus 5-percent interest.

(Several people talking simultaneously.)

CHAIRMAN: Okay. Back up. Lawyers think we have to think about it a minute.

MS. EULER: Yeah.

CHAIRMAN: And you guys are what?

MS. EULER: I mean, you can talk about it.

MR. REINHARD: Well, why don't you think and we'll talk about another subject.

MS. EULER: John, do you want to say something?

MR. McCULLOCH: We're just confusing things, I think. The preneed is all about you
all wanting that 85 -- 95 percent of it to go
into the trust, but not the finance charges,
not the State fees, all those things. That
was never intended to go in there.

MR. REINHARD: No.

MR. McCULLOCH: We're just bringing it
up. A lot of you are looking like you don't
even know what it is, so, obviously, you
didn't think about that.

MR. STALTER: It's really the audit
issue. I mean, there's a way to have a pool
come through a clearing account and then
divide things up. All the payments get to
trust. And the issue is, are you going to
make it all come to the trustee, and then the
trustee take instructions about how to
distribute it out?

MR. McCULLOCH: And that's what you
would have to do, because they don't
understand, either.

MR. STALTER: Yeah.

MR. McCULLOCH: I mean, you'd have to
spell it all out.

(Several people talking simultaneously.)

MS. EULER: And that's why I think
that Earl and I need to think about this from a legal perspective.

MR. McCULLOCH: Keep in mind, all this costs money.

MS. EULER: Yeah, I know.

MR. McCULLOCH: As a small business, you've got to think about that.

MS. EULER: Yeah, I know.

MR. McCULLOCH: And everything you want that trustee to do, there's a cost involved.

MS. EULER: I understand.

MR. McCULLOCH: So --

MR. REINHARD: Kind of like the funeral-home paperwork.

MS. BATEMAN: And some providers, like we do, we don't go to the trustee first. We do all the administration in my office. The trustee wouldn't have a way of knowing out of this payment take this much to post to finance charges because I don't keep those kind of records. So, it will not work for somebody.

MR. REINHARD: Right. For you all.

CHAIRMAN: So, I think where we're at with that is we've got to think about it some
more?

MS. EULER: Uh-huh.

CHAIRMAN: Is that where you guys are?

MS. EULER: Yeah. Let Earl and I do a little research on this and come back with it.

MR. McCULLOCH: We don't. They may have to, but we don't.

CHAIRMAN: Well, that's what I mean.

MS. EULER: You don't.

MR. McCULLOCH: We don't have to divide the trust.

CHAIRMAN: Well, so, is the instruction of the Board for them to look at that some more or just we're done with it?

MR. REINHARD: Well, I think we've got to clarify it for these people in a rule.

MR. McCULLOCH: That these things do not have to be included.

MR. REINHARD: Yeah. Like you say, finance.

MR. McCULLOCH: Administrative fees, you know, and finance charges. It doesn't say that on here, but if you want to call it the contract fee, late fees. Well, it does have finance charges, so those things are just
going to clutter it all up.

MS. BATEMAN: I think that if you tied it up with a description of preneed contract, I think that maybe you may be able to do that easier because it just talks about the arrangements and the merchandise and the services.

MR. KRAUS: Right. Yeah. We may be able to draw a line there somewhere, but we can look at that and try to come back with something useful.

CHAIRMAN: Okay.

MS. DUNN: So, okay to clarify?

MS. EULER: Yeah.

CHAIRMAN: All right.

MR. ZELL: I hate to say this, but trust companies do not want to do this. I'm involved with one right now. They do not want to trade these little things back and forth. That's called a bank, not a trust company.

MS. EULER: Okay.

CHAIRMAN: All right.

MR. KRAUS: Thirty-three. Payments made directly to the trust from the consumer. We talked about that already, didn't we?
MS. EULER: I think so.

MR. FRAKER: Uh-huh.

CHAIRMAN: That was just could be; right -- or whatever?

MR. KRAUS: Yes. That they could, but they're not required to.

MS. EULER: Right.

CHAIRMAN: Right.

MS. EULER: And 34 and 32 are the same.

MR. KRAUS: Yeah. That's the same.

Thirty-five is the same. Define rule if this means all funds must be deposited in the trust, and after the deposit, they may be disbursed by the trustee.

MS. EULER: And that's the same.

MR. KRAUS: And that's the same deal, too. What happens if the trustee has a dispute over the request?

MS. BATEMAN: Can I ask one more question on 33? Is it understood that if the purchaser hasn't paid me 5 percent, I cannot take anything out? Right. So, if I have only collected three and he stops paying, I'm stuck not be able to get the origination fee out? Because it says seller may make this
request after 5 percent of the total amount
has been deposited, so --

MR. OTTO: Well, there's -- there was
an unfortunate drafting problem that I tried
to talk Charlie out of and it exists. The
5-percent fee can only come in after 5 percent
has hit the trust. However, the 10-percent
optional fee can come out as the dollars come
in. So, in other -- if you're taking 15
percent out, it doesn't matter. You can take
5 percent of the 10, then 5 percent of the 5,
and then 5 percent of the other 10. The only
time that that is an issue is if you're only
taking 5 percent out and then your statement
would be correct, I believe. You have to wait
till 5 percent is in before you can take it
out.

MS. BATEMAN: So, again, if he only
pays 3 percent, then I'm out --

MR. OTTO: You can't take out the 5
percent under paragraph 3, but you can take
out that 3 percent under paragraph 4 for your
10 percent.

MS. EULER: Let's add that to the
things to look up.
MR. KRAUS: Okay.
MR. OTTO: See, because under paragraph 3, you can take out 5 percent, which is yours forever. Under paragraph 4, you can take out another 10 percent, but that's subject to be refunded. Unfortunately, the 10 percent can come out dollar for dollar as it comes in while the 5 percent can only be taken out after 5 percent has been deposited into the trust. So, if you're taking 15 percent out, it's not a problem. You can start taking it out dollar for dollar right away.

MS. EULER: We'll take a look at that and see if we can address that in a rule.
MR. OTTO: But it is a problem if you're only taking out the 5 percent.

MR. McCULLOCH: It would sure help clarify if there was some way to clean that up where you can just take it as it comes in.

MS. EULER: Yeah. That's what I'm saying. Let's take a look at that.

MR. McCULLOCH: Yeah. Because that's going to be a problem.

MR. OTTO: Well, one thing, you'll force people to take out the 15 percent,
arguably, that may not want to. They really
only want the 5, but they want it dollar for
dollar coming in. And so, they're going to
use a paragraph 4 excuse to take out the money
when -- so, you might have people taking out
15 percent that really only want to take out 5.

MR. KRAUS: So, then if there is a
dispute about a request to a trustee, then do
we want to have any rules about such disputes?

MS. EULER: I think that's a good idea.

MR. OTTO: WWF cage match.

MR. KRAUS: Like what?

MS. EULER: Cage fighting.

MR. REINHARD: That could give him the
rules of encounter.

MS. EULER: Mixed martial arts.

MR. McCULLOCH: What rule -- what do
you mean, now? If there's a dispute, what do
you mean there?

MR. KRAUS: If someone submits a
request to a trustee for, say, a disbursement,
and e:ther the trustee --

MS. EULER: The trustee doesn't agree.

MR. KRAUS: -- if the trustee doesn't
agree with it or they get conflicting
requests, then do you want to address by rule how those are to be resolved or leave that to whatever -- I guess, whatever processes the trustee has.

   MS. EULER: Well --
   MR. McCULLOCH: Now, are you speaking of a seller requesting it --
   MS. EULER: Yeah. Yeah.
   MR. McCULLOCH: -- or a purchaser?
   MS. EULER: The seller.
   MR. McCULLOCH: The seller.
   MR. KRAUS: I would assume, but, you know, they could receive all sorts of things.
   MS. EULER: The seller requests 5 percent and the trustee says, no, because I've only received 4.9 percent. If we want to discuss a rule on how -- a process to resolve that.
   MR. KRAUS: I kind of think that's their deal.

   MS. EULER: I think so, too. Okay.
   MR. KRAUS: Whatever the Board wants.
   MS. EULER: Yeah, I think it's their deal.
(Several people talking simultaneously.)

MR. KRAUS: Do you think that's their deal?

CHAIRMAN: I think that's their deal.

MR. REINHARD: Deal.

MR. KRAUS: All right.

MR. STALTER: There's a rule in here someplace.

MR. KRAUS: Thirty-eight. Let's see. Ten percent. We just talked about that.

Thirty-nine, State or federally chartered financial institutions. Fairly typical to require the fiduciary to be located within the state. Will foreign fiduciaries be required to comply with Missouri's 362.600. I don't even know what that is.

MS. EULER: What's 362.600 say, Bill?

MR. KRAUS: What is that?

MR. STALTER: Here's my issue. Well, I've got Tom Richards interpreting this kind of -- this section one way, and I guess I want to know how you all interpret it. In other words, this is a fairly common provision from state to state in terms of, yeah, are you really requiring that the fiduciary to have
brick and mortar in this state, or, I mean, basically, I mean, as long as they transact business in the state, is it okay?

MS. EULER: They have to have authority to exercise trust powers in the state.

MR. STALTER: Well, but you have -- we have OCC charters and ODS charters. And, basically, the way that their charter is constructed, they don't have to have it in the location within a state. And they said that they are not subject to, you know, the charter requirement in Missouri. Now, I'm just looking for clarification.

MS. EULER: Well --

MR. KRAUS: And right on cue.

MS. EULER: Mark probably doesn't know anything about Division of Finance law.

MR. KRAUS: No?

MR. STAHLHUTH: No.

MR. KRAUS: Sure, he does.

MS. EULER: My guess is we're going to take a break here shortly. Let me call Christie over at Division of Finance and see if she can help clarify that.
MR. KRAUS: There we go. See, I tried to throw you out there and it didn't work.

MS. EULER: I saved you all. Note for the record, I saved you. You owe me.

MR. STAHLHUTH: Okay.

CHAIRMAN: So, Sharon, you're going to make a phone call?

MS. EULER: I'll make a phone call, if we take a break soon.

CHAIRMAN: Soon?

MR. KRAUS: Was that a hint?

MS. EULER: That was a hint.

CHAIRMAN: Well, define control first.

MR. KRAUS: Well, let's get through K40. Oh, boy. There's a whole bunch more on the next page. Are we defining control? Control would be controlled by nor be under common control of the seller or preneed agent.

MS. EULER: I think there is a body of law out there that talks about what it means to be controlled.

MR. KRAUS: I think so, too.

MR. STAHLHUTH: Isn't that what this does when it says they may want to define control. I thought that's what this did.
MR. KRAUS: It does.

MS. EULER: Yeah.

MR. KRAUS: Well, further define was the suggestion.

MS. EULER: Yeah. I don't think so.

MR. KRAUS: I don't think that we need to.

CHAIRMAN: No. We want to make a rule.

MR. STAHLHUTH: No, you don't want to make a rule.

MR. KRAUS: All right. That was easy.

MS. EULER: All right.

MR. KRAUS: Ready?

CHAIRMAN: Okay.

MS. EULER: Let us break.

CHAIRMAN: I hear a break.

(Off the record)

CHAIRMAN: Okay. Let's pick it back up and get started. We have been requested to hold where we are in the trust section because we have Mark with us and we want to make sure we get to this part, so I think we're going to jump ahead to the -- I know we're going to jump ahead to the insurance part, wherever that's at. 436.450.
MR. KRAUS: 450.

MS. EULER: Oh. Do you want me to
give an update on Division of Finance?

CHAIRMAN: Sure.

MS. EULER: I talked to Christie
Concannon, who is the general counsel for
Division of Finance, who says that foreign
corporations need to be registered pursuant to
the statutory section cited to do their trust
business in Missouri. So, yes is the answer
to your question.

MS. BATEMAN: Yes is the answer,
meaning they just need to register, they don't
need to have a brick and mortar?

MR. McCULLOCH: They have to have
brick and mortar?

MS. EULER: They need to be authorized
to exercise trust powers in Missouri.

MS. BATEMAN: (Inaudible.)

MS. EULER: Yes.

MS. BATEMAN: Okay.

MR. STALTER: (Inaudible.)

MS. EULER: Okay.

CHAIRMAN: Okay.

MR. KRAUS: All right. 450, K59.
Payments collected by or on behalf of a seller, address purchaser paying insured directly. We have covered that; right?

MS. EULER: Uh-huh.

MR. KRAUS: Oh. All right. Yes.

Insurance on the other handout. Let's see. From Mark. Insurance-funded preneed contract need not comply with those sections that specifically deal with trust-funded and joint-account-funded preneed funeral contracts. That's looking at the handout that looks like this from Mark Warren.

MS. EULER: Which I don't think everybody has.

MR. KRAUS: Does everybody have that? I think it was on the table.

MS. DUNN: Somebody has taken all mine. Do you want some more copies?

MS. EULER: Would you all like copies of this?

CHAIRMAN: Anybody else not have it?

MS. DUNN: Anybody else need one?

MS. EULER: Mark, my question on that is: Which specific sections -- call Mark.

MS. WARREN: Probably need to.
MR. MCCULLOCH: I've got his.

MS. WARREN: But let me hear your
question before -- maybe I can answer.

MS. EULER: Because I know that one of
the issues that came up as we were discussing
this and the legislature rejected was that
with insurance-funded contracts, there still
needs to be a seller. And, I know currently,
right now, there is not, meaning a licensed
preneed seller. And I don't know. There's
been some issue, and Mark and I talked this
morning about some of the insurance contracts
that are preneed contracts, but there is
currently no preneed seller.

MS. WARREN: You mean, like an
insurance producer, agent -- licensed agent?

MS. EULER: Like -- and I'm just going
to pick on one of your clients.

MS. WARREN: Okay.

MS. EULER: The Homesteaders form has a
preneed contract attached to it, but there is
no preneed seller currently. So, for
insurance companies -- for insurance-funded
preneed contracts, there needs to be a preneed
seller. So, I'm wondering if that's what you
were talking about with that first comment, 
that insurance contracts don't need to comply 
with other sections. I don't know. Is there 
any --

MS. RUSSELL: I think he was talking 
-- Mark was talking this morning about my 
issue with the contract having not have to 
have the joint-account and the trust-account 
stuff.

MS. EULER: Oh, okay.

MS. RUSSELL: That's what Mark was 
talking about this morning --

MS. EULER: Okay.

MS. RUSSELL: -- regarding that 
section.

MR. KRAUS: Well, including the certain 
language in there?

MS. RUSSELL: Yes. That's what he was 
talking about there, and I think we beat that 
to death, too.

MS. EULER: Okay. So, that's nothing 
new.

MR. KRAUS: Yeah. We're going to try 
to work something out on that.

MR. SPEAKS: He raised that issue the
other day, too, about the seller and what
about companies like Homesteaders or
Forethought.

MR. KRAUS: About whether there needs
to be one?

MR. SPEAKS: Right.

MS. RUSSELL: And yes. Yes, there has
to be a preneed contract. Yes.

MR. SPEAKS: And the law says there
has to be, yeah.

MS. RUSSELL: Yes.

MR. KRAUS: Okay. Do we need to
address that further in a rule at all?

MS. EULER: Well --

MR. KRAUS: I don't think so, but --

MR. SPEAKS: I know he was wondering,
if I recall then, just in his comments, did
that mean that Homesteaders had to get a
sellers license?

MS. RUSSELL: Not -- they could. They
could, but --

MR. SPEAKS: They could, but they
don't want to.

MR. KRAUS: That's one way of doing it.

MS. RUSSELL: (Inaudible) -- the
funeral home.

MR. SPEAKS: At least that's what I understood he was saying.

MS. RUSSELL: It's a funding mechanism like -- you know, like I always say, joint accounts or anything else. Like, in our instance, the funeral home, I make sure the funeral home is a seller and a provider before we even sign up, just start talking business, because somebody has to be a seller.

MS. EULER: Right.

MR. KRAUS: Right. Somebody sold the contract.

MS. RUSSELL: So, we're not.

MR. SPEAKS: Well, what he was wanting to avoid was having Homesteaders --

MS. RUSSELL: Yeah.

MR. SPEAKS: -- fall under the control of the State Board in Missouri.

MS. RUSSELL: They can be a seller if they're going to go out and bypass the funeral homes and use --

MR. SPEAKS: Right. And they don't -- to my knowledge, they don't do that.

MS. RUSSELL: Yeah. So, no. They
don't have to.

MR. SPEAKS: He just wanted to make sure that they didn't suddenly find themselves out of compliance.

MS. RUSSELL: Right. Got you.

MR. SPEAKS: When they hadn't intended to.

MS. EULER: Mark, do you have anything to add?

MR. SPEAKS: Is that fair, Ann?


MR. STAHLHUTH: Yeah. That sounds right that they could be if they wanted to, but they don't really have to be because they are a funding mechanism. On the other hand, the point that there is going to be an intersection of the preneed-seller regulation and insurance regulation, does that person who is doing the selling of the preneed contract is likely to also need an insurance-producer's license when they --

MS. RUSSELL: Correct.

MR. STAHLHUTH: -- because they're selling both.
MS. RUSSELL: Correct.

MS. EULER: Right.

MS. RUSSELL: Well, in order to sell an insurance funded preneed contract, you have to have an insurance-producer license, so it all goes hand in hand, yes.

MS. WARREN: Right. I think that the idea is to not make it mandatory that every insurance company become a funeral director.

MS. EULER: Right. Right.

MS. WARREN: Make sure that we don't create that inadvertently in the rule-making.

MS. EULER: But there needs to be a preneed seller involved with every insurance-funded preneed contract.

MS. RUSSELL: And that's usually the funeral home.

MS. EULER: Right.

MR. OTTO: But not always is the problem.

MR. STAHLHUTH: (Inaudible.)

MR. SPEAKS: Not always. There just has to be one.

MS. RUSSELL: There just has to be one. Thank you.
MS. EULER: Right. Because, currently, that's not -- I mean, this is a big change in the law.

MR. McCULLOCH: Typically, they would be -- he would be, like, the third party and you should be a seller.

MS. RUSSELL: Pardon? Say that again.

MR. McCULLOCH: Typically, you would be, like, the third-party seller like the preneed and you should be a seller.

MS. RUSSELL: No.

MR. McCULLOCH: Why not?

MS. RUSSELL: We are more like a fiduciary. We're the funding mechanism. We're not the -- we're a funding mechanism.

MR. McCULLOCH: So am I. So am I.

MS. RUSSELL: No. Your trust is your funding mechanism.

MR. McCULLOCH: Yeah, but I'm the seller, and you should have to be the seller.

MS. RUSSELL: Well, we don't sell. The funeral home is the seller.

MR. McCULLOCH: You're out there selling. You have people out there selling -- (inaudible) -- just like I do.
MS. RUSSELL: No, we don't have independent agents like you're talking about.

MR. McCULLOCH: The funeral home is your independent agent.

MS. RUSSELL: John, I understand where you're coming from and if you call insurance companies third-party sellers, fine, but that's not my definition of a third-party seller.

MS. EULER: Okay. Here is the question: Do we need a rule that says -- that clarifies that the law now is that for selling insurance from the contract, there needs to be a seller just like there is for everything else? Do the insurance companies --

MR. KRAUS: That's in the law.

MS. RUSSELL: I think it's clear.

MS. EULER: Okay.

MS. RUSSELL: I think it's been clear forever on 436 that a preneed contract can't be sold in Missouri without a seller's license. I don't know how much clearer you can be on that.

MS. EULER: Okay. Ann?

MS. WARREN: I think that the law is
clear, we shouldn't rewrite a law.

MS. EULER: Okay. All right.

CHAIRMAN: So, hypothetically, an insurance company goes out and just starts selling preneed contracts, then we have the authority to go say --

MS. RUSSELL: Yes.

CHAIRMAN: -- you have to have a seller's license, you can't do this?

MS. EULER: Right.

MR. SPEAKS: Correct.

MS. EULER: Or else you need to --

CHAIRMAN: Well, that's my interpretation, but I just want to clarify for myself.

MS. RUSSELL: Yes.

CHAIRMAN: So, is there something that we're missing, and I'm getting the idea everything is fine.

MS. EULER: I don't think so.

CHAIRMAN: Everybody agree with that?

MS. WARREN: Well, the only thing that I'm reading what he's written here:

Insurance-funded preneed contracts need not comply with those sections that specifically
deal with trust-funded and
joint-account-funded preneed funeral
contracts. Now, did what we say just now
comport with what this blurb is? Does anybody
see that there is any disagreement between
those two? I don't see that there is any.

MS. EULER: No.

MS. WARREN: Just wanted to make sure.

Okay.

MS. EULER: Okay.

MS. WARREN: I don't see a problem.

MR. WESTBY: Well, I have a question
on that. If I understand what she just read
here, then why are you creating a thing where
these insurance folks have got to have all
that about trusts and stuff that they don't
sell in the contract? Why do they have to
have that?

MS. EULER: That's what we were just
talking about.

MR. WESTBY: I know, but why --

MS. EULER: We're going to address
that in rule.

MR. WESTBY: Okay.

MS. DUNN: Who needs the Mark Warren
MS. RUSSELL: She does. Oh, you got one.

(Several people talking simultaneously.)

CHAIRMAN: Okay.

MR. KRAUS: All right. The next one on the second page of that same handout is all insurance premiums shall be sent directly from the policy owner to the insurance company. I think we've talked about that already and addressed that issue. I think --

MS. RUSSELL: On that, I think if you're going to do the rule, you're going to -- that's the question I think Mark was asking about that if we -- the funeral home, the seller charges the administrative fee or State-audit fee that they call it, the $2 right now for a contract fee, that that doesn't have to go to the insurance company because the insurance companies don't want that $2 and because they're not a seller, so to speak.

MS. EULER: Right. Right.

MS. RUSSELL: Okay. That was --

MS. EULER: We may want to clarify
that one more.

MS. RUSSELL: Yeah. That one has to probably be the clarification point.

MS. EULER: Okay.

MR. McCULLOCH: And you'll make sure that will be the same thing for the trustees then?

UNIDENTIFIED: Yeah. The same -- (inaudible.)

MS. EULER: We'll look at that.

MR. McCULLOCH: Because they don't want to be the seller, either. The same call; right?

MS. EULER: We will look at that.

MR. McCULLOCH: The same call and we'll vote on it.

MS. EULER: Okay.

MR. KRAUS: Okay. 457(8), sub 2. Is there an 8, sub two?

MR. FRAKER: There's a 7, sub 2.

MR. KRAUS: Well, at any rate, the third one. Seller should not be named as beneficiary or assignee. We need to protect freedom of choice of consumer and only allow funeral homes to be named assignees. Neither
providers nor sellers shall be named as
beneficiaries as it allows them to receive
death benefits whether they perform services
or not. I'm not sure what --

MS. EULER: I understand what he's
saying.

MR. OTTO: Where are we at?

MR. KRAUS: I think that's looking at
-- I think it's 450, sub 7, sub 2.

MR. STALTER: Well, actually, it's the
next page.

MS. EULER: Yeah, it's on the next
page.

MR. KRAUS: It's on the top of the
next page.

MS. EULER: The way the law is set up
is that the idea was that there would be a
seller, and the seller is obligated to pay the
provider. And when the seller gets the money,
whether it's from insurance, joint account, or
trust, that regardless of the funding source,
there is still the seller, and the seller is
obligated to pay the provider. So, if the
seller -- it would be appropriate for the
seller to be the beneficiary of the policy
because the seller is obligated to pay the provider. So, the money goes to the seller and the seller pays the provider, and, yes, there is the possibility for the provider and seller to receive death benefits whether they perform services or not. And maybe if we put something in rule that says sellers who receive the money, you know, shall only be used -- or shall be used to pay the provider or something to clarify that.

MR. STAHLHUTH: That would be -- you could justify that as consistent with the requirements that overages get paid to the consumer because, in effect, there's an overage of the whole amount.

MS. EULER: Right. That's true. That's a good idea. You're looking at me with glazed eyes, Martin. Do you understand what I'm saying?

CHAIRMAN: I understand. But I don't -- the overage thought, I didn't follow that one.

MS. EULER: So that the seller's -- if the preneed is for $10,000 for a full service, by the time of death, for whatever reason, it
only costs $1,000, then the $9,000 legally
belongs to the seller.

CHAIRMAN: Right.

MS. EULER: And that's an unjust
enrichment. And so, there's another provision
in the statute that says that overage is paid
either to the estate if the person was on
public assistant, or to the estate.

CHAIRMAN: Sure.

MS. RUSSELL: Only on nonguaranteed
contracts.

MS. EULER: Right. Right.

MS. RUSSELL: Only on nonguaranteed.

MS. EULER: So -- yeah. But -- so,
and that's what Mark is talking about.

CHAIRMAN: Okay.

MR. STAHLHUTH: In effect, in the
situation where there is no services provided,
what you have is overage of the entire amount
of the life-insurance policy.

MS. EULER: Right. Right.

MR. STAHLHUTH: So, that's why --
that's how you justify the rule that they have
to pay it the same way.

MS. EULER: Right. Right. Right.
CHAIRMAN: I'm with you.

MS. EULER: And that's consistent with the flow of the statute.

CHAIRMAN: Do we have to do anything?

MR. McCULLOCH: I agree.

MR. REINHARD: I agree.

CHAIRMAN: All right. That's a rule.

MR. KRAUS: All right. The last one on there is --

(Several people talking simultaneously.)

MR. KRAUS: -- that refers to -- 8.

The State of Missouri receiving excess proceeds as stated in statutes violates policy language. Prior to a person going on Medicaid, they name State of Missouri as beneficiary. Anything else would violate insurance-policy language.

MS. RUSSELL: May I? The owner of the policy of the assignment is to the funeral home, it's up to the funeral home to send that excess money to public assistance -- you know, to the State, not the insurance company. That's not their duty.

MS. EULER: That's correct.

MS. RUSSELL: It would be that person.
So, I think Mark is, on this one, concerned about an issue that doesn't affect the insurance company. Do you agree with that?

MR. STAHLHUTH: That's the way I read it, too --

MS. RUSSELL: Yeah.

MR. STAHLHUTH: -- is that the insurance company is going to be unaffected by any of this.

MS. RUSSELL: Exactly.

MR. STAHLHUTH: Because they're going to pay the --

MR. OTTO: Except I will note certain insurance companies don't have a problem. They view themselves as the interpreters and forces of 436. A big rock on the side of Gibraltar comes to mind. And so, to the extent that we can clear things up. For example, there's a problem with a certain insurance company that will not allow the consumer to put a funeral home as the beneficiary because their interpretation of 436 says you can't do that. And our point is that, excuse me, that's between -- that's none of your business, insurance company, you know.
If the State of Missouri has a problem with
that, that's the State of Missouri's problem,
but the insurance company doesn't want you to
do that. So, to the extent that we might be
able to clarify some things in rules that I
can point to insurance companies saying --
and, of course, some of these insurance
companies in the past, historically, have
wanted the advantages of being the seller with
none of the duties of being a seller, you know.

MS. EULER: Yeah.

MR. OTTO: They want all the income,
they way this, they want that, they want that,
but they don't want to have to do this, they
don't -- so, sometimes it gets confusing as to
whether they're speaking with their
I-want-to-be-a-seller hat on or
I-don't-want-to-be-a-seller hat on. So, it
might not hurt to clarify some of this in
regulations for us to use when we're going --

MS. EULER: Give us an example.

MR. OTTO: Well, to make it clear.

Again, that's a good one right off the top,
that the consumer has the right to make --
make it absolutely clear the consumer has the
right to name a funeral home as the
beneficiary or the seller as a beneficiary or
whatever. You think that's in there, but
something that makes it absolutely clear that
they can do that. And that the -- like this
one here, we'll just, you know, make it
absolutely clear that it's the -- the
insurance company shall pay the whole amount
to the seller.

MS. EULER: Okay.

MR. OTTO: Okay. Period. You know,
if the -- and, again, I'm assuming the seller
is the beneficiary or the assignee or
something or whatever, but the insurance
comp any shall pay the amount to the seller,
and it's up to the seller then to pay the
overage to the State of Missouri or whatever
the situation is.

MS. WARREN: Mark, it just seems so
simple that in all life-insurance policies you
have to name your primary beneficiary, your
contingent beneficiaries, in the order in
which they're to receive, and that's the
direction that is given to the insurance
comp any at the time or at any subsequent time
that they make a change in beneficiary, so
that's just a written direction so the company
knows where to pay it, and I think that that's
where this comment is going. You have to give
us written direction. We can't just -- the
insurance company can't just -- (inaudible) --
on its own, start handing money out, because
what a company has to do is do an --
(inaudible.) And I think what we're trying to
do is avoid that. I'm just kind of assuming
that at this point. But you can't make
requirements to a contract that are not in the
contract. So, the insurance company is going
to have to answer the Department of Insurance.
If the contract says pay A and, if not A, pay
B, but then we have a rule that says pay C,
then the company is going to -- if they -- if
the company pays what the rules says, then
they're violating the written contract. So, I
think what Mark Warren is trying to do here is
say they've got to put it in the contract who
the payee should be so that there is direction
who the contingent beneficiaries are. I mean,
you can't -- no? Am I way off? Mark is
shaking his head.
MR. STAHLHUTH: Well, it looks to me that lines 37 through 44 in the bill work together. I mean, the insurance-funded preneed contract shall be valid and enforceable only if the seller or provider is named as the beneficiary or assignee, so --

    MS. WARREN: See, I was reading 40 through 44.

    MR. STAHLHUTH: Right. And it ties together. If the proceeds of the life-insurance policy exceed the actual cost, well, just right up above, the beneficiary or assignee of the life-insurance policy funding the contract is the seller or provider. So, they're the ones who are going to get these proceeds. And so, 40 through 44 really imposes no obligation whatsoever on the insurance company. It's all on the seller or provider because they're the ones who are the assignee or beneficiary of that insurance policy.

    MS. EULER: Is what you're saying is that -- I'll ask this to you and also to Don. And I'll try not to bruise Brad's knees. If the life-insurance policy is for $20,000, the
funeral costs $7,000, does the life insurance always pay out $20,000 or do they just pay the actual cost of the funeral, $7,000, and then any overage they pay to the secondary beneficiary?

MS. WARREN: They pay the full amount under the contract. Whatever the contract dictates, the insurance company has to --

MS. EULER: But which contract?

MS. WARREN: The life-insurance contract.

MR. OTTO: But I've had that exact conversation with some insurance companies where they say we think under Missouri law, the funeral home should only get the $7,000, and the other $13,000 should go to the family.

MS. EULER: I have heard that, as well.

MR. OTTO: And we say no --

MR. STAHLHUTH: August 28th, that will change.

MR. McCULLOCH: We have that problem -- only pay the funeral-home amount -- the funeral-charge amount.

MR. OTTO: Yeah. And the other problem I've had is slightly different, but
the same attitude, is a consumer has sent in a
change of beneficiary to the funeral home.
And then the company says, well, we don't --
under -- we don't think that they have a valid
preneed contract with that funeral home,
therefore, the funeral home cannot be a
beneficiary. And we say that's up to the
State Board to decide whether or not there's a
valid preneed contract. It's your job to do
what your customer says.

MS. WARREN: So, what's the insurance
compny say they do with the rest of the
money? Do they keep it? They're not saying
that, are they?

MR. OTTO: Well, if I could prove it,
I'd have a great lawsuit, but I think they
just really want to hold onto the money as
long as they can before they have to write a
check.

MS. EULER: What I have seen is like
what Don was saying, is the insurance
companies want to act like the preneed seller
and that they require a statement of goods and
services provided, and then they pay on that,
and it's not a $20,000 life-insurance policy.
It's a cost-of-the-goods-and-service life-insurance policy.

MS. WARREN: So, the policy -- the underlying policy is not -- (inaudible.) The finite amount is for whatever it is that the services cost at the time?

MS. EULER: I don't know.

MS. WARREN: I would think the language would control --

MR. STAHLHUTH: They may be -- and the insurance companies may be -- if they have a legitimate excuse, it might be that the insurance company just has its insurance policy, and at the time of the funeral, they get some assignment to the funeral home. And so, at that time, it's an assignment as their interest may appear so that, at that time, they're going to be wanting a statement of goods and services.

MS. WARREN: (Inaudible.)

MR. STAHLHUTH: That would be the legitimate way that an insurance company might get confused over these. It comes to a preneed contract, there shouldn't be that confusion, at least not after August 28th,
because here in the policy, they're going to
be named as the beneficiary or assignee of --
the beneficiary or the assignee of the
life-insurance policy, so they're not going to
be any confusion from the insurance-company's
standpoint. They pay pursuant to what their
own policy assignment was or beneficiary
designation was. And so, any overages aren't
going to be the problem of the insurance
company, it's going to be the problem of the
seller or the provider.

MS. RUSSELL: Exactly.

MR. OTTO: I've had one that said
we'll send -- of course, the funeral home was
the only beneficiary on the policy; that was
it -- only beneficiary. And they said, well,
they wanted the statement of goods and
services, which was not -- which was, like,
you know, $7,000 for a $20,000 policy. They
said, well, we're going to put -- on the
check, we're going to put the funeral home's
name, we're going to put the State of
Missouri's name, and we're going to put the
family's name, and then you go around and get
the signatures and do all that and like that.
Well, what does that do? That keeps the money -- even if you can get all those signatures, that keeps the money in the insurance-company's bank account to earn them interest for another three months while you're dealing with that mess.

MS. RUSSELL: Well, and I think Department of Insurance would be glad to hear these things, you know, having to --

MR. STAHLHUTH: Yeah. I mean --

MS. RUSSELL: Because it's a regulatory thing with the Department of Insurance. When you've got an insurance company that's blatantly not following insurance laws by paying what the assignment of proceeds says, that's an insurance issue, an insurance regulatory issue.

MR. STAHLHUTH: Right.

MS. WARREN: And I think what this is clearly saying here is, like, make it clear that if Medicaid -- and it's MO HealthNet now --

MS. EULER: Yeah.

MS. WARREN: -- has to receive -- I didn't type this.
MS. EULER: We all know what it means.

MS. WARREN: Yeah. Everybody knows.

-- say so. If you are a beneficiary of MO HealthNet, then you should make sure that your policy -- your insurance company knows about it and put them as a contingent beneficiary.

MR. STAHLHUTH: No. I think they net -- this is a preneed regulatory law and not an insurance regulatory law.

MS. RUSSELL: Right.

MR. STAHLHUTH: So, this compliance with subsection 8 or -- and this comment is going to be the requirement that's imposed upon the seller who receives the proceeds or the provider who receives the life-insurance proceeds. The insurance company, they're not going to have to do anything except look at what their beneficiary designation or what their assignment designation is and they cut the check that way. And then whatever happens after that, if the seller or provider goofs it up, they're going to have to answer to the Board.

MS. WARREN: Right. And if it's unclear, an interpleader could affirm, but
it's faster, probably, to write the check and put a couple people on it -- I mean, and that happens all the time when you settle, like, a car-accident case. The check is written to the law firm and to the person that's to receive the money, and then that money gets put in a trust account of the firm and then it's divided up however it's supposed to be and that's done right away. I don't know why it will take three months to do that. Usually, everybody is eager to get their money right away. They're real fast on getting signatures unless you've got a lost person.

MR. STAHLHUTH: Well, that would be, like, for a liability insurance. But in a life-insurance company --

(Several people talking simultaneously.)

MR. OTTO: Well, now, I mean, that's different than the beneficiary. That's different. If there's a beneficiary on the life-insurance policy, you pay the beneficiary.

MR. STAHLHUTH: Right.

MR. OTTO: And it's not the insurance-company's job to determine, oh, some of this money is excess, it should go here, it should
go there. That's the seller's job, not the
insurance company.

MR. STAHLHUTH: Right.

MR. OTTO: But I'd like to talk to you
at some point in time about Prudential.

MS. EULER: But not to mention any
names.

(Several people talking simultaneously.)

MR. OTTO: Not to mention any names.

I didn't say anything. I just want to talk
about Prudential. Darlene is nodding her
head. She knows exactly what I'm talking
about.

MS. WARREN: Angela Nelson; right?

Call her. But I guess we just want to make
sure that for our clients, they want to make
sure that they're not forced to do something
that's contrary to the written contract.

MR. STAHLHUTH: They won't be.

MS. RUSSELL: No.

MS. WARREN: That's all that is.

MR. McCULLOCH: I don't think it does.

MR. STAHLHUTH: Your client will be
fine.

MS. WARREN: Good.
MR. SPEAKS: Trust us.

(Several people talking simultaneously.)

CHAIRMAN: I'm having a harder part
discerning the $20,000 life-insurance policy
for the $7,000 preneed.

MS. EULER: It's just hypothetical.

MR. SPEAKS: Well, we do things
differently in the city, Martin.

MS. WARREN: Well, maybe I'm ignorant.
I keep thinking, well, what if they decided
just to do a cremation? I mean, that's a lot
cheaper than a full-fledged funeral; right?

MS. EULER: It depends on where you go.

MS. RUSSELL: That happens, and then
you have -- (inaudible.)

(Several people talking simultaneously.)

CHAIRMAN: The best part of that
answer -- the best part of that answer is when
they come in and you hope it's irrevocable and
you say, fine, but I'm mailing the proceeds to
the State.

(Several people talking simultaneously.)

CHAIRMAN: You really want that
cremation that bad, huh?

MS. WARREN: Yeah. That would really
-- yeah. Truly. (Inaudible.) I didn't think about that.

(Several people talking simultaneously.)

MR. KRAUS: All right. So, that's --

MR. STAHLHUTH: We need to go back to the --

MR. KRAUS: Comment 60.

MR. STAHLHUTH: Yeah. Now, you're back to the original document.

MR. KRAUS: Yes. And I have one more there. Set out that receipt by agent equals receipt by the seller. Do we need to set that out in a rule?

MR. WESTBY: Where are we at now?

MR. KRAUS: We're at K60, one page back on Section 436.450. I think that's with regard to receipt of payments.

MS. EULER: Okay. I'm hearing no surge of, yes, we need a rule on that. Mark?

CHAIRMAN: Anybody?

MR. KRAUS: (Inaudible.)

MR. STAHLHUTH: I don't -- I think this is addressing receipts by the agent of the seller.

MS. EULER: Right.
MR. KRAUS: Right.

MR. STAHLHUTH: And I guess that would be up to the Board as to whether they went to -- it would be consistent with what's in the statute already.

MR. KRAUS: Yeah.

MS. EULER: Yeah. Do you have anything else you would like the Board to consider for rules that would assist the Division of Insurance in doing their job under this section?

MR. STAHLHUTH: I didn't get any instruction from anybody that we needed any, but it seems pretty clear, under this regulatory scheme, that the insurance companies really aren't willing to be regulated by this preneed law.

MS. RUSSELL: Correct.

MS. EULER: Right.

MR. STAHLHUTH: Although there might be something or section at the sales point with the producers -- the insurance producers and the preneed agents. So, we didn't really see anything that we would need.

MS. EULER: Okay.
MR. STAHLHUTH: Anything else that we might need would be a matter of just internal Board workings with that examination provision, but that's not a thing that you need rules over.

MS. EULER: Right. Okay.

MR. KRAUS: All right.

MS. EULER: And do we need Mark -- I mean, Mark, you're welcome to stay, but do we need him for anything else?

CHAIRMAN: Anybody got any more direct questions to Department of Insurance?

MS. EULER: If you want to stay, you can, but --

MR. KRAUS: Stay and share in the joy.

MR. STAHLHUTH: I feel like I probably should for that fried chicken that you all -- but I think they are expecting me back at some point this afternoon.

MR. KRAUS: All right. Thank you.

MS. EULER: Thank you, Mark. We appreciate your time.

MS. DUNN: Thanks, Mark.

CHAIRMAN: Thank you.

MR. KRAUS: Let's see. Do you want to
go back to where we were?

MS. EULER: Okay.

MR. KRAUS: And that takes us back to 436.43, the second page. Comment K41.

(Several people talking simultaneously.)

MR. KRAUS: It looks like that is talking about some control of financial institutions.

MS. EULER: What comment are we on?

MR. REINHARD: Forty-one.

MR. KRAUS: Forty-one, and a presumption that may be rebutted by showing to the Board that control does not, in fact, exist, and the comment was whether we want to set out any procedures for showing that to the Board.

MS. EULER: No, I don't think so.

MR. KRAUS: I don't think so, either.

CHAIRMAN: Legal says they don't think so. Everybody agree?

MR. REINHARD: No.

(Several people talking simultaneously.)

MR. McCULLOCH: I agree.

MR. REINHARD: I agree.

MR. KRAUS: All right. Forty-two.
Should this fiduciary-review requirement be imposed retroactively to existing trusts?

MS. EULER: It will not be applied retroactively, but I believe that trustees will need to review trust assets to insure compliance.

MR. KRAUS: Going forward.

MS. EULER: Going forward.

MR. KRAUS: Even with regard to contracts already in place.

MS. EULER: Uh-huh.

MR. STALTER: Trusts.

MR. KRAUS: I mean -- yeah. Trusts.

CHAIRMAN: Mr. Otto?

MR. OTTO: This one was designed for in the event -- really, for a successor trustee. So, there's a trust -- I mean, you know, if you're, as a trustee, inherited a trust that might not be in compliance, you're not violating the law on day one.

MS. EULER: Right.

MR. OTTO: You've got time -- a reasonable amount of time to look through it and see if you can get it into compliance.

MS. EULER: Yes.
MR. KRAUS: All right. Any other thoughts on that? Okay. Forty-three. Expenses in establishing and administering a preneed trust. Point of clarification, the fiduciaries can recover their expense in setting up new trusts compliant with Senate Bill 1.

UNIDENTIFIED: I don't understand what that comment would mean.

MR. STALTER: What it means is that you have put down a new layer of oversight for trustees. There's going to be an expense to that. There was discussion last summer about what a reasonable trustee's fee was, and so, what we're saying here there's an expense for, you know, for a bank to set up a new trust, and that's part of what it can recover as part of expense. I just wanted to clarify that that -- before, we've had -- (inaudible) -- trustee's fee would be part of administering a preneed trust, and depending on if this language --

MR. SPEAKS: That word "all" addresses that.

MR. STALTER: All expenses. But I
would say that, before, expenses for
establishing a trust wasn't really clear
whether that was a trustee's expense that
could be recovered. It's a new term in there,
so --

MS. EULER: So, is what you're asking
the Board to do is consider a rule --

MR. STALTER: No. I'm just saying I'm
putting out the issue and I think I've heard
enough already, so --

MS. EULER: Okay. (Inaudible.)

MR. KRAUS: Okay. That's right. Move
on. Okay. Forty-four. Is there a minimum
that the seller may pay -- must pay the
provider, connected to sub 10, I guess, there.
And that's just under the contract generally?

MS. EULER: I think that could be -- I
mean, if the Board wanted a rule on that, I
think we could do a rule on that.

MR. McCULLOCH: No, would be the
answer.

MS. EULER: Okay.

MR. McCULLOCH: They shouldn't get
into those agreements -- the Board. They
don't have anything to do with that. That's a
contractual thing between those two.

MS. EULER: Does everybody agree? Jim?

MR. REINHARD: I agree with John.

MS. EULER: Gary?

CHAIRMAN: Done deal.

MR. KRAUS: All right. Forty-five.

Language suggests that the seller/provider can agree to -- how income may be divided. May a seller who acts as its own provider incorporate similar provisions in the preneed contract that contemplate successor providers who do not have a trust.

MR. STALTER: (Inaudible.) I'm thinking along John's lines. In other words, if you have a third-party seller, there's a contractual agreement between what the provider is going to get. You know, we've got a seller/provider, the same entity, but we have now provisions into this law about, you know, portability. And what my question is: If one of those portability provisions is that the new provider could say just leave that trust where it's at, now, can I then, as the new seller, say here's really the arrangement -- you know, some kind of a reasonable
arrangement, because it costs me to leave it there.

MS. EULER: Yes.

MR. STALTER: And I can't force it out.

MS. EULER: Yes.

MR. STALTER: See my point?

MS. EULER: Yes.

MR. STALTER: Okay.

MS. EULER: One thing that I hope that people will have a better understanding now is that the Board issues one license. And when you are licensed as a seller, you can sell for your own funeral home and do your own thing, or you can be what we call third-party sellers now. It's one license. And there is no distinction between third-party sellers and individual funeral homes. So, if an individual funeral home wants to be a third-party seller for two other funeral homes in their area, that seller's license authorizes them to do that. So --

MR. STALTER: Yeah. But I'm taking it one step further, is that I have no intent to be a third-party seller.

MS. EULER: Right.
MR. STALTER: But by virtue of the portability provisions --

MS. EULER: You may find yourself in that situation.

MR. STALTER: That's right.

MS. EULER: Absolutely.

MR. STALTER: Yeah.

MR. KRAUS: All right. So, 46 then?

MS. BATEMAN: Wait. Can I ask one thing?

CHAIRMAN: Yes.

MS. BATEMAN: On the insurance one we just went over the example of you have a $20,000 contract, you only use $7,000, what happens to the other $13,000. I don't think that that's reflected anywhere on the trust provisions, is it? Have I missed it? So, what happens in that instance?

MS. RUSSELL: Are you talking about irreversibility?

MS. EULER: I think --

MS. BATEMAN: In an irrevocable contract. I'm not talking one that is for Medicare purposes. So, you have excess money at the time that you deliver the contract,
does the money go to the State, does it go to
the funeral home, to the seller, to whom?

MS. EULER: I believe there is a
provision on that, it's just somewhere else.

MR. SPEAKS: Growth goes to the
funeral home. That's the only way there would
be an excess is if there was earnings.

(Several people talking simultaneously.)

MS. EULER: And we call it income, we
don't call it gross.

MR. STALTER: I mean, a nonguaranteed
would be about the only situation.

MS. EULER: "Growth" is an NPS term.
We call it income.

MR. SPEAKS: Income, yeah. The
interest, the income goes to the funeral home.

MS. EULER: Yeah.

MS. BATEMAN: And depending on how
much is used at the time of need.

MS. RUSSELL: Except it has to be
guaranteed.

MR. SPEAKS: Yeah.

MS. RUSSELL: It has to be -- it can't
be a nonguaranteed.

MR. SPEAKS: Yeah. Yeah. If it was a
guaranteed --

MS. BATEMAN: Yeah.

MS. RUSSELL: It has to be a guaranteed contract.

MR. SPEAKS: -- preneed contract.

MS. RUSSELL: Then the excess, I think --

MR. SPEAKS: If it was nonguaranteed, then it would go back to the consumer.

MS. RUSSELL: Exactly.

MS. EULER: Or to the State. Yes?

MR. OTTO: Does there need to be any clarification in this paragraph that starts at line 58 where there is no contract between the seller and the provider because the seller and the provider are the same entity?

MS. EULER: I think that's kind of --

MR. STALTER: I thought we addressed that. I thought it was kind of clear.

MR. OTTO: When the seller and the provider are the same entity, so there is no contract between them, and this section says the money --

MS. EULER: Well --

MR. OTTO: You know. I mean, I don't
know if it does, but --

    MS. EULER: You know, that's not a bad idea.

    MR. MCCULLOCH: I thought there had to be a contract between --

    MR. OTTO: Not if you're the same legal entity.

    MS. EULER: Not if they're the same legal entity.

    MR. MCCULLOCH: Not if they're the same?

    MR. OTTO: Yeah. I mean, and nobody wants -- you know, nobody is trying to stick it to anybody here, but --

    MR. KRAUS: Yeah. But that's talking about the preneed contract, not the contract between the seller and the provider.

    MR. OTTO: You know, but there may not be a contract between the seller and the provider.

    MR. KRAUS: Right. There doesn't have to be if you're the same entity.

    MR. OTTO: Yeah. Yeah.

    MS. EULER: Uh-huh. Okay. We'll take a look at that.
MS. BATEMAN: I mean, you know, the legal --

MS. RUSSELL: I think it says guaranteed --

MR. KRAUS: All right. Forty-six, should the Board make a form regarding certificate of performance -- sub 11?

MS. EUER: No.

CHAIRMAN: Everybody agree?

MR. FRAKER: No.

MR. SPEAKS: What was the answer? No?

CHAIRMAN: That's what I'm getting.

MS. DUNN: That was just Sharon.

MS. EUER: That's just me. I don't have a vote.

MR. CHAIRMAN: Well, I saw two nos, so it's just whether the Board creates the form of this is the official certificate of performance.

MS. EUER: I think that the sellers are going to want to do their own.

(Numerous people answer yes.)

MR. McCulloch: I thought you guys didn't want to get into that anyway because you don't want to get -- if it's done
incorrectly and all that, so --

MS. EULER: Yeah. So, I say no.

CHAIRMAN: The answer is no.

MS. EULER: But I don't have a vote.

MR. STALTER: Let's take yours, Sharon. And, really, the trustee -- and what we want -- we'll want to have things covered -- (inaudible.)

MS. EULER: Yeah.

MR. STALTER: And that's why I say -- (inaudible.) Okay.

MR. KRAUS: Now, there's an added comment there about would the signing of an at-need contract suffice and such contract would be signed by both parties, and in such contract, they agree to deliver the merchandise and services for the beneficiary.

MS. EULER: I don't think that's our call. I think it's up to the seller and the trustee to decide what constitutes a certificate of compliance.

MR. KRAUS: That's consistent.

MS. EULER: That meets the statutory requirement.

CHAIRMAN: All right. So, that's just
(Chairman makes a noise).

MR. KRAUS: All right. Moving on.

Okay. Forty-seven. Will this section be
applied retroactively to pre '09 trusts? Sub
12.

MS. EULER: This section is almost
word for word what the current law says, so
that law hasn't changed.

MR. OTTO: I got it. The only
difference is instead of what you're entitled
to receive for the preneed contract, the
current law says are all deposits made into
the trust on that contract.

MS. EULER: And so --

MR. OTTO: And Brad can speak to how
enforceable this section is, anyway.

MS. EULER: Well, it's like the other
section. It's not applied retroactively.
However, if -- Don, I'm going to pick on you.
If MFT fails to make a payment on September
15th, then this law applies.

MR. OTTO: It doesn't matter to me.
It's just virtually identical to the current
law.

MS. EULER: Yeah. It's very similar.
MR. KRAUS: All right. Moving on then.
Forty-eight. Need to explain in a rule -- I
assume that looks like that's with regard to
the written statement of all deposits and as
to what that written statement is to consist
of. Do we need to spell that out?

CHAIRMAN: Just what that is?

MR. KRAUS: Right.

MS. EULER: Board, what do you think?

I don't --

MR. ZELL: Do you get to write out the
numbers instead of typing them out? What do
you mean?

MR. KRAUS: Well, I mean, do you list
a total? Do you list individual lines? Do
you -- I mean, there's a lot of variations you
could have in the written statement of all
deposits.

MS. EULER: We want it to show the
dates the deposits were made or do we want to
--

MR. KRAUS: Yeah. Individual ones,
totals or --

MS. EULER: Do we want it verified by
the bank or the trustee?
MR. STALTER: Oh, no. Let's not go there.

MR. MCCULLOCH: I think you may have another problem there. How is the trustee going to figure out what the interest is on a commingled trust for any one individual?

MR. OTTO: You're going to have to do that on your -- you're going to have to do that.

MR. MCCULLOCH: Don't?

MR. OTTO: You're going to have to, I think, under the new law.

MR. STALTER: Yeah. I think you're going to have to, too.

MR. MCCULLOCH: How are you going to do it? That's what I'm asking.

MR. OTTO: We've got a computer program that does it.

(Several people talking simultaneously.)

MR. MCCULLOCH: Are you sure?

MR. OTTO: Yeah.

MR. KRAUS: That's an accounting question.

MR. MCCULLOCH: And we discussed that before --
MS. BATEMAN: Not per customer.

MR. OTTO: Yeah. Ours does.

MR. McCULLOCH: So, you get a $50 payment coming in. I need to see how that works.

MS. BATEMAN: In some cases, it doesn't come out.

MR. OTTO: You're going to have to. Because we'll take a look at your annual reporting and stuff.

MR. REINHARD: He'll sell you a copy of his program.

MR. OTTO: Actually, I don't own it. I rent it, but --

MR. REINHARD: Oh.

MR. McCULLOCH: So, I'll give you an example. Ms. Jones gives your company 50 bucks.

MR. OTTO: Yeah.

MR. McCULLOCH: And you put that in a mutual fund that has, let's say, 100 investments.

MR. OTTO: Right.

MR. McCULLOCH: Next month, they give you another $50, you put that into a different
mutual fund and they've got $50 invested. The next month, they give you $50. That mutual fund has $30. And your program is going to track all that?

MR. OTTO: Well, it goes into one --

MR. McCULLOCH: Oh, there's the problem right there.

MR. OTTO: No. Well, no. I mean, we have two options where they can put the money, a mutual fund or --

MR. McCULLOCH: Yeah. But what if it goes that way? That's what I'm saying. These payments are going to come in over the next ten years, possibly.

MR. OTTO: Right.

MR. McCULLOCH: Okay. And they're going to be in all these different mutual funds. How are you going to keep track of that?

MR. OTTO: Talk to Mr. Hamm at Impressive Technologies, because that's what we do.

MR. McCULLOCH: I don't think they can do it.

MR. OTTO: Because, you know, right
now, if you get on at 3:00 in the morning and log on to your account, you can get Mrs. Jones and see exactly -- if she died today, exactly how much would be paid off for that, and it's broken down in deposits made, realized income, unrealized income, expenses.

MR. McCULLOCH: Yeah. You've got that problem, too, realized and unrealized.

MR. OTTO: Yeah. That's on our report.

MR. McCULLOCH: Okay. So, you -- she gets her report and it says that the unrealized gains for that moment in time, and then, you know, that's going to change, too.

MR. OTTO: Yeah. It changes daily, arguably, yeah.

MR. McCULLOCH: Yes. Yeah.

MR. OTTO: Now, we don't update the -- the system gets updated once a month, I believe. But, yeah. But --

MR. McCULLOCH: This is really poor. It's in there, but it shouldn't have been in there because you're going to cause, I think -- I don't know if you feel the same way --

MR. STALTER: I always have a problem with just saying interest or dividends or so
forth. I mean, there's a way to make it work for income, you know. Then it also is, how quickly do you have to have it updated, you know? The cost -- I mean, for each individual contract, we don't report principal. I mean, basically, you've got deposit your payments, but there should be some kind of an allocation, you know, and you have to decide how quickly it has to be done, but --

MS. EULER: Well, and those are all things that we could do by rule.

MR. McCULLOCH: It says 30 days, doesn't it, right here?

MR. STALTER: That's what I --

MR. McCULLOCH: Within 30 days after receipt of the purchase --

MR. OTTO: Well, that's 30 days after they send you the request -- the consumer -- you have to give them a report. It doesn't say how many -- how often you have to update your report, and that could -- I don't think that's in the business of a rule. That's -- you know. Some people do it quarterly, some people do it semiannually, some -- you know. It may depend what you're investing in even.
MS. EULER: And it would seem to me that we want the report to say what date it was as of. That might be something to put in the rule.

MR. OTTO: That makes sense. That makes sense.

CHAIRMAN: So, what we're actually deciding here is 048 says may be explained in rule. We're just -- we're talking about what is reported or what is given back in that written statement?

MS. EULER: Well, do we want to do a rule that says what that written statement should contain?

CHAIRMAN: Okay.

MR. FRAKER: Yes.

MR. SPEAKS: Well, it says what it should contain. A written statement of deposits including principal and interest paid to date.

MR. KRAUS: Right.

MR. McCULLOCH: (Inaudible.)

MR. STALTER: But not principal. I mean --

MR. KRAUS: Is that one amount or is
that a whole bunch of different amounts?

MR. STALTER: Well, what the consumer
will want to see is, okay, how many deposits
have been made to this account, and the other
is what is your accrued income.

MS. EULER: Do they want to see, like,
a bank statement?

MR. SPEAKS: In other words, they know
they've made 50 payments. The report should
show 50 payments and the interest.

MR. KRAUS: Well, I guess, where I was
going is, if I want to do the bare minimum
that I can scrape by with under this statute,
then can I just send in a written statement
that includes a total that reflects all
deposits made to such trusts and the date?

MR. SPEAKS: Yeah. Because it says
included.

MS. EULER: I have deposited $5,000 to
your account.

MS. BATEMAN: Why wouldn't you let the
customer decide how much information they want,
because I know we get calls, but they just
want to know I have $3,000, they don't care
about the timing of the payments. And then
they call you back and say, hey, I saw that I
have $3,000, but I want to know on each one
of the payments.

    MR. SPEAKS: Right.

    MS. BATEMAN: I just think it's
spending too much to be saying I want it by
payment or not want -- it may not be what --
(Several people talking simultaneously.)

    MR. REINHARD: I'd do the minimum.

    MS. EULER: We don't have to do a
rule, but we could do a rule if you want a
rule.

    MR. KRAUS: Yeah. You don't have to
do one. You could not do one and see what
people submit, and if it's not useful, then
you could do a rule then.

    CHAIRMAN: Well, they have to give it
to them, regardless. I mean, it says so right
there. We're just talking about the --

    MR. SPEAKS: Yeah. But if -- you
know, in the first year at the new law,
everybody complains about the report they get
back, then you know you need to make a rule.

    MR. STALTER: Yeah. Everybody gets a
different report, basically, because that's
what Josh will do is just compare, you know, statements, so --

MR. KRAUS: Do you want to do that?

MR. ZELL: And a complaint to the Board is going to be that I have $472 and I should have $40 of interest and they only have $37, so what are you going to do?

MR. OTTO: It's not your money anyway. Don't worry about it.

MS. EULER: Thanks, Don.

CHAIRMAN: That's what I've said all along.

(Several people talking simultaneously.)

MR. REINHARD: I agree either the minimum or none, and I'd say none.

MS. EULER: Okay.

MR. REINHARD: None.

MR. Mcculloch: None.

MR. KRAUS: All right. We'll just none for now, because you can decide to do one later.

MR. REINHARD: Yeah. Absolutely.

MS. EULER: Okay.

CHAIRMAN: Okay. So, none, I guess.

MR. KRAUS: All right. Forty-nine.
We don't maintain records regarding principal on the individual contract basis. Administrators track payments, also wide track only interest as opposed to income.

MR. STAHLER: I think we already decided that.

MR. KRAUS: Yeah. All right. Skipping -- moving on. 435, comment 50. On the July 1, 2010 -- which is July 1. I think I've heard a lot of references to July 10th, but I think it's July 1 that everyone is talking about there. This means that no one has to comply to Senate Bill 1 till after July 1, 2010, or exactly what does this mean? We need to clarify in rule. And I think we talked about already putting together something to set out what's before and what's after August 28th.

MS. EULER: Uh-huh. But, you know, I don't -- I think it's not a bad idea to do a rule on this to clarify that the 2010 date applies to assets of the trust.

MR. OTTO: I don't think it's limited to that.

MS. EULER: What do you think?
MR. OTTO: Well, any provisions in this chapter which come into effect.

MS. EULER: You're right. Well, I think it would be good to clarify that.

CHAIRMAN: Clarify?

MR. McCULLOCH: No.

CHAIRMAN: Anyone else?

MR. SPEAKS: You just like disagreeing.

(Several people talking simultaneously.)

MS. DUNN: The only concerns that I see, the less rules you have and the less clarification, the more complaints you have and the more money it costs everyone because once you get a complaint, you have to review it, it goes to the Board, it's a Board meeting.

MS. EULER: You send an investigator out.

MS. DUNN: And an investigation. And I -- that's the only thing I see is if you have a rule that will prevent complaints coming in, then it's going to be more cost effective for everyone because --

MS. EULER: And it will help the trustees to know what to do, too.

MS. DUNN: And the funeral home has to
be interviewed, and it takes your time and --
that's the only concern I would have through
the rule, because that's what we see. We see
complaints on everything, so that's my only
statement. Because, in the long run, it will
cost more.

MR. McCULLOCH: Don, say again what
your thought is on it.

MR. OTTO: Well, I mean, I could tell
you why this was put in there. I mean, one
of the -- some of the concerns why this was
put in there were some of the things we've
already talked about, that the preneed agents
aren't going to be licensed on the 30th, that
you might -- to the extent that ongoing, your
trust is going to have to -- you know, you're
not supposed to have money that's invested in
your Uncle Joe's bar, they didn't want
everybody having to divest that at a loss on
August 29th.

MS. EULER: Right.

MR. OTTO: So, I really think if you
-- I mean, there are a lot of complications
the way this is worded, I recognize, but I
really think the legislative people who put
this in there -- and Representation Wasson was
one of the big ones on this -- he wanted a
phase-in time for all -- for Chapter 436.

MR. McCULLOCH: You're right.

MR. OTTO: If you've got a trust that's
already is in existence, you're not going to
get in trouble if you screw up until July 1.

MS. EULER: Right.

MR. OTTO: Now, a new trust that
starts on, you know, October, sorry, you're
under the new rules. But if you're already in
existence, you're not going to get in trouble
till July 1.

MS. EULER: But it only is trusts.
It's not the sellers, it's not the agents,
it's not the providers, it's the trusts.

MR. OTTO: Yeah, I know. I agree with
you. But I'm just saying that was their
thinking back there.

MS. EULER: Right. Right. Which is
why I --

MR. OTTO: But it got worded to the
trusts.

MS. EULER: Which is why I think it
would be helpful to have a rule to clarify
exactly what that means.

CHAIRMAN: And your thought is that rule is it's just the trusts?

MS. EULER: Uh-huh.

MR. McCULLOCH: It certainly wasn't the intent, but that's what it says. Wasson said, when Jerry got up and spoke in his hearing, he brought that up, and he said, wow, that's a great idea, like that was the first time he had ever heard it. But I had been asking for that, and it was, like, go away. But when he said it, it seemed to make a lot of sense. And that certainly was the intent. He knew we were going to need time. He knew the Board would need time. Obviously, it didn't get written properly or very good, but --

MS. EULER: But it is what it is.

MR. McCULLOCH: Well, you say that sometimes, but then when it doesn't apply or you don't like it, then you want to change it to work it around, you know. So --

MS. EULER: No. The Board is always --

MR. McCULLOCH: So, let's work this one to make it do what they intended.

MS. EULER: The Board is always
limited to what the statutory authority
provides. The Board can't change what the
statutory authority provides, but the Board
can clarify and define what the statute says
and means. So, my suggestion here is that we
clarify what this means, but I don't have a
vote. It's not my call.

MR. McCULLOCH: We have four
attorneys; do we have four opinions of that?

MR. OTTO: No, probably eight.

(Several people talking simultaneously.)

MR. SPEAKS: So, they can all argue
both sides of it.

MR. KRAUS: I have three opinions
myself.

MS. EULER: Yeah.

MR. KRAUS: And I think they're all
wrong.

CHAIRMAN: So, as a Board member, you
have --

MR. McCULLOCH: Well, I thought we
kind of addressed this anyway where we were
making some exceptions. We understand that
some things aren't going to be able to be
ready, so we're going to move that date out to
December 31, and then we've got some things that will be this date and -- is that kind of what we've been doing anyway?

MS. DUNN: Well, it has to be addressed by emergency rules --

MS. EULER: It has to be a rule.

MS. DUNN: -- if we're going to alter those dates. That's why we're trying to get as many rules in that need them if we're going to alter dates that are effective on August 28th.

MR. McCULLOCH: What would you suggest? What would you suggest?

MR. STALTER: You know, one of the -- it gets to be about this way. Okay. Your guesstimate is that existing trusts in place. But the comment they came up last week was what happens if you continue to put payments after August 28th into the old trust. Is that a grandfathering, I mean, since we don't -- you know, after July 10th of next year? Because the issue is then, how do you distinguish contracts you have to prove income on and those where you can still take out the 20 percent for the income.
MR. McCULLOCH: I mean, I would think that if you're going to start new, you better start new with a new trust; okay? But it's going to take a little bit of time to get all the things in place, but, I mean, that's how I thought it was going to be.

MR. STALTER: Well, I think there were a lot of things that we -- yeah -- we have to work out. But as far as -- okay -- when do we have to start accruing income? I mean, August 28th, you know. But not with regard to existing trusts --

MR. McCULLOCH: Exactly.

MR. STALTER: -- because they are -- they're outside of this.

MR. McCULLOCH: That's right.

MR. STALTER: But this July 10th, 2010, is -- I always thought of it as investments, you know, compliance with -- you know, we've got this new prudent investor versus prudent man.

MR. McCULLOCH: Yeah.

MR. STALTER: And, now, that's something that, you know, we've got at least a year to get that turned around.
MR. McCULLOCH: Yeah.

MR. STALTER: But, you know, we know now that we're going to have to have products exams, we have to show that we put 85 percent in there, we have to show that we have accrued income, and those are the two issues that, you know, I think we have to start on August 28th.

MR. McCULLOCH: Yeah.

MR. OTTO: And the other distinction which complicates things is it doesn't say apply to trustees governed, it says applies to trusts.

MR. STALTER: Yeah. To the trust.

MR. OTTO: So, it's broad. I mean, I think this is potentially broader than what -- you can argue how broad it is. But since it says trusts, well, I'm the seller for this trust; okay? What regulations apply to me that I'm violating or that I have July -- or I'm okay till July 1st? Because if I'm a seller for this trust, and it says regulations on this trust don't kick in till July 1, you know, it could have been worded better.

MS. EULER: Uh-huh. It could have been, but we are stuck with what we have.
MR. OTTO: We're stuck with what we've got. But, you know --

CHAIRMAN: Well, I'm a little confused, and what is the major issue? I mean, she -- the thought is, she's talking about the trust, but you would like to see something -- it may be too big here, but what you would like to see.

MR. McCULLOCH: Well, when I first read it, just as a layperson, I mean, I think it meant that, okay, on the 28th or the 29th, if I'm going to continue to be in the trust business, I better have a new trust and I'm going to have to start complying to these new rules and regulation laws; right? But, honestly, I can't do it all day one, and we know that. Even the Board won't be ready day one, so I'm going to have until this date to get it all up and going; is that kind of the idea?

MR. STALTER: We're on the same page.

MS. EULER: Uh-huh.

MR. McCULLOCH: Okay. Now, I'm finding out that maybe there is some things that aren't just quite that clear; okay? And
that's fine; okay? But I think that was the intent of this when Wasson was in there that day.

CHAIRMAN: Everything was July 1.

That's what you're saying, that you thought Wasson's intent was everything was July 1?

MR. McCULLOCH: Yes. Of course.

Yeah, I do think that. I thought that at the time; I thought, finally, someone said it, and he agreed.

MR. STALTER: I agree with you. Yeah.

And I think what happened is that, you know, when we look at this, you have to start -- you have to, you know, deposit, you have to accrue income.

MR. McCULLOCH: Yeah.

MR. SPEAKS: Basically, how do we get around that, and it's -- you know, that's the statute. I mean, we -- you can't go beyond the authority of the statute.

UNIDENTIFIED: But the trustee is everything.

MR. STALTER: So, I mean, there are minimum things we'll have to do on August 28th. Beyond that day, there are a lot of
things, you know --

MR. McCULLOCH: We've got to get it all up and going. That's what I thought at the time. And I thought, well, good, because it's going to take time because all these counselors have to be notified, explain to them what they have to do now, get them a license, tell them about the fee, work that out, so there's a lot of things, all the paperwork has to get ready. So, yeah, that's what I thought. But, well, heck, you've got a year, that'll be fine, you know. We'll be able to get it all up and going. So, when somebody shows up on my doorstep and says, hey, you know -- you can say, well, I'm working on it, and they may say, well, you don't have this right, and I say, okay, but I'm working on that. We'll get that fixed. I understand. I mean, that's what I would think would be the right way to handle it. Just common sense, it sounds like that's the way to do it.

MR. SPEAKS: I agree with that.

MR. McCULLOCH: Because you're going to have a lot of that -- not just me. You're
going to have a lot of these folks out here, these funeral directors that are now going to have to make decisions and they're going to try to do their own and they're going to try to learn this new law, and I can tell you right now, in my 26 years of this, there's people out there right now that don't understand the old law, much less the new.

CHAIRMAN: Right. They don't even know the new exists.

MR. McCULLOCH: Well, that's true, too. So, yeah, I think to be fair, that's what we should do for them, and that includes me.

CHAIRMAN: So, now, how does all of that translate into what you all are talking about as the rule?

MR. SPEAKS: Well, the question says does -- no one has to comply with SB 1, and that's not what this says. This is referring directly to trusts and their administration.

MS. EULER: Uh-huh. Right.

MR. OTTO: Well, but, what is meant by trust?

MR. KRAUS: Well, and do we need a
rule to -- I mean, is the section explicit
enough, or does there need to be a rule to
say anything more about it?

MS. EULER: The fact that we -- there
are so many different versions of what we
think this means from the people in this room,
multiply that times 770 leads me to believe we
need a rule.

MR. OTTO: A very simple one -- you
won't like it, I don't think. A very simple
one would just be clarify that for trusts
established before August 28th, they don't
have to comply. That trust is not --

MS. EULER: That they are given until
July 2010.

MR. OTTO: -- does not have to comply
with Senate Bill 1 until July 1 of 2010.
That's the easiest way. Now, if you don't
like it, then it gets more complicated.

MR. SPEAKS: Well, and there are some
things it never has to comply with because you
can't make things retroactive.

MS. EULER: Right.

MR. ZELL: What would they have to
comply with?
MR. OTTO: Well, a good example is the contracts that we use; okay? And the disclosure language.

MR. ZELL: That's going forward.

MR. KRAUS: Yeah. You don't have to go back and amend all of your contracts to include certain language as set out in the new law.

MS. EULER: Right.

MR. ZELL: What changes to SB 1 do affect our old contracts written today?

MR. McCULLOCH: Some of the reporting, I guess.

MR. STALTER: Yeah. Reporting diversification.

MS. EULER: (Inaudible.)

MR. OTTO: Yeah. Using the prudent investment rule. All your future investments because, you know, your investments aren't static. So, anytime that you would reinvest the money, that new -- that reinvestment would be -- would fall, arguably, at least, under the new law after July 1.

MS. EULER: And that's one of the consumer publications we're going to put
together.

MS. DUNN: Bullets, yeah.

MR. McCULLOCH: Even of the existing trusts?

MS. DUNN: So everyone understands those different dates and what's due when and what's on this report versus that report.

MS. EULER: Right.

MR. OTTO: I mean, I think a new investment of that existing trust, I think, arguably --

MR. McCULLOCH: New investments of the existing trust.

MR. KRAUS: And, you know, that's an interesting approach in addressing it from an education standpoint as opposed to a rule standpoint.

MS. EULER: Yes.

MR. KRAUS: It may be more effective.

MS. EULER: Okay.

MR. KRAUS: Because I think this could be really difficult and perilous to try to put together a rule that's specific enough to be useful and, yet, not chocked full of holes.

MS. EULER: Bad rules.
MR. KRAUS: On this topic.

MS. RUSSELL: No. He answered what he was talking about.

CHAIRMAN: He did? Okay. So, walk on by?

MS. EULER: I want to vote.

CHAIRMAN: Board?

MR. McCULLOCH: Don't clarify any of this; is that the question you're asking?

CHAIRMAN: Or at least done by rule.

MR. SPEAKS: Address it with an educational --

MR. KRAUS: Approach it through education.

MR. STALTER: Yeah.

MR. SPEAKS: That makes more sense to me.

MR. McCULLOCH: I'd go along with that. Okay.

MR. STALTER: Yeah. Down the road.

MR. OTTO: Continuing education.

(Several people talking simultaneously.)

MR. KRAUS: Since we're working on some education stuff.

(Several people talking simultaneously.)
MS. EULER: Okay.

MR. KRAUS: Fifty-one.

MS. EULER: We've already addressed that.

MR. KRAUS: Yeah. Fifty-two. Trusts which hold insurance should be exempt from diversification as well as small trusts, but what other circumstances would justify this exception? That's connected to it because of special circumstances, and what are special circumstances? And I think those are circumstances that are special.

MS. EULER: On a case-by-case basis.

CHAIRMAN: Aha.

MR. OTTO: Thank you.

UNIDENTIFIED: Thank you very much.

MR. KRAUS: On a case-by-case. I mean, really, how do you -- I mean -- other than saying, well, here's a couple of examples, but that's not all inclusive, I don't know how helpful that is.

MR. OTTO: Right.

MR. KRAUS: But, you know, that could be done in a rule, I suppose.

MR. OTTO: Well, there's a bunch of
case law under the Uniform Trust Act on stuff like this, I think.

MS. EULER: Yeah. My thought is let's leave that be. Again, we run the risk of being too narrow or too broad, and do it on a case-by-case basis as it comes up.

MR. KRAUS: Develop it over time?

MS. EULER: And this is language lifted, like Don said, from the Uniform Trust Act, so there's case law out there. There's a body of law.

CHAIRMAN: Everybody okay with that?

Excellent.

MR. KRAUS: All right. Fifty-three. Can a purchaser who has an insurance policy assigned to a funeral home borrow against the policy?

MS. EULER: That is a very good question.

MR. McCULLOCH: They could, yes.

MS. EULER: Yeah. If they're the owner.

MR. McCULLOCH: Funeral directors should take caution and make sure that they're the owner so that they can control that, but
it could happen.

MR. ZELL: How do you know?

MR. OTTO: You may not. You should make it clear in your contract if you're only getting credit for what the value of that policy is.

MR. McCULLOCH: You wouldn't. If you're the owner, and you just make me the beneficiary, you can do anything you want. You can cancel it, you can do anything you want.

MS. EULER: Or make it a contractual part of your contract.

MR. ZELL: But you, as the funeral director, have no idea? You never know.

MR. McCULLOCH: You need to put in there that you'll only give the service if they pay, you know, type of thing, that kind of verbiage. It's only good if I get paid. If it doesn't pay, then I'm not --

MR. OTTO: Or, you know, if they borrow $5,000 on a $10,000, you're only getting what you get.

MR. McCULLOCH: Yeah. So, a funeral director has to be smart enough to know not to
do those things and --

CHAIRMAN: So, do we need a rule that says the funeral director needs to be smart enough to know?

MR. McCULLOCH: No, I don't.

(Inaudible.)

(Several people talking simultaneously.)

MR. SPEAKS: And put penalties in place.

CHAIRMAN: I agree.

MS. EULER: I think that's under cause for discipline.

CHAIRMAN: Cause for discipline. There you go.

MR. KRAUS: Fifty-four. Under Section 440. Could set out what this means, but wouldn't have to, especially as -- I think that's regards trustee, his responsibilities. Trustee obligations already addressed elsewhere.

MS. EULER: Again, this is lifted from the Uniform Trust Act, and I think we just -- I think there's a body of law out there. I don't think we need to give any more further direction.
MR. KRAUS: I think that's true.

CHAIRMAN: All agree?

MR. McCULLOCH: I agree.

CHAIRMAN: Agree. X it off.

MR. SPEAKS: I just like the word "retards." Does the Uniform Trust Act really say that?

CHAIRMAN: Do we need a rule in regard to the retards?

(Several people talking simultaneously.)

MR. OTTO: We're getting punchy.

MR. SPEAKS: We're getting punchy now.

MR. McCULLOCH: I don't like the fact that you're talking about me. I'm sitting right here.

(Several people talking simultaneously.)

MR. McCULLOCH: I'm right here, now, and I can hear everything you're saying over there.

MR. KRAUS: We've got a number of terms in sub 2 there that we could define further in rule if we wanted to.

CHAIRMAN: Pretty specific, isn't it?

MS. EULER: I don't think we need to.

MR. KRAUS: That's fairly specific, I
think. I mean, you could get into officer, manager, that sort of thing, but --

(Several people talking simultaneously.)

MR. KRAUS: No? All right. Not a lot of support for that.

CHAIRMAN: No support, so just mark it off.

MR. STALTER: I mean, just how independent does the independent investment advisor have to be? Isn't that what this section is kind of going after?

MS. EULER: This section isn't really going after the independent investment advisor or the investment advisor. It's more because the investment -- the trust is not going to invest in the investment advisor. Well, I don't know if you read the indictment -- with a few exceptions.

MR. STALTER: Okay.

MS. EULER: So, I guess, I don't see that as an issue unless I'm missing something. Don?

MR. OTTO: Well, the only clarification that might be is, particularly on that second one, agents. I mean, any of
it. Agents or attorneys of the trust that
we're talking about here. I mean --

    MS. DUNN: Oh, I see. Right. Because
there might be a misunderstanding of it, what
agents we're talking about.

    MR. OTTO: Yeah. I mean, because, you
know, I'm investing with these other people
that are completely independent of me, but it
just so happens that they are an agent of a
trustee somewhere else.

    MS. EULER: Of a trustee. That's a
good idea.

    MR. OTTO: And that wasn't the intent.

    MR. SPEAKS: I see that.

    MR. OTTO: Same with that first one.

Spouses of a -- you know, of a seller. Well, one of your sellers, you know.

    MS. EULER: Yeah. No spouses.

    MR. OTTO: Yeah.

    CHAIRMAN: Is that 56?

    MR. STALTER: A seller's spouse cannot
act as the investment advisor, even if there's
a contract between the trustee and the
investment advisor or what?

    MS. EULER: This is about investment
decisions.

MR. STALTER: Yeah.

MS. EULER: This isn't about investment advisors.

MR. STALTER: Okay.

MS. EULER: The investment advisor is an agent under 440.

CHAIRMAN: So, you shouldn't consult your spouse about the investment of the trust?

MS. EULER: No, you shouldn't invest in your spouse.

CHAIRMAN: Oh, okay.

MR. KRAUS: Yeah. Right. Invest the funds with.

MS. EULER: Invest the funds with your spouse.

CHAIRMAN: Okay.

MR. OTTO: You know, I may invest my money in -- I'm trying to think of something that isn't belly-up. You know, with Central Bank of Missouri.

MS. EULER: SCI.

MR. OTTO: Yeah. Belly-up yet. No. Central Bank of Missouri, but it just so happens that the majority shareholder of
Central Bank of Missouri is the wife of somebody who -- the wife of a funeral-home owner, but not anyone that I deal with.

MS. EULER: Yeah.

MR. OTTO: I just -- I mean, obviously, so it's all supposed to be related to people with the trust.

MS. EULER: Right.

MR. OTTO: And some rule that clarifies that, I think, would be useful.

MS. EULER: Okay.

MR. ZELL: This is near and dear to me, and the way I understand it is the trust company has a responsibility to go out and find an investment advisor; correct? They have a contract with that investment advisor. The investment advisor is a registered agent and has -- with a firm -- what is the word --

MS. EULER: The trustee has a duty to invest, however that's --

MR. ZELL: Okay. So -- and then whatever the investment advisor says, the trustee still is responsible to say, well, it's a good investment or a bad investment.

MS. EULER: Right.
MR. ZELL: Or, hey, this is a little shaky. Don't invest in Joe's Pizza. They have that responsibility. Whoever that investment advisor is, you're not worried about the relationship they have with anyone, the seller or the provider or anything; correct?

MS. EULER: The new law does not have any -- does not address the investment-advisor issue. It's the duty of the trustee to supervise or to make decisions that are good for the trust. And so, if there is an investment advisor, they're under the control of the trustee, and the trustee is responsible. So, if the investment advisor does something stupid, then that's the trustee's problem.

MR. ZELL: But the trustee doesn't have guidelines to select the investment advisor?

MS. EULER: Yes.

MR. ZELL: They do or they don't?

MS. EULER: Yes. 436.440.

MR. OTTO: You can make an argument you can't have an independent investment advisor after August 28th unless you had one
before August 28th.

MS. EULER: Right. But even if you
do, the investment advisor is subject to the
support -- these responsibilities of the
trustee because the investment advisor is an
agent of the trustee.

MR. OTTO: I guess if you wanted to,
you could come up with a rule defining
independent for independent financial advisor.

MS. EULER: We don't have that word in
the statute anymore.

MR. OTTO: It's still there in the last
paragraph.

MS. EULER: Yes, that's true.

MR. OTTO: I mean, you don't have to.
We've gone since 1982 without defining that
without any problems.

MS. EULER: And look how well that's
worked out.

MR. OTTO: Yeah. That's what I'm
saying. That was sarcasm. Sorry.

MS. EULER: Well, we could do that.
We could also do a rule that clarifies that
the independent investment advisor is still an
agent of the trustee, although I think that's
a matter of law.

MR. STALTER: That's fine. I mean, basically, it is -- so long as the trustee provides oversight for the investment -- (inaudible.) It's a question of oversight, basically.

MS. EULER: Yeah. Right.

MR. STALTER: Okay.

MR. OTTO: But, again, it's not necessary because -- I mean, it's not something I don't think you have to do because trust law already covers what a trustee has got to do.

MS. EULER: Right.

MR. STALTER: But that was a part of 436. The old one is that if you appointed an investment advisor, you --

MS. EULER: That's one interpretation of the law. It's not the only interpretation of the law.

Okay.

CHAIRMAN: So, are all the legal minds in one accord here?

MS. EULER: Yeah. We're ready to move on, I believe.
CHAIRMAN: Do you have your marching orders?

MS. DUNN: What are we going to do with 58?

CHAIRMAN: I -- are we --

MR. KRAUS: Fifty-eight is a little bit different, I think. And whether you want to address where there's a current investment in place, whether you're required to divest that and it's dependent upon whether the trustee deems it prudent.

MS. EULER: Yes.

MR. KRAUS: Yes to what?

MS. EULER: There is no rule -- no law, nothing in the statute says that the trustee must divest of a current investment. The law says that for future investments, thou shalt not.

MR. KRAUS: Because this addresses investing, not divesting.


CHAIRMAN: So, you're making a rule --

MS. EULER: Do we need a rule that says that?

CHAIRMAN: Was that yes or a no?
MS. EULER: I don't know. I don't have a vote.

CHAIRMAN: I understand that, but --

MR. SPEAKS: Well, Sharon, are you suggesting that they can send in retroactive on current trust accounts?

MS. EULER: No. No.

MR. KRAUS: She's saying it has to do with investing going forward, not divesting with regard to existing investments.

MS. EULER: New investment decisions. Right.

CHAIRMAN: And your thought is, we would need a rule saying that?

MS. EULER: My -- no. It seems clear to me, but maybe it's not. So, my question to the Board is, would you like a rule on that, because this language says a trustee shall not make any decisions to invest in a trust. But it's --

CHAIRMAN: Is everybody cool with that?

MS. EULER: -- it would be appropriate to do a rule if the Board wanted a rule, but not necessary.

CHAIRMAN: Not necessary, but can.
Since everybody said move on, we don't need it.

MR. KRAUS: Moving on.

CHAIRMAN: And we can jump that whole section.

MR. KRAUS: We did 450. Woo-hoo.

MS. EULER: Yea. So, we have one section left.

MR. KRAUS: Turn the pages. We are flying now.

CHAIRMAN: Actually, we are.

MR. KRAUS: 455, joint accounts. K62, number of things here. Set out in a rule no pooling of joint accounts, may be in CD or other types of deposit instruments when the agent receives the money and the seller is deemed to have received it. Any thoughts on any of those?

MS. RUSSELL: I think you're going to need a rule on joint accounts just by the sheer number of calls Becky has gotten or I've just talked to people that don't understand the pooling part, and that I think you'll be -- it would be a lot easier on the staff if you do a rule on what accounts.

MR. KRAUS: Becky does enjoy those
calls, though.

MS. RUSSELL: I know, she does, don't you, Becky?

MS. DUNN: No.

CHAIRMAN: Clarification, pooling just meaning that they have to be individual and all of that? Just making sure.


MR. McCULLOCH: It's not a commingled joint account. It's a commingled trust.

CHAIRMAN: Right. Right.

MR. REINHARD: How dumb are these sons of bitches?

MS. DUNN: And the only reason for a rule on this is because your smaller funeral homes probably focus on joint accounts.

MS. RUSSELL: Exactly.

MS. DUNN: So, if they -- if a rule would help clarify for them --

MR. REINHARD: Well, make a rule that says individual accounts.

CHAIRMAN: All in favor says yes; right?

MR. KRAUS: And that's clarifying each of those?
MR. REINHARD: Well, let's go through them. I mean, you clarified that one about no pooling.

MR. KRAUS: Right.

MR. OTTO: How can you get clearer than the statute there?

MR. REINHARD: Yeah. How much clearer can it be?

MR. OTTO: There shall be a separate joint account established for each preneed contract.

MS. DUNN: Don, you just want business. No, that's okay. If it's clear, it's clear.

MR. REINHARD: What's going on in the rule? I think it's fine. You've got three yeses on that.

CHAIRMAN: Got it.

MR. McCULLOCH: What, specifically, do people ask you, Becky, when you get --

MS. DUNN: Well, right now, they're not, but they don't understand anything about Senate Bill 1, and they really don't know that -- how it's going to affect them having joint accounts because that was the easiest way that
the funeral homes could do business. So, if there's anything that can be set out by rule to help those funeral homes --

MR. McCULLOCH: You mean, so that they can read it and they don't have to call you?

MS. DUNN: Right.

MR. McCULLOCH: I don't think that's going to happen.

MS. DUNN: Yeah.

MR. McCULLOCH: I mean, I think you're going to get the call anyway, but I understand your point, though.

MR. KRAUS: We could make a rule that everybody has to read the rules before calling Becky or you're subject to discipline.

MS. DUNN: And if you all understand this, then --

MR. McCULLOCH: I do think it's clear, but if that's a problem for you, we need to fix it. I mean, why not?

MS. DUNN: But is there something we can put in the rule that will help them understand this, because if a rule is just going to say what the statute says, then it's not going to be helpful.
MR. McCULLOCH: Well, if they just said commingling --

MR. KRAUS: Well, that's true because you don't want to just copy what it says.

MS. DUNN: Yes.

MR. KRAUS: And if you say something slightly different, then are you changing what the statute really means when you don't mean to, and then you have a problem with the rule --

MS. EULER: Right.

MR. KRAUS: -- and you're not -- you're just creating problems.

MS. EULER: Right.

MR. REINHARD: We can make a rule there's no commingling. Does that clear it up for them?

MR. McCULLOCH: Can you use that word instead? It seems like people understand that word.

MR. KRAUS: Yeah. Unless -- then we have define what commingling is.

MR. REINHARD: We're not sure.

(Inaudible.)

MR. KRAUS: I mean, that's the thing.
You can just create more -- you can complicate it unintentionally.

MS. EULER: Right.

MS. DUNN: So, maybe it doesn't need one.

(Several people talking simultaneously.)

MR. MCCULLOCH: Do you think it's a situation where -- hey, Becky?

MS. DUNN: For those that do joint accounts, and if this is clear, just go back and read these sections of the law and make sure you understand them.

MR. FRAKER: What do you say? Do we need a rule?

MR. KRAUS: I don't think so, but I don't do joint accounts.

MR. REINHARD: Then we don't need a rule.

MR. MCCULLOCH: Martin, as we try to educate folks, if that fixes it, good. If it doesn't, then we can always go back and do something to help.

MR. REINHARD: Yeah. If it comes to be a problem, let's do that. So, no rule.

MR. KRAUS: All right.
MR. McCULLOCH: Got you.

CHAIRMAN: More in the educational thought later.

MR. FRAKER: Yeah, I agree.

CHAIRMAN: Okay. No rule.

MR. KRAUS: CD or other type of deposit. Was that on all of those?

CHAIRMAN: No. Maybe we were just talking the pool. Is that on all the whole group, or just that thought?

MR. REINHARD: Are they asking -- in that case, are they asking, like, okay, since they start off and they're making payments on a joint account, you could put it in a passbook savings; you see what I'm saying? Is that what they're -- are they asking you a question, is that okay?

CHAIRMAN: CD or other type of deposit instrument.

MR. KRAUS: I think they're trying to confirm that those are okay.

MR. REINHARD: But that's a joint account. You would have a -- anything you're saying is a joint account. It doesn't have to be in a CD; it could be in a passbook
savings drawing .2 percent.

MR. KRAUS: Right.

MR. REINHARD: That's joint.

MR. KRAUS: Right.

MR. REINHARD: You don't roll them,

but you --

CHAIRMAN: The word is "joint," not "CD."

MR. REINHARD: Huh?

CHAIRMAN: Like you said, the word is "joint," not "CD."

MR. REINHARD: Yeah. That's exactly right.

MR. FRAKER: Well, your CD has got at least two names on it.

MR. KRAUS: So, you think that's fine?

CHAIRMAN: So, I think we're okay, aren't we?

MR. REINHARD: I think we're fine there, too.

MR. KRAUS: Okay. I think the last one, we've talked about already.

CHAIRMAN: All right. So, no one at all.

MS. RUSSELL: Never mind.
CHAIRMAN: Darlene?

MS. RUSSELL: No. I'm not even going to go there. It's just too tiresome -- joint accounts.

CHAIRMAN: Well, now, if it's important though, it's important.

MS. RUSSELL: Well, just the typical question that you get if they have a bank and all their money goes into one account, but that bank keeps track of everybody's name on each -- whose money is in there. That's what they consider joint account. Some people are considering those joint accounts. To me, that's not a joint account.

MR. McCULLOCH: That's not a joint account.

MS. RUSSELL: That's not a joint account, so -- that's when the word "pooling" and stuff, you know --

MR. McCULLOCH: That's a little savings account with a whole bunch of people's money in it.

MS. RUSSELL: Exactly. Exactly. That is exactly what it is, but I think you're fine.

CHAIRMAN: But won't there --
MR. KRAUS: Yeah. There will be some education to be done there.

MS. RUSSELL: Educating them.

CHAIRMAN: The reporting requirements will change part of that, too.


MR. FRAKES: It's hard for me to believe that that's either way. It's hard for me to believe that people would do that.

CHAIRMAN: Me, too.

MR. KRAUS: All right. Sixty-three actually says it's better left to finance law. It's reasonably have the potential to gain income or increase in value. I think that is addressed in finance law. Sixty-four, let's see. Could define in a rule doing some -- (inaudible) -- in the Board unnecessarily in future unforeseen circumstances? This adds to what is reasonable expenses. According to the comment, that even suggests case by case, which I agree with. I don't know if anyone else has any thoughts as to --

MR. McCulloch: Just leave it alone, do you think?

MR. KRAUS: Yeah. I think just leave
it alone. All right.

CHAIRMAN: Everybody shakes head yes.

(Several people talking simultaneously.)

MS. RUSSELL: Earl, on a joint account, one question I get all the time is 100 percent of the money has to go in and you don't get to keep that 5 percent, and that's correct; right? On the joint accounts?

MR. KRAUS: Yeah. I think that -- yeah. I think that's right.

(Several people talking simultaneously.)

MS. RUSSELL: I just want to make sure because that -- they're already saying, well, we get to keep the 5 and then we get to keep 10. No. Joint account, 100 percent. It's going to be -- it's different than a trust.

MR. KRAUS: Yeah, it's different. The trust is -- yeah. It's all different.

(Several people talking simultaneously.)

MR. KRAUS: So, that's all of the sections.

(Several people talking simultaneously.)

MR. KRAUS: Now, we also -- I mean, if you wanted to, we could either do that at this meeting or next meeting. We have some draft
rules that we put together last time. And --
yeah. And I actually have to go so I can
pick up my kids on time, but if you all want
to do that today, you can --

MS. EULER: I think we should do it
next meeting.

(Several people talking simultaneously.)

MS. RUSSELL: Will they be posted on
the Web so we can look at them before the
next meeting.

MS. DUNN: They're there.

MS. RUSSELL: Oh, are they now? Oh.

Oh, the ones that you --

MS. DUNN: The emergency rules on the
August 5th.

(Several people talking simultaneously.)

MR. KRAUS: And we'll have additional
changes to those, too, I think, but -- but I
think they just got on there yesterday.

(Several people talking simultaneously.)

MS. DUNN: But if it doesn't seem
clear, let us know because we're trying to put
it into the right formats.

CHAIRMAN: Did everybody catch that?

Did everybody catch that?
MS. DUNN: No.

CHAIRMAN: The emergency rules that have been at least addressed -- it's not saying that's the rule, it's just that they've been addressed -- are on the Web site. You can go look at them now, see what's there, fully with the anticipation they'll probably be worked on some more, but if you want to go to the Board Web site, you can look at those, and the question actually was, do we want to look at those, talk about them now, but probable better to go look at them, and then after you've really had an opportunity to look, actually have something to talk about.

MS. DUNN: And they're under the August 5th meeting.

CHAIRMAN: They're under the August 5th meeting.

(Several people talking simultaneously.)

MS. DUNN: Any more agendas? They're all the same.

MS. EULER: The rest of the sessions, the rest of Senate Bill 1.

MS. DUNN: Oh, I have -- it's what -- it's on the Web site. We just use the same
agenda every week.

CHAIRMAN: The goal would have been
that we did all of the what we've done and
then talked about the -- what we have -- the
assignments from last week and all that, but
it's just taken too much time after we've
really --

MR. SPEAKS: So, I have to do another
interpretive dance next week? I knew that was
going to stay.

(Several people talking simultaneously.)

MS. DUNN: We have everyone's comments
numbered each meeting, so the new stuff is out
on our agenda -- I mean, is out on our Web
site.

(Several people talking simultaneously.)

MR. KRAUS: Yeah. Be sure and check
back with the Web site, too, because as we
work on the draft rules and make changes, then
we'll repost them to get them ready to be
reviewed by the Board, but --

MR. ZELL: When do you think you'll
have rules written down?

MS. EULER: We have some.

MR. KRAUS: We have some now. The
goal is to have drafts prepared -- for
emergency rules, drafts prepared, approved by
the Board for filing, and actually filed on
August 28th so that then they can be effective
ten days after that. That's the earliest we
can -- absolute earliest we can do it.

MR. ZELL: So, what happens between
the 28th and the ten days?

MR. KRAUS: During that time, you know
what the rule is going to be. That's the
absolute most we have authority to do. You
can't do anything sooner than that, so --

UNIDENTIFIED: Well, I love the way our
government is working.

MR. KRAUS: Yeah. We're making
sausages.

MR. REINHARD: Well, it's better than
what it would be over there, whatever, China
or --

CHAIRMAN: Okay.

MS. EULER: Okay. Thanks.

MS. DUNN: Everybody remembers what
time and day the next meeting is; right?

CHAIRMAN: When is it?

MS. DUNN: Okay. It is --
CHAIRMAN: Next meeting is --

MS. DUNN: August 19th at 9:00 a.m.

CHAIRMAN: August 19th, 9:00 a.m.

(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 11, 2009; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this \( 8^{\text{th}} \) day of September, 2009.

\[ \text{Signature} \]

KRISTY B. BRADSHAW, CCR

Poe & Company Reporting and Videoconferencing
(573) 875-7027
From: Brad Speaks
Sent: Friday, July 24, 2009 5:09 PM
To: PR.Embalm
Cc: Euler, Sharon; Dunn, Becky; [Redacted]
Subject: Request

To the State Board of Funeral Directors and Embalmers:

I would like to formally ask that the Missouri State Board of Embalmers file a motion for hearing in the Texas case (in regard to the 7 items listed below: 

1. Payment of claims from NPS
2. Timing of claims payment
3. Ongoing consumer payments on contracts
4. Missouri banks and their liability, and the class action lawsuit on behalf of Missouri funeral homes
5. Expenses of the CFA in pursuing this matter
6. Access to teleconference reports conferences with the SDR
7. The SDR's intent to send a letter to all consumers re: claims against NPS.

I further request that the state board hire Mr. Robert Cowherd as the board's attorney so that he can work on this ongoing issue for the consumers of Missouri and the funeral providers who have been harmed. There is much at stake and Mr. Cowherd is extremely well-versed in the matters surrounding these issues and I feel that he is ideally qualified to stand up for the interests of the harmed parties on behalf of the State Board. This move would make a lot of sense, now that the board is empowered to hire it's own attorney.

Most sincerely,
Brad

Brad Speaks | President
Speaks Family Legacy Chapels
E: P.O. Box 259 | Independence, MO | 64051
E: [Redacted]
T: 816.252.7900
F: 816.252.9758

STATEMENT OF CONFIDENTIALITY:

The information contained in this message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, please notify Brad Speaks at 816-807-2484, and destroy all copies of this message and any attachments.

8/5/2009
Welcome to the Board of Embal

August 11

Board Meeting Addendum Working Documents

Date
Draft SB1 Implementation Group II _2_
Public Comments
Date
Bill Stalter August 11 2009 Comments
Don Otto August 11 2009 Comments
Mark Warren August 11 2009 comments
Roger Richie August 11 2009 comments
August 11

Board Meeting Addendum Working Documents

Draft SB1 Implementation Group II _2_
A. SB1 implementation – Group II

436.400. Title of Act

The provisions of sections 436.400 to 436.520 shall be referenced as the "Missouri Preneed Funeral Contract Act" and shall apply only to preneed contracts entered into, and accounts created on or after, August 28, 2009, unless otherwise specified.
436.405 Definitions

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

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

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

12. (3) "Insurance-funded preneed contract", a preneed contract which is designated to be funded by payments or proceeds from an insurance policy or single premium annuity contract;

15. (4) "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 in the names of the purchaser and seller, as provided in this chapter;

20. (5) "Market value", a fair market value:
21. (a) As to cash, the amount thereof;
22. (b) As to a security as of any date, the price for the security as of that date obtained from a generally recognized source, or to the extent no generally recognized source exists, the price to sell the security in an orderly transaction between unrelated market participants at the measurement date; and
27. (c) As to any other asset, the price to sell the asset in an orderly transaction between unrelated market participants at the measurement date consistent with statements of financial accounting standards;

30. (6) "Nonguaranteed contract", a preneed contract in which the seller does not promise, assure, or guarantee that all or any portion of the costs for the disposition, services, facility, or merchandise identified in a preneed contract will be limited to the amount designated in the contract upon the preneed beneficiary's death or that such costs will be otherwise limited or restricted;

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

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

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

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

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

2. All terms defined in chapter 333, RSMo, shall be deemed to have the same meaning when used in sections 436.400 to 436.520.
436.410. Cemetery exception

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.
436.412. Grandfather clause

Each preneed contract made before August 28, 2009, and all payments and disbursements under such contract shall continue to be governed by this chapter as the chapter existed at the time the contract was made. Any licensee or registrant of the board may be disciplined for violation of any provision of sections 436.005 to 436.071 within the applicable statute of limitations. In addition, the provisions of section 436.031, RSMo, as it existed on August 27, 2009, shall continue to govern disbursements to the seller from the trust and payment of 9 trust expenses. Joint accounts in existence as of August 27, 2009, shall continue to be governed by the provisions of section 436.053, as that section existed on August 27, 2009.

Comment [K5]: When drafting rules and particularly when addressing time period immediately following 08/28/09, we'll want to keep in mind that the prior statutes can still come into play.

Comment [O6]: Could set out in rule some things from prior law:
- seller gets 20% plus interest
- financial advisor paid
- seller pays trust expenses

Comment [O7]: Maybe set out in rule that under new law, all money in a trust funded preneed must go first into the trust
436.415. Provider/Seller obligations

1. Except as otherwise provided in sections 436.400 to 436.520, the provider designated in a preneed contract shall be obligated to provide final disposition, funeral or burial services and facilities, and funeral merchandise as described in the preneed contract.

2. The seller designated in a preneed contract shall be obligated to collect and properly deposit and disburse all payments made by or on behalf of a purchaser of a preneed contract and ensure that statutory and contractual duties are met, in compliance with sections 436.400 to 436.520, RSMo.

Comment [K8]: May want to define these terms as used in ch. 436 and the rules promulgated thereunder by rule.

Comment [K9]: With regard to third party sales, is the funeral home obligated even if the seller is incapable of performing (due to insolvency) according to the terms of the seller/provider agreement?

Comment [K10]: What about insurance where premiums are made directly to the Insure?

Comment [O11]: May want to set out in rule:
- re: provider obligations, funeral director in charge is responsible.
- seller and provider obligations apply to all contracts, old and new.
436.420. **Provider/Seller contract**

1. No person shall be designated as a provider in a
2 preneed contract unless the provider has a written contractual
3 agreement with the seller. Any seller who designates a person as a
4 provider in a preneed contract without a contractual relationship with
5 such person is in violation of the provisions of sections 436.400 to
6 436.520. No contract is required if the seller and provider are the same
7 legal entity.

8 2. The written agreement required by this section shall include:

9 (1) Written consent from the provider authorizing the seller to
10 designate or obligate the provider under a preneed contract;

11 (2) Procedures for tracking preneed contract funds or payments
12 received by the provider and for remitting such funds or payments to
13 the seller, including the time period authorized by the seller for the
14 remittance of funds and payments; and

15 (3) The signatures of the seller and the provider or their
16 authorized representatives and the date such signature was obtained.

17 3. A provider shall notify the board within fifteen days of
18 authorizing or otherwise agreeing to allow a seller to designate himself
19 or herself as the provider under any preneed contract.

20 4. Upon request of the board, a seller, provider, or preneed agent
21 shall provide a copy of any preneed contract or any contract or
22 agreement with a seller or provider to the board.
Consumer contract requirements

1. All preneed contracts shall be sequentially numbered and in writing and in a font type and size that are easily read, and shall clearly and conspicuously:

4 (1) Include the name, address and phone number of the purchaser, beneficiary, provider and seller;

6 (2) Identify the name, address, phone and license number of the provider and the seller;

8 (3) Set out in detail the disposition, funeral and burial services and facilities, and merchandise requested;

10 (4) Identify whether the contract is trust funded, insurance funded, or joint account funded;

12 (5) Include notice that the cancellation of the contract shall not cancel any life insurance funding the contract, and that insurance cancellation is required to be made in writing to the insurer;

15 (6) Include notice that the purchaser will only receive the cash surrender value of any insurance policy funding the contract if cancelled after a designated time, which may be less than the amount paid into the policy;

19 (7) Include notice that the board provides by rule that the purchaser has the right to transfer the provider designation to another provider;

22 (8) Prominently identify whether the contract is revocable or irrevocable;

24 (9) Set forth the terms for cancellation by the purchaser or by the seller;

26 (10) Identify any preneed trust or joint account into which contract payments shall be deposited, including the name and address of the corresponding trustee or financial institution;

29 (11) Include the name, address and phone number of any insurance company issuing an insurance policy used to fund the preneed contract;
32. 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.

33. Prominently identify whether the contract is a guaranteed or non-guaranteed contract.

34. Include any applicable consumer disclosures required by the board by rule and:

41. Include a disclosure on all guaranteed installment payment contracts informing the purchaser what will take place in the event the beneficiary dies before all installments have been paid, including an explanation of what will be owed by the purchaser for the funeral services in such an event.

45. Comply with the provisions of sections 436.400 to 436.520 or any rule promulgated thereunder.

47. A preneed contract shall be voidable and unenforceable at the option of the purchaser, or the purchaser’s legal representative, if it is determined in a court of competent jurisdiction that the contract is not in compliance with this section or not issued by a seller licensed under chapter 333, RSMo, or if the provider has not consented to serve as provider at the time the contract was executed. Upon exercising the option by written notice to the seller and provider, all payments made under such contract shall be recoverable by the purchaser, or the purchaser’s legal representative, from the contract seller, trustee, or other payee thereof.

57. A beneficiary who seeks to become eligible to receive public assistance under chapter 208, RSMo, or any other applicable state or federal law may irrevocably waive their rights to receive any refund or payment of any monies from the funds or insurance used to fund their preneed contract. Such irrevocable waiver may be executed at any time and shall be in writing, signed and dated by the beneficiary and shall be delivered to the seller and any applicable trustee, financial institution or insurance company.

64. All purchasers shall have the right as provided in this chapter to cancel or rescind a revocable preneed contract and transfer any preneed contract with or without cause.
68. A preneed contract, shall not be changed from a trust-funded, insurance-funded, or joint account-funded preneed contract without the written consent of the purchaser.

Comment [K30]: Will the Board apply this retroactively to preclude sellers from correcting problem contracts or arrangements?

Comment [O31]: Could define further by rule
436.430. Trust funded contract requirements

1. A trust-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. A seller must deposit all payments received on a preneed contract into the designated preneed trust within sixty days of receipt of the funds by the seller, the preneed sales agent or designee. A seller may not require the consumer to pay any fees or other charges except as authorized by the provisions of chapter 333, RSMo, and this chapter or other state or federal law.

3. A seller may request the trustee to distribute to the seller an amount up to the first five percent of the total amount of any preneed contract as an origination fee. The seller may make this request at any time after five percent of the total amount of the preneed contract has been deposited into the trust. The trustee shall make this distribution to the seller within fifteen days of the receipt of the request.

4. In addition to the origination fee, the trustee may distribute to the seller, an amount up to ten percent of the face value of the contract on a preneed contract at any time after the consumer payment has been deposited into the trust. The seller may make written request for this distribution and the trustee shall make this distribution to the seller within fifteen days of the receipt of the request or as may be provided in any written agreement between the seller and the trustee.

5. The trustee of a preneed trust shall be a state- or federally-chartered financial institution authorized to exercise trust powers in Missouri. The trustee shall accept all deposits made to it for a preneed contract and shall hold, administer, and distribute such deposits, in trust, as trust principal, under sections 436.400 to 436.520.

6. The financial institution referenced herein may neither control, be controlled by, nor be under common control with the seller or preneed agent. The terms "control", "controlled by" and "under common control with" means, the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing ten percent.
38 or more of the voting securities. This presumption may be rebutted by a showing to the board that control does not in fact exist.

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

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

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

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

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

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

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

96 A preneed trust, including trusts established before August 28, 2009, shall terminate when the trust principal no longer includes any payments made under any preneed contract, and upon such termination the trustee shall distribute all trust property, including principal and undistributed income, to the seller which established the trust.
436.435. Trustee duties

1. To the extent that any provisions in this chapter which come into effect on August 28, 2009, apply to trusts governed under this chapter which are in existence on August 28, 2009, such trusts shall be in compliance with this chapter no later than July 1, 2010.

2. All property held in a preneed trust, including principal and undistributed income, shall be invested and reinvested by the trustee thereof and shall only be invested and reinvested in investments which have reasonable potential for growth or producing income. Funds in, or belonging to, a preneed trust shall not be invested in any term life insurance product.

3. A trustee shall 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 shall exercise reasonable care, skill, and caution.

4. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise when investing and managing trust assets.

5. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances, the purpose of the trust is better served without diversification.

6. In investing and managing trust assets, a trustee shall consider the following as are relevant to the trust:

   (1) General economic conditions;

   (2) The possible effect of inflation or deflation;

   (3) The expected tax consequences of investment decisions or strategies;

   (4) The role that each investment or course of action plays within the overall trust portfolio;

   (5) The expected total return from income and the appreciation of capital;
33 (6) Needs for liquidity, regularity of income, and preservation or
34 appreciation of capital;

35 6. No seller, provider, or preneed agent shall procure or accept
36 a loan against any investment or asset of or belonging to a preneed
37 trust. As of August 29, 2009, no preneed seller, provider, or agent shall
38 use any existing preneed contract as collateral or security pledged for
39 a loan or take preneed funds of any existing preneed contract as a loan
40 or for any purpose other than as authorized by this chapter.

Comment [1053]: Can a purchaser who has an insurance policy assigned to a
funeral home borrow against the policy?
436.440. **Trustee delegation to agent**

1. The provisions of this section shall apply to all
   2 preneed trusts, including trusts established before August 28, 2009.

2. A preneed trustee may delegate to an agent, duties and powers
   4 that a prudent trustee of comparable skills would reasonably delegate
   5 under the circumstances. The trustee shall exercise reasonable care,
   6 skill, and caution in:

   7 (1) Selecting an agent;

   8 (2) Establishing the scope and terms of the agency, consistent
   9 with the purposes and terms of the trust; and

   10 (3) Periodically reviewing the agent's actions in order to monitor
   11 the agent's performance and compliance with the terms of the agency.

12. In performing a delegated function, an agent owes a duty to
13. the trust to exercise reasonable care to comply with the terms of the
14. agency.

15. By accepting a delegation of powers or duties from the trustee
16. of a preneed trust, an agent submits to the jurisdiction of the courts of
17. this state.

18. Delegation of duties and powers to an agent shall not relieve
19. the trustee of any duty or responsibility imposed on the trustee by
20. sections 436.400 to 436.520 or the trust agreement.

21. For trusts in existence as of August 28, 2009, it shall be
22. permissible for those trusts to continue to utilize the services of an
23. independent financial advisor, if said advisor was in place pursuant to
24. section 436.031, RSMo, as of August 28, 2009.
436.445. **Trustee investment restrictions**

A trustee of any preceed trust, including trusts established before August 28, 2009, shall not after August 28, 2009, make any decisions to invest any trust fund with:

4 (1) The spouse of the trustee;

5 (2) The descendants, siblings, parents, or spouses of a seller or an officer, manager, director or employee of a seller, provider, or preneed agent;

8 (3) Agents or attorneys of a trustee, seller, or provider;

9 (4) A corporation or other person or enterprise in which the trustee, seller, or provider owns a controlling interest or has an interest that might affect the trustee's judgment.

Comment [K55]: Could define these via rule.

Comment [K56]: Frequently, the investment advisor has some form of relationship to the seller, even if no more than an agency relationship.

Comment [K57]: Same.

Comment [K58]: May want to address that where a current investment, not required to divest unless trustee deems prudent.
436.450. Insurance funded contracts

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

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

17 3. Payments collected by or on behalf of a seller for an
18 insurance-funded preneed contract shall be promptly remitted to the
19 insurer or the insurer's designee as required by the insurer; provided
20 that payments shall not be retained or held by the seller or preneed
21 agent for more than thirty days from the date of receipt.

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

25 5. Laws regulating insurance shall not apply to preneed
26 contracts, but shall apply to any insurance or single premium annuity
27 sold with a preneed contract; provided, however, the provisions of this
28 act shall not apply to single premium annuities or insurance policies
29 regulated by chapters 374, 375, and 376, RSMo, used to fund preneed
30 funeral agreements, contracts, or programs.

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

33 7. For any insurance-funded preneed contract sold after August
34 28, 2009, the following shall apply:

35 (1) The purchaser or beneficiary shall be the owner of the
36 insurance policy purchased to fund a preneed contract; and
37 (2) An insurance-funded preneed contract shall be valid and
38 enforceable only if the seller or provider is named as the beneficiary
39 or assignee of the life insurance policy funding the contract.

40 8. If the proceeds of the life insurance policy exceed the actual
41 cost of the goods and services provided pursuant to the nonguaranteed
42 preneed contract, any overage shall be paid to the estate of the
43 beneficiary, or, if the beneficiary received public assistance, to the
44 state of Missouri.
436.455. Joint accounts

1. A joint account-funded preneed contract shall comply
2 with sections 436.400 to 436.520 and the specific requirements of this
3 section.

4. 2. In lieu of a trust-funded or insurance-funded preneed contract,5
6 the seller and the purchaser may agree in writing that all funds paid
7 by the purchaser or beneficiary for the preneed contract shall be
8 deposited with a financial institution chartered and regulated by the
9 federal or state government authorized to do business in Missouri in an
10 account in the joint names and under the joint control of the seller and
11 purchaser, beneficiary or party holding power of attorney over the
12 beneficiary's estate. There shall be a separate joint account established
13 for each preneed contract sold or arranged under this section. Funds
14 shall only be withdrawn or paid from the account upon the signatures
15 of both the seller and the purchaser or under a pay-on-death
16 designation or as required to pay reasonable expenses of administering
17 the account.

18 3. All consideration paid by the purchaser under a joint account-
19 funded contract shall be deposited into a joint account as authorized
20 by this section within ten days of receipt of payment by the seller.

21 4. The financial institution shall hold, invest, and reinvest funds
22 deposited under this section in other accounts offered to depositors by
23 the financial institutions as provided in the written agreement of the
24 purchaser and the seller, provided the financial institution shall not
25 invest or reinvest any funds deposited under this section in term life
26 insurance or any investment that does not reasonably have the
27 potential to gain income or increase in value.

28 5. Income generated by preneed funds deposited under this
29 section shall be used to pay the reasonable expenses of administering
30 the account as charged by the financial institution and the balance of
31 the income shall be distributed or reinvested upon fulfillment of the
32 contract, cancellation or transfer pursuant to the provisions of this
33 chapter.

34 6. Within fifteen days after a provider and a witness certifies to
35 the financial institution in writing that the provider has furnished the
36 final disposition, funeral, and burial services and facilities, and
37 merchandise as required by the preneed contract, or has provided
38 alternative funeral benefits for the beneficiary under special

Comment [K62]: Set out any of the following:
- no pooling of joint accounts
- may be in CD or other type of deposit instrument
- when agent receives money, seller is deemed to have received

Comment [K63]: Could address in rule, but is probably better left to finance law

Comment [K64]: This is used in a number of places. Could define in rule, but doing so would likely harm in brevity unnecessarily in a future unforeseen circumstances. May be better to leave the determination of reasonable as a case-by-case analysis for the board.
38 arrangements made with the purchaser, the financial institution shall 39 distribute the deposited funds to the seller if the certification has been 40 approved by the purchaser. The seller shall pay the provider within 41 ten days of receipt of funds.

42 7. Any seller, provider, or preneed agent shall not procure or 43 accept a loan against any investment, or asset of, or belonging to a joint 44 account. As of August 28, 2009, it shall be prohibited to use any 45 existing preneed contract as collateral or security pledged for a loan, 46 or take preneed funds of any existing preneed contract as a loan or for 47 any purpose other than as authorized by this chapter.
and not in lieu of any authority provided by this chapter, and may be
brought concurrently with other actions to enforce this chapter or
sections 436.400 to 436.520, RSMo.

333.340. 1. The board shall adopt and enforce rules for the
transaction of its business and for standards of service and practice to
be followed in the professions of embalming and funeral directing
deemed necessary for the public good and consistent with the laws
of this state. The board may also prescribe a standard of proficiency
as to the qualifications and fitness of those engaging in the practice of
embalming or funeral directing.

2. The board shall set the amount of the fees which this chapter
authorizes and requires by rules promulgated under section 536.021,
RSMo. The fees shall be set at a level to produce revenue which shall
not substantially exceed the cost and expense of administering this
chapter.

3. The board shall promulgate and enforce rules for the
transaction of its business and for standards of service and practice to
be followed for the licensing and registration of providers, sellers, and
preneed agents deemed necessary for the public good and consistent
with the laws of this state.

4. Any rule or portion of a rule, as that term is defined in section
536.010, RSMo, that is created under the authority delegated in this
section shall become effective only if it complies with and is subject to
all of the provisions of chapter 536, RSMo, and, if applicable, section
536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
and if any of the powers vested with the general assembly pursuant to
chapter 536, RSMo, to review, to delay the effective date, or to
disapprove and annul a rule are subsequently held unconstitutional,
then the grant of rulemaking authority and any rule proposed or
adopted after August 28, 2009, shall be invalid and void.

436.400. The provisions of sections 436.400 to 436.520 shall be
referred to as the "Missouri Preneed Funeral Contract Act" and shall
apply only to preneed contracts entered into, and accounts created on
or after, August 28, 2009, unless otherwise specified.

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

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

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

(3) "Insurance-funded preneed contract", a preneed contract
which is designated to be funded by payments or proceeds from an
insurance policy or single premium annuity contract;

(4) "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 in the names of the purchaser and seller, as provided in this
chapter;

(5) "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 as
of that date obtained from a generally recognized source, or to the
extent no generally recognized source exists, the price to sell the
security in an orderly transaction between unrelated market
participants at the measurement date; and
   (c) As to any other asset, the price to sell the asset in an orderly
transaction between unrelated market participants at the measurement
date consistent with statements of financial accounting standards;

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

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

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

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

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

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

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

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.

436.412. Each preneed contract made before August 28, 2009, and
all payments and disbursements under such contract shall continue to
be governed by this chapter as the chapter existed at the time the
contract was made. Any licensee or registrant of the board may be
disciplined for violation of any provision of sections 436.005 to 436.071
within the applicable statute of limitations. In addition, the provisions
of section 436.031, RSMo, as it existed on August 27, 2009, shall continue
to govern disbursements to the seller from the trust and payment of
trust expenses. Joint accounts in existence as of August 27, 2009, shall
continue to be governed by the provisions of section 436.053, as that
section existed on August 27, 2009.

436.415. 1. Except as otherwise provided in sections 436.400 to
436.520, the provider designated in a preneed contract shall be
obligated to provide final disposition, funeral or burial services and
facilities, and funeral merchandise as described in the preneed
contract.

2. The seller designated in a preneed contract shall be obligated
to collect and properly deposit and disburse all payments made by, or
on behalf of, a purchaser of a preneed contract and ensure that is
statutorily and contractual duties are met, in compliance with sections
436.400 to 436.520, RSMo.

436.420. 1. No person shall be designated as a provider in a
preneed contract unless the provider has a written contractual
agreement with the seller. Any seller who designates a person as a
provider in a preneed contract without a contractual relationship with
such person is in violation of the provisions of sections 436.400 to
436.520. No contract is required if the seller and provider are the same
legal entity.

2. The written agreement required by this section shall include:
(1) Written consent from the provider authorizing the seller to
designate or obligate the provider under a preneed contract;
(2) Procedures for tracking preneed contract funds or payments
received by the provider and for remitting such funds or payments to
the seller, including, the time period authorized by the seller for the
remittance of funds and payments; and
(3) The signatures of the seller and the provider or their
authorized representatives and the date such signature was obtained.

3. A provider shall notify the board within fifteen days of
authorizing or otherwise agreeing to allow a seller to designate himself
or herself as the provider under any preneed contract.

4. Upon request of the board, a seller, provider, or preneed agent
shall provide a copy of any preneed contract or any contract or
agreement with a seller or provider to the board.

436.425. 1. All preneed contracts shall be sequentially numbered
and in writing and in a font type and size that are easily read, and shall
clearly and conspicuously:
(1) Include the name, address and phone number of the
purchaser, beneficiary, provider and seller;
(2) Identify the name, address, phone and license number of the
provider and the seller;
(3) Set out in detail the disposition, funeral and burial services 
and facilities, and merchandise requested;
(4) Identify whether the contract is trust funded, insurance 
funded, or joint account funded;
(5) Include notice that the cancellation of the contract shall not 
cancel any life insurance funding the contract, and that insurance 
cancellation is required to be made in writing to the insurer;
(6) Include notice that the purchaser will only receive the cash 
surrender value of any insurance policy funding the contract if 
cancelled after a designated time, which may be less than the amount 
paid into the policy;
(7) Include notice that the board provides by rule that the 
purchaser has the right to transfer the provider designation to another 
provider;
(8) Prominently identify whether the contract is revocable or 
irrevocable;
(9) Set forth the terms for cancellation by the purchaser or by 
the seller;
(10) Identify any preneed trust or joint account into which 
contract payments shall be deposited, including the name and address 
of the corresponding trustee or financial institution;
(11) Include the name, address and phone number of any 
insurance company issuing an insurance policy used to fund the 
preneed contract;
(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;
(13) Prominently identify whether the contract is a guaranteed 
or nonguaranteed contract;
(14) Include any applicable consumer disclosures required by the 
board by rule; and
(15) Include a disclosure on all guaranteed installment payment 
contracts informing the purchaser what will take place in the event the 
beneficiary dies before all installments have been paid, including an 
explanation of what will be owed by the purchaser for the funeral 
services in such an event.
16) Comply with the provisions of sections 436.400 to 436.520 or any rule promulgated thereunder.

2. A preneed contract shall be voidable and unenforceable at the option of the purchaser, or the purchaser's legal representative, if it is determined in a court of competent jurisdiction that the contract is not in compliance with this section or not issued by a seller licensed under chapter 333, RSMo, or if the provider has not consented to serve as provider at the time the contract was executed. Upon exercising the option by written notice to the seller and provider, all payments made under such contract shall be recoverable by the purchaser, or the purchaser's legal representative, from the contract seller, trustee, or other payee thereof.

3. A beneficiary who seeks to become eligible to receive public assistance under chapter 208, RSMo, or any other applicable state or federal law may irrevocably waive their rights to receive any refund or payment of any monies from the funds or insurance used to fund their preneed contract. Such irrevocable waiver may be executed at any time and shall be in writing, signed and dated by the beneficiary and shall be delivered to the seller and any applicable trustee, financial institution or insurance company.

4. All purchasers shall have the right as provided in this chapter to cancel or rescind a revocable preneed contract and transfer any preneed contract with or without cause.

5. A preneed contract, shall not be changed from a trust-funded, insurance-funded, or joint account-funded preneed contract without the written consent of the purchaser.

436.430. 1. A trust-funded preneed contract shall comply with sections 436.400 to 436.520 and the specific requirements of this section.

2. A seller must deposit all payments received on a preneed contract into the designated preneed trust within sixty days of receipt of the funds by the seller, the preneed sales agent or designee. A seller may not require the consumer to pay any fees or other charges except as authorized by the provisions of chapter 333, RSMo, and this chapter or other state or federal law.

3. A seller may request the trustee to distribute to the seller an amount up to the first five percent of the total amount of any preneed contract as an origination fee. The seller may make this request at any
time after five percent of the total amount of the preneed contract has
been deposited into the trust. The trustee shall make this distribution
to the seller within 15 days of the receipt of the request.

4. In addition to the origination fee, the trustee may distribute
to the seller, an amount up to ten percent of the face value of the
contract on a preneed contract at any time after the consumer payment
has been deposited into the trust. The seller may make written request
for this distribution and the trustee shall make this distribution to the
seller within fifteen days of the receipt of the request or as may be
provided in any written agreement between the seller and the trustee.

5. The trustee of a preneed trust shall be a state- or federally-
chartered financial institution authorized to exercise trust powers in
Missouri. The trustee shall accept all deposits made to it for a preneed
contract and shall hold, administer, and distribute such deposits, in
trust, as trust principal, under sections 436.400 to 436.520.

6. The financial institution referenced herein may neither
control, be controlled by, nor be under common control with the seller
or preneed agent. The terms "control", "controlled by" and "under
common control with" means, the direct or indirect possession of the
power to direct or cause the direction of the management and policies
of a person, whether through the ownership of voting securities, by
contract other than a commercial contract for goods or nonmanagement
services, or otherwise, unless the power is the result of an official
position with or corporate office held by the person. Control shall be
presumed to exist if any person, directly or indirectly, owns, controls,
holds with the power to vote, or holds proxies representing ten percent
or more of the voting securities. This presumption may be rebutted by
a showing to the board that control does not in fact exist.

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

8. Within a reasonable time after accepting a trusteeship or
receiving trust assets, a trustee shall 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, other circumstances of the
trust, and all other requirements of sections 436.400 to 436.520.

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

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

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

12. If a seller fails to make timely payment of an amount due a
provider under sections 436.400 to 436.520, the provider shall have the
right, in addition to other rights and remedies against such seller, to
make demand upon the trustee of the preneed trust for the contract to
distribute to the provider from the trust all amounts to which the seller
would be entitled to receive for the preneed contract.
13. The trustee of a preneed trust, including trusts established before August 28, 2009, shall maintain adequate books and records of all transactions administered over the life of the trust and pertaining to the trust generally. The trustee shall assist the seller who established the trust or its successor in interest in the preparation of the annual report described in section 436.460. The seller shall furnish to each contract purchaser, within thirty days after receipt of the purchaser's written request, a written statement of all deposits made to such trust regarding such purchaser's contract including the principal and interest paid to date.

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

436.435. 1. To the extent that any provisions in this chapter which come into effect on August 28, 2009, apply to trusts governed under this chapter which are in existence on August 28, 2009, such trusts shall be in compliance with this chapter no later than July 1, 2010.

2. All property held in a preneed trust, including principal and undistributed income, shall be invested and reinvested by the trustee thereof and shall only be invested and reinvested in investments which have reasonable potential for growth or producing income. Funds in, or belonging to, a preneed trust shall not be invested in any term life insurance product.

3. A trustee shall 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 shall exercise reasonable care, skill, and caution. A trustee who has special skills or expertise, or is named trustee in reliance upon the trustee's representation that the trustee has special skills or expertise, has a duty to use those special skills or expertise when investing and managing trust assets.

4. A trustee shall diversify the investments of the trust unless the trustee reasonably determines that, because of special circumstances,
the purpose of the trust is better served without diversification.

5. In investing and managing trust assets, a trustee shall consider the following as are relevant to the trust:

1. General economic conditions;

2. The possible effect of inflation or deflation;

3. The expected tax consequences of investment decisions or strategies;

4. The role that each investment or course of action plays within the overall trust portfolio;

5. The expected total return from income and the appreciation of capital;

6. Needs for liquidity, regularity of income, and preservation or appreciation of capital;

6. No seller, provider, or preneed agent shall procure or accept a loan against any investment or asset of or belonging to a preneed trust. As of August 29, 2009, no preneed seller, provider, or agent shall use any existing preneed contract as collateral or security pledged for a loan or take preneed funds of any existing preneed contract as a loan or for any purpose other than as authorized by this chapter.

436.440. 1. The provisions of this section shall apply to all preneed trusts, including trusts established before August 28, 2009.

2. A preneed trustee may delegate to an agent, duties and powers that a prudent trustee of comparable skills would reasonably delegate under the circumstances. The trustee shall exercise reasonable care, skill, and caution in:

1. Selecting an agent;

2. Establishing the scope and terms of the agency, consistent with the purposes and terms of the trust; and

3. Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the terms of the agency.

3. In performing a delegated function, an agent owes a duty to the trust to exercise reasonable care to comply with the terms of the agency.

4. By accepting a delegation of powers or duties from the trustee of a preneed trust, an agent submits to the jurisdiction of the courts of this state.

5. Delegation of duties and powers to an agent shall not relieve
the trustee of any duty or responsibility imposed on the trustee by
sections 436.400 to 436.520 or the trust agreement.

6. For trusts in existence as of August 28, 2009, it shall be
permissible for those trusts to continue to utilize the services of an
independent financial advisor, if said advisor was in place pursuant to
section 436.031, RSMo, as of August 28, 2009.

436.446. A trustee of any preneed trust, including trusts
established before August 28, 2009, shall not after August 28, 2009, make
any decisions to invest any trust fund with:

(1) The spouse of the trustee;

(2) The descendants, siblings, parents, or spouses of a seller or
an officer, manager, director or employee of a seller, provider, or
preneed agent;

(3) Agents or attorneys of a trustee, seller, or provider; or

(4) A corporation or other person or enterprise in which the
trustee, seller, or provider owns a controlling interest or has an
interest that affect the trustee's judgment.

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

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

3. Payments collected by or on behalf of a seller for an
insurance-funded preneed contract shall be promptly remitted to the
insurer or the insurer's designee as required by the insurer; provided
that payments shall not be retained or held by the seller or preneed
August 11

Public Comments

Don Otto August 11 2009 Comments
Rough Draft of Proposed Regulation language

RE: 333.011

"In the business of funeral directing" shall include receiving directly or indirectly any compensation, remuneration or pecuniary benefit in exchange for performing any activity set out 333.001 (7) including, but not limited to:

1. Performing said activities in exchange for the purchase of any products or services;
2. Performing said activities in exchange for donations to any church or charitable organizations.
3. Performing said activities in exchange for other goods or services

However in no event shall a person licensed under Chapter 333 be deemed not to be in the business of funeral directing by not charging for any provided goods or services.
August 11
Public Comments
Mark Warren August 11 2009 comments
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<th>Section</th>
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<td>Section 436.405</td>
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<td>436.405(2)</td>
<td>Freeze prices at the time the contract was entered into.</td>
<td>Expand on definition to allow funeral home to collect up to the cost of their at-need bill.</td>
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<td>Section 436.415</td>
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<td>436.415(2)</td>
<td>Collection and disbursement of funds shall be made directly to insurance company to prevent misappropriation of funds.</td>
<td>All insurance premiums shall be sent directly from policyowner to insurance company.</td>
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<tr>
<td>436.405(3)</td>
<td>Defines insurance-funded as a single or modal pay insurance policy, but only a single pay annuity. Does this mean that modal pay annuities are still allowed but do not fall under this Act? What about reporting?</td>
<td>All insurance premiums shall be sent directly from policyowner to insurance company. Insurance companies will only pay the assigned funeral home or the named beneficiary as directed in policy language.</td>
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<tr>
<td>436.420</td>
<td>Remittance of funds to insurance companies and payment of death benefits from insurance companies.</td>
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<td>Section 436.425</td>
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<tr>
<td>436.425</td>
<td>Sequential numbering of contracts creates messes.</td>
<td>Allow each preneed seller to create their own process. Preneed contracts should have a blank line inserted at the top.</td>
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<td>436.425(3)</td>
<td>Irrevocability of funding to qualify for governmental benefits (i.e. Medicaid).</td>
<td>Need to allow the policyowner to meet the qualifications of DHS by making the life insurance policy irrevocably, not the preneed contract. Current language does not do this.</td>
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<td>Section 436.450</td>
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<tr>
<td>436.450(1)</td>
<td>Insurance funded preneed contracts</td>
<td>Insurance funded preneed contracts need not comply with those sections that specifically deal with trust funded and joint account funded preneed funeral contracts.</td>
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<td>436.450(3)</td>
<td>Submission of premium payments to insurance company no seller</td>
<td>All insurance premiums shall be sent directly from policyowner to insurance company.</td>
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<tr>
<td>436.450[8][2]</td>
<td>Seller should not be named as beneficiary or assignee.</td>
<td>Need to protect freedom of choice of consumer and only allow funeral homes to be named assignees. Neither providers or sellers shall be named beneficiaries as it allows them to receive death benefits whether they perform services or not.</td>
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<tr>
<td>436.450(9)</td>
<td>State of Missouri receiving excess proceeds as stated in statute violates policy language.</td>
<td>Require person going on Medicaid to name state of Missouri as beneficiary. Anything else would violate insurance policy language.</td>
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From: John Ziegenhein
Sent: Saturday, August 08, 2009 11:33 AM
To: Schnieders, Pam
Subject: Re: State Board of Embalmers and Funeral Directors Open Meeting Notice - August 11, 2009

Dear Missouri State Board,
I would like you to issue a suggested list of statements that should be included in the trust funded pre need contract documents that we funeral homes are expected to provide to purchasers when a pre need contract will be funded by a trust.
Theoretically, after you have interpreted the new pre need law, you would have an understanding (or expectations) of the minimum "bullet points" that are expected to be written into the funeral home contracts funded through a trust. Your inspector will be inspecting our contracts in the future. What do you expect to see on those contracts??
I would appreciate this "second opinion" of the law to confirm my interpretation of the law
THANK YOU,
Roger Richie
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