OPEN MEETING MINUTES
Missouri State Board of Embalmers
and Funeral Directors

August 19, 2009
Division of Professional Registration
3605 Missouri Boulevard
Jefferson City, Missouri

Wednesday, August 19, 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 Wednesday, August 19, 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
Todd Mahn, Secretary
James Reinhard, Member

Board Members Absent
Joy Gerstein, Public Member
John McCulloch, Member

Staff Present
Becky Dunn, Executive Director
Lori Hayes, Inspector
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General

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

Wednesday, August 19, 2009 9:15 a.m.
The meeting of the Missouri State Board of Embalmers and Funeral Directors reconvened in open session at approximately 9:15 a.m. on Wednesday, August 19, 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
James Reinhard, Member
Todd Mahn, Secretary
Joy Gerstein, Public Member (Was on conference call and left the call at 9:45 a.m.)

Board Members Absent
John McCulloch, Member

Staff Present
Becky Dunn, Executive Director
Lori Hayes, Inspector
Earl Kraus, Senior Legal Counsel
Sharon Euler, Assistant Attorney General

Public Present
Barb Neumann, Representative Timothy Meadows
Kaiene Summerville, MFDEA/Summerville Funeral Home
Darlene Russell, CFL Preneed
Brad Speaks, Self/Spakes Family Legacy Chapels
Mark Warren, Inglish & Monaco
Richard Brownlee, Assurant
Chris Moody, SCI
Bill Stalter, Stalter Legal Services
Don Otto, MFDEA/MFT
Doug Farrow, Stewart Enterprises

Approval of Agenda
Motion was made by Gary Fraker and seconded by James Reinhard by to approve the open agenda. Motion carried with Gary Fraker, Todd Mahn, James Reinhard and Joy Gerstein.
voting in favor with no votes in opposition. John McCulloch was absent from the meeting in its entirety.

Approval of Minutes
No minutes were available for approval.

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

Future Meeting Dates
Future meeting dates are scheduled as follows:
- August 25, 2009, 9:00 a.m.
- August 26, 2009, 9:00 a.m. if needed
- September 2, 2009, 9:00 a.m.

Financials/Projections
Nothing was reported at this meeting.

Attorney General Update
Sharon Euler, Assistant Attorney General, stated she contacted Mark Gutchen, Counsel with the Division of Legal Services in regards to the Medicaid provision discussed last week for individuals qualifying for assistance, he was going to speak with his group and will get back in touch with Ms. Euler next week.

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:
- 436.455 Purchaser cancellation
- 436.456 Seller cancellation
- 436.457 Purchaser change of provider
- 436.458 Seller annual reports
- 436.459 Record retention
- 436.470 Complaints/Inspections/Subpoenas/AG
- 436.480 Purchaser’s death/incapacity
- 436.485 Criminal penalties/Ch. 407 violation
- 436.490 Provider cease business
- 436.500 Seller cease business
- 436.505 Credit life
- 436.510 Provider may demand payment from trustee
- 436.520 Rulemaking authority
Section 1 Closed records
The board voted if a contract is cancelled then all interest goes back to consumer. Jim Reinhard and Gary Fraker voted no and Todd Mahn voted yes. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

The board voted a refund less the origination fee would be returned on a cancelled contract. Gary Fraker and Todd Mahn voted yes, Jim Reinhard voted no. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

The board voted for further clarification on 436.457.4 regarding the amount that is returned to the consumer. Todd Mahn, Jim Reinhard and Gary Fraker voted in favor. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

12:10 p.m. - 1:30 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 1:30 p.m.

Senate Bill 1 Implementation Process - Continued

The Board continued its review of the public's comments pertaining to Senate Bill 1, and discussion was held. A court reporter was present and recorded the discussion. The transcript is a permanent part of the record and as such a summary of the discussion is not made a part of the official minutes of this meeting.
Notice of Intent
The board reviewed the draft of the Notice of Intent. A motion was made by Gary Fraker and seconded by Todd Mahn to approve the Notice of Intent as drafted with the changes of adding the boards email address to the top of the form and add the fax number. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety. There is a finding of confident and substantial evidence to support the need for this rule.

It was the directive of the board to appoint a sub committee to approve the Applications for Preneed Provider/Seller and Preneed Agent.

The board was in agreement that the dates on the Proposed Emergency Rule Handout (5) should be changed to October 31, 2009. There is a finding of confident and substantial evidence to support the need for this rule.

Emergency Rules Following 8-5-09 handout:
- **Emergency rule: Corporation must be represented by an attorney:**
  Motion was made by Gary Fraker and seconded by Todd Mahn to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: Payment is not determining factor of “practice of funeral directing”**
  Motion was made by Gary Fraker and seconded by Todd Mahn to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: Pre-need seller and agent must be licensed in Missouri**
  Motion was made by Gary Fraker and seconded by Todd Mahn is approve this rule with the change from license to register and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: “Final Disposition” as defined in Chapter 193**
  Motion was made by Gary Fraker and seconded by Jim Reinhard to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.
• **Emergency Rule: “Provider” includes funeral establishment that has agreed to undertake obligations of pre-need contracts pursuant to Chapter 436:**
  Motion was made by Todd Mahn and seconded by Jim Reinhard to approve with the changes in (2) to “any provider” and need to specify new 436 with new numbers and that there is a finding of confidential and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

• **Emergency rule: Display of License:**
  Motion was made by Todd Mahn and seconded by Gary Fraker to approve and that there is a finding of confidential and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

• **Emergency rule: Corporate ownership of a corporate licensee**
  Motion was made by Gary Fraker and seconded by Jim Reinhard to approve and that there is a finding of confidential and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

• **Emergency rule: Licensee must file application for new license if change in ownership:**
  Motion was made by Todd Mahn and seconded by Jim Reinhard to approve and that there is a finding of confidential and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

• **Emergency rule: Failure to renew a license within 2 years requires completion of application process:**
  Motion was made by Jim Reinhard to approve this rule, this motion was withdrawn. Motion was made by Gary Fraker and seconded by Todd Mahn to withdraw this emergency rule that there is not a finding of confidential and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

• **Emergency rule: Licensed funeral director must report each seller for whom he or she is an agent:**
  Motion was made by Gary Fraker and seconded by Todd Mahn to approve and that there is a finding of confidential and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

• **Emergency rule: Pre-need agents must take Missouri law exam:**
  Motion was made by Todd Mahn and seconded by Gary Fraker to approve and that there is a finding of confidential and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor.
with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: Normal market fluctuation resulting in a shortage in a pre-need trust is not a basis for injunctive relief:**
  Motion was made by Todd Mahn and seconded by Jim Reinhard to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with all voting in favor with no votes in opposition. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

- **Emergency rule: Financial welfare cause for injunction:**
  Motion was made by Gary Fraker and seconded by Todd Mahn to approve and that there is a finding of confident and substantial evidence to support the need for this rule. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety.

**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 Gary Fraker and seconded by Todd Mahn to adjourn. Motion carried with Gary Fraker, Todd Mahn, and James Reinhard voting in favor with no votes in opposition. Joy Gerstein was absent for this portion. John McCulloch was absent from the meeting in its entirety. The meeting adjourned at 3:45 p.m. on Wednesday, August 19, 2009.

**Executive Director:** Sandy Sebastian

**Approved by the Board on:** [Date]
MISSOURI STATE BOARD OF EMBALMERS
AND FUNERAL DIRECTORS

TRANSCRIPT OF MEETING

DIVISION OF PROFESSIONAL REGISTRATION
3605 MISSOURI BOULEVARD
JEFFERSON CITY, MISSOURI

AUGUST 19, 2009
9:30 A.M. - 3:40 P.M.
CHAIRMAN: Okay. The meeting is called to order. Roll call. Gary Fraker?

MR. FRAKER: Yes, sir.

CHAIRMAN: Jim Reinhard?

MR. REINHARD: Here.

CHAIRMAN: Todd Mahn?

MR. MAHN: Here.

CHAIRMAN: Joy Gerstein?

MS. GERSTEIN: Here.

CHAIRMAN: John McCulloch?

MS. DUNN: Absent.

CHAIRMAN: Absent. All right. So --

MR. REINHARD: Make a note of that.

CHAIRMAN: Make a note of that. And it's on record even, so -- all right. We need a motion for the agenda.

MR. FRAKER: So moved.

CHAIRMAN: Gary Fraker so moves.

MR. MAHN: Second.


All right. So done. So, need an approval of the minutes from last week.

MR. MAHN: First.

CHAIRMAN: First.

MR. FRAKER: Second.
CHAIRMAN: Gary Fraker seconds. Jim?
MR. REINHARD: Third.
CHAIRMAN: Jim thirds it. All right.
So done. Okey doke. Moving right along.
Turn the page. Do you want to address future
meetings, anything specific?
MS. DUNN: Everybody knows what day the
meeting is next week; correct? April 25th
starting at 9:00 a.m.
UNIDENTIFIED: April?
UNIDENTIFIED: August.
MS. DUNN: I'm sorry. August. August
25th starting at 9:00 a.m. here at the
Division. And, also, we will determine this
week if we're going to meet in open on the
26th, as well. We don't know that yet.
MS. RUSSELL: I'm sorry, Becky. You
said August 26th, also?
MS. EULER: Maybe.
MS. DUNN: Possibly.
MS. RUSSELL: Possibly.
MS. DUNN: It just depends on how
we're doing with the progress on the rules and
things. But, for sure, the 25th next week,
9:00 a.m., here at the Division.
CHAIRMAN: Okay. Do you want to make the thought about the financial proposals and all that?

MS. DUNN: Oh. We've had financials on every week. Sherry Hess and Connie Clarkston are working on those. We will have that portion of the meeting next week on the Tuesday agenda. Also, while I have the floor, there are some new faces. Make sure that you say your name clearly if you make a statement, come up to the microphone if the court reporter can't hear you, and who you're with. If you have written comments, make sure that we get those so that they can be a matter of the record.

CHAIRMAN: Okay. Which reminds me. I didn't do the introductions and I apologize. You heard the roll call of the Board, so you, obviously, know who they are. Obviously, this is Becky Dunn, our executive director; Earl Kraus, senior legal counsel for the Division; our court reporter, and tell us your name.

THE REPORTER: Kristy Bradshaw.

CHAIRMAN: Kristy Bradshaw. Sharon Euler with the attorney general's office;
Inspector Lori Hayes back there taking care of what I love most there, the coffee pot. So -- and Mr. Stalter, if you'll take it from there and let's go around the room.

MR. STALTER: Bill Stalter, Stalter Legal.

MR. SPEAKS: Doug Cassity, National Prearranged Services.

MS. DUNN: That's not true.

CHAIRMAN: Wait till somebody buys the minutes recorded with that on there.

MR. SPEAKS: Brad Speaks from Speaks Funeral Home.

MR. BROWNLEE: Richard Brownlee, I'm counsel for Assurant, which sells the insurance product for a lot of this in the nation.

CHAIRMAN: Thank you.

MR. WARREN: Mark Warren, Inglis & Monaco, for the Missouri Preneed Coalition.

MS. NEUMANN: Barb Neumann, representing Representative Meadows' office.

MS. RUSSELL: Darlene Russell, CFL Preneed.

MR. OTTO: Don Otto, Missouri Funeral
Directors and Embalmers Association and
Missouri Funeral Trust.

MS. SUMMERVILLE: Kalene Summerville,
Missouri Funeral Directors Association and
Summerville Funeral Home.

MR. MOODY: Chris Moody, Moody &
Associates, on behalf of SCI.

CHAIRMAN: All right. Thank you all
for coming today and being a part of this and
helping us work through all this. And the
sign-in sheet is moving, or just remember to
do it.

MS. DUNN: No. It's at the door.
Please make sure that you sign in, if you
would, please.

CHAIRMAN: We definitely need that, so
please remember to do that. Okay. Next
thought, and I guess where that would be is I
was speaking with Earl here about how this
thing is going with the emergency rules and
things, and I thought it might just be a nice
thing for him to give us a little update on
that. So, you can address that.

MR. KRAUS: Well, we have -- there are
some draft rules on the Web site. There are
other draft rules that we have almost
together. What we've been trying to do is, as
we march through each section, then get the
directions from the Board as to what to draft
rules about. Then we're putting those draft
rules together with the intention of looking
at them at a subsequent meeting. Last
meeting, we went the whole meeting going
through section by section, so we didn't get
to discussion about previously drafted rules.
We're hoping today that we'll get through
these sections and then be able to move on to
actually talk about draft rules that are
already drafted, so that's kind of where we
are.

CHAIRMAN: Okay. Thank you, sir. Oh.
Ground rules. Again, everybody has pretty
much been here. Ground rules are, we need you
to speak clearly, say who you are for the
court reporter so she can get that on tape.
Side conversations get things totally
confused, so we need to remember her because
she has to try to get every word of this on
paper, so we would appreciate that. Introduce
yourself, if I didn't say that a while ago,
whenever you speak so she knows who you are.
So, we appreciate all your help in those areas
and that will make her life a lot simpler, we
hope. So, all right. Anything else I've
missed or we're ready to go?

MS. DUNN: We're ready to go.

CHAIRMAN: We're ready to go. All
right.

MS. DUNN: Oh, Sharon might have
something.

CHAIRMAN: Oh. Yes, ma'am. Yes?

MS. EULER: I do have something. I
just wanted to report back that Earl and I
talked this morning with Mark Gutchen, who is
general counsel for the CHSS --

MR. KRAUS: He's counsel within
Division of Legal Services.

MS. EULER: -- or DLS or Division of
Legal Services, with regard to the Medicaid
issue, and we asked for his input and his
department's input on the provision we talked
about last week involving qualifying for
public assistance, and he said he would talk
with his people and be back in touch with us
by next week. So, if we need a rule on that,
we should have some guidance from the
Department.

CHAIRMAN: All right. It sounds good.

MS. EULER: And, also, I apologize,
again, but I need to leave for a meeting
downtown here in a few minutes, but I should
be back by -- (inaudible.)

CHAIRMAN: Okay. And I'll also put
out that we will be breaking at noon for
lunch. Start-up time will be 1:30 today as
opposed to 1:00, so anybody else that's
interested, the Board is going to run down to
the Capitol and pay their respects to Governor
Hearnes that is in state there, so if any of
you all want to do the same, if you didn't
know that was happening, you can do the same.
So -- all right.

MR. KRAUS: That reminds me, too.
Just before 2:30, I'll need to step out
briefly to participate in a phone hearing, but
then I'll be right back in.

CHAIRMAN: Okay.

MR. KRAUS: I don't expect it'll take
very long.

CHAIRMAN: We're going to move very
well today; I just feel it. So, this is
going to work good, so -- all right. Senate
Bill 1 implementation, group #3. 436.456,
purchase or cancellation, if you have your
Bibles, beginning at verse 1, I suppose. So,
take it away.

MR. KRAUS: All right. I think there
are a couple of sets of comments, or at least
one that are not incorporated within this
document, so we'll try to reference back and
forth with those comments as we go through.
So, if we're going along and we miss some of
those or there's something in those that you
want to bring it up, then please bring up as
we go through the sections.

MS. EULER: And just so I'm clear, I
know there was a problem with Don Otto's and
MFTA's comments. Are those the only ones that
are separate that we need to follow along with?

MR. KRAUS: I think so.

MS. EULER: I know that Bill got his in
promptly.

MR. STALTER: Thank you.

MS. DUNN: Don's comments are four
pages. The first one we handed out were two,
so everyone should have a four-page document.

    MS. EULER: And it's -- well, it's

three.


    MR. KRAUS: Three, but double-sided?

    MS. EULER: Yeah.

    MS. DUNN: Okay.

    MS. EULER: All right.

    MR. OTTO: You didn't think I would

get it all done.

    MS. DUNN: At 1:45 a.m.

    MR. OTTO: (Inaudible.)

    CHAIRMAN: Just saying that, tell us

again -- anybody that wants to make comments

for next week, if there's anything to comment

left on -- I guess there will be after today.

But --

    MS. EULER: The rules.

    CHAIRMAN: Yeah. The rules. So, you

need those to you by when?

    MS. EULER: Friday.

    CHAIRMAN: By Friday. So, those

comments need to be in by Friday to be able

to get -- unless you get a special handout.

I guess --
MR. KRAUS: Which works, too, but if you want them to be a part of this, then --

MS. EULER: Well, and just -- August 28th is next week, so next week is more important because the rules need to be voted on next week for the emergency rules, so they need to be voted and approved next week so that they can be filed on Thursday, the 28th -- I think, on Thursday or Friday.

MR. KRAUS: I think that's Friday.

MS. EULER: Friday. So --
CHAIRMAN: So, we need to be able to do that if we can.

MS. EULER: So, timeliness is important.

CHAIRMAN: Okay.

MS. DUNN: Earl, one other thing that I would like for the Board to approve today is the draft form for the intent of application.

MR. KRAUS: Notice of intent?

MS. DUNN: Yes.

MS. EULER: Do we want to do that first?

MS. DUNN: Does the Board have a copy of the notice of intent?
MS. EULER: I have it.

MS. DUNN: Sharon and I worked on just some cleanup language on the notice of intent last night. Not a lot of big differences, but Lori is giving it out today. And this one is not on our Web site yet, and hasn't been downloaded and sent in for application yet like some did -- Darlene. We've got some filled out and sent in.

MR. STALTER: So, you're not going to accept those?

MS. DUNN: No.

MS. GERSTEIN: Mr. Chairman? Hello?

MS. DUNN: Yes.

MS. EULER: Yes. We're here, Joy.

MS. GERSTEIN: This is Joy from the State Fair, and I need to drop off.

MS. DUNN: Okay.

MS. GERSTEIN: It's raining very hard here.

MS. DUNN: Okay.

MS. GERSTEIN: I have a whole bunch of volunteers, so I need to get back over there.

MS. DUNN: Okay. Thanks, Joy.

MS. GERSTEIN: Okay? So, if you want
-- I can come on later if you would like.

MS. DUNN: Okay. We will -- we'll get
in touch with you.


MS. DUNN: Okay. Thank you.

CHAIRMAN: So, Board, sometime through
the day, definitely look at this, make sure
you're happy with it or if you have questions
about it, and then we'll go back to this along
the agenda instead of -- because, otherwise,
it's just give it the stamp of approval and
move on. So, I'll give you that opportunity
and then we'll pick it back up and decide
before the day is over. Okay. So, are we
ready to proceed?

MS. DUNN: Yes. Proceed.

CHAIRMAN: Or do you want now? Do you
want now?

MR. REINHARD: Well, I've got a point,
you know. The point is, is Don brought this
in today. The comments are supposed to be
received by Friday. I like the format where
we have it all right there, so you have to
switch back and forth with these, so I would
really appreciate the association getting
theirs in so we could incorporate it with the
rules.

CHAIRMAN: Okay. All right.

MS. EULER: And I'll be back.

CHAIRMAN: And show that Sharon will
be back.

MS. EULER: If you need me for anything
important, you can send me a Blackberry or
make note of it and I'll address it when I
get back.

MS. DUNN: Okay.

CHAIRMAN: All right.

MR. KRAUS: All right. So, we start
into group #3, Section 436.456, comment K1.
Let's see. With regard to the written notice
and setting out what that should entail in a
rule, and one suggestion was whether
notarization should be required, also. Let's
see. It looks like it's with regard to
joint-account fund and preneed contracts and
the written notice of cancellation. I think
on other notices that we've had throughout --

MS. DUNN: We have notarization.

MR. KRAUS: -- we have set out what --

MS. DUNN: We have a notarized
statement on those.

MR. KRAUS: Okay. Do you have wording?

MS. DUNN: Yes.

CHAIRMAN: And we said that's what
you're speaking of is the former things that
we looked at, we did that, too, also; correct?

MR. KRAUS: I think so; isn't that
right?


CHAIRMAN: That's what I'm thinking.

Okay. So, input? Just to proceed with as we
did on all the others or -- yes?

MR. FRAKER: I have a quick question.

Is this the purchaser signing the --
requesting a refund or a transfer -- is this
the purchaser that you're asking to have their
signature notarized on this, or someone acting
on behalf of the purchaser? (Inaudible.)

MR. KRAUS: This is what the purchaser
shall do. In the very top section there, it
has an order to cancel the contract, the
purchaser shall --

MR. FRAKER: Okay. In many instances,
the purchaser is not available to do this, or
someone that may not be a --
MS. DUNN: Gary, you have to speak up a little bit.

MR. FRAKER: -- that may not be a -- have power of attorney. I'm just looking at -- I think we talked about this the other day just a little bit, someone acting on behalf of that person that's not been appointed their legal guardian. Will we accept that as the next evidence?

CHAIRMAN: It's going to have to be -- it would have to be somebody that would be in legal capacity, though, to come in and just say I want to cancel their contract, wouldn't they?

MR. KRAUS: Yeah, they would. And I remember we did talk about that, how a lot of times, you know, the person who it needs to be isn't around or --

MR. FRAKER: Right.

MR. KRAUS: -- and there need to be decisions made, but I think Martin is right that to actually cancel the contract, it has to be someone who has the authority to do that.

CHAIRMAN: So, we're talking about someone --
MR. KRAUS: Now, they may need to go back and obtain the authorities in some way to do that and then come back.

MR. FRAKER: Well, we're not going to accept another funeral home calling up and signing. You know, someone says -- your competitor wants the money. We're not going to accept that. We've got to accept someone that's in some legal capacity acting on behalf of that individual, so --

CHAIRMAN: I would think.

MR. KRAUS: Yeah. I mean -- and, of course, this is just talking about canceling. If you're talking about designating a different provider, that's different.

MR. FRAKER: I understand. But it all goes back to that.

MR. KRAUS: But with respect to canceling, it's either got to be the person or someone who has authority to act for that person through power of attorney or guardian or --

MR. FRAKER: Does that need to be defined in this?

MS. RUSSELL: I was going to let Earl
finish, but I had a question about the written
notice. Would it be possible in a rule to
put on a cancellation that if it's an
irrevocable contract, that the written notice
must include a notarized statement indicating
the individual is not on public assistance? I
mean, that has been a point many years in
regards to canceling an irrevocable when the
person is not on public assistance. I mean,
most of the funeral homes have always allowed
that, but if you had a rule that said that a
notice of cancellation to include a written
statement that they are not on public
assistance, because the intent was to put the
person -- to make the contract irrevocable for
going on public assistance.

MR. KRAUS: But they are not currently
on public assistance?

MS. RUSSELL: Correct.

MR. KRAUS: Or that they never have
been?

MS. RUSSELL: For a cancellation.

MR. FRAKER: Personally, I don't see
what difference it makes because those
irrevocable things are primarily for the
public assistance.

MS. RUSSELL: Exactly, Gary. But the problem occurs is that some funeral homes will hold a purchaser hostage saying I cannot cancel an irrevocable. And when the intent of why the purchaser bought it and signed the irrevocable wasn't because of public assistance, the funeral director just told him, well, down the road, in case you want to get eligible for public assistance, you just sign here -- for down the road, you know. But say that person never went on public assistance, got mad at the new funeral-home owner, the funeral home changed hands, he got mad, don't like that guy anymore -- the new owner -- and wants to change, the funeral director can say, no, it's irrevocable, we're not changing it.

MR. KRAUS: Well, actually, that does go towards what Sharon and I were talking about with Mark Gutchen this morning.

MS. RUSSELL: Okay. Good.

MR. KRAUS: And how to -- how best to address that to where you're just talking about the money and not the other parts of the
contract.

MS. RUSSELL: Exactly.

MR. OTTO: Don Otto. Well, the problem is because of the current 436. The way cancellation is worded, I think, gives the consumer the right to cancel an irrevocable contract, which is kind of a weird sentence, to cancel something that's irrevocable. That language has been changed with Senate Bill 1, and I think you can make an argument that the way to cancel -- the way the irrevocable language is worded, it says the consumer may irrevocably waive their right to cancel. Now, that isn't the way it's worded really under the current law on trusts. It is on joint accounts, but not on trusts, which left the door open to allow us to cancel an irrevocable contract as long as we got a waiver or something that they didn't owe any money. I'm not comfortable with saying that a consumer, under Senate Bill 1, can cancel an irrevocable contract. They can switch providers, not doubt about that, but I'm not comfortable -- I don't think -- there's a good argument that they cannot cancel an irrevocable contract.
irrespective of whether they receive public
assistance or not because it says irrevocably
waive their right to cancel the contract.

MR. KRAUS: Well, and I think this
provision is focused on that the person may
cancel the contract if designated as revocable
without cause --

MR. OTTO: Yeah. This provision is
for just revocable. We got off of the
irrevocable issue.

MR. KRAUS: -- so that's just -- right.
MR. OTTO: I'm not sure you can cancel
an irrevocable contract under the new law.

CHAIRMAN: Just because it's
irrevocable.

MR. OTTO: Because that's what it --
that's the way irrevocable is kind of defined
in there now is a person may make a contract
irrevocable by irrevocably waiving their right
to cancel or something like that on the way
it's worded under Senate Bill 1, and I don't
know how you get around that.

CHAIRMAN: There's your challenge.

MR. OTTO: And that might be -- Sharon
might have a good input on that, too.
MR. KRAUS: Yeah, she might.

MR. OTTO: I mean, that is a potentially unfair situation that I don't like because somebody could have made an irrevocable contract on anticipation of going on public assistance in the future. They never get on public assistance in the future, now they want to cancel it. On its face, there is no good reason why they shouldn't be able to. The State of Missouri is not owed any money. But the way Senate Bill 1 is worded, I'm not sure they can.

CHAIRMAN: Oksy. So, I guess the comment or question is, they obviously -- do they need to work on rules toward that?

MR. MAHN: Yes.

MR. KRAUS: Certainly, for the notice.

MR. FRAKER: You know, there are some parameters here that need to be addressed. Say, if the person moves away. I mean, there's a whole slew of things that could change this whole -- could change the contract. You know, first and foremost, and in most cases, this person moves out of the area. You know, you can't very well hold them...
to that irrevocable thing whenever they're not
even in the area. I mean, that's ridiculous.
So, I think it's up to the individual. If
they want their money back and they've got
enough smarts to come in and sign the paper,
they know what they should be held accountable
for signing in the irrevocable.

MR. REINHARD: Well, write a rule that
says you can't make a contract irrevocable
unless you are on or you're getting ready to
file for assistance.

CHAIRMAN: I agree with that.

MR. REINHARD: And the hell with this
bullshit of putting it down if we think we're
going to get. Let's be on it.

CHAIRMAN: Well, I think the line
actually says you are applying for, but I'd
have to look at that, so --

MR. FRAXER: I think there needs to be
some -- (inaudible) -- for this. Earl, you
understand what I'm talking about?

MR. KRAUS: I think so.

CHAIRMAN: Okay. Any other comments
in the general audience to follow that thought?

MR. FARROW: I have one. There's
really two issues with irrevocable. One is, obviously, the Medicaid. The second, there are families that just want it to be irrevocable so their children can't make changes if they become incapacitated, things like that, you know. So, I really think you're limiting someone's rights when you just arbitrarily say it's -- you can make changes to irrevocable. And I do think the contracts specifically state what irrevocable is and they have an option to make this not irrevocable, so I don't know that it has to be in the law that they can change irrevocable. And, also, if you do that, Medicaid -- you're really changing kind of the spirit of the Medicaid law if you allow someone to make changes to those things. So, I don't agree that -- I mean, I think the laws was written for Medicaid -- or for irrevocable makes sense, and I wouldn't see any reason to change it.

MR. KRAUS: Let me ask this: Do you think that the person who entered into the contract should be able to make changes to it?

MR. FARROW: Well, I think they get a
choice. You're given a choice at the time whether to make it irrevocable or revocable. There are families that request to make it irrevocable for a number of reasons. One is they have a method of disposition that they're choosing. They know their family will make changes and they don't want changes to that --

MR. KRAUS: Well, of course, if their family doesn't have authority, then they can't make any changes whether it's revocable or irrevocable unless they later get the authority to do that.

MR. FARROW: But they can if they become incapacitated, you know. I mean, irrevocable is really just somebody's choice. Now, I could agree that there may need to more verbiage as to the definition of irrevocable or even a form that folks need to sign, but I wouldn't take away a family's right a make it irrevocable because we think we're limiting funeral homes more.

MR. MAHN: But I think if somebody passes away, the family, whether it's irrevocable or not, can change it from a traditional to a cremation. The deceased has
no legal rights anymore.

CHAIRMAN: Right.

MR. MAHN: So, that irrevocable don't work in that way, you know. And I think if they have you on Medicaid, then if they're wanting a refund, and they've been on Medicaid, the money goes to the State, because they're taking --

CHAIRMAN: It goes to the State.

(Several people speak simultaneously.)

MR. MAHN: It's the law, you know. So, I think we're just trying to clear it up, you know, as how we want it to read in Senate Bill 1.

MR. REINHARD: Well, so I want to ask this gentleman a question. So, you're saying, like, if you had an irrevocable cremation, the family walked in and says, oh, we want to buy a proper casket and a vault, and we don't want the cremation anymore, you can say, oh, this is irrevocable, we can't change it?

MR. FARGOW: They could -- if someone had passed away or if the person is still living?

MR. REINHARD: But that's what they
wanted. I'm talking about if they passed away.

MR. FARROW: If they were passed away,
then, as this gentleman said, that the family
has the right to make changes. But while
they're alive --

MR. REINHARD: But they can't before?
MR. FARROW: Huh?
MR. REINHARD: And in your eyes, they
can't before; right?
MR. FARROW: Right. If it's
irrevocable.

MR. REINHARD: If the person is alive
and competent --

MR. FARROW: Right. And if they want
me to make changes -- as an example, what if
someone had bought -- purchased an expensive
casket and that was their choice, that was
what they wanted, but now the family -- and
they were still living, but the family wanted
to change it?

MR. REINHARD: Couldn't because --
MR. FARROW: Because it's irrevocable.
MR. REINHARD: Well, plus, it's --
they're not incompetent. I mean, they would
have to make the change themselves, so where
does the irrevocable come into play?

MR. FARROW: What if they became
incompetent or incapacitated?

MR. MAHN: But if they did, then the
family could still change it.

MR. FARROW: How?

MR. MAHN: They could still -- the
family, if they become incapacitated, the
family still had the right to change it.

MR. FARROW: Not if it was irrevocable.

MR. MAHN: Yeah, they can.

MR. FARROW: (Inaudible.)

MR. MAHN: Uh-huh. Yeah.

MR. KRAUS: Well, maybe that's
something we need to try to clarify.

MR. MAHN: Well, they're going to
either change it then or they're going to
change it when they die. It doesn't really
make any difference. They'll just wait, you
know.

CHAIRMAN: They would still have the
option.

MR. MAHN: Well, right. The end
result, they'll have the option. It's kind of
a sad deal. I mean, you know, Mother doesn't
want to be cremated and she bought a $10,000 funeral, and the kids want to cremate her and
--

CHAIRMAN: Then give right of sepulcher to somebody else.

MR. KRAUS: Wouldn't they still have a problem after they pass away where if, let's say, the contract is for certain products at certain prices, and the contract is irrevocable. And after they die, they want to do something different.

MR. MAHN: Only if she is on Medicaid.

MR. KRAUS: They're certainly free to do something different, but they don't get the money back from that contract.

MR. MAHN: If she wasn't on Medicaid, they do.

MR. KRAUS: Really?

MR. MAHN: Yeah.

CHAIRMAN: So, are you going to fight it in court?

MR. MAHN: Yeah.

CHAIRMAN: I mean, that's the only option; right? That's the only option.

MR. MAHN: I've got a case going like
that yesterday. That's why I'm real familiar
with it right now.

MR. STALTER: Now, I didn't hear what
you were discovering. That's what I thought.
When you make something irrevocable, you're
talking about the funding of itself.

MR. MAHN: Right.

MR. STALTER: And so, if they become
eligible for assistance. Now, if they've
accepted assistance and then they change after
the death, then it is that the State gets to
come back, they're subrogated to the rights of
the funding.

MR. MAHN: Right.

MR. STALTER: Now, if it's a case like
this where the person who entered the contract
wants a specific funeral, you know, that's a
contract right in it on their purchaser's
death, or somebody succeeds to that, and I
think that's when we would say I kind of
agree. If the family comes in, they want to
change things, you know, really, are you meant
to enforce that contract under its terms? The
issue about this irrevocability is, I think,
about the funding part of it.
MR. KRAUS: And that's where we were focused this morning with talking with Mark over at Social Services is focusing on the funding part as to the irrevocability as opposed to the other parts, which, really, there are ways for families to make changes with respect to that, maybe not so much with the funding, which is really the intent of it, I think. And we may be able to address that under that section of the bill.

MR. STALTER: One of the abuses we saw under this was where you had some sellers who would make every contract irrevocable. And, you know, actually, there was a legitimate reason for doing that and it was for tax purpose. There was an argument if the contract was irrevocable, the consumer didn't have a right to the funds under any circumstance, so then you would say it would never be taxable to the purchaser, but the IRS blew through that. I mean, that's -- I mean, I can see why people did that years ago, but that just doesn't work anymore. So, it basically, I think, comes down to this funding issue.
CHAIRMAN: Sir, if you wouldn't mind introducing yourself. We all have been --

MR. FARROW: I apologize. My name is Doug Farrow; I work for Stuart Enterprises.

CHAIRMAN: Okay. Thank you. We all had the opportunity for that earlier. All right. Any other questions, comments? The next point?

MR. KRAUS: All right. There's a comment here, K2, is there a minimum amount the purchaser must receive? Any thoughts on that?

MR. OTTO: I mean, that would be governed by the provider-seller agreement.

MR. KRAUS: I don't know that we've got to set that out in a rule, you know, without it being in statute, so --

MR. OTTO: (Inaudible.)

MR. KRAUS: I mean, unless it would simply be clarifying what's already in the law.

MR. MAHN: I'm going to hold up on each one of them.

MR. KRAUS: No other thoughts on that?

MR. MAHN: Wasn't there a percentage on cancellation? I wasn't here last week. The
minimum -- a cancellation percentage or not?

MR. FRAKER: It was just trusts, wasn't it? I think it was just trusts, wasn't it, that we talked about?

MR. MAHN: We're talking about trusts here; right?

CHAIRMAN: I don't know.

MR. MAHN: I mean, if there's --

MR. KRAUS: I mean, this talks about that it shall distribute all deposited funds to the purchaser. And I don't know if the comment was going towards talking about what all deposited funds means, maybe.

MR. MAHN: Well, I mean, the -- I don't know where to find it at in here, but I thought there was a percentage amount on cancellations. I don't know if it was 95 percent or 90 percent. I can't recall.

MR. KRAUS: I mean, I think there was discussion about that at one point. I don't know if that made it into the final version.

MR. OTTO: Well, I think that we're -- yeah. There is, but that's two paragraphs down. I think -- I mean, for some -- I guess this is pointed to the interest provisions, so
I get interest shall be distributed as provided in the agreement with the seller. I think K1 and K2 kind of go together with some kind of -- I mean, I don't know who -- where that comment is from, but I mean, the statute says interest is distributed as per the contract, period.

MR. STALTER: And part of those are my comments because if you look at some of the old joint-account contracts, you know, the income would be -- or we say interest, so we're talking about a joint -- you know, some kind of depository account. You know, the interest was to go back to the consumer except to the extent that you had reasonable expenses. And you see -- well, you see some of these contracts where the funeral home would define reasonable expenses to be all the income. So, by contract, they have built that in their preneed contract, their joint-account contract that, you know, if you cancel, then my reasonable expenses are all accrued income. So, in a sense, if -- you know, I think you could still have that authority under the statute the way it's been written to say what
-- you know, if they think that they are
entitled to all the income on a cancellation
unless you put a rule otherwise what is
reasonable expense on a cancellation of a
joint-account contract.

MR. KRAUS: Well, and is reasonable
what's agreed to in the agreement?

MR. STALTER: Yeah. Yeah, I know.

MR. KRAUS: Do you want to leave that
alone?

CHAIRMAN: I heard leave it alone.

MR. FRAKER: I think so.

MR. KRAUS: Any other thoughts?

MR. MAHN: It could be a can of worms.
Leave it alone, I guess.

MR. KRAUS: All right.

MS. DUNN: Anything that you leave
alone leaves up to interpretation and then
we're not always sure how to respond to it.
But I said that last week, too, so --

MR. REINHARD: That's why we have
lawyers, don't we?

MR. MAHN: Call the counsel over here
and they can interpret for us.

CHAIRMAN: Well, actually, what I'm
hearing is probably, really, just what it is.
It'll be whatever the funeral director decides
to write in the contract, and that's as open
from giving it all back to keep it all.

MR. KRAUS: And if a purchaser agrees
to that --

CHAIRMAN: Unless we write a rule.

MS. RUSSELL: Did I understand, Bill,
you to say that, I mean, some funeral homes
would actually put in their joint-account
contract that the reasonable expense of
administering my joint account is all of the
income?

MR. STALTER: All accrued income?

CHAIRMAN: That's what he said.

MS. RUSSELL: And that is a terrible
thing to the consumers. I mean, that is, like
-- I just can't believe that they would do
that, but --

MR. REINHARD: Have we had a complaint
on that, Board? No.

MS. RUSSELL: Wow. Well, I think --

MR. REINHARD: Not that I can recall.

You were on the Board at one time or you
worked for them. Do you ever remember a
complaint on that? No.

MS. RUSSELL: On joint account?

MR. REINHARD: On joint accounts.

MS. RUSSELL: Well, this is a little
bit different now because they're become --
it's become joint accounts is -- if Bill is
saying is correct, I know that the legislature
or the people that I talk to had no intent on
a joint account people and they said a
reasonable expense charging the whole income.
I just never --

MR. REINHARD: Well, what is it -- it
could be the same argument for trust accounts,
too.

MR. STALTER: Yeah. You're right.

MS. RUSSELL: Wow.

MR. REINHARD: So, what are we arguing
here?

MR. KRAUS: Yeah. And I remember some
discussion when they were talking about this
over at the Capitol as to should there be a
certain percentage and should there not be a
certain percentage.

MR. REINHARD: It should have been 100
percent, no preneed sold in Missouri, period.
MR. OTTO: Don Otto again. We're not
-- this section is talking about when the
consumer cancels, not the -- how much expenses
you take it.

MR. STALTER: It is, and that's right.
This is the seller -- or not -- I'm sorry.
For the purchaser.

MR. OTTO: Yeah. This is not about
what the reasonable expenses are in
administering trusts. This is about what the
consumer gets back when they cancel. And it
was done on purpose this way to make joint
accounts similar to trusts, because we've had
a lot of people come in that says, hey, a
trust you can keep the interest if a person
cancels. Why can't I keep the interest if I
have a joint account and the person cancels?
And so, this was in here on purpose to allow
the seller the option -- again, it has to be
in the contract-- of keeping the interest if
they so desire upon a cancellation. And I
mentioned this in my comments later, Senator
Scott said several times the funeral home is
not a bank. If the consumer wants to go
invest their money and get all the interest,
go to the bank, invest the money, and get all
the interest. But if you're buying a preneed,
it's not the funeral home's responsibility to
be a bank for the consumer. And so, this was
in here on purpose, I believe, to level the
playing field between trusts and joint
accounts, to make joint accounts more of a
viable option for some people. But whether
you like it or not, I think that was the
intent of this specifically is to allow that
interest to be withheld. Now, there probably
is a really good thing to have a rule on with
this is to what to do if the contract does
not say how the interest is going to be
distributed, you know. If the contract does
not say how the interest is going to be
distributed, what happens to the interest?
The statute is silent to that, so that's
probably something that would be -- you know.
That would probably be a good rule to say if
the contract doesn't say how the interest is
going to be distributed upon cancellation, it
goes to the consumer, or something like that.

CHAIRMAN: Yes, ma'am.

MS. NEUMANN: The question that I
have: What in the rules does it say that
you, the funeral director, tells me that you
get to keep 30 percent of my money? Is there
anything that I signed to say if you signed
it, you said that I would notify this, this,
and this? But what is there in the rules now
that says to the consumer when I go in and
you talked me into it and you tell me that,
but don't tell me you get to keep the money,
that I can sign something to say that you told
me that?

MR. OTTO: Well, it's -- yeah. It's
the interest, not the money, but yeah.

MS. NEUMANN: Well, the interest, yeah.

MR. OTTO: There is another provision
--

MS. NEUMANN: There should be a
coverage for that.

MR. OTTO: Well, there's another
provision in here which says the contract --
there is a provision in Senate Bill 1 that
says the contract shall spell out what happens
upon cancellation. And this Board may want to
come up with a standard disclosure that says
this is what you're going to do. But it does
say in the statute that the contract will
spell out what happens upon cancellation.

MS. NEUMANN: Okay. Because I can see
someone coming in there --

MR. OTTO: Oh, yeah.

MS. NEUMANN: -- and signing papers
and then finding out later because you didn't
bother to tell me that you get to keep the
money and then I'm out of the interest. I
mean, there should be something that's
covering me as a consumer that you can't rip
me off.

CHAIRMAN: For her sake, state your
name.

MS. NEUMANN: Oh, I'm sorry. Barbara
Neumann from Senator Meadows' office.

CHAIRMAN: All right. Okay. Any more
comments? Where did we end up with -- you're
writing, looking?

MR. KRAUS: I think I have except for
Don's thought about whether we need a rule
about what if it's not in the agreement, then
is there a default to giving the money to the
consumer.

CHAIRMAN: That's probably okay.
MR. KRAUS: Do we need a rule on that?
Yes? No?
CHAIRMAN: It's kind of like you get
-- it's kind of like the will thing, you know.
Nobody has a will, but, yeah, you really do.
The State of Missouri created it for you.
What do you think? He needs to know what to
do.

MS. NEUMANN: I think there should be
-- Barbara. There should be a disclosure, and
it should be written down that they have to
give you a disclosure. If you don't sign it,
then they can't be held to it.

MR. REINHARD: No.
MR. STALTER: No, that's not fair.
MS. NEUMANN: No?
MR. STALTER: We've got a statute
that's there, and, I guess, right now, the
thing is we've got a bit of a gap here. As
long as they cover it in the contract how they
address the interest, then the contract
governs. The issue is here if a contract is
silent, should we have a regulation that says
here's what you'll do with the interest in the
absence of the contract telling us.
MS. RUSSELL: It's a pretty good idea.

MS. NEUMANN: Yeah.

MR. FRAKER: (Inaudible.)

MR. REINHARD: Maybe if they're 105 and they have some kind of terminal disease.

MR. FRAKER: Well, this is a comment Jim and I were talking about here. On these contracts -- and we talked about this before, Darlene. If a contract is frozen, you know, and the interest that that thing builds up offsets, most people will understand that. If it's paying interest now, it's just token interest, but, nevertheless, these families want these things frozen, you know. We do that. We still freeze them and we keep the interest. So, I mean, I -- to me, that's --

MS. RUSSELL: You're talking about fulfillment, though, not cancellation.

MR. FRAKER: Well, irregardless.

MS. RUSSELL: Yeah. We're talking about the cancellation part of it.

MR. REINHARD: We need a rule to say --

MR. FRAKER: Well, I -- I know.

MS. RUSSELL: But I understand where you're coming from.
MR. FRAKER: But I think that's where this is headed, Darlene, because, you know, whether or not the -- that's why -- that's how we freeze contracts. That's how we freeze joint accounts.

CHAIRMAN: I'm thinking there could be some advantage in having something spelled out that says if you haven't addressed it, at least when the Board gets a complaint, there is something to stand on that says, well, you didn't take the time to bother to put it in there, so --

MS. RUSSELL: I think it would make Becky's job easier when she has that first complaint and there's nothing in the contract that it's spelled out.

CHAIRMAN: I need everybody in one accord or whatever, though, but he can at least look at it and we can always say no later. What do you think?

MR. REINHARD: I'm saying no now.

CHAIRMAN: Well, let's just vote.

What do you -- Jim says no. Do you --

MR. MAHN: I stepped out for a moment.

What are we saying no to?
CHAIRMAN: Okay. The ultimate thought --

MR. REINHARD: That you can't step out anymore.

MR. MAHN: I may step out more.

CHAIRMAN: The thought is do we need a rule that, basically, summarizes what happens to the interest only in a cancellation of the contract? No fulfillment, nothing like that. Just cancellation, that if your contract does not specify what happens whether you keep all the earned income, whether you divvy it up however you want, but if there is nothing at all specified in the contract, it's by default that all the interest goes back to the consumer.

MR. MAHN: I agree with that.

CHAIRMAN: Okay. So, there's one to one. You're going to break it.

MR. FRAKER: No.

CHAIRMAN: Okay. So, we don't need it.

MR. KRAUS: Let's see.

CHAIRMAN: Are we on 3 -- K3?

MR. KRAUS: I think we're on K3. For consistency with trust-funded contract
refunds, the seller may include a contract provision allowing it to regain accrued interest. In the absence of such language, regulation may be needed to govern the parties' rights to interest -- well, that's what we were just talking about. Bill, do we need to talk any more on that? All right.

K4, a purchaser has signed policy to new party instead of canceling.

MS. RUSSELL: If we're on the K4 which is this -- about the insurance funded; is that where we were?

MR. KRAUS: Yes.

MS. RUSSELL: You're talking about the preneed contract, not the policy, so that's not an issue regarding this. We're talking about the preneed contract, so you can't -- you know, you're talking about assigning a policy.

MR. KRAUS: It's a different issue.

MS. RUSSELL: It's a different issue, yes. So, the answer to that, in my opinion, would be no.

MR. OTTO: And this is Don Otto.

Ignore my K4 comment on my sheet. I was -- I
couldn't read the dotted line, so --

MR. KRAUS: Okay. We're moving on to K5?

MR. WARREN: Mark Warren.

CHAIRMAN: Yes.

MR. WARREN: On the comment in K4, may a purchaser assign a policy, are we talking about the insurance policies?

MR. KRAUS: I think so, yeah.

MS. RUSSELL: We just said that it's a contract, not a policy.

MR. WARREN: All right. The preneed contract?

MS. RUSSELL: Yeah. That has nothing to do with the insurance policy. Yeah.

MR. WARREN: All right. That's -- all right. I got you.

MR. MAHN: So, should it say preneed contract instead of policy?

MR. KRAUS: No. I think the question was -- I think where the comment was going was apart from cancellation, can someone just assign the insurance policy to someone else?

I mean, like, a more global question.

CHAIRMAN: Meaning the preneed --
MR. MAHN: Or the insurance contract
or the preneed contract? They're two
different things.

MR. KRAUS: I think the underlying --
the insurance contract, I think is what we're
talking about.

MR. MAHN: She's saying a preneed
contract.

MS. RUSSELL: Insurance policy and the
preneed insurance contract are two separate
things. An insurance policy on cancellations
and stuff is governed by the Department of
Insurance on that. That's why you have it
like this. So, the answer on can you cancel,
does it have any effect on the policy is why
they put this rule in there. You understand
what I'm saying; right, Earl?

MR. KRAUS: I think so.

MS. RUSSELL: (Inaudible.)

CHAIRMAN: So, your thought is there
is no reason for it. There is no need; right?

MR. KRAUS: It's a different thing.

MS. RUSSELL: You can cancel the
insurance preneed contract, but it does not go
and affect the insurance policy.
MR. KRAUS: Because that's a separate contract.

MS. RUSSELL: It's a separate --
MR. KRAUS: It's a different matter, a different regulator.

MS. RUSSELL: Exactly.
MR. KRAUS: Different rules.
MS. RUSSELL: Different regulations come into play within the cancellation of an insurance policy.

MR. WARREN: It's freestanding.
MR. KRAUS: Right.
CHAIRMAN: Okay.
MR. WARREN: But as far as assignment, you can't assign it during the policy -- (inaudible.)

MS. RUSSELL: Oh, sure. Yes.
CHAIRMAN: Sure.
MR. WARREN: In fact, I don't think that needs to be addressed in the rule. It's just up to, you know, it happens quite often with funeral homes, the policy will be assigned to the home or whomever.

MR. KRAUS: And if we were going to do some kind of rule, we would be stepping on
insurance's toes, too.

MS. RUSSELL: Exactly.

MR. WARREN: Yeah.

MR. KRAUS: Okay.

CHAIRMAN: Okay. All right.

Everybody okay with that? We need to go on.

All right.

MR. KRAUS: All right. K5, reference to 100 percent of the trust property is confusing. Who must bear the risk of the account value or think the intent would be to refund -- a refund of payments less the origination fee.

MR. WARREN: I tend to agree with Don Otto's comment. You know, I don't think it's fair that you investment money towards a trust, you pay in 100 bucks at the time you contract -- (inaudible) -- where if you held the policy or -- excuse me -- the contract, 20 years later, the value of that being $200. I just don't see that as fair. And it also raises issues as time of contract and value of the trust account contract, that particular little portion of the trust.

CHAIRMAN: Okay. Further comments?
MR. STALTER: Well, if I may, I was just trying to figure out, are we talking about value or 100 percent of the trust or -- I understand your position and I think that -- I'm just asking, okay, are we -- if we just transfer the -- what's ever in that trust, is that what we're talking about? Because the problem here is that if it is how it was, you know, in the past, an amount equal to, you know, until the trust earns enough money, basically, the seller has exposure for that 10 percent that didn't go into trust. That's -- you know, you're making the seller a kind of guarantor of that 10 percent that's due back on the cancellation until the trust earns enough money.

MR. OTTO: Don Otto. I think that was clearly the intent of the legislators to make the seller be at risk of that 10 percent.

MR. STALTER: Okay.

MR. KRAUS: Until they can draw that 10 percent, or what do you mean?

MR. OTTO: Yeah. Until -- well, I mean, in a cancellation, you give that 10 percent back to the consumer, period.
MR. KRAUS: Right. You just mean that the 10 percent that's sitting there because the seller hasn't drawn that 10 percent yet?

MR. OTTO: No. If the consumer has, you know, paid -- they're paying $100 a month on a $10,000 contract, and so, you would get $500 -- you get $1,500 as your 15 percent. Five hundred of it is yours forever. That's the origination fee. The other 10 percent you've got to give back to the consumer, and you may have to reach into your pocket and pull it out. But the analogy was similar to insurance charge-back where an insurance agent sometimes has to reach into their pocket.

It's not really analogous, but that was the concept. Or an insurance agent sometimes has to reach in his pocket to pay back commissions because the consumer has canceled. I mean, you may not like it as a seller or a funeral home, but that was pretty -- I think that's pretty clear that you've got to give that money back to the consumer.

CHAIRMAN: So, are you on track for that?

MR. KRAUS: Yeah, I am.
CHAIRMAN: All right. Comments?

MR. KRAUS: So, we are not doing any rule on that because we all know what it is, or we are?

MR. MAHN: I think we ought to highlight certain things in this and then get Senator Scott and Representative Wasson over here to explain their interpretation of the funeral industry and we could explain our interpretation of public offices because they, obviously, had somebody do it here, but I'm scratching my head a little bit.

CHAIRMAN: I understand. Go ahead, Brad.

MR. SPEAKS: Brad Speaks. I think Don is right that that was the intent of the legislature; however, that is not what this says, I don't think. Trustees shall distribute 100 percent of the trust property. Money has left in the trust, it's no longer trust property.

MR. KRAUS: Oh. But it does say including any percentage of the total payments received on the trust-funded contract that have been withdrawn from the account.
MR. SPEAKS: Okay. I didn't read that.

MR. KRAUS: So, yeah. That's what I was looking at first, too.

MR. OTTO: And that is the 10-percent provision is what that's referencing.

MR. KRAUS: You give that up, also.

MR. SPEAKS: Okay. Never mind.

MR. MAHN: I'd almost take that as the 5 percent, too.

MR. OTTO: No. That was talked about. The 5 percent is yours forever.

MR. MAHN: It doesn't say that.

MR. KRAUS: But the 5 percent does go into the trust and then it comes back out.

MR. MAHN: Yeah. And it says 100 percent.

MR. SPEAKS: That's the trust's property.

MR. KRAUS: Now, unless the 5 percent is not under the .4.

MR. OTTO: It's not under the .4.

MR. STALTER: It's not. It's -- yeah.

MR. KRAUS: Well, then there's the answer.

MR. SPEAKS: Okay.
MR. OTTO: It's not under the .4.
It's point something else.
MR. KRAUS: Three or five or something.
MR. MAHN: Oh, of course, it is.
MR. KRAUS: Well, then there you go.
All right. Everybody happy?
MS. RUSSELL: So, are you going to do
a rule on this?
MR. KRAUS: I haven't heard that we
are.
MR. REINHARD: No, we're not.
MS. RUSSELL: Oh, wow. I just heard a
big discussion and everybody had different
opinions. I can't imagine --
MR. KRAUS: I'm happy to do one, I just
haven't heard that yet.
MS. RUSSELL: Poor Becky.
CHAIRMAN: So, do you guys want to
give him some walking orders.
MR. KRAUS: I can only do what I'm
instructed to do.
MR. MAHN: Well, I went far before and
got the guillotine. I say 95 percent of it
needs refunded to the family.
CHAIRMAN: Get your black hat on
there, Jim.

MR. MAHN: That's the rule, you know.

Simple as that. Why things getting black and white. Everything has got to be -- has to get interpreted, like we're in China or something. (Inaudible.)

CHAIRMAN: There's vote number one.

MR. MAHN: Ninety-five percent needs to be refunded. Cancellation. (Inaudible.)

MR. FRAKER: I agree

CHAIRMAN: So, there's two. Give us the official, Jim.

(Several people talking simultaneously.)

MR. REINHARD: I hate to lose.

MR. KRAUS: Well, in the course of -- you know, if we were to draft a rule on this, then we would have to be careful and not saying it that straightforward, although that won't encompass all scenarios.

MR. MAHN: Right. No. There's nothing we don't want straightforward, and we've got to get room for the attorneys to be able to fight over something someday.

MR. KRAUS: Well, because, I mean, if you say 95 percent, depending on what's gone
in, when it's come out. I mean, that -- we

can always --

MR. MAHN: Right. You've got to have

monkey words here and there.

CHAIRMAN: There's no need to go

further. Write the rule.

MR. KRAUS: All right. 436.457, seller

cancellation. K6, upon cancellation, 85

percent of contract payments shall be refunded
to the purchaser. Seller gets maximum 15

percent of payments plus income, if any;

right? That's what it sounds like. Any

thoughts on that? Okay. All right. Going

once, twice. Moving on.

MR. BROWNLEE: Excuse me. Are we

moving past 457?

MR. KRAUS: That's what we're on right

now.

MR. BROWNLEE: I had a note -- Richard

Brownlee with Assurant. I had a note under

page 6 that says if they're insured and they

cancel, they get the cash-surrender value;

does that make sense to those who know more

about this than I?

MS. RUSSELL: This is just talking
about the trust and joint accounts, not
talking about insurance-funded accounts.

MR. BROWNLEE: So, on seller
cancellation, it makes -- it says --

MS. RUSSELL: But we're not talking
about insurance funded.

MR. BROWNLEE: This is trust funded?

MS. RUSSELL: Trust and joint.

MR. OTTO: The first sentence, this is
just on joint account and trust cancellations.

MR. BROWNLEE: That's what the whole
section on 457 refers to?

MS. RUSSELL: Correct.

MR. OTTO: Right.

MS. RUSSELL: Just trust and joint, not
insurance.

MR. BROWNLEE: No insurance here.

MR. KRAUS: Well, you know, that is --
I mean, we could clarify that, though, because
I think you're right that sub one refers to
just trust and joint account, but these are
all separately standing subsections.

UNIDENTIFIED: That's exactly right.

MR. STALTER: Well, but your issue
here is who is the seller.
MS. RUSSELL: Exactly.

MR. STALTER: See, with your insurance
-- this is the issue you haven't even
addressed yet is, I mean, who is the seller
under the insurance-funded arrangement, so --

MR. SPEAKS: It won't be --

MR. KRAUS: Whoever the seller is.

MR. SPEAKS: Yeah. It would be the
seller here.

MS. RUSSELL: Yeah.

MR. SPEAKS: So, you really -- I think
this is pretty clear --

MS. RUSSELL: It's clear.

MR. SPEAKS: -- from a legal
standpoint.

MR. KRAUS: So, you're saying what,
again?

MR. STALTER: In other words, we're
talking about this is a cancellation by the
seller.

MR. KRAUS: Right.

MR. STALTER: So, we're contemplating
that a seller has trust-funding or
joint-account tracts, but who is the seller
with the insured contracts?
MR. KRAUS: Well, I think in that --
with that funding mechanism, there would be a
seller, and that person is the seller.

MR. STALTER: And that's where we --
this issue has been kind of open for -- since
the first meeting, I think, under 333, is how
do we define who is the seller in the
insurance-funded arrangement?

MR. WARREN: The seller, technically,
is going to be the insurance company is the
one who is, you know, issuing the policy. The
seller could be a variety of people including
someone who is totally outside the realm of
preneed or the funeral business.

MR. KRAUS: And, of course, under the
new provisions, they'd have to be a licensed
seller, so then we know who the seller is.

MR. WARREN: Right. Right.

MR. KRAUS: And if someone is selling
who is not a licensed seller, then they've got
a problem.

MR. WARREN: But if you're talking
about a seller canceling a trust fund or a
joint account from his preneed contract, that
wouldn't affect the insurance policy.
MR. STALTER: Yeah.
MR. KRAUS: That's right.
MS. RUSSELL: That's right.
MR. WARREN: So, I mean, to me, this is clear as to what it affects.
MS. RUSSELL: Exactly.
MR. WARREN: I mean, I don't see any need for a rule, in my opinion.
MR. STALTER: You know, you can argue that you're -- really, we're talking about trust funded here, but when you talk about the 85 percent, you know, that -- there's origination fee regardless whether it's joint or trust funded, so they can, you know, collect that 5, but the 10 percent is really a trust-funded issue. So, then, basically, this applies only to the trust-funded seller.
MR. KRAUS: Well, and that's where I was going is, is it necessary to say in a rule that this section does not regard insurance-funded contracts?
MR. MAHN: Or joint accounts.
MR. STALTER: Or joint, yeah.
MR. KRAUS: Well, of course, that -- and in paren one, they do say joint account.
Seller may have the right to cancel a
trust-funded or joint-account-funded preneed
contract if.

MR. STALTER: Yeah. But you have a
numbered paragraph. These are all numbered
paragraphs so that, you know, one doesn't act
as a binding on all the subs and so --

MR. KRAUS: Exactly. Exactly. So, no
interest?

CHAIRMAN: Is it really going to be
beneficial?

MR. KRAUS: I don't know. I'm just
asking.

CHAIRMAN: I'm hearing split opinions.

MR. MAHN: Yes, I'd put it in there.

But if you don't put it in there, then they'll
just have some argument later on about it.

MR. REINHARD: Well, the only thing
you need to clarify, like Bill said, if both
of them have origination fees of 5 percent,
then a trust gives back 85 percent; correct?

We were saying 85 here. The joint account
gives back 95.

MR. STALTER: That would be right. I
mean, that's like -- yeah.
MR. REINHARD: So, you know, you need
to -- if you're going to write a rule,
encompass both of them and then it's clear.

MR. MAHN: Right.

CHAIRMAN: Gary, you're the deciding
factor.

MR. FRAKER: Well, it needs to be
clarified.

CHAIRMAN: Okay. Unanimous.

MR. REINHARD: Well, a bank's trust
canceling out, you're going to have to be
going to joint accounts. There are going to
be a lot of people in joint accounts.

MR. KRAUS: All right. 458.

MR. REINHARD: Well, do we write a
rule or not?

MR. KRAUS: Yeah, we did. It's done;
I just wrote it. But we're moving on. K7.

Purchase or change of provider. This customer
selects a different provider, the seller has
the option to either establish a trust where
the new provider receives credit for all
principal or pay principal and income to the
new provider.

MR. MAHN: I think if they select a new
provider, the principal and income ought to go
along with the prearranged funeral. Isn't
that the question? Is that the question?
That's how I'm reading the question, isn't it?

MR. KRAUS: Yeah. Whether they can
just pay the money or establish --

MR. MAHN: A new trust?

MR. KRAUS: -- or change the trust.

MR. MAHN: Either the old trust pays
the, you know, the new provider the full
amount plus all of the interest.

MR. KRAUS: And let them set up the
trust, I assume?

MR. MAHN: Or wait till time of death
and pay the funeral bill, all the interest; is
that what you're saying?

MR. FRAZER: By the whole thing.

MR. KRAUS: Well, I would assume that
they would do one or the other at the time of
the change of the provider.

MR. MAHN: You're talking about a
purchaser change in provider before time of
death, is what I'm asking.

MR. KRAUS: Right.

MR. MAHN: And should the whole amount
plus the interest or principal go with the
trust; is that what you're saying? Is that
what this says?

MR. KRAUS: I think that's the
question.

MR. MAHN: I think we need to be real
clear on that.

MR. OTTO: Yeah. This is -- you're
right. This is -- here was what was the
concern, is your funeral home is also a
seller. And you have a lot of fiduciary
obligations because you're a seller. Now, the
consumer is changing to your competitor across
the street. You don't want to be stuck to be
forced to be in a contractual relationship
where you owe fiduciary relationships and
obligations to your competitor across the
street. So, that gives the seller an option.
If the seller doesn't mind the new provider,
you replace the old -- the new provider with
the old provider. If you don't like the new
provider -- for example, with MFT, I use the
example of Warren Funeral Chapel. If somebody
had wanted -- I didn't want to do business
with them. I shouldn't be forced to do
business with somebody I don't like. So, then
you have option two as the seller is just
write a check.

MR. MAHN: Well, no competitor is
going to like their competitor.

MR. OTTO: Yeah. Yeah.

MR. MAHN: So, if the family had an
issue with your funeral home -- (Inaudible.)

MR. OTTO: Yeah. You want to wash
your hands of it.

MR. MAHN: Well, they should be able
to go down the street.

MR. OTTO: Yeah. They should. They
should.

MR. MAHN: (Inaudible.)

MR. OTTO: But you, as a seller, don't
want to be stuck, for example, having to do
reporting requirements to your competitor.

MR. MAHN: Well, I don't think this
says that.

MR. OTTO: Well, if it didn't say
that, that would be a problem if it didn't
have it this way. So, the seller has the
option of just continuing the trust with new
provider taking the place of old provider, or,
if I don't like new provider for whatever reason, I can write new provider a check. Now, where the confusion is and where a rule -- I know you're going to get into problems and where you might want a rule is the 15 percent. And if you take a look at my comments, the way I read this rule, this statute, funeral home B gets whatever the provider should have gotten. Well, the 15 percent belongs to the seller, not the provider. So -- and the way this is worded, again, it says the newly designated provider gets all payments owed to the original provider under the contract. And then in paragraph 3, option 1, shall either continue the trust with the new provider in place of to receive all payments owed the original provider, or pay the new provider the trust property. Again, this could have been worded better, and we tried, but I believe the upshot of this is funeral home B gets the 85 percent plus all the interest because the first funeral home gets to keep their 15 percent. And that was intentional because, otherwise, funeral home B is getting the advantage of
funeral home A paying the salespeople to go
out and sell this. So, if you want to change
providers, funeral home B, either option 1 or
option 2, winds up getting 85 percent plus
interest because the interest does go with it.
But that first funeral home or first seller
gets benefit for I'm the one that pays the
commissions; I'm the one that had the
building; I'm the one who did all this stuff.
And that was what they -- the intent. It was
not to reward -- you know, otherwise, the
funeral home might just put an ad in the paper
saying, you know, $500 if you transfer your
funeral to me. I'm going to let all my
competitors pay their salesmen and I'm just
going to take it all.

MR. KRAUS: Yeah. But wasn't there
also discussion about intent towards
100-percent portability?

MR. OTTO: What?

MR. KRAUS: Wasn't there also intent
towards achieving 100-percent portability
without penalty on the consumer?

MR. OTTO: Well, there is no penalty
to the consumer, but funeral home B, in any
case -- you know, if ever you're changing
funeral homes, the second funeral home has to
accept it. It has to be willing to do the
deal.

MR. KRAUS: Right.

MR. OTTO: And this deal is, you get 85
percent plus the interest. Now, a savvy --
there's -- we brought this up and we could
never get Charlie to word this better. But
there's an interesting calculation that needs
to be made if the consumer wants to change the
funeral home.

MR. MAHN: Okay. So, do they cancel
it at 95 --

MR. OTTO: Is it better to cancel, 95
and no interest?

MR. MAHN: -- percent or 85 percent
with interest?

MR. OTTO: Or is it better to transfer
at 85 and interest?

MR. MAHN: Sure. So, they're going to
be calculating.

MR. OTTO: So, they've got to
calculate it.

MR. MAHN: That's right.
MR. OTTO: A good rule here, however -- a very good rule would be to make it clear that funeral home B has to accept this deal, you know. Is bound by the original contracts. And something that makes it clear that the seller, if they take option B and just write a check, that the seller and trustee are done with it now for the future, but that doesn't obligate them of any malfeasance they've done before they transferred the money. That might be good to clear up because you don't want somebody trying to say, oh, I transferred this, I'm not responsible. Well, the problem happened while you were in control of the money.

MR. KRAUS: Yeah. They mismanaged the funds at the time.

MR. OTTO: Yeah. Yeah. You don't want somebody to try to sneak out on that. But, on the other hand, after I write the check -- I took option B, I wrote the check, the money is out of my trust, it's not my problem anymore. That's the new trust's problem.

MR. KRAUS: How could it be their problem?
MR. OTTO: I know. I just -- it
shouldn't be, but I didn't know -- I thought
that would be a nice --

MR. REINHARD: He wants to clarify
that it's not their problem.

MR. OTTO: I want to make it clear
it's not my problem.

MR. MAHN: Trust A's problem, you mean?

MR. OTTO: Yes. It's not Trust A's
problem after the transfer, but they're
responsible for what they did before the
transfer.

CHAIRMAN: Any other comments?

MR. MAHN: Well, it might be cleaner
just to match them both up and say 95 percent
when you cancel it or you transfer it, 95
percent plus the interest goes to funeral home
B.

MR. FRAKER: That would be great.

CHAIRMAN: Is anyone against that
thought?

MR. FRAKER: Well, I think that's good.

UNIDENTIFIED: What?

CHAIRMAN: I just said anyone against
that thought.
MR. OTTO: I just -- we didn't hear what the thought was.

UNIDENTIFIED: We didn't hear what you said.

MR. MAHN: So, why not match them both up and 95 percent plus the interest, whether it's cancellation or transfer, goes to funeral home B?

MR. OTTO: Because that would go beyond what the statute requires for change of providers. That would have been nice if they matched up.

MR. MAHN: Yeah.

MR. OTTO: But the statute doesn't match them up.

MR. MAHN: Well, can't we match it up for them?

CHAIRMAN: Do what?

MR. OTTO: And the regulation can't go beyond what the statute requires, obviously. And I think the statute only requires 85 percent to go. And that was really on purpose, again, to try to stop funeral home B from benefiting from funeral home A's work.

MR. MAHN: Oh, of course, it does.
MR. OTTO: But it does create a weird situation where it might be better to cancel than transfer in some cases.

MR. MAHN: Either way, portability of trusts still stands.

MR. REINHARD: Write that in the rule.

MR. MAHN: Yeah. Write that in a rule.

MR. REINHARD: And put that in the contract.

MR. MAHN: Tell them thank you for all last year, but -- anyway. Okay.

MR. KRAUS: That goes beyond the scope of the statute.

MR. MAHN: I'll write that letter. I've got my first letter in the mail for a donation last week.

MR. REINHARD: You're not sending any, are you?

CHAIRMAN: Do you know what your --

MR. KRAUS: Yeah. We're going to clarify that as best we can.

MR. FRAKER: I still think that's what they intended. (Inaudible.)

(Several people talking simultaneously.)

MR. REINHARD: Can you write
something, Earl, and get back to us, and then
we'll look at it, because I think we're going
to spend the rest of the afternoon. We're
going to have to call a cab and say leave the
governor's casket open another hour.

MR. KRAUS: Yeah. We'll want to talk
about it again when we have a draft.

MR. OTTO: Thank you very much. I
really appreciate all this. I have to go
teach the class because we've got people that
want to get the class in before the law
changes. The reason the comments didn't come
in from us till 1:25 in the morning is because
my comments are in response to what you did,
and I didn't get those till last night.

MR. MAHN: We won't miss you. You're
leaving the boss here anyway.

MR. OTTO: I know. She's in charge.
She can handle it, but thank you very much.
I appreciate it.

MR. REINHARD: Thank you.

CHAIRMAN: So, K8; is that where we're
at?

MR. KRAUS: Unless we covered those in
the discussion. I think we've talked about --
I'm certain we haven't hit on notice in K9.

MR. MAHN: The two don't match up, do they? Cancellation or transfer just doesn't match up.

MR. STALTER: No.

MR. MAHN: And it should have.

MR. FRAKER: I think they intended for that to match. I really do.

MR. MAHN: No. I think they intended for it not to.

MR. STALTER: There's a gap there. I mean, there is.

CHAIRMAN: But it's there, and what can we do about it?

MR. MAHN: We can't do anything about the gap, can we?

MR. KRAUS: I think they looked at them as different things. You know, canceling is one thing and transferring is something else.

CHAIRMAN: Sure.

MR. KRAUS: But it's set up how it's set up.

MR. MAHN: But Don is right. Families or the funeral directors are sitting down with
-- we'll sit down and try to calculate when the family comes in to see you that wants to move it. Well, should you -- and you can't go back and cancel it with them or transfer it.

MR. KRAUS: They'll try to steer them one way or the other. Sure.

MR. MAHN: We're going to try to -- right.

MR. KRAUS: But what are you going to do?

MR. MAHN: Well, nothing. I just wanted to make that comment.

MR. KRAUS: Okay.

MR. REINHARD: Do you feel better now.

MR. MAHN: Oh, I feel real good.

MR. REINHARD: Okay.

MR. KRAUS: All right. What counts as notice to the seller? I guess this -- what should be the -- upon written notice. I think we've been setting out most of those things in rule as to --

MR. MAHN: On a scratch pad.

CHAIRMAN: Same as the other one was, wasn't it?

MR. KRAUS: Yeah.
CHAIRMAN: Okay.

MR. MAHN: Can that say on a scratch pad, Earl?

MR. KRAUS: To drop them off a Post-It note?

MR. MAHN: Yeah. The funeral home's letterhead.

CHAIRMAN: We're saying K9 is just like the previous one, so we're just going on K10?

MR. KRAUS: Right. Okay. Alternative provider elects to transfer the trust, it should receive a trust value as opposed to payments plus income. These transfers could take time to effect. I think that kind of relates to our other discussion.

MR. MAHN: Yeah. They're all commingled.

MR. KRAUS: Right. Anything else on 458? Okay. 436.460. Seller annual reports. K11, may want to require by rule that a Board form be used for the annual report. I think we probably do want to do that, don't we?

CHAIRMAN: Anyone against that?

MR. MAHN: No.
CHAIRMAN: Becky?

MS. DUNN: Yes. A Board form.

MR. REINHARD: Oh, yeah.

MR. KRAUS: For the annual report. Otherwise, you're going to get everything and anything.

MR. REINHARD: You'd get some sticky notes.

MR. KRAUS: There's a note stuck on there, too, that's towards not -- I've seen some forms promulgated as rules themselves, but then any time you need to make any kind of change to the form, you've got to go in and repromulgate a rule to change the form, and you don't want to do that.

CHAIRMAN: Correct.

MR. KRAUS: Just make the form, it's a form, it's not a rule. But then to the extent you want to specify what the provisions -- what the requirements are in the section as to what's required on the annual report, you may want rules saying the contract amount means whatever you think it should mean. And I have some different highlighted items here that maybe you would want to consider defining
by rule. For example --

CHAIRMAN: Didn't we do that, definition section? That's basically --

MR. KRAUS: We did a similar thing in the definition section.

CHAIRMAN: With, like, the bullet points, meaning --

MS. DUNN: Well, we have a definition section that defines what something may mean, like in 333, embalmer.


MS. DUNN: So, do you want to further define some of the highlighted items that he has --

CHAIRMAN: I guess I was thinking more of the list when I said bullet points, of what are those things, but they could be both.

MR. KRAUS: Yeah. Like the list, what does that mean?

CHAIRMAN: Anyone against them creating or at least something for us to look at that would define further those items that are to be there and maybe specifically what those items are?

MR. REINHARD: Like on the contract?
For the report? What are you --

CHAIRMAN: We're talking about the report.

MR. KRAUS: The seller annual report, there are -- there's a description here of a number of items that have to be included in the annual report, which you can either leave as is as those are the requirements. Or if you think some of these need clarification for the Board and for people who are trying to comply, then we could, in rule, explain further what some of these things are.

MR. REINHARD: Well, if we can explain further to simplify it, let's explain further to simplify it. I suppose you're against that.

CHAIRMAN: No. He said do it.

MR. REINHARD: Oh. You said do it.

(Inaudible.)

MR. MAHN: I knew you weren't getting your two cents in.

CHAIRMAN: Okay. That's a yes.

MR. KRAUS: All right. Let me see if there's anything additional in here. I assume the same would apply with regard to written consent, written consent as to what comprises
those.

MS. DUNN: Yes.

MR. KRAUS: Okay.

MS. DUNN: Any opposition?

CHAIRMAN: Oh. We need to know that?

MS. DUNN: Well, Earl is asking.

CHAIRMAN: What's the question then?

Written -- I heard written consent, written consent.

MR. KRAUS: Written consent. I assume you want us to also set out what comprises written consent? Like, it has to be signed by the person, it has to be dated, stuff like that?

MR. MAHN: Yeah.

MS. DUNN: Just simplify it.

MR. KRAUS: Yeah.

CHAIRMAN: Everybody in favor of that?

Yeah.

MR. MAHN: Say yes.

MR. REINHARD: Absolutely. Anything to make it easier.

MR. KRAUS: All right. Does anyone have any thoughts, like, if we define, like in sub 9, written consent authorizing the Board
to order an investigation, examination, or an audit. I don't know that investigation, examination, or audit need further definition, but if you wanted to, we could as to what an investigation is, what an examination is, what an audit is.

CHAIRMAN: Anyone against them defining that?

MR. MAHN: No.

MR. REINHARD: Because we can always throw it out.

MR. MAHN: Yeah.

CHAIRMAN: True. Absolutely. Yes, ma'am?

MS. SUMMERVILLE: Kalene Summerville. I just noticed that Don has said that defining too far may cause more problems and restrict what we can do.

MR. KRAUS: They can.

MS. SUMMERVILLE: You might be careful on how far you take that.

MR. KRAUS: Sometimes you can bind yourself in by saying an audit is these things, and if that's all inclusive and then you want to do something else that you think
is an audit, well, it's not in your rule as an audit, so you can't.

MS. DUNN: Or at a minimum, some language that would say at a minimum to be or --

MR. MAHN: Can we put down things we think it is and then put underneath it all the above.

(Several people talking simultaneously.)

CHAIRMAN: Mark?

MR. WARREN: You know, the way I look at it is put a rule out there that says I got to do stuff other than what's in this law, I don't agree with that. This defines what I have to provide, and I could make a real good argument on I don't have to do anything else. It's statutory.

CHAIRMAN: Any other comments? Well, I think the goal of the Board is to make this as somewhat as easily as possible to try to avoid problems, obviously.

MR. KRAUS: So, we're going to clarify, but not add requirements; right?

MR. MAHN: Correct.

CHAIRMAN: All heads are nodding.
Okay.

MR. KRAUS: The next page. K18, we've got the name and address of financial institution. Comment was require the name of the trust officer, specifically.

CHAIRMAN: Why would that be beneficial?

MR. KRAUS: So you have a person to get ahold of instead of an institution.

CHAIRMAN: What if he doesn't work there anymore? So, wouldn't it need to be both, or for sure --

MR. KRAUS: Well, the financial institution is already required by statute.

CHAIRMAN: Okay. You're just wanting to add --

MR. KRAUS: Whether that's a more specific contact within that financial institution.

CHAIRMAN: Yes, ma'am?

MS. SUMMERVILLE: This is Kalene Summerville. Also, Don had mentioned that this adds a requirement that's not already in the statute by adding the person's -- the trust officer's name. I don't know if that's
a big deal or --

CHAIRMAN: Couldn't we just, you know, like we were asking on the corporations for just a contact person that was involved or something? That's probably too simplified, but you know what I'm saying?

MR. KRAUS: I think you can. I mean, I honestly think you could ask for the trust officer within that financial institution, so you are asking for someone who you can contact there now. Is that going beyond the statute? Depending on how you say that, it could. You can certainly ask for an individual contact. I don't see that being outside of the financial institution because how do you contact any business? You contact a person.

CHAIRMAN: Sure. Anyone against the thought of them looking toward that thought?

MR. REINHARD: No.

MR. MAHN: No.

CHAIRMAN: Go for it.

MR. KRAUS: All right. Some more highlighted terms which I assume we'll do like we did in the first page. Let's try to clarify those to the extent we can and then
you can look at what draft we come up with
and see if you like it.

CHAIRMAN: Works for me.

MR. KRAUS: All right. Principal
collections received by the trustee since the
previous report, K20, grand total or individual
amounts. Every individual contribution
regardless of amount; right? I think that's
also clarifying what those terms mean. I'm
assuming that the Board wants more than just a
total there. That would make some sense to
me, but we'll put that in the draft and bring
it back.

MR. FRAKER: I have a question. I keep
thinking about some things we talked about
earlier about are we starting this at ground
zero again? In other words, all this stuff
here starts over regardless of what's gone
on before. We can't go back and change
anything that's already there; is that right?
Am I looking at this right? Do you understand
what I'm asking?

MR. KRAUS: Not exactly.

MR. REINHARD: You're saying, like,
any of the contracts or anything before the
August 28th? We can go back and examine them, but we can't go back and change them. I mean --

MR. KRAUS: What do you mean by change them?

MR. REINHARD: Well, I mean, is he saying, like -- are you talking about, like, people going back and having people sign new contracts so they would be up to date with --

MR. FRAKER: We're not even thinking about that, are we?

(Numerous people answer no.)

MR. KRAUS: No. The contracts that are in place are in place and they're valid contracts.

MR. REINHARD: Right. You don't have to go back and have them rewritten.

MS. RUSSELL: No.

MR. MAHN: Or white them out.

MR. KRAUS: Now, if you go -- let's say you want to open a contract back up again and, basically, enter into a new contract with someone to replace an old contract, then that would have -- if that's done after August 28th, it would have to comply with these
requirements. But that's the same as really
doing a new contract. You don't have to --
you know, you don't have to go back in and
make changes to all the old ones.

MR. REINHARD: Because some of these
people may think that you have to do that. I
don't know.

MR. KRAUS: You're certainly not
prohibited from doing that if they want to.

MR. REINHARD: What do you think,
Darlene? There would be some of those small
funeral homes that would think you would have
to go back?

MS. RUSSELL: Well, some are going
back just because they know what they've got
on record right now doesn't even meet the old
436. So, no. You're right. I think you've
made that pretty clear. Everyone that's got
any common sense knows it's on a go-forward
basis. August 28th, you know, your contract
has to say that. You don't have to go back
to those old contracts.

MS. NEUMANN: That's what we're
telling people in their e-mails.

MS. RUSSELL: Yeah.
MS. NEUMANN: When they contact us for information, I tell them starting August 28th, those new laws go into effect. Before August 28th, those laws are the old laws. You have to go into the new ones -- the new contracts. They know that they're not obligated to renew all the old ones.

(Reinhard and Mahn speaking simultaneously.)

(Several people talking simultaneously.)

CHAIRMAN: Well, this is actually referring to the reporting of contracts. And, like, in principal contribution and current face amount and all of those things, that is on the going-forward basis. I mean, I received $500 this year from Mrs. Jones' contract that I already reported on my annual report two years ago, and I just reported the face amount. I'm not going to have to show that. How would I show that? That wouldn't make sense with any going-forward number.

MR. KRAUS: Well, we did talk about previously how we're going to address the initial reporting period after the law goes into effect. But then this will be something
that you'll want to talk about as to going forward past that for the next reporting period, how folks are to comply with these things. Now, that doesn't need to be an emergency rule because that's not until way down the road, but we're going to likely need to be in just a regular rule how people are to report things that are required under their new contracts they've entered into since August 28th and the contracts that they had before that time, because the information that they have available is going to be different because the contracts are different, I would think; right?

UNIDENTIFIED: (Inaudible.)

MR. FRAKER: So, we're going to make everyone that has -- from August the 28th on that buys a preneed agreement that is put in trust, we're going to make every funeral home change their bookkeeping and saying you've got to keep track of each individual account, how much interest has been made, rather than keeping it in a separate, you know, account that would be virtually impossible to determine how much interest was made?
CHAIRMAN: We're not going to make it.
This is what --

MR. KRAUS: Well, that's kind of a loaded question, but I think they will certainly need to put in place whatever processes they need to put in place to comply with the statutory requirements for reporting. Once we get to that regular annual reporting, which, again, will be a ways from now.

(Several people talking simultaneously.)

MR. KRAUS: Because, I mean, otherwise, they won't be in compliance, you know, and the statute requires what it requires. Now, whether you put that in place yourself or you're working with some financial institution that has that in place or can put that in place, you know, it's up to that licensee.

MR. FRAKER: Do the banks -- do trust companies keep these accounts separate?

CHAIRMAN: My trust company has bought new software for their accounts to be able to isolate every single account with the interest that that single account has earned and whatever, because they didn't use to do that.
I talked to them the other day.

MS. DUNN: I have been told this morning that Hawthorne Bank is canceling all their trusts with all funeral homes because they have their conflicting provisions in Senate Bill 1.

CHAIRMAN: And my trust company is saying we'll adapt.

MR. STALTER: Blue Ridge, too. I just heard it, Blue Ridge has.

CHAIRMAN: It's going to be a mess.

MS. RUSSELL: Blue Ridge has, also?

MR. KRAUS: It's opportunity for new businesses to come in and do some business.

CHAIRMAN: Absolutely. All right. See? So, the question was report individual -- the sellers?

MR. KRAUS: Yeah. On K20, we're going to do that the same as -- let's see.

MR. FRAKER: I don't think it's bad.

I think it's fine to do that.

CHAIRMAN: Okay.

MR. FRAKER: I just -- (inaudible.)

CHAIRMAN: Do it and then we'll look at it whatever and then we'll back it up if
we need to.

MR. KRAUS: All right. I think that
takes us down through the rest of that page.

CHAIRMAN: All right. Anybody got any
comments that finish up page 5? Okay. Take
a break.

(Off the record)

CHAIRMAN: K24.

MR. KRAUS: K24, certification under
oath. Need a form for that? A Board form,
or just have them do an affidavit like
everybody does?

MS. DUNN: What do you think, Lori?

MR. KRAUS: Well, I guess, that may be
on the form that you're already going to do.

MS. HAYES: Yeah.

MR. KRAUS: Yeah. That will be a part
of the form.

MS. DUNN: Okay. So, we're okay on
that.

CHAIRMAN: So, it's already taken care
of. Answered its ownself. Twenty-five.

MR. KRAUS: All right. Twenty-five.

Spreadsheet format for reporting joint
accounts. I'm not sure if that goes towards
suggesting that or requiring it.

MS. EULER: I think that if they --
they can report it however works for them, and
if they want to send it in a spreadsheet,
that's fine. I don't know that we need to
address that specifically, but Board? Lori?
What do you think? Would that make your life
easier or do you care?

MS. HAYES: Whatever you --
(inaudible.) Because everybody could have a
different computer program; it's however they
pull it, or you can do it by hand or --

MR. KRAUS: As long as the information
is the same? Okay.

CHAIRMAN: Okay.

MR. KRAUS: Twenty-six is more
defining of terms which we can put back into
the prior two pages, I think. Twenty-seven
should be part of the form. Yes.

Twenty-eight, annual reporting fee, which
fees, as I understand, we're going to do with
financials which should be next week.

MS. EULER: Yeah.

MS. DUNN: Right now, you can go ahead
and draft emergency rules, just not with the
fee amount in it.

MS. EULER: And just leave a blank for the -- in the amount of blank, because we need to have the rule ready to go next week.

MR. KRAUS: All right.

MS. EULER: So, if we could have the rule drafted for the Board to approve, we could fill in the blank.

CHAIRMAN: So, you all --

MS. DUNN: So, draft the rule for the fees and then we'll drop in the fee after we have the presentation on the financials and the projections next week.

CHAIRMAN: Did you all get that?

Draft the rule for the fee and then do the amounts later.

MR. REINHARD: Yeah. That's good with us.

CHAIRMAN: All right. Yes.

MR. KRAUS: And we'll do that for all of the others, too.

MS. DUNN: Yes.

MR. KRAUS: All right.

CHAIRMAN: Perfect.

MR. KRAUS: Twenty-nine. How to do
this in transition. I think we've already dealt with that. I think; haven't we?

MS. EULER: Can I just bring something up? I know we talked about an emergency rule to allow the reporting this year be the same as last year. But I wonder if we want to add to that reporting something about their trust balance or the -- so, something that we know that their trust is properly funded or that their joint accounts or life insurance are properly funded -- maybe just some totals. The total amount held in trust, total amount in life insurance, total amount in joint accounts?

CHAIRMAN: I think that's a wonderful idea, but I think it'll be a nightmare.

MS. EULER: Why?

CHAIRMAN: Because I just saw myself having to go try to come up with all of that, along with trying to get my contracts ready, trying to -- that's not something that's just right there -- the totals.

MS. EULER: Well, is there something that would be more accessible, because I think -- I'm concerned that if we don't do that this
year, we have Senate Bill 1 in place this year, and if somebody goes south between this year and next October, they will look to this Board and go, you had this rule in place and you did nothing for reporting this year to even check on the financial status of people. That's my concern.

CHAIRMAN: And the financial status of that would only be the contracts written from August 28th to the end of the reporting date?

MS. EULER: No. For the previous -- and didn't we talk about that last time about making the annual reports, standardizing them if they're for the calendar year or for a fiscal year or from October to October?

CHAIRMAN: We did that. We did that. October, to make it a standard.

MS. EULER: So, it's from October to October?

CHAIRMAN: Uh-huh. So, what do you guys think? I think it's a nightmare, but --

MS. EULER: I mean, is there something that we could ask reportingwise that's within the authority of Senate Bill 1 that would not be a nightmare?
MR. STALTER: Not by October 31st.

I'm just saying that I think that -- this is something you're going to have to plan ahead. But to get that kind of stuff together for October 31st, it's not going to happen. It's going to be real rough.

MS. EULER: Really?

MR. STALTER: Yeah.

MS. EULER: See, I would think --

CHAIRMAN: I can't even sell a preneed and be legal on October 28th, but with where's my contract and all the language and all the la, la, la, and --

MS. EULER: You can't -- I would think that a funeral home would be able to tell us how much money is in joint accounts or how much money is in insurance or how much money --

MR. REINHARD: If you're like me. I mean, I could go add those up for you, but, hell, you've got somebody that's like Gary, who has millions and Martin has got trillions, and Bill's got gazillions.

MR. STALTER: I don't have any.

MS. EULER: Well, I --

MR. REINHARD: Well, I mean, you're --
(inaudible) -- if you added them all up.

Hell, yeah, it would be a nightmare.


Yeah.

MR. MAHN: When you've only got two --

MR. REINHARD: And then -- and you
don't know what -- (inaudible.)

MR. MAHN: Do you want them in
alphabetical order?

MS. EULER: We'll alphabetize them for
you, Jim.

MR. STALTER: And they're not even
numbered sequentially.

CHAIRMAN: Here's your perfect example.

MR. REINHARD: One's on Jim and one's
on Pan.

CHAIRMAN: One of the funeral homes
that we purchased, when we purchased it, we
asked for the information.

MS. EULER: Uh-huh.

CHAIRMAN: And they're, like, we don't
have any records here of what totals -- of
what we have in totals. We'll just have to
go down to the bank --

MS. EULER: So, how do you --
CHAIRMAN: We'll just have to go down to the bank and have them add it up for us.

MS. EULER: Really?

MR. KRAUS: Which could be several banks.

CHAIRMAN: Which could be several banks. It was several banks. CDs here, CDs there, CDs here, CDs there. And I had to go get printouts from all those banks, and that's the only thing I had to check --

MS. EULER: So, you don't know?

CHAIRMAN: I didn't say everybody. I said one.

MS. EULER: Huh.

UNIDENTIFIED: That's how I would do it.

CHAIRMAN: So, I'm just saying it really would be.

MS. EULER: Okay.

CHAIRMAN: And half of the funeral industry doesn't even know this exists, let alone --

MS. EULER: Well, they would if there was a blank on their new -- on their annual report for this year.
MR. REINHARD: There's going to be several obituaries in the --

CHAIRMAN: Well, I know, but --

MR. REINHARD: -- Missouri Funeral directors' magazine.

MS. EULER: Okay.

(Several people talking simultaneously.)

CHAIRMAN: Actually, it really would be. It'll be hairy.

MR. MAHN: Aren't they going to have to give totals next year anyway?

MS. EULER: Well, okay. Yeah. They will next year.

MR. MAHN: All totals; right?

MS. EULER: Yeah.

MR. MAHN: It's going to take a year to go into totals probably.

MS. EULER: Okay. I'm just raising it as an issue.

MR. MAHN: It's a great --

CHAIRMAN: It's a great thought. I agree with the thought. The reality is the issue, though.

MR. MAHN: It's awesome. There just ain't enough time.
MS. EULER: Okay. All right. Well, I'm raising it as an issue.

CHAIRMAN: Okay. So, we passed that one. Next?

MR. KRAUS: K30.

UNIDENTIFIED: Don't you wish you were back over at the other building?

MS. EULER: No. I was treated the same way over there, so --

MR. KRAUS: This, I think, we have previously addressed. It's talking about what you want for the date, and this says by the 31st of October of each year or by the date established by the Division -- or by Board -- by rule.

CHAIRMAN: But that is the one we established, isn't it, because that is when the reports kind of were due or are due or whatever.


MS. DUNN: Uh-huh.

MR. KRAUS: All right. K31, can there be a waiver of the late fee? I think that was a question. This says shall be subject to a late fee in an amount established by the
Board by rule. I don't envision that as enabling the amount to be zero, you know, if there's good cause. That's going pretty far beyond the statute, I think.

MS. EULER: And I think you will create more problems than you will solve if you allow a waiver provision, because everybody will want a waiver because everybody has got a good reason, or maybe I'm cynical.

CHAIRMAN: It just puts the Board in the discerning business.

MS. EULER: It -- yeah. It puts the Board in a bad situation. It's easier to enforce a bright-line rule than a shade of gray.

CHAIRMAN: Everybody in agreement with that?

MR. REINHARD: Yes.

MR. MAHN: Yes.

MR. KRAUS: But you'll be able to -- and you'll be able to set what that late fee is.

MS. EULER: And you can set the late fee by gradation, if you want, you know. If you're 30 days late, it's 5 bucks; if you're
60 days late, it's $150.

MR. REINHARD: I like gradation.

MS. EU LER: If you're 6 months late, it's $2,000. I mean, those are just made-up, make-believe numbers, but, you know, you could have a gradation if you wanted to.

MR. STALTER: Yeah. Yeah.

CHAIRMAN: I think the general feeling is leave it alone.

MR. REINHARD: Thank you for that new word today. I've never heard that word.

CHAIRMAN: Thank you?

MR. REINHARD: No. Gradation. Well, I never have.

MR. MAHN: They don't have that on the NASCAR station, do they?

MR. REINHARD: (Inaudible.)

(Several people talking simultaneously.)

CHAIRMAN: K32.

MR. KRAUS: K32. Specify that automatic suspension takes effect November 1, immediately after the reporting deadline. Let's see. If the seller fails to file an annual report on or before its due date, his or her preneed-seller license shall
automatically be suspended until such time as
the annual report is filed and all applicable
fees have been paid.

CHAIRMAN: So, we need a rule to just
agree with that? That's what it says.

MR. KRAUS: It would suggest -- yeah.

I mean, that's kind of what it says. I don't
know if we --

MS. EULER: Yeah. Yeah.

MR. KRAUS: Do we need a rule to say
it, too?

MS. EULER: It wouldn't hurt.

MR. REINHARD: Why do we need a rule
to say what it says?

CHAIRMAN: Legal?

MS. EULER: It defines what
automatically suspended would be.

MR. REINHARD: Okay.

MS. EULER: And it defines --

MR. KRAUS: Because there's not a date
in the provision.

MS. EULER: There's not a date in the
provision, and since you are setting the
renewal fee -- the renewal-date deadline as
October 31, it wouldn't be a bad idea. It's
up to the Board.

CHAIRMAN: Anyone against it?

MR. REINHARD: All right. Let's do it. Let's do it.

CHAIRMAN: Do it. You all said that; right?

MR. MAHN: Yes.

MR. REINHARD: If we don't do something, we ain't never going to get out of here, so come on.

CHAIRMAN: We've moving, though. We're moving. Thirty-three.

MR. KRAUS: Thirty-three. Automatic suspensions without notice could cause problems for both the licensee and the Board. The validity of any contracts written during the suspension would be in doubt.

MS. EULER: Well, I think everybody would have notice because there will be a notice attached to it that says if you don't file this, your license is suspended November 1, and there's notice in the statute.

MR. KRAUS: Well, there will be in the rule, too.

MS. EULER: Uh-huh. And that's about
as public notice as you can get.

    MR. KRAUS: Do you think there will be
issues with the validity of the contracts? I
think they would still be preneed contracts.

    MS. EULER: The contracts --

    MR. KRAUS: There would be --

    MS. EULER: We could make a rule on
that.

    MR. KRAUS: Someone operating --
someone could be operating under a suspended
license --

    MS. EULER: Yes.

    MR. KRAUS: -- which would be a
problem for them.

    MS. EULER: It would be a problem for
them, but not for the contract.

    MR. KRAUS: I don't know if that would
invalidate the contracts.

    MS. EULER: Right. I don't think so.

    MR. STALTER: Well, you have a -- it
is. You can't sell a preneed contract without
a license.

    MS. EULER: Right.

    MR. STALTER: So, if you don't have a
-- if you have a suspended license, is the
contract -- is he compounding his problem by the fact of the automatic suspension?

MR. KRAUS: It might be, but I don't know what we do about it.

MS. EULER: It's a problem for him.

MR. STALTER: Yeah.

CHAIRMAN: Something that -- I was just looking at Don Otto's comments here that might really should be looked at is that during that automatic suspension, any contract sold during it are valid. In other words, if somebody really took preneed money and they were suspended --

MS. EULER: Right. They're still --

CHAIRMAN: -- because we don't want the customer hung out there with --

MS. EULER: They're still bound to the contract, but the seller is subject to discipline, subject to injunction, subject to all of those remedies, but not the contract. And maybe we need to specify that rule.

MR. KRAUS: But they would need to say that in rule, maybe.

MS. EULER: Yeah.

MS. RUSSELL: Martin, it's no
different than what you do with a funeral
director or an embalmer that doesn't renew
their license and they go ahead and embalm a
body, then they are -- you know, then they're
in trouble.

CHAIRMAN: Right.

MS. RUSSELL: You know, the body is
still embalmed.

CHAIRMAN: That's true.

(Several people talking simultaneously.)

MR. KRAUS: It's still a valid
embalming.

MS. EULER: It is.

CHAIRMAN: You can't go back on the
embalming, but what if somebody -- I don't
even know who the somebody would be or what,
but what if somebody said, well, their license
wasn't any good, though, so that contract is
not, either.

MS. RUSSELL: Then that person would
probably seek court action, yeah, against them.

CHAIRMAN: Legal -- okay. So, you're
thinking that it's okay, it doesn't need
addressed?

MS. EULER: Well, let's think about --
CHAIRMAN: Darlene, you're thinking it's okay, or it does?

MS. RUSSELL: I think it needs a draft that says just what you said.

CHAIRMAN: Okay. Okay.

MS. RUSSELL: You know, that -- I think it would be a great idea to have that clarified in rule. Bill is agreeing with me, even.

MR. STALTER: Well, I've suggested that, yeah.

MS. RUSSELL: (Inaudible.)

MS. EULER: So, let's talk about a different scenario. What if we have somebody who doesn't have a preneed-seller's license, that's never had a preneed-seller's license, who has said to the Board you can't make me and I ain't going to, and their contracts are still valid. What's their incentive to get a license?

MS. RUSSELL: You have an injunction.

MR. KRAUS: A judge telling them to.

MS. RUSSELL: That's what I'm saying, an injunction.

MS. EULER: Yeah. I mean, so we don't
want to hurt the consumers.

MR. KRAUS: Of course, we could limit this to addressing people operating under suspension.

MS. EULER: Yeah.

MR. STALTER: Suspension. Yeah.

MR. KRAUS: Under the automatic suspension --

MS. EULER: Under this rule.

MR. KRAUS: -- under this provision.

MS. EULER: Right. I think that would be good to narrowly tailor it.

MR. KRAUS: Okay.

CHAIRMAN: Everybody in agreement?

MR. REINHARD: That's two new words, narrowly tailored.

CHAIRMAN: Okay. Let's go. That's good.

MR. KRAUS: All right. The point sub 8 there says this section shall apply to contracts entered into before August 28th, 2009. The comment was, does this mean that that is -- that means only or does that mean also?

MS. EULER: It means also. It means
that in the reporting requirements, you have
to report for contracts sold before August
28th, as well as after.

MR. KRAUS: That's how I read that,
too.

MS. DUNN: But if you're both
discussing it, I think a rule needs to clarify
it.

MS. EULER: Uh-huh. I think that's a
good idea.

CHAIRMAN: Any opposition?

MS. EULER: How about a motion for?

CHAIRMAN: That's by default, if
there's no opposition.

MR. KRAUS: Because it's just a draft.

CHAIRMAN: That's right.

MS. EULER: It's a directive.

CHAIRMAN: It's a draft. Okay.

MR. KRAUS: All right. Retention, 465.

Adequate records. We need to define what that
is.

MS. DUNN: Record retention.

CHAIRMAN: Oh, yeah. Yeah. So, how
are you going to define that?

(Several people talking simultaneously.)
MS. EULER: My thought on this is that we are better off leaving that left to the ordinary dictionary definition than trying to define it too much because if we try to define it too much, we may have somebody who meets the letter of the law, but not the spirit of the law. But that's -- if you think it would be useful for funeral directors to know what they need to keep, we could do a rule.

MR. KRAUS: It is hard to define.

MS. EULER: It is hard to define.

MR. KRAUS: Adequately.

CHAIRMAN: Okay. Board members, anyone against that or want to make a motion for it?

MR. MAHN: No. I think we --

CHAIRMAN: Define adequate or not define adequate?

MR. MAHN: I'm going to be honest with you. When you two attorneys start doing your lingo back and forth, I mean --

MR. KRAUS: It's all crackles and buzzes?

MR. MAHN: Yeah. I just go off.

CHAIRMAN: I followed that totally.

That was easy.
MR. MAHN: Well, you'll stay in it then. You just stay and call us when it's noon, because --

(Several people talking simultaneously.)

MR. MAHN: Well, we were going along fine there for a little while, but, man.

MR. SPEAKS: What if it said including, but not exclusively, and then --

MS. EULER: Uh-huh. We could do that. I mean, Board members, you're in the business. Does --

MR. KRAUS: Of course, you can risk setting a minimum, but then everyone does just the minimum.

MS. EULER: Right. And that's the problem. Todd, what do you think?

MR. MAHN: I think it's 20 minutes -- (inaudible) -- lunch.

MR. KRAUS: I think that would be a good thing for later.

MR. STALTER: Yeah. This is not an emergency issue, this is a --

MS. EULER: Okay. No.

MR. REINHARD: Down-the-road issue.

CHAIRMAN: Nonemergency issue. Call
the paramedics.

MR. REINHARD: Hey, that's -- we could
do all these like that.

MR. MAHN: K36 through K63 are
nonemergency.

MR. KRAUS: These? No, we don't need
to do that.

MR. MAHN: Only highlight the one
that's got red lights.

MR. KRAUS: All right. Adequate
records. That's the same thing.

MR. REINHARD: Down the road.
UNIDENTIFIED: Down the road.

MR. KRAUS: Maintains within the state
of Missouri in a format that's accessible --

MS. EULER: We have a similar rule for
funeral establishments, don't we?

UNIDENTIFIED: All my records --
MS. EULER: Or did we just talk about
that? I think it's a good idea to --

MR. KRAUS: I think it's a good idea.
I don't think that's an emergency one, either,
but I think it's a good idea.

CHAIRMAN: I think banking solved that
last time with bricks and mortar, didn't they?
MR. KRAUS: Who did?

MS. EULER: I think it is.

MR. STALTER: No, not quite.

MS. EULER: I think --

CHAIRMAN: Not quite? Oh, okay.

MS. EULER: I think we need a rule on that. I would be more comfortable doing an emergency rule on that so if we do have disciplinary issues or audit issues, we've got the records easily accessible.

CHAIRMAN: That's the way it's basically always been, isn't it?

MS. EULER: No.

CHAIRMAN: Oh, sorry.

MR. KRAUS: For all those who do it the right way.

MR. REINHARD: What records are you talking about? Funeral-home records or the interval records or the accidental records?

MR. STALTER: Trust records.

MS. EULER: The preneed records.

MR. MAHN: (Inaudible.)

MR. REINHARD: Are you talking about the audit of my finances and at-need, preneed, for the last five years?
MS. EULER: We're talking about -- yes. Your seller records of preneed contracts.

CHAIRMAN: I'm thinking they've always got to be here. I mean, in my mind, they always had to anyway. I mean --

MS. EULER: But unless you have a rule that says that, you can't enforce it.

CHAIRMAN: Well, I'm not sure whether we did, but I remember us doing a situation where we made them make copies of the preneed contracts and take them to another funeral home.

MR. STALTER: Sure. Yeah.

MS. EULER: Yes. And that's because we had a rule on that.

MR. STALTER: Now, you didn't -- it was not under 436.

MS. EULER: Not under 436, no.

MR. STALTER: Okay.

MS. EULER: But that's what I'm saying, we ought to have a rule under 436 because when Lori goes out to inspect a seller and says, okay, I want to look at your preneed records, and they say, well, we keep those all in Vegas. And Lori comes back and says,
Board, I need authority to go to Vegas --

(Several people talking simultaneously.)

MR. SPEAKS: And what happens in Vegas stays in Vegas.

MR. KRAUS: So, this is gypping Lori out of a trip, is what you're saying?

MS. EULER: Pretty much. Lori has got responsibilities. She's got two kids at home. She can't be taking them to Vegas.

MR. SPEAKS: She needs a trip to Vegas.

MR. REINHARD: Yeah.

MR. KRAUS: What if that company in Vegas stores them all electronically and that person can obtain them electronically when Lori asks for them?

MS. EULER: So long as they're -- and that's what this says. They can be obtainable in Missouri, but we have -- this has been an issue. This has been an issue with the Board, that the Board has lost on, because there wasn't a rule. And so, there is no point in requiring records if everybody is going to go rent a storage unit in Vegas because that's like having no records because the Board is not going to send Lori to Vegas every six
months to look at the records.

(Several people talking simultaneously.)

CHAIRMAN: Right. So, we need the rule.

MS. EULER: Or North Dakota; how about that? They keep their records in North Dakota.

CHAIRMAN: Is anyone against that rule?

MR. STALTER: This is kind of a down-the-road rule, isn't it?

MS. EULER: It's also an emergency rule. Because everybody -- we need to be able to act upon our authority under Senate Bill 1 now. We need to be able to go out and inspect records now as opposed to waiting 12 months while we have a regular rule.

CHAIRMAN: Do you see a problem with that?

MR. STALTER: We'll have to figure out formats, you know, how -- when they have to be accessible. And we discussed this on the cemetery side and we were talking about, you know, five or ten business days, you know.

MS. EULER: Yeah.

MR. STALTER: And to the accessibility, what format are you looking for
from fiduciaries and so forth, so --

MS. EULER: Well, I think --

MR. STALTER: You just have to be
careful about what you're -- how you're going
to define what they have to have and when they
have to have it there.

MS. EULER: Right. I agree, but I
think we can do that.

MR. STALTER: I don't disagree.

MS. EULER: And we may --

MR. STALTER: I just don't think it's
an emergency rule; that's what I'm saying.

MS. EULER: Well, we may need to
refine it in a permanent rule, but I think we
need an emergency rule because I know Bill is
going to tell all of his clients to go rent
storage lockers in North Dakota; right, Bill?

MR. STALTER: Well, actually, I mean,
when you say that --

MR. MAHN: Vegas.

MR. STALTER: Actually, you mention
that, but all of my decisions for US Bank are
made out of Fargo, North Dakota.

MS. EULER: See?

MR. STALTER: I'm not going there.
MS. EULER: But I think we need some rule that says if you're operating in Missouri and we come out to take a look at your books and records, we need to be able to do that in Missouri without having to go to Fargo.

CHAIRMAN: Anyone --

MR. REINHARD: Really happy campers over that.

MR. STALTER: Yeah. You're close enough -- (inaudible.)

MS. DUNN: Plus in a format that we can understand.

MS. EULER: Right.

MS. DUNN: Because we've gotten that done one other time --

MR. REINHARD: Well, yeah. Write something up and we'll look at. Go on. Let's go.

MS. EULER: So, is that a motion to --

MR. REINHARD: Yeah. Write it up and we'll look at it.

MR. KRAUS: All right.

CHAIRMAN: Okay. Yes.

MS. DUNN: We're doing yeas and nays.

MR. KRAUS: Thirty-eight. Five-year
period, it's intended to cover the open-audit period to the extent the trust is audited with passing colors, the seller could be free to begin disposing of records less than five years after the performance.

MS. EULER: No.

CHAIRMAN: What records?

MS. EULER: I think you need to keep the records for five years whether you've been audited or not. Oh, for no less than five years.

MR. KRAUS: For the duration of the contract and for no less than five years after the performance or cancellation of the contract.

MR. STALTER: The question here has to do with whether there is an audit or not, because they've been audited, you know --

MS. EULER: I don't think it matters.

MR. STALTER: Just that -- okay. I mean, it's just -- these bigger companies about how many records they've got to keep.


MR. KRAUS: They figure that, well, they just audited us, so the next audit is not
going to be for a while, so we can get rid of all these?

MR. STALTER: Yeah. And the risk we're talking about cancel -- or the performed contracts, and how long are you going to require them to keep their performed contracts. And, really, they should keep them for a period of three years for -- you talk about tax audits and so forth, but, truthfully, you know, at some point, they just need a clear line about when they can then start destroying old records.

MS. EULER: And I think the statute sets forth that clear line of five years.

MR. STALTER: Okay.

MS. EULER: Do we need a rule on that?

CHAIRMAN: Need a rule? Did I hear you guys say we do -- you think we do or we don't?

MS. DUNN: I don't think there's any opposition. What did you think, Earl?

MR. KRAUS: I agree.

CHAIRMAN: That we do or don't?

MR. KRAUS: That we don't.

CHAIRMAN: Don't.
MS. DUNN: Okay.

CHAIRMAN: Okay. Legal says we don't. It's clear and forward.

MR. KRAUS: 470, K39, the Board shall conduct a financial examination of the books and records of each seller. I think there is the issue of defining or, maybe more importantly, whether there is any process that needs to be set out.

MS. EULER: No.

MR. KRAUS: And maybe there doesn't need to be.

MS. EULER: I don't think so.

MR. REINHARD: So, what do you mean? You don't -- you're just going to say examination. Does that mean, like, Lori comes in here and says give me five contracts and --

MS. EULER: It could. I think that that flexibility is good because the more -- the Board may direct different kinds of financial examinations. So, for, like, you with only two preneed contracts, the Board is going to do a different financial examination of you than Martin's -- how many did you say you have; a trillion?
CHAIRMAN: Trillions.

MS. EULER: --than Martin's trillions
-- six trillion contracts.

MR. STALTER: Yeah. Gazillions over
here, but --

MS. EULER: Okay. So, I mean, that
would be my perspective on it, but I don't
have a vote.

MR. STALTER: I'll take a flip side of
that is that what I'd like to see out there,
I mean, some different approaches to it so
that the operators know what to expect when
there is a financial examination. That there
might be a very easy one for Jim, because we
know it's going to have to be easy for Jim.

MS. EULER: Uh-huh. Because he has two
contracts.

MR. STALTER: Uh-huh.

MS. EULER: Well --

MR. STALTER: But, I mean, some -- if
the date -- if we set out --

MR. REINHARD: (Inaudible.)

MR. STALTER: -- the format of this so
that they know how to keep records. That's
what I'm driving at on this.
MS. EULER: Uh-huh. Okay. And I see your point --

MR. REINHARD: And I agree.

MS. EULER: -- and I wonder if that's something that might be more useful to take up after we've had a little experience with this law and we see what needs to be done and see if it's an issue.

MR. REINHARD: So, we could do that down the road?

MR. STALTER: It's a down-the-road thing.

MS. EULER: Yeah, I think so.

MR. REINHARD: But what -- and I think it's back to what he's saying is, like, there is a difference. I mean, are you going to say -- is this, like, are we going to random audit everybody and then if you pick a random audit, do you get actually -- we call up an account and then have a firm go in and audit them? Or are we going to, like -- are you just going to have, like, an examination where, like, our inspectors -- I mean, I think you're going to have to get down to some of this to where it makes sense --
MS. EULER: Right.

MR. REINHARD: -- because like he did
-- you know, he's saying these guys that small
--

MS. EULER: Right.

MR. REINHARD: -- there's a lot of
small funeral homes that just will be just
horrified.

MS. EULER: Right. And I think that
this --

MR. REINHARD: Here's the keys.

MS. EULER: -- that this gives you that
flexibility, too.

MR. STALTER: Okay. So, down the road.

MS. EULER: Yeah.

MR. REINHARD: So, we'll move on.

CHAIRMAN: So, what you -- the
determination was just defining what is audit,
what is inspection --

MS. EULER: Financial examination.

CHAIRMAN: -- what is -- the degree of
that; right?

MS. EULER: Uh-huh.

MR. REINHARD: Right. But we're going
to do that later; right? Yeah.
CHAIRMAN: Okay.

MR. REINHARD: Down the road.


MR. KRAUS: Okay. The same with the issue of notice to the licensee whether there's --

MS. EULER: I don't think there needs to be notice to the licensee.

MR. KRAUS: I don't think there does, either.

MS. EULER: This notice is the Board shall issue notice authorizing someone to do the inspection, the examination, or audit. It's not notice to the licensee.

MR. KRAUS: Right.

MR. REINHARD: Right.

MR. KRAUS: All right.

CHAIRMAN: Okay.

MR. KRAUS: Forty-two. Defining more terms. Do those go into the later pile, also?

MS. EULER: Yeah, I think so.

MR. KRAUS: Conflict of interest, affiliated with management, owns a pecuniary interest.
CHAIRMAN: Wouldn't it have to be?

MR. KRAUS: I think it would be -- all
go together.

MS. EULER: Yeah.

CHAIRMAN: All agree it all goes with
the other?

MR. REINHARD: Uh-huh.

CHAIRMAN: Okay.

MR. KRAUS: Forty-three. Entering the
office, that goes with that, too.

MS. EULER: Uh-huh.

CHAIRMAN: All agree. Okay.

MR. KRAUS: Forty-four. Well, this is
-- I'd put that in the same pile. The same
with forty-five.

MR. REINHARD: No. We move it to the
other pile.

MR. KRAUS: Forty-six on subpoenas,
you could develop a form subpoena if you
wanted to, but it would be issued by you.

MS. EULER: Yeah.

MR. KRAUS: You don't have to do that.

MS. EULER: No.

MR. KRAUS: I think if you do, that
would be for later anyway.
CHAIRMAN: Okay. Heads are nodding.

MR. KRAUS: Forty-seven. Board, Division of Finance, Department of Insurance, financial institutions, and professional registration, and the office of attorney general may share information regarding a number of things. And the Board could consider doing a memorandum of understanding. Of course, that's completely outside the rules process.

MS. EULER: Uh-huh.

MR. KRAUS: We're not even talking about any kind of rule, much less an emergency rule. I think if the Board were to do that, that would be for later on. And you really wouldn't have to do that, but it may facilitate communication.

MS. EULER: Uh-huh. Yeah.

CHAIRMAN: That's okay?

MR. KRAUS: Forty-eight. May institute independently; right? It's the office of the attorney general initiating judicial proceedings.

MS. EULER: And my view of that is that seems, to me, what the statute says
already, and I don't know that we need to mess with it.

MR. KRAUS: I think that's what -- yeah. I think it is what it says already. I think they mean they may need information from the Board to know about it, but --

MS. EULER: Uh-huh. Right.

MR. REINHARD: (Inaudible.)

MR. KRAUS: I don't think we need a rule.

CHAIRMAN: Everybody looks happy with that.

MR. KRAUS: All right. On to 436.480, purchaser's debt incapacity. This section needs -- K49, this section needs to be consistent with any enforceable right of sepulcher designation.

MS. EULER: Well --

MR. KRAUS: I see Don has got a note about that. Did you want to --

MS. EULER: Under the law, the right of sepulcher doesn't have anything to do with enforcing legal rights. Only a personal representative appointed by the court or the estate can enforce legal rights. So, the
right of -- if you have the right of -- if
you're the --

MR. KRAUS: But sepulcher is a
separate right that someone has.

MS. EULER: The right of sepulcher is
the right to control final disposition, it's
not the right to enforce contractual
agreements.

MR. KRAUS: Right. It's not a power of
attorney.

MS. EULER: It's not a power of
attorney, it's not a court-appointed personal
representative for the estate.

MR. KRAUS: So, what do you do in a
conflict when you have someone with the right
of sepulcher wanting to do one thing and
someone with power of attorney under a preneed
contract directing something different?

MS. EULER: You tell the funeral home
to contact their own attorney.

MR. KRAUS: I like it.

MR. REINHARD: There we go. Write
that in the rule. Okay.

MR. MAHN: I'm going to put one on
staff.
MS. EULER: Well, the thing -- the difference here is that this statute is talking upon rights and remedies, who enforces rights and remedies. And the goods and services, the at-need contract is not a right or remedy. But, say, the person is dead and there's a dispute with enforcing the preneed contract. Only the personal representative can enforce the preneed contract. Having the right of sepulcher doesn't give you the right to enforce the preneed contract.

MR. REINHARD: Say that again. Not the whole thing, just the last sentence.

MS. EULER: Having the right of sepulcher does not give you the legal authority to enforce a preneed contract. The only person who could enforce a contract on behalf of the decedent would be the personal representative --

MR. REINHARD: Oh, okay.

MS. EULER: -- appointed as part of the estate.

MR. STALTER: But --

MR. REINHARD: So, which happens, hell, like a month later?
MR. STALTER: Yeah. That's -- yeah. Exactly. Your personal representative, it may be weeks or a month later.

MS. EULER: That's true.

MR. STALTER: So, we're sitting here trying to figure out what to do with this preneed contract.

MS. EULER: Well, you march down to the courthouse and you file an estate and you get appointed as PR so you can do it because only the PR can legally enforce rights of the decedent.

MR. STALTER: Unless the preneed contract then defines who can enforce it in the purchaser's absence.

MS. EULER: The right of sepulcher governs final disposition.

MR. KRAUS: But there, again, you can --

MR. SPEAKS: That doesn't automatically transfer any other powers onto that person.

MS. EULER: Right.

MR. SPEAKS: That's the whole point.

MS. EULER: Right.

MR. KRAUS: Yeah. And there, again,
you could end up with the same conflict --

MR. SPEAKS: Yeah.

MR. KRAUS: -- if the contract says this person determines upon my death what happens -- you know, who can go forward in asserting rights under the contract. Those are different rights than the right of sepulcher --

MS. EULER: Right.

MR. KRAUS: -- which maybe the same person has, maybe somebody else had, and then you have two different rights coming at each other.

MS. EULER: And that's when you file a lawsuit.

MR. SPEAKS: Would you have to hire a lawyer to do that?

MS. EULER: No.

MS. DUNN: They'll hire you acting as such.

MR. SPEAKS: I don't know where we could find one.

MR. STALTER: One that knows what he's doing.

MS. EULER: You can represent yourself
pro se, if you like.

CHAIRMAN: So, do we need to do something with this?

MR. KRAUS: So, is the consensus no?

MS. EULER: No.

MR. STALTER: No.

CHAIRMAN: No. Okay.

MR. REINHARD: Thank God.

MR. STALTER: I got my answer.

CHAIRMAN: Thank you for the legal lesson.


CHAIRMAN: That's just consistent with all the rest of it, isn't it?

MS. DUNN: Yes.

MR. KRAUS: So, I assume we'll develop a form for that.

MR. REINHARD: Yeah. Get a nice one, too, because there's going to be about 100,000 of these. Yeah, we're done. NPS killed us and now the Board hit us upside the head.
We're really done.

MR. KRAUS: And, Becky, you all are putting the forms together; right?

MS. DUNN: We -- you know, we have a bunch of draft forms that Lori put together some time ago.

MR. KRAUS: Right.

MS. DUNN: We just need to --

CHAIRMAN: And 51 would go with the same, wouldn't it?

MR. KRAUS: The report required by this section shall include -- yeah. As to whether that would be built into the form or a required attachment to the form, I would expect.

MS. EULER: Yeah. And, again, I don't think we're picky as to the attachment. If they -- if people want to do it as an Excel spreadsheet, that's fine. If they want to handwrite it out, so long as it's legible, that's fine.

MR. KRAUS: And I think that can be indicated on the form.

MS. EULER: Uh-huh.

MR. KRAUS: That there are those
options.

MS. EULER: As long as the information is there and it's easily readable and organized, I don't think we care what format.

CHAIRMAN: Couldn't that also -- and we had this at least twice already. But couldn't it also be like we did just an example of the embalming log on the Web site so you can download a spreadsheet and just fill in the blanks?


CHAIRMAN: Okay.

MS. EULER: But I don't think we have to mandate that people do it that way.

CHAIRMAN: Right. All right. So, the answer to that was no. Everybody agree? Move right on.

MR. KRAUS: All right. Purchasers, 52. Will provider have to notify each purchaser? That's the report, and this section shall include the name, phone number, and address of the purchasers of any outstanding preneed contract for which the licensee is the designated provider.
MS. EULER: Not under this section.

MR. KRAUS: Yeah. I'm not sure what that means.

MS. EULER: And the reason why the Board needs that information is so when Mary Jane calls in ten years from now and says, well, I had a preneed with Bob Smith, or I don't know who I had a preneed with, but I lived in Nowhere, USA, that the Board can look up and say, yeah, you had a preneed with Bob Smith and now you need to call Joe Blow, because we get -- Becky gets those kinds of calls, don't you, Becky?

MS. DUNN: We do.

CHAIRMAN: This would be similar to, like, calling Division of Insurance and saying XYZ Insurance Company went out of business, who is now handling those contracts?

MS. EULER: Yes. Yes.

CHAIRMAN: So, are you going to start maintaining that database?

MS. DUNN: Well --

MS. EULER: We'll have the information available.

MS. DUNN: Yeah.
CHAIRMAN: For $50 an hour, going back, digging through the files.

MS. EULER: Yes.

CHAIRMAN: Okay. But do we need a rule for that? Is that legal from legal, do you think?

MS. EULER: I don't think so, unless the Board thinks so.

CHAIRMAN: Hey, if you don't think so.

MS. DUNN: Well, emergency.


MR. KRAUS: Fifty-three. Does this refer to if any preneed contracts, there must be a provider to each preneed contract; right?

MS. EULER: This means if there is someone assuming the responsibility for the contract, they need to be listed, and if there is not, then there is no one to list.

MR. KRAUS: Yeah. I think that comment was because it's going towards -- because the wording "under a preneed contract, if any."

MS. EULER: Yeah.

MR. KRAUS: Well, that kind of reads funny.
MR. EULER: Yeah.

MR. KRAUS: Of course, there's a
preneed contract, or what are you doing?
CHAIRMAN: So, do you need to set that
out or --

MS. EULER: I would suggest a rule
setting that out and for the Board to consider
whether you want a rule that says every
provider ceasing to do business shall make a
good-faith basis to find a provider to handle
the contracts. What do you think?
CHAIRMAN: Do you have a question mark
there?

MR. KRAUS: Do I what?
CHAIRMAN: I thought I heard a
question mark in your voice.

MR. KRAUS: Oh, no.
CHAIRMAN: Okay. So --

MS. EULER: Does the Board want -- I
mean, do you want to put that responsibility
on the providers? I know the Board has done
so in the past on kind of an encouragement
basis. It might be useful to have a rule
that says that.

CHAIRMAN: Anyone disagree? Go for
it. What other information, though?
Fifty-four, I assume, is where everybody is
looking.

MS. EULER: I don't know that we have
any at this point. We may, as time goes on,
but I don't --

CHAIRMAN: Nonemergency? All agree?
Yeah. Nonemergency.

MR. KRAUS: Fifty-five, must require a
written notice, provider shall notify each
seller in writing. Set out what's required to
be included in that?

CHAIRMAN: Didn't we do something
similar to that back a few pages?

MR. KRAUS: I think you had --

MS. EULER: Do we want to do just a
general definition as to what written notice
means throughout the statute because it's used
in several places?

MR. KRAUS: We could.

CHAIRMAN: If they define written
notice for several places, does that make
sense?

MR. KRAUS: We could do that unless
otherwise more specifically defined in a
particular section, it shall mean --

MS. EULER: Right.

MR. MAHN: Not a problem. Yes.

MR. KRAUS: I like that.

MS. EULER: Notice in writing.

CHAIRMAN: I hear yeses. Well, we've got to finish, we've only got five more; don't you think?

MS. EULER: Yeah. Let's go.

CHAIRMAN: If they're easy.

MS. DUNN: Okay.

MR. KRAUS: 436.500.

CHAIRMAN: K56 says need a form.

Isn't that just an in general with all the rest of it?

MS. EULER: Yes.

MR. STALTER: Yeah.

MR. KRAUS: Got to have a form.

CHAIRMAN: Next, 57.

MR. KRAUS: The Board use its audit powers to provide some assurance to buyers.

MS. EULER: No.

MR. KRAUS: Has consented to assuming the outstanding obligations of the seller.

MS. EULER: The problem with that is
that these records are closed records, not
subject to disclosure. That's one problem.
Problem number two is what's on lines --
paragraph -- lines 25 through 30, that the
Board is prohibited from using its audit
records to amend, rescind, or supersede any
duty imposed on or due diligence required of
an entity assuming the obligations of the
seller. So, I think that section prohibits
the Board from using its audit powers to
provide assurance to buyers.

CHAIRMAN: So, it's just -- doesn't
matter anyway?

MS. EULER: The audit is for the Board
to insure compliance.

CHAIRMAN: But the comment 57 is just
doesn't apply; correct?

MS. EULER: Right.

CHAIRMAN: All agree it doesn't apply?
Okay. End of story.

MR. KRAUS: Fifty-eight, could develop
a rule on the seller may file a plan, set out
requirements, and leave format to the seller.
So, you could just leave it as is, you could
set out what such a plan must include.
CHAIRMAN: That sounds too big for emergency rule to me.

MR. KRAUS: You could even develop a form.

MS. EULER: Uh-huh.

CHAIRMAN: Doesn't it, you, seriously?

MS. EULER: Yeah.

CHAIRMAN: For us to create the developed seller plan in advance?

MS. EULER: Right. No.

MR. STALTER: No.

MS. EULER: We may want a rule there to clarify that the seller shall use good-faith efforts to protect the preneed contracts and to find a seller to service the preneed contract for the future or something like that.

CHAIRMAN: So, do you see that as emergency?

MS. EULER: Yes.

CHAIRMAN: So, basically, the good-faith effort being the emergency thought?

MS. EULER: Yes.

CHAIRMAN: Kind of simple. Anybody see issue in that? Go for it.

MR. KRAUS: Fifty-nine, any other
information, maybe trust statement or bank
insurance statements showing balances.

CHAIRMAN: Isn't that what I referred
to as I was saying could be the problem
thinking about what Sharon was thinking we
might need some totals? In other words, some
funeral homes go down to the bank and just say
print me off my statement, and why would that
be an issue.

MS. EULER: Well, I think it's a good
idea, actually, because for the annual
reports, you're going to need to do that
anyway. And so, it's kind of like they need
to file a final annual report.

CHAIRMAN: But I like the word "could"
there, not that you have to go to the bank
and get those printouts and --

MS. EULER: No. No. No. That they
need to file a final -- file what would be
ordinarily the annual report, but file a final
one.

MR. STALTER: Or an interim. Really,
what you're doing is in between the annual
report --

MS. EULER: Right.
MR. STALTER: -- and, now, we're selling a property, so then you have an interim report.

MS. EULER: Here is our final annual report. Instead of requiring them to file it in October, that they need to file it with the Board at the cease doing business, because that would have that information in it.

(Several people talking simultaneously.)

CHAIRMAN: Lots of conversation, so, obviously, we need to look at it; agreed?

MR. REINHARD: Yes.

MR. MAHN: Yes.

CHAIRMAN: Yes. Agreed.

MS. EULER: What does the Board think?

CHAIRMAN: Yes, look at it.

MR. KRAUS: But you want the other information to be what?

MS. EULER: That they file an annual report is ordinarily due October 31, but file it at the time they file their cease doing business -- a final report of some -- we'll make up some name for it.

MR. KRAUS: Well, you can refer back to the other section.
MS. EULER: Yeah.

CHAIRMAN: Okay.

MS. EULER: But they need to file it with their cease.

CHAIRMAN: Sixty is the word "notify" again. Haven't we already addressed that once?

MS. EULER: Yes.

CHAIRMAN: Or twice or three times or four times. Sixty-one, written notification. I think we already hassled that back a page or two, didn't we?

MR. KRAUS: Next, 505, credit life. No comments.

CHAIRMAN: No comments.

MR. KRAUS: Anything from the room?

CHAIRMAN: No.

MR. KRAUS: Moving on. 510, provider may demand payment from trustee. K62, need a reg setting out conditions, timing and release for trustee to be protected. Let's see.

MS. EULER: Bill, did this come from you?

MR. STALTER: Yeah. And I'm thinking what were terms when they got a --

MS. EULER: What would you suggest?
MR. STALTER: When you've got a -- say, an alternative or a -- (inaudible) -- replacement provider or something of that nature.

MS. EULER: Right.

MR. STALTER: And there's some kind of dispute. There is -- you know.

MS. EULER: Right.

MR. STALTER: Yeah.

MS. EULER: I think it's probably a good idea. What would you suggest in terms of timing and release?

MR. STALTER: That's a down-the-road thing. Let's just say at some point --

MS. EULER: Okay.

MR. STALTER: -- or I'll give you a suggestion.

CHAIRMAN: Nonemergency. But even is that, 63, there's nothing there.

MR. KRAUS: Twenty, rule-making authority.

CHAIRMAN: That's about fees.

MS. EULER: Yeah. It just says -- yeah.

CHAIRMAN: Later.
MS. EULER: Yeah.

CHAIRMAN: We are done.

MS. EULER: Ta-da. All right.

MS. DUNN: With that.

CHAIRMAN: With that. Correct.

MS. DUNN: Yeah.

CHAIRMAN: We are done with that. So, that leaves us to go to lunch. And we will be addressing the emergency rules or considering them and the draft for the intent when we come back. And it's 12:05, so 1:30? Does that work well for -- does that do what we need? Okay. Go eat lunch and be back at 1:30.

(Off the record)

CHAIRMAN: Did you get the handout on the emergency rules that Lori is working with there?

MS. DUNN: We should have three handouts that we're going to discuss now.

MS. EULER: And the notice of intent.


CHAIRMAN: Okay. Take it away, legal counsel.
MR. KRAUS: Do we want to start with the form?

MS. EULER: Start with the form.

MR. KRAUS: The one that says "draft" across the front really big. Notice of intent.

MS. DUNN: Do you want to walk through it?

MS. EULER: Uh-huh.

MS. DUNN: Okay.

MS. EULER: I'll do it.

CHAIRMAN: All right.

MS. DUNN: Okay.

MS. EULER: Let's just do a quick walk-through of this. This is what we put together as a form for people to file the notice of intent, the idea being that people would fill this out, keep a copy of it for them to post as their temporary permit, send a copy to the Board, and that so long as the Board has a copy of this on file, it will be your permit to practice. It's not a license, it's simply a permit to practice until the Board either grants or denies your application for licensure, or December 31st, whichever comes first. A condition of this permit being
in effect is that you have to file your real
application by -- and I put in October 31, but
that date is flexible and up to the Board.
So, that's what's in the instructions. One
notice of intent per entity, so if you are a
corporation filing to be a provider and a
seller, you check both boxes. If you're an
individual registering as an agent, you just
check the agent box.

MS. DUNN: But if you have multiple
funeral directors that are going to be an
agent, then each one of them will need that
form.

MS. EULER: Right. Each person or
legal entity needs to file a separate one of
these. The next section is name, rank, and
serial number. Section B in --

MS. RUSSELL: Sharon?

MS. EULER: Yes.

MS. RUSSELL: Can we go back to your
boxes here where you're checking?

MS. EULER: Uh-huh.

MS. RUSSELL: We were talking about
funeral directors having to also do this.

MS. EULER: Yes.
MS. RUSSELL: So, would there be a box for a funeral director to check?

MS. EULER: If they are going to be a preneed agent, they just check the box as a preneed agent because they will need to register as a funeral director once the real forms come out.

MS. RUSSELL: No. I mean, they're already a licensed funeral director.

MS. EULER: Right.

MS. RUSSELL: Okay.

MS. EULER: They will still need an agent registration.

MS. RUSSELL: They're still going to need an agent registration?

MS. EULER: Yes.

MS. DUNN: So, do you think as we're talking about this, would it be helpful for us internally to know that they are a funeral director and going to be an agent?

MS. RUSSELL: Because they won't be taking the test.

MS. EULER: Well --

MS. DUNN: I know this is only temporary, so --
MS. EULER: -- I think that for our purposes right now, all we need to know is they're registering as an agent.

MS. RUSSELL: Couldn't you make a box that says funeral director/preneed agent?

CHAIRMAN: That's what I'm sitting here thinking.

MR. MAHN: And then agent only.

MS. RUSSELL: It would make it a little bit less -- I mean --

MS. EULER: We could.

MS. RUSSELL: I mean, I think it's --

MR. KRAUS: Well, I mean, you could put a question in that same area, "Are you also a funeral director, yes, no?"

MS. RUSSELL: Just something to indicate --

MS. DUNN: Right.

MS. EULER: Yeah, we can do that.

MS. RUSSELL: Okay.

MS. EULER: We'll just --

MS. RUSSELL: Sorry. I was thinking about --

MS. EULER: That's okay.

CHAIRMAN: That makes sense.
MS. DUNN: Yeah.

MS. EULER: Okay. We can do that.

MS. RUSSELL: And if I can clarify, we were just talking about if the funeral director says he never -- you know, there's ten funeral directors in the establishment, but only one of those funeral directors actually makes preneed, your advice would be only that guy would need to do this?

MS. EULER: Right.

MS. DUNN: Right.

MS. EULER: Right.

MS. RUSSELL: Okay. Thank you.

MS. EULER: The rest can if they want, but they don't have to.

MS. RUSSELL: If they want.

MS. EULER: Right. You were in --

MS. RUSSELL: I am so sorry.

MS. EULER: No. You reminded me of something else I meant to say about this. The other thing is that the applications for the agents would need to be submitted by -- and, again, I have October 31, but that date is up to the Board. And even if you haven't taken the Missouri Law, submit your application and
then supplement with the Missouri Law when you've got it done. So, you don't have to wait until you've taken the Missouri Law to submit your application.

MS. RUSSELL: The permanent application?

MS. EULER: Right.

MS. RUSSELL: The permanent application. Got you.

MS. EULER: Right. You need to submit your permanent application, but the Board won't act on it until you pass the Missouri Law, and that's just for this process.

MR. FRAKER: Yeah. But, once again, Sharon, those that are in the process now are in their internships or funeral director class, they're still going to have to have this.

MS. EULER: Yes.

MR. FRAKER: But are they going to be certified or whatever the word is?

MS. EULER: Registered.

MR. FRAKER: Registered, but after --

MS. EULER: Yes.

MR. FRAKER: You're not going to make
those that are apprenticing now take the test
before December the 31st?

MS. EULER: If they are going to sell
preneed, they will need to take the test
before December 31st.

MR. FRAKER: Yeah. But if they're in
their apprenticeship classes, one that I'm
thinking about, Darlene, she's --

MS. RUSSELL: Oh, yeah. They're
currently serving an apprenticeship, but, see,
their apprenticeship doesn't end before this
goes into effect.

MS. EULER: Right.

MS. RUSSELL: They'll have to take the
Law exam to take --

MS. EULER: To continue to sell
preneed.

MS. RUSSELL: Preneed.

MS. EULER: Unless they've taken the
Law, they won't have to take it again --

MS. RUSSELL: For the -- (inaudible.)

MS. EULER: -- for their
funeral-director license.

MR. FRAKER: Okay.

MS. DUNN: Well, when the new rule
passes.

    MS. EULER: When the new rule passes.

    CHAIRMAN: That's really interesting
    that we would allow an apprentice to take the
    Law test to be a preneed agent, but not a
    funeral director.

    MS. DUNN: No, they can take --

    MS. EULER: But when they register as a
    preneed agent, they can sell preneed. They're
    fully --

    CHAIRMAN: I know, but if you were
    just an apprentice working through your
    apprenticeship, you would not be allowed to
    take that Law test until you had completed
    your apprenticeship.

    MS. EULER: Yeah.

    MS. RUSSELL: Yeah.

    CHAIRMAN: So, now, we've made it
    available for them to do half of their testing
    before they've completed their apprenticeship
    to make them a preneed agent.

    MS. EULER: Because it's -- yeah.

    That's true.

    MS. DUNN: Well, then maybe that rule
    needs to be looked at.
UNIDENTIFIED: Yeah. There we go.

MS. EULER: But it's a different profession.

MR. SPEAKS: I hadn't thought of that.

MS. EULER: Yeah.

MS. DUNN: But you do have a rule pending that says once you've taken the Missouri Law successfully, you do not have to take it again.

MS. EULER: Uh-huh.

UNIDENTIFIED: True.

MS. RUSSELL: Now, and, Earl, you were saying this is going to be an emergency rule, so, hypothetically, I'm thinking that on August 28th, your office is going to get -- (inaudible) -- with people. They will have it available to file even though the rule isn't in effect, so to speak; right?

MR. KRAUS: Right.

MS. EULER: Yeah.

MS. RUSSELL: That's what you're thinking?

MR. KRAUS: Yeah. The rule --

MS. EULER: Yes.

MR. KRAUS: We anticipate the rule --
the proposed rule would be filed on the 28th.

MS. RUSSELL: And you're thinking maybe next week --

MR. KRAUS: It wouldn't take -- it can't take effect until ten days after that.

MS. RUSSELL: Correct.

MS. EULER: Right.

MS. RUSSELL: But you're thinking sometime next week, they can actually download it and --

MS. EULER: As soon as we can get it approved by the Board and there's a process --

MR. KRAUS: As soon as it's approved and available.

MS. DUNN: The form process is kind of like the current 436 process. When I was telling Earl and Sharon, and they went, oh. So, we'll try to speed that along.

MS. EULER: It just -- I thought it was just a matter we need to formalize the form and copy it -- we can take it down to Kinko's and copy it, but apparently not, so --

MR. KRAUS: Yeah. There's a -- (inaudible.)

MS. EULER: Yeah. So -- okay. So --
MS. RUSSELL: Go on.

MS. EULER: -- moving on to Section B, we ask just a few general questions. And on A, I would suggest we change that. Right now, it says have you ever had a professional license disciplined by another state or territory? I think we should say by any.

MS. RUSSELL: Any. There you go.

MS. EULER: Have you ever been finally adjudicated, blah, blah, blah, of a crime? Have you ever been arrested or charged with a crime?

MS. RUSSELL: Can I ask you a question about that one?

MS. EULER: Uh-huh.

MS. RUSSELL: Is the Board -- I guess, you're going to have to have -- if the office staff gets several of them that say yes to they've been found guilty of a crime, then those don't automatically go and get a registration; is that correct?

MS. EULER: They will go into the stacks, so when the license applications come in, they will be looked at first.

MS. RUSSELL: But they can go ahead and
operate?

MS. EULER: I don't think we can exclude anybody because it's not a license.

MS. RUSSELL: Okay. Okay.

MR. KRAUS: I mean, they do, also -- to the extent this matters, they do also have to certify on the back that they are eligible for licensure. Now, they may say, well, yeah, I'm a felon, but, sure, I'm eligible. Okay. Well, we'll see you at --

MS. DUNN: Yeah. They go in the orphan stack.

CHAIRMAN: We'll see you when the application is decided on.

MS. RUSSELL: That was good, Becky.

CHAIRMAN: Of course, they may already be out there selling preneed now.

MR. FARROW: It seems with these, we're going to ask them have you ever been arrested for smoking pot in college, but we're not going to ask if you've ever been arrested for stealing preneed funds? You have the arrest question just on the drug and alcohol --

MS. EULER: No. Look at sub C.

MR. FARROW: -- and not -- huh?
MS. EULER: Look at sub C.

MR. FARROW: I am.

MS. EULER: Oh, wait.

MR. FARROW: That's drugs or alcohol.

Notice of any drug or alcohol rules.

MS. EULER: Oh, you know what? You know what? One of them was supposed to be drugs and alcohol and one of them was not, and we got both of them drugs and alcohol --

MR. FARROW: Okay.

MS. EULER: -- because C and D are the same.

MS. RUSSELL: Yes.

MR. FARROW: Yes.

MS. EULER: And they shouldn't be.

MS. RUSSELL: Okay.

MR. FARROW: Okay. Second, I've got --

MS. EULER: Just take out the drug or alcohol --

MS. RUSSELL: On the C?

MS. EULER: -- on the C.

MR. FARROW: And I am not an attorney, but can we ask folks have you ever been arrested if they weren't convicted? I mean, can we hold that against them?
MS. EULER: Yes. We can ask.

MR. FARROW: Will it be held against them?

MS. EULER: We can ask if they've ever been arrested. Let me get that real quick.

MR. KRAUS: Yeah. And a lot of the different boards are -- have different wording on how they ask that question. Some ask just for pled guilty or convicted, some go further and say charged, some go even further and ask arrested. And I've talked about that with a number of the different boards, and while I agree with you that I don't think the fact that you've been arrested can be held against you, because that's just an arrest, it doesn't mean anything.

MR. FARROW: Yeah.

MR. KRAUS: But I think that that can lead the Board to do further inquiry and find out what's the status of that arrest, did that lead to any kind of charges that they're not aware of, or any guilty pleas or convictions that they're not aware of, because maybe they were arrested ten years ago and maybe there's currently a warrant out for them or something
that the Board would want to know about. As
to whether they hold it against them or not is
-- I think is another question.

MS. EULER: Well, and the --

MR. SPEAKS: Here's what I think that
does for you. Just as an example, suppose a
person has been arrested for embezzling funds
at some point. They have been arrested for
that. It never went to trial because they
couldn't gather enough evidence to make it
stick, and finally, you know, a prosecutor
says, you know, forget it. But if the person
is sworn, you know, there's a sworn statement
--

MS. EULER: Right.

MR. SPEAKS: -- that says they do have
to answer yes to that, if you're compiling a
case against somebody, because the whole point
of this was to protect the public.

MS. EULER: Right.

MR. SPEAKS: I think that gets you
where you need to be.

MS. EULER: Right. Well --

MR. SPEAKS: You know, his question
really had maybe more to do with, well, is
half of his crew suddenly ineligible.

(Several people talking simultaneously.)

MR. FARROW: I have one gentleman.

MS. EULER: It doesn't make you ineligible, but let me read to you some of the causes for discipline or denial that may be relevant --

MR. FARROW: Okay.

MS. EULER: -- that an arrest may lead us to. Use of any controlled substance or alcoholic beverage that impairs a person's ability to perform the work of a profession licensed or regulated by this chapter. You've been arrested for DUI; maybe. Use of fraud, deception, misrepresentation in securing a certificate of registration, permit, or license; definitely, if you lie to us about this. Obtaining or attempting to obtain fee-charged tuition or other compensation by fraud, deception, or misrepresentation; there may not be enough for a criminal case, but there may be enough for us to get discipline on that. Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonestly in performance of functions of
duties; there might be that. Impersonation of a person holding a certificate of authority. Enabling another person to practice or offer to practice who is not currently licensed. Issuance of a certificate of license, permit, or a registration based upon a material mistake of fact. Violation of professional trust or confidence. Use of advertisement or solicitation, false, misleading, or deceptive to the general public. Violation of any of the provisions of Chapter 193 or 194. Willfully and through undue influence, selling a funeral. All of those things are things that criminal charges may alert us to conduct.

MR. FARRAR: Can I give you an example and you tell me whether you think you would deny this person?

MS. EULER: No.

MR. FARRAR: I have a gentleman -- you can nod. I have a gentleman who works for me, he's worked for several other folks. Ten years ago, he was involved in a drug crime. All right. He's a licensed insurance agent. He goes to NA meetings, he doesn't use drugs whatsoever. It was ten years ago. He's
already in the business. Do I have to fire him? In this economy, do I have to tell a gentleman that's worked hard for ten years he can't be licensed?

MS. EULER: I will tell you that the Board's charge is to consider each of those matters on a case-by-case basis. And, you know, it's a Board decision whether to license him or not. And I am not going to speak for this Board or speak to whether, yes, the Board will give a license or not. But all of the things you listed would be mitigating factors that the Board would consider in its decision. The Board has discretion as to whether it gives a license or not, so, you know, is it an automatic denial? No, it's not an automatic denial. Is it something he should disclose and explain in his application?

MR. FARROW: Oh, absolutely.

MS. EULER: Absolutely.

MR. KRAUS: And I think, too, going back to your initial question about arrests, is there's an important difference there as to what evidence the Board would have to put on if a denial is challenged in that if, let's
say, the Board is basing the denial or, I
guess, the discipline on a conviction or a
guilty plea, they have to show that there was
that conviction or guilty plea, and that's a
fairly straightforward case evidentiarywise.
But if they're basing it on information
obtained as a result of finding out about an
arrest, they can't just prove the person was
arrested.

MS. Euler: Right.

Mr. Kraus: They have to prove the
actual underlying conduct for which the person
was arrested, which is a lot more complicated
case to put on, especially years and years
after the fact.

MS. Euler: Uh-huh.

Mr. Kraus: But that's what they would
have to show, so that's a pretty big
difference for the Board.

Mr. Farrow: And then, I guess, one
question is -- (inaudible) -- as much as
anything. On most of these that I've seen
from other states, they'll usually put a title
in it, or I call it a statute of limitations
even though that's not a correct term for
this, but ten years, or, you know, they'll go
back to a certain period of time. But, you
know, it just seems -- it seems we're holding
these folks to a pretty tough standard, where
they should be especially when it comes to
theft, embezzlement, things like that.

    MS. EULER: Uh-huh.

    MR. FARROW: But a guy with a DUI
quite some time ago, you know, whether -- it
seems kind of arbitrary whether the Board will
decide whether that person should be granted a
license or not.

    MS. EULER: Uh-huh. And, you know,
some Boards do have time limits and --

    MR. KRAUS: Some do, particularly with
regard to renewals.

    MS. EULER: Uh-huh.

    MR. KRAUS: Like, if they renew every
two years, they'll say during the last two
years because they don't want to rehash
everything that they've already talked about.

    MS. EULER: Uh-huh.

    MR. KRAUS: I know what some boards
have run into, if it's just on a regular
application, if it just says the last two
years and then describe. Let's say they've had one DUI or DWI during that time period, so they say yes and they describe that one. But since they've had five others every two years back, they don't divulge those because it says just during the last two years. So, then the Board doesn't get a full picture of what they're really talking about. So, I mean, that's kind of both sides of that.

MR. FARROW: And let me say this: Not pro drugs, not pro any of those things.

MS. EULER: Well, but sometimes people make choices.

MR. FARROW: But, you know, it seems -- and I understand holding funeral directors to a certain standard because they're around chemicals and things like that. A preneed person, I understand holding them accountable when it comes to their fiduciary responsibility, but, you know, a DUI five years ago or three years ago, even, we are talking about people's livelihoods.


MR. FARROW: Especially the ones that already have licenses. That's really where my
concern is.

MR. KRAUS: And I think the sections that Sharon was referring to earlier that these could relate to do include language that, as it relates to the duties of that licensee, not just are you a good or bad person, I guess.

MS. EULER: Right.

MR. KRAUS: And I know each of the boards that I deal with, they look at that a little bit differently. Like, as they relate to DWIs, some professions care about that a lot, and others not as much, you know.

Accountants are different than tattooists, are different than cosmetologists as to how they look at that, so --

MS. EULER: So, I think the bottom-line answer to your question is tell your guy to send in his application, be truthful and honest with the Board, tell them what's gone on and why he should get a license.

MS. RUSSELL: But he'll still be able to operate on August 28th --

MS. EULER: Uh-huh. Yeah.

MS. RUSSELL: -- until he has to send
in his permanent application.

MS. EULER: Right.

MS. RUSSELL: Got you.

MR. KRAUS: And then until the Board accepts or denies that application.

MS. RUSSELL: Yeah. The Board won't be doing any denying of applications until that time --

MS. EULER: Right.

MS. RUSSELL: -- when the permanent application actually comes in.

MS. EULER: Right. Right.

MR. KRAUS: Until they receive it, yeah.

MS. RUSSELL: Right.

MR. FARROW: And is there something in here that speaks to an appeals process in case there are denials?

MS. EULER: There won't be any denial of this. This is you send it in --

MR. FARROW: No, I don't mean this. I mean, if the Board --

MS. EULER: With the form -- with the permanent application?

MR. FARROW: Uh-huh.
MS. EULER: Yeah. That all is an administrative process. Okay.

MS. DUNN: There's a whole explanation that we provide if we deny anything.

MS. EULER: Yeah. Yeah. Basically, you go to the AHC and then it goes to circuit court and then the appellate court process. Okay. Moving on. Section C, this information for a corporation to list a registered agent, and the name of the person in charge of the business. And then sub D is if you will be applying for licensure as a preneed seller, circle the type of funding you plan to use, and we haven't changed that from licensure to if you intend to apply.

MR. SPEAKS: Should it say circle all that apply?

MR. STALTER: Yeah. All that --

MS. EULER: Yeah. Yeah.

MS. RUSSELL: It says -- (inaudible.)

UNIDENTIFIED: (Inaudible.)

MS. EULER: Yeah. Yeah. And then list the names of who you're using as your trustee or insurance companies. If you're applying for registration as a preneed sales
agent -- and that should be just preneed agent
-- please list all preneed sellers. And then
this is -- Darlene, this kind of goes to what
you were going. Please list all licenses and
members currently held that are issued by the
State Board.

MS. RUSSELL: Okay.

MS. EULER: So, maybe we don't need a
separate check for that.

MS. RUSSELL: Well, or just something
that -- I still think it will be less
confusing for the number of calls you'll get
in here --

MS. EULER: Okay.

MS. RUSSELL: -- if you put -- if you
call it a preneed sales agent/funeral director
because, hopefully --

MS. EULER: Okay.

MS. RUSSELL: -- Becky knows the
mentality will be -- you know.

MS. EULER: Yeah, I know.

MS. RUSSELL: I'm not --

MS. DUNN: Just to add that category.

CHAIRMAN: And it'll actually help in
the sorting --
MS. EULER: Yeah.

CHAIRMAN: -- to know who, because, otherwise, you're going to have to go back and compare licenses, like, even though it says that.

MS. EULER: Yeah.

MR. STALTER: Licenses and registrations? A lot of these guys think they already --

MS. EULER: Just licenses.

MR. STALTER: Just licenses? Okay.

MS. EULER: We don't care if they currently have a registration or not.

MS. RUSSELL: Right.

MS. EULER: And I know that's one of the things we're going to have really hit on education.

MR. STALTER: They'd argue with you. I've got one.

MS. EULER: Well, and, you know, the approach that we need to take with this is, this is not a change in the law, this is a new law.

MS. RUSSELL: Exactly.

MS. EULER: Because it really is.
MR. STALTER: I know. You're preaching to the choir.

MS. EULER: Yeah. Okay.

MR. KRAUS: I assume under E will also be if you intend to.

MS. EULER: Yes.

MR. KRAUS: Okay.

MS. EULER: If you intend to.

MS. RUSSELL: Where was that, Earl?

MR. KRAUS: On E.

MS. EULER: On E.

MR. KRAUS: Under --

MS. EULER: On subsection -- here.

MS. RUSSELL: Oh, okay.

MR. KRAUS: Yeah. We kind of go D, E, F, and then F again.

MS. EULER: Yeah. That's because she had a bad typist. Okay. And then the last section, which should be G, is the affidavit of the applicant. I, so-and-so -- and if you're a corporation, list your title -- swear I've personally completed the application, everything is true and correct. While I am subject to criminal penalties, to the best of my knowledge, I am eligible for license or
registration. And if I am signing on behalf of a corporation or other entity, that I have full authorization to sign on behalf of the entity, and then it's notarized.

MS. DUNN: Sharon, would you describe under C -- I know this is a term -- registered agent.

MS. EULER: Yes.

MS. DUNN: This is not an agent of preneed.

MS. EULER: No. This is who is your registered agent with the Secretary of State.

MS. DUNN: Yeah. And it's the language --

MS. EULER: When you form your corporation, you're required --

MS. DUNN: It's in Senate Bill 1, too, I think.

MS. EULER: Yeah. You're required to have a registered agent within the state.

CHAIRMAN: So, if I go pull my registration up, there is on that registration somebody listed as the registered agent.

MS. EULER: Yes. Yes.

CHAIRMAN: Okay.
MS. EULER: If you go to the Secretary of State's Web site and pull up the corporate entity, it will say registered agent, so-and-so.

MS. DUNN: So, it has nothing to do with a preneed agent?

MS. EULER: No.

MR. KRAUS: But if you think that's confusing, we could say with the Secretary of State there.

MS. DUNN: I think we should.

MS. RUSSELL: Yeah.

MS. DUNN: I mean, I questioned it in Senate Bill 1, not knowing which sections I was in at points.

MS. EULER: Okay.

MS. RUSSELL: Yeah. It makes sense.

MR. KRAUS: Then they could start getting calls about how do I get registration with the Board of Embalmers?

MS. EULER: Yeah. Or people will actually look at it and go, they haven't been with me for ten years, or, oh, that was my lawyer. I think he died.

CHAIRMAN: So, give me an example of
the registered agent with the SOS versus the
person in charge of the business.

    MS. EULER: Usually, it's the lawyer
who forms the corporation or --

    MR. KRAUS: And there are some
companies that the service they provide is
being the registered agent, on CT corporations.

    MS. EULER: Like CT corporations.

    MR. KRAUS: In St. Louis, they are the
registered agent for a bunch of different
companies. They accept service, they forward
correspondence, all kinds of stuff.

    (Several people talking simultaneously.)

    MR. STALTER: Your articles of
incorporation will set it out, and then, after
that, you can amend it, but it would be a
filing with the Secretary of State's office.

    MS. EULER: Right. Right.

    MR. KRAUS: And since they are
separately -- (inaudible) -- there has to be
someone to go to.

    MS. EULER: Someone to serve. Your
registered agent is, basically, who you serve
for a lawsuit or official notice. Okay. Does
anybody have any questions, comments? Does
this work?

MS. RUSSELL: That makes more sense.

MS. EULER: Huh?

MS. RUSSELL: That makes a lot more sense now.

MS. EULER: Okay. Good. Does the Board want to --

CHAIRMAN: Vote on it?

MS. DUNN: Yeah.

MS. EULER: -- vote -- approve it with the changes?

CHAIRMAN: With the changes made?

MR. KRAUS: You'll notice, too, that there isn't anything on here about House Bill 600 or Senate Bill 30 because this is not a license, it's not an application for a license, so those provisions don't apply to this. They will apply to the application that's ultimately filed after this form.

MS. EULER: Right.

MS. DUNN: And for those who don't know those terms, those happen -- that deals with tax compliance.

CHAIRMAN: All right. Any concerns?

MS. RUSSELL: If you call that a
temporary permit, did I just hear you say, Earl?

    MS. EULER: Yes.

    MS. RUSSELL: Temporary permit is the terminology you're calling this?

    MS. EULER: Yes.

    MR. KRAUS: That's the best thing we've been able to come up with to call it.

    MS. RUSSELL: That sounds -- that's probably the best -- yeah.

    MS. EULER: Yes. It's not a license. It's just -- it's your olly olly oxen free until you get your application on file.

    MS. RUSSELL: Temporary permit.

    MR. KRAUS: It's your notice of intent to apply.

    MS. EULER: And this means, though, if you file this and you steal $600 million between now and October 31, we're still going to come after you, but we won't come after you for unlicensed activity, we'll just come after you for stealing $600 million.

    MS. RUSSELL: Perfect.

    MR. KRAUS: So, you get a break.

    MS. EULER: You get a break.
CHAIRMAN: So, I'll entertain a motion that we approve this with the corrected changes.

MS. RUSSELL: You've got to get Jim back in, don't you?

MS. EULER: Are you okay? Are you okay with the dates?

MS. DUNN: Well, the only thing on here was do you all want October 31st.

MS. EULER: Is the Board okay with the dates?

MR. FRAKER: If it meets with you guys.

MS. EULER: I'll go with it.

MR. KRAUS: Okay.

MS. DUNN: Yeah. We're going to have a Board subcommittee helping us, so --

CHAIRMAN: So, you're okay with that?

MR. MAHN: Yes.

MS. EULER: Do you want to do that now? Do you want to create a Board subcommittee to help with the processing of license applications?

CHAIRMAN: Oh, I'm sure we're going to by those eyes.

MS. EULER: Well, you could do that
now while you're talking about it, if you
wanted to, or you could wait.

MR. MAHN: We probably ought to wait
and see who we've hired, that way we can put
them behind the desk for a while.

CHAIRMAN: What is the process for
creating a Board subcommittee other than --

MS. EULER: Have somebody move that we
create a Board subcommittee and decide who you
want to be on it.

MR. MAHN: I say we wait and see who
we hire, Chairman.

CHAIRMAN: Before we have a Board
subcommittee?

MR. MAHN: Well, they could push the
paperwork through.

MS. DUNN: Well --

MR. MAHN: But it would cost more to
put -- (inaudible.)

CHAIRMAN: I think the executive
director is expecting that Board subcommittee
to go this one is a funeral director and this
one isn't, and this one goes in this pile.

MS. DUNN: You can decide on that next
year.
MR. KRAUS: What I envision the
subcommittee is doing is -- of course, their
ultimate responsibility is to make
recommendations to the Board as to grant/deny,
grant/deny.

MS. DUNN: Right.

MS. EULER: Right.

MR. KRAUS: As to who goes through the
paperwork is between, I guess, the staff and
the chair.

MS. DUNN: Right.

MS. EULER: Right.

MS. DUNN: Or we can wait till you're
out for some week and --

MR. KRAUS: But the committee is going
to have to look at each and all -- each --
all the paperwork once it's put together and
make recommendations -- decisions on
recommendation.

MS. RUSSELL: A lot of boards have
those. A lot of boards work together.

MS. EULER: Uh-huh.

MR. KRAUS: Yeah, a lot of them do.

CHAIRMAN: Will that require any kind
of numbers?
MR. KRAUS: That way, everyone doesn't have to look at every piece of paper.

CHAIRMAN: Like, it has to be -- the subcommittee has to be two people or --

MS. EULER: No. You can do whatever you want.

CHAIRMAN: So, Gary is going to come up here and do it by himself?

MR. FRAKER: (Inaudible.)

MR. MAHN: Well, he's raised his hand up.

CHAIRMAN: He raised his hand.

MR. MAHN: He wants it bad.

MR. FRAKER: It's been suggested to me that there are three Board members not currently in this room, and they would -- I'm sure they would be honored to serve.

MR. MAHN: I second that.

MR. KRAUS: You know, if you're not here, you get on committees.

MR. MAHN: Motion, Chairman.

CHAIRMAN: Take that back.

MS. EULER: Well, you know, actually, having the public member on the subcommittee might not be a bad idea.
MS. RUSSELL: Usually, the chairman sometimes does that, too. Chairman and public member.

MS. DUNN: Yeah, Chairman.

MR. STALTER: Who asked you?

MS. RUSSELL: Be nice.

CHAIRMAN: Hey, I'm okay.

MS. DUNN: Okay. Well, we'll work on that.

CHAIRMAN: We'll work on that, so -- can we do this?

MS. EULER: Yes.

MS. DUNN: Yes.

CHAIRMAN: All right.

MS. DUNN: Motion?

CHAIRMAN: Motion?

MR. FRAKER: Yes.

CHAIRMAN: Gary did the motion.

MR. MAHN: Second.

CHAIRMAN: He did the two. And I say yea or nay, or just say you're okay?

MS. DUNN: Yes. You --

MS. EULER: And then, Becky, we can get it formalized and you can get it started in the process.
MS. DUNN: Yes.

MS. EULER: So we can get it up and ready to go.

MS. DUNN: Yes. Their motion was to approve and receive.

CHAIRMAN: So, that takes care of that. Done.

MS. EULER: Done.

CHAIRMAN: Next.

MR. KRAUS: Next. Do you want to move to the handouts? Within the handouts, there are three other handouts. One is proposed emergency rule for notice of intent to apply, the next one is emergency rules for group one following 8/5/09 meeting, the third one is group-two rules which are from the last meeting. The first one, proposed emergency rule for notice of intent to apply, the Board has looked at and I think we made some slight adjustments to it. I forget what it was, but this is the most recent draft.

MS. EULER: We need to change the dates.

MR. KRAUS: The dates, we were going to talk about.
MS. EULER: Well, the Board just voted for sub 5 to be October 31.

MR. KRAUS: Right. Okay.

MS. EULER: As opposed to October 1. And then the other date stays December 31, which is on here.

MR. KRAUS: Okay. Which is consistent with the form; right?

MS. EULER: Uh-huh. Yes.

MR. KRAUS: So, unless there are other comments or changes needed, then I don't know that we need to do much more on this one.

MS. EULER: The Board needs to finally approve this and to make a finding that substantial evidence supports the need for the rule.

MR. KRAUS: So, you would recommend a motion to that effect?

MS. EULER: I would recommend that someone move that there is substantial evidence to support the filing of this rule, that there is a need for it, and a motion that staff be directed to get this rule ready to file on August 28th.

MR. KRAUS: On an emergency basis.
MS. EULER: On an emergency basis.

MR. KRAUS: And that way, they would be in compliance with Chapter 536.

MS. EULER: Correct.

CHAIRMAN: So, I will entertain that motion.

MR. MAHN: First.

MR. FRAKER: Second.

CHAIRMAN: Okay. Third.

MS. EULER: All in favor?

CHAIRMAN: All in favor? Done.

MS. RUSSELL: Could I ask you one more question about the notice of intent?

MS. EULER: Uh-huh.

MS. RUSSELL: I'm just anticipating what other question might come up.

MS. EULER: Sure.

MS. RUSSELL: Does the Board anticipate giving just a reply back; otherwise -- saying that we have received your notice of intent to apply?

MR. KRAUS: Not at this time.

MS. EULER: No. What I would do --

MS. RUSSELL: So, she'll get all the calls.
MS. EULER: Fax it. Fax it or send it by some sort of mail so you have a receipt.

MS. RUSSELL: Okay.

MS. DUNN: E-mails would be great.

MS. EULER: E-mail it.

MS. RUSSELL: E-mail it; that way, they have a record of it.

MS. DUNN: And we have asked for the e-mail on these, haven't we?

MR. STALTER: Yeah.

MS. EULER: Uh-huh.

MS. DUNN: Yeah.

MS. RUSSELL: Okay.

CHAIRMAN: Is it possible to go on-line and just fill that out and zap it?

MR. KRAUS: Well, I don't think we have it as a fillable form, no.

CHAIRMAN: Oh, yeah.

MR. STALTER: You still have to have a signed copy, too, don't you?

MS. EULER: Yeah. And then follow up with a signed copy in the mail, but it will be deemed filed --

MR. KRAUS: But you could scan and send it pdf if you wanted.
MS. EULER: Yeah.

MR. KRAUS: And follow up with --

MS. EULER: Sub 2 says you may file by hand delivery, mail, fax, or other electronic means such as e-mail, so --

MR. STALTER: But they can fax it or e-mail it, but then you still want a signed copy -- a hard copy?

MS. EULER: Right.

MS. DUNN: Yes.

MS. EULER: Follow up with the hard copy, but it will be deemed filed when that electronic file hits the Board.

MS. RUSSELL: Okay. Thank you.

MS. EULER: Do you want to set up a separate e-mail for people to e-mail that to?

MS. DUNN: Well, we have prembalm now, so we can include that on the form.

MS. EULER: Okay. Okay. Should we add that to the form?

MS. DUNN: Yes.

MS. EULER: Then we need to make that note. Perhaps the chair would like to entertain a motion that the notice-of-intent form be amended to provide the Board's e-mail
address, and notice that people can file it by
electronic submission.

CHAIRMAN: I would entertain that
motion.

MR. FRAKER: I'll make that motion.

CHAIRMAN: Gary makes the motion.

MR. MAHN: Second.

CHAIRMAN: Todd seconds. All in
favor? Yes.

MR. FRAKER: Aye.

MR. MAHN: Aye.

MR. KRAUS: Followed by original
intent?

MS. EULER: Yeah.

MR. KRAUS: All right. The next
emergency rules for group one following 8/5/09
meeting. A number of draft rules here. There
are some comments with those, too, as they
were being drafted.

MS. EULER: All right. Okay. Did we
receive any comments from the public about
these rules?

MR. KRAUS: I don't -- none that I
recall at the moment. I don't know how you
want to --
MS. EULER: Let's just start with them.

MR. KRAUS: Do you have any preference on how you go through these? We'll start with the first one.

CHAIRMAN: Works for me.

MR. KRAUS: It looks like I raised a comment there. Let me see what it was.

MS. EULER: Yeah. The Board currently has a rule to this effect. Would it be advisable to amend the existing rule rather than replace it with a new rule? It's on page 31, rule 20 C.S.R 2120-2.050. Do you all have law books there? There were some.

MR. STALTER: I've got one, yeah.

MS. RUSSELL: What was the section?

MS. EULER: It's on page 31.

MR. KRAUS: All licensees may be represented before the Board. Of course, it doesn't really say that you're a separate legal entity that you have to be.

MS. EULER: Correct. But what I'm wondering is if we should just simply amend this rule as opposed to doing a totally new rule.

MR. KRAUS: Oh, just amend that. That
seems to make sense to me.

MR. STALTER: It'll be less confusing.

If you have two rules out there --

MS. EULER: Yeah.

MR. STALTER: And what's the emergency need for the corporate representation anyway?

MR. KRAUS: I don't know if there is one.

MS. EULER: The -- what I see as the emergency need for it is once we get into the grant-denial process, if the board denies a license to a corporate entity, until we can get the full rules done, we may have an issue there with somebody who comes in and wants to represent their corporation.

MR. STALTER: Yeah. We won't be granting or denying it till some point after October 31st.

MS. EULER: Right.

MR. STALTER: So --

MS. EULER: But the --

MR. KRAUS: Regular rules won't go into effect for a long time.

MS. EULER: Yeah. Like, a year. Or maybe we do an emergency rule to supersede the
existing rule and then we do a formal rule?

MR. KRAUS: Well, and, actually, if you make changes to a rule that changes more than 50 percent of the rule, you have to rescind and repromulgate anyway, which is what we could do here since it's a pretty short rule.

CHAIRMAN: So, which one makes more legal sense?

MR. KRAUS: You mean, whether it's emergency or regular?

CHAIRMAN: Or to rescind and --

MR. KRAUS: Well, I don't think that's actually our choice. I think once you change a certain amount of it, you have to rescind and repromulgate.

MS. EULER: Uh-huh.

MR. KRAUS: You don't get to choose whether you do that or not.

CHAIRMAN: Okay.

MR. KRAUS: So, I don't think that's a decision the Board needs to make.

CHAIRMAN: So, I heard something about 50 percent and it's bigger than that or whatever?
MR. KRAUS: I think, depending on how much of this language we include, and I suspect we'll need to rescind and repromulgate anyway.

MS. EULER: Yeah.

CHAIRMAN: So, based upon that, is it an emergency then or not from the legal point of view?

MR. KRAUS: (Inaudible.)

MS. EULER: Not necessarily.

CHAIRMAN: I know embalming is important in the first 24 hours, but I don't know about this.

MS. EULER: Okay.

(Several people talking simultaneously.)

MR. KRAUS: I kind of think that this is the law, but the rule clarifies it for everybody.

MS. EULER: Yeah.

MR. KRAUS: So, I don't know if that's that much -- it's certainly not as much of an emergency as some of the others.

MS. EULER: Right. I agree with that.

CHAIRMAN: Okay. So, do we just scrap it? Your advice would be just to scrap it
for later?

MR. KRAUS: Well, I think we could --
I mean, we're drafting some of the rules now,
too, it's just drafting them as regular rules.

MS. EULER: I think that we should put
this as a regular rule. I do have an edit
for it, though. In subparagraph 1, I think we
should take out "regarding denial or
discipline of the license," and just put a
period there. I don't think we want to limit
it.

MR. KRAUS: I wonder if we need sub 2
at all, because why do we need to say what an
individual can do? Or -- well -- or I guess
sub 1 or sub 2.

MS. EULER: Well, have we had
situations where -- I don't think you need to
be an attorney to file a citizen complaint,
even if you were filing on behalf of a
corporation, so I don't think we need sub 2 at
all.

CHAIRMAN: At the expense of sounding
hateful, if it's not going to be an emergency
rule, why don't we just go on?

MS. EULER: Well, because we're almost
done with it.

CHAIRMAN: Okay. Just making sure.

MS. EULER: We're three-quarters of the way through.

CHAIRMAN: Okay.

MR. MAHN: On the first paragraph.

MS. EULER: Yeah.

MR. KRAUS: Well, since we're going to have quite a few changes to this, why don't -- and it's going to be a regular rule and we're going to be rescinding this rule --

MS. EULER: We'll just redo it.

MR. KRAUS: -- why don't we come back, play with it, bring it back to the Board and talk about it later.

MS. EULER: Okay.

MS. DUNN: Okay.

MR. KRAUS: It's going to be quite a bit different. All right. The second one, payment is not a determining factor of practice of funeral directing.

MS. EULER: This, again, is not needed as an emergency rule that I see.

CHAIRMAN: The question that I have that since I brought up the little thought of
-- I better explain it -- the fact that we
are going to be licensing apprentices that
haven't completed their apprenticeship and
some of that with half of their --

MS. EULER: We are going to be
registering them --

CHAIRMAN: Well, okay.

MS. EULER: -- as preneed sales agents
if they want to sell preneed.

CHAIRMAN: Okay.

MR. FRAKER: So, why would they not go
ahead and take the test -- (inaudible) --
right through the apprenticeship, get their
license -- or, you know, they pass their test.

MS. EULER: Their registration.

MR. FRAKER: -- they're getting their
agent certificate --

MS. EULER: They can do that.

CHAIRMAN: All right.

MR. FRAKER: At least they have a test
out of the way.

MS. EULER: Right.

CHAIRMAN: But do we need --

MR. KRAUS: But that doesn't speed
them up getting their funeral-director's
license.

MS. EULER: Right.

MR. FRAKER: Yeah. They've still got to serve their apprenticeship, but not --

MR. KRAUS: Yes.

CHAIRMAN: But just making it clear to those folks, to some extent, that didn't --

MR. STALTER: Do a third --

(inaudible.)

CHAIRMAN: -- fix you where you were in the business of funeral directing.

MS. EULER: Right. That is true. I'm not saying this isn't a needed rule. I think it is a needed rule, but my question is, is it needed as an emergency rule?

CHAIRMAN: Any debate out there that you guys would see that --

MS. EULER: And we don't have a quorum.

CHAIRMAN: No, we don't.

MR. KRAUS: (Inaudible.)

MS. EULER: Where did Jim go?

MR. STALTER: A regular rule. Is that regular rule; is that what you're saying?

MS. EULER: Yeah.

CHAIRMAN: Hang on and our quorum will
be back.

(Off the record)

CHAIRMAN: We're all back.

MS. EULER: Are we back?

CHAIRMAN: We're back.

MS. DUNN: Todd, are you back? Okay.

MR. KRAUS: We're doing the second one as a regular rule.

CHAIRMAN: So, do we need a motion for that or just go back and pick them all up at once?

MR. KRAUS: I -- we're talking --

MS. EULER: I'd do them one by one.

CHAIRMAN: One by one.

MS. EULER: And you need to -- when you -- the motion needs to also have a finding by the Board that there is competent substantial evidence to support the need for the rule.

CHAIRMAN: Okay. So, on each one of them. Okay. So -- but the thought -- legal advice at this point in looking at it to the Board is that this would just be a regular -- number two would just be a regular rule, the practice of funeral directing does not need
emergency-rule status. That's your advice; correct?

MS. EULER: Yes.

MR. KRAUS: Correct.

MS. DUNN: Correct.

CHAIRMAN: Okay. Now, Board, need a motion or a question on that we put rule number two there on practice of funeral directing as a regular rule.

MR. FRAKER: So moved.

CHAIRMAN: Gary makes the motion.

MR. MAHN: Second.

CHAIRMAN: Jim seconds. All in favor?

MS. EULER: Todd seconds.

CHAIRMAN: Or Todd seconds. I'm sorry. So, that goes to regular rule.

MS. EULER: You're sitting where Jim was last week and it's confusing him.

MR. MAHN: Sorry. I've been called worse.

MR. KRAUS: And we're approved to go forward, and there's substantial and --

CHAIRMAN: Oh, you need that even in regular rule?

MS. EULER: There's competent -- yes.
MR. KRAUS: -- and competent evidence, yes.

MS. EULER: Yes. For every rule, you need a --

CHAIRMAN: Oh, okay. I'm sorry. I thought that was only in the emergency status.

MS. EULER: No. The Board needs to find that there is a reason for the rule.

CHAIRMAN: Okay. And, Gary, your motion included that; correct?

MR. FRAKER: Yes, sir. It certainly did.

CHAIRMAN: All right.

MR. FRAKER: You heard it.

CHAIRMAN: I heard it. All right.

The next page.

MS. HAYES: Did you all vote on the first one?

CHAIRMAN: Yes.

MR. KRAUS: Number three, preneed seller, an agent must be licensed in Missouri.

MR. STALTER: This is a technical thing, but preneed agents aren't licensed; right? They're registered?

MS. EULER: Yes.
MS. DUNN: That's correct.

MS. EULER: You're correct.

MR. KRAUS: Registered.

UNIDENTIFIED: Good one, Bill.

MR. STALTER: I wish I had studied that. It just came up from the top of my head. I'm sorry.

MR. MAHN: One point for Bill.

MR. STALTER: I can go home; right?

MR. KRAUS: Must be an agent of a seller who is licensed to sell preneed contracts. Okay. You'll notice on each of these, we have the authorization there, so if you're curious about what section we were talking about or where it came from, it'll be in one of those sections there.

CHAIRMAN: Other than Bill's comment of changing licensed to registered, any other changes needed and required there?

MR. MAHN: (Inaudible.)

CHAIRMAN: Okay.

MS. EULER: This is the no-free-agent agent law.

CHAIRMAN: No what?

MS. EULER: No-free-agent agent law.
CHAIRMAN: Okay. So, the no-free-agent agent law. Need a motion to make the preneed seller an agent and must be registered in Missouri rule an emergency rule?

MS. EULER: And the finding that you believe there is competent, substantial evidence to support the need for the rule.

CHAIRMAN: And you believe all that.

MR. MAHN: First.

CHAIRMAN: Yes from Todd.

MR. REINHARD: Second.

CHAIRMAN: Jim got it, second.

MR. FRAKER: Jim got it.

CHAIRMAN: Gary?

MR. FRAKER: Yes.

CHAIRMAN: Emergency rule.

MR. KRAUS: Number four, final disposition is defined in Chapter 193. I'd be curious about that, and it is on page 53 of the orange booklet.

MS. EULER: Those of you that have it.

CHAIRMAN: Any need for discussion?

MS. EULER: What do you think, Todd?

MR. MAHN: No. No discussion.

CHAIRMAN: No discussion. All right.
Then we'll entertain a motion that the final disposition as defined in Chapter 193 go into emergency-rule status with the supported documents --

MS. EULER: -- and finding that there's competent and substantial evidence to support the need for a rule.

CHAIRMAN: -- findings and competence -- all that. Motion? Gary?

MR. FRAKER: I've got it.

CHAIRMAN: Second?

MR. REINHARD: Second.

CHAIRMAN: Jim. Todd?

MR. MAHN: For.

CHAIRMAN: For it, yes. So, emergency rule. MR. KRAUS: All right. Number five, provider includes funeral establishment that has agreed to undertake obligations of preneed contracts pursuant to Chapter 436.

MS. EULER: I have a question on this. Why -- okay. Never mind. I don't have a question.

MR. KRAUS: I think number two should be any provider instead of and provider.

Sharon, as we're going through these and we
make a reference to Chapter 436 --

MS. EULER: Yes.

MR. KRAUS: -- do you think we need to
be more specific in references to sections of
436 that have to do with preneed --

MS. EULER: Yeah.

MR. KRAUS: -- and not the whole
chapter?

MS. EULER: Yeah. Well --

MR. KRAUS: Because, I mean, there's a
lot more in that chapter.

MS. EULER: There is a lot more in the
chapter. I think we also need to specify that
it's the new law and not the old law. So, I
-- yeah. We do need to specify that it's 436
-- I don't know what the numbers are -- blah,
blah, blah through blah, blah, blah.

CHAIRMAN: Okay.

MS. DUNN: Effective date of --

MS. EULER: No.

MS. DUNN: No? Okay. I didn't know
when you said new law versus old law.

MS. EULER: The section, and we'll
figure it out.

MR. KRAUS: Yeah. Because,
previously, it was 071 something through --

MS. EULER: It was 070 to something or another.

MR. KRAUS: Yeah. 005 through 071 is what it was before and right now.

MS. EULER: And now it's -- yeah. And you put as supplemented -- (inaudible.)

MS. DUNN: So, are we ready to vote on this one?

CHAIRMAN: I suppose. Any further discussion? Anybody got a thought? Is it good?

MR. MAHN: Motion is good.

MS. DUNN: So, emergency?

CHAIRMAN: Okay.

MS. DUNN: Motion?

CHAIRMAN: Todd made the motion; is that what I heard?

MR. REINHARD: Second.

CHAIRMAN: Jim seconded. Gary?

MR. FraKER: Yeah.

CHAIRMAN: Yes.

MS. DUNN: And the finding there is competent and substantial evidence there is a need for a rule.
MS. EULER: And that includes the
finding that there is competent and
substantial evidence to support the need for
the rule.

CHAIRMAN: It did.

MS. EULER: All right. Very good.

MR. MAHN: Are we saying prayers now
or what?

CHAIRMAN: We are.

MR. MAHN: Chanting.

MS. EULER: We'll be singing later.

MS. RUSSELL: Sharon, is that also
that we could change the statute of 436 to
whatever specific section?

MS. EULER: Yes. Yes.

CHAIRMAN: Instead of Hail Mary, it's
hail the rule.

MS. RUSSELL: Okay. Thank you.

MR. KRAUS: All right. Number six,
display of license. I think we can forget
about that one.

MS. EULER: Now, there is currently --
there are current regs that address --

MR. MAHN: Take that one out. It
clutters up the wall.
MS. EULER: -- that address establishments, directors, sellers, so, really, all -- you either need to rescind the portions of the rule that provides that for establishments, directors, and embalmers, and make this only for sellers, agents, and providers; do you see what I'm saying?

MR. KRAUS: Yes.

CHAIRMAN: So, the other law would take care of funeral directors and embalmers?

MS. EULER: Yeah.

CHAIRMAN: And apprentice and all that stuff?

MS. EULER: And establishments.

CHAIRMAN: Okay.

MR. KRAUS: I mean, unless you want one rule to cover all of them.

MS. EULER: I think we need -- the current law -- the current rules are organized by profession, and I think people are going to be confused enough about having a whole new set of laws that if we change the organization of the rules, it will confuse them even more.

MR. KRAUS: I think that's right.

MS. EULER: What do you all think?
MR. KRAUS: I think it -- because it would be odd for a funeral director to have to go to -- who doesn't sell and isn't involved in preneed --

MS. EULER: Right.

MR. KRAUS: -- to go to 436 about how to display their licenses.

MS. EULER: Because, right now, they look in the rule and there is a rule -- if I can find it -- 2120-2.060 are all the funeral-directing rules.

CHAIRMAN: I think that makes sense.

MS. EULER: And so, I think we need to start a new section when we do the final rules that's for sellers, providers, agents, and keep with that.

MR. KRAUS: And you'll notice on these drafts, they're not organized into sections or numbers yet.

MS. EULER: Right. Right.

MR. KRAUS: But they will be. So, have this be sellers, providers, agents.

MS. EULER: Yes. I'm looking for the rule. Yeah. All certificates, registrations, licenses, or duplicates thereof issued by the
State Board shall be displayed at all times in
a conspicuous location accessible to the
public.

MR. KRAUS: Now, will we have the same
requirements for agents --

MS. EULER: Yes.

MR. KRAUS: -- with regard to a
registration --

MS. EULER: Yes.

MR. KRAUS: -- as sellers and
providers with regard to their licenses?

MS. EULER: Yes. Because they will
get a certificate of registration.

MS. DUNN: Where will they display it?

MR. KRAUS: That's where I was going.

MS. EULER: Well --

MR. REINHARD: Wallpaper the wall.

MS. DUNN: Well, no. I mean, Akins
may not --

MR. KRAUS: We can just make it this
big and they can wear it as an ID wherever
they go.

MS. EULER: That's right. We can
laminate it.

MR. KRAUS: Display it on their person.
MS. EULER: Do you give pocket licenses?

MS. DUNN: Yes.

MR. KRAUS: Issue badges.

MR. REINHARD: Give them a badge, too.

MR. SPEAKS: We don't need no stinking badges.

MR. REINHARD: Todd wants a badge.

(Inaudible.)

(Several people talking simultaneously.)

CHAIRMAN: You know, after all this, surely to goodness, they're going to put it on the wall.

MS. DUNN: But they don't have a wall.

MS. EULER: We're going to issue special jackets for everybody.

CHAIRMAN: In the provider's location or seller's location that they are working for.

MS. RUSSELL: Well, that's a good question. What if you sell for 15 funeral homes and you have --

CHAIRMAN: I have an embalmer's license in six funeral homes. I have a funeral-director's license in six funeral homes. I have a --
MR. MAHN: Brag, brag, brag.

MS. RUSSELL: I have no problem with --

(inaudible.)

(Several people talking simultaneously.)

MS. EULER: The cardinal rule --

CHAIRMAN: Becky likes to send me lots of paper.

MR. KRAUS: So, are we going to issue all of those --

MR. MAHN: Big shot.

MR. KRAUS: -- and change all of them.

CHAIRMAN: You've got all them in more than one location, too, Bucko.

MR. FRAKER: Martin, you're --

(inaudible.)

MS. EULER: The cardinal rule for regulations is that the regulations have to mirror what's in the statute. They can't exceed the statute.

(Several people talking simultaneously.)

MS. EULER: So, let's look and see what the statute says because there is a statute that talks about it. I just need to find it.

(Several people talking simultaneously.)
MS. EULER: Here, it says all licenses or registrations or duplicates thereof shall be displayed in each place of business.

MS. DUNN: But these are travelers.

MS. EULER: I don't care. I didn't write this.

MR. REINHARD: Well, do you need to specify, like, at whatever funeral home they're working at, it has to be displayed there?

MS. EULER: Yeah. They can carry it with them in a photo -- in an easel and post it on -- put it on the desk.

CHAIRMAN: So, are you liking that or not liking that?

MS. DUNN: Well, a funeral director can display their agent.

MS. RUSSELL: Carrying it is no problem. Yeah. A funeral director that has a funeral home can display it, but a person that works for 15 funeral homes --

MS. EULER: You put it --

MS. RUSSELL: -- that may one day next week go to another 15 funeral homes --

MS. EULER: You put it in a photo
album and you put it on the desk where you're living with them.

   MS. RUSSELL: While you're working there. While you're working there --
   MS. EULER: Yeah.
   MS. RUSSELL: -- but does it have to stay there permanently so when the inspector comes?

   CHAIRMAN: If an embalmer drops in a funeral home and signs the embalming log once, his license better be on the wall.
   MS. RUSSELL: I'm okay with it. I'm just saying that you --
   CHAIRMAN: Oh, I'm just trying to be --
   MS. RUSSELL: Yeah. I'm okay with it. I just know that your --
   CHAIRMAN: -- you know, what's the word?
   MS. RUSSELL: -- larger third-party sellers and people that have several agents out there working that don't know from day to day which funeral home they may be at could have a problem.
   MS. EULER: Well, the point --
   MR. MAHN: We're going to know now.
MS. RUSSELL: Yeah, we're going to know now.

MS. EULER: The Board can clarify this by rule because it doesn't say shall be displayed at all times. It just says shall be displayed.

MS. RUSSELL: Okay. Okay.

MS. EULER: So, if the Board wants to pass a rule -- the other registrations need to be displayed at all times, but if you want to pass a rule that says just so long as it's displayed while you're selling, I think you would be authorized by that.

CHAIRMAN: Well, get real for a minute and get away from the bandwagon that I'm beating on. Is it really important?

MS. EULER: Yes.

MS. RUSSELL: Sharon makes sense. Sharon makes sense. That makes sense to display it while you're writing the contract.

MS. EULER: It is important.

MS. RUSSELL: That is important for the consumer to see you've got that registration then when you're making the contract. When you're at a doctor's office, I look at the
wall for the licenses, for --

MR. MAHN:  The wall.

MS. EUER:  The wall.

MS. RUSSELL:  The wall.

MR. MAHN:  That's the wall. Not on

the desk, the wall.

MS. RUSSELL:  But that's while the

consumer is there, what she is saying will

handle that, because you will actually display

it while you're making the preneed

arrangements. You'll carry it with you.

MR. MAHN:  Who's going to monitor that?

MS. EUER:  The consumers will. Trust

me.

MS. RUSSELL:  That's --

MS. DUNN:  Well, this doesn't require

--

(Several people talking simultaneously.)

MR. REINHARD:  (Inaudible.)

MR. MAHN:  I won't hang that stuff all

over the wall.

MR. REINHARD:  (Inaudible.)

MR. MAHN:  It looks terrible. It
doesn't go with my decor at all.

CHAIRMAN:  So, is what I just heard if
you're the traveling preneed agent, you just
have your license in a frame and you just set
it on the desk?

MR. REINHARD: As you write a contract.
CHAIRMAN: As you write the contract?
MR. MAHN: You could glue it in your
suitcase and just set your whole suitcase up
there. Or to the back of your computer.
MS. EULER: I mean, it's up to the
Board.
CHAIRMAN: Take your family's pictures
in, put that on the desk, you know, your
business cards.
MS. RUSSELL: No. I think you just
have to conspicuously display it on the table
in front of them, you know, on this laminated
sheet right there as you're handing them the
price list and everything else.
MS. DUNN: Everyone gets a laminated
card.
MS. EULER: I just throw it out as an
option. I think that would be consistent with
the statute. It's up to the Board to decide
whether that's what you want to do or not.
MR. REINHARD: We do? I don't have a
laminated card.

UNIDENTIFIED: They rash us.

MS. HAYES: Sharon, I have a question.

MS. RUSSELL: We have one.

MR. MAHN: I can't even get a badge.

MS. HAYES: You said that the agent said it needs to be displayed at place of business.

MS. EULER: Yes.

MS. HAYES: If I'm an agent working for a third-party seller, is my place of business the third-party seller's company or is my place of business the funeral home, because you could do it where the agents have it displayed at the corporate office, or the --

MR. REINHARD: That's good, Lori. There you go. Thank you.

MS. HAYES: -- ATF office or whatever.

MS. EULER: Well, you could also argue that the place of business is where you are having contact with the public. I mean, I think the purpose of this law is for the public to know that you are on the up-and-up, and you have that registration issued by the State. So, if I were the public, I would
want to see that when I sign the contract.

MR. SPEAKS: Well, the argument that
was put out in the working group was that the
purpose of this was so that the Board would
have control over these people and know who
they were.

MS. EUER: Well, that, too.

MR. SPEAKS: It's nothing to do with
the consumer.

MS. EUER: Of course, it's all about
the consumer, Brad.

MR. SPEAKS: No, it's not. So, her
question gets at how does she inspect for that?

MS. EUER: Yeah.

MR. SPEAKS: Because if it's an
impractical deal, then it's --

MS. EUER: Yeah.

MR. SPEAKS: -- it doesn't matter what
the law says, you're back to square one. How
do you enforce it and how do you find out
about it?

MS. DUNN: It's going to be easy for
everyone that is our traveling agents.

MS. EUER: Well, or tell me to write
the rules.
CHAIRMAN: You know, actually you're talking about the traveling agent, but, really, the place that it will come up the most is really her and the rest of the CIU because they're going to walk in with the little sheet that says where is this one, where is this one, where is this one, where is this one?

MS. DUNN: Yes.

CHAIRMAN: So --

MR. MAHN: I think when you register -- (inaudible) -- put it on the wall.

MS. EULER: What if they're selling for not a funeral home?

MR. MAHN: He's embalmed for six funeral homes. His license is on six funeral homes.

CHAIRMAN: Actually, I think, obviously, the public is really important, but the criteria of where it goes is what -- (inaudible) -- with those sheets. But where they're registered -- where they've told the Board they're registered because that's what's going to go on that printout.

MR. SPEAKS: I think that's very
practical.

MR. STALTER: It's like a cross-check, is what it is.

CHAIRMAN: Yeah.

MR. MAHN: Put them on the wall.

MS. EULER: What about -- that's where their license hangs on the wall, but that they shall carry their pocket card whenever they are conducting a preneed sale?

MR. MAHN: How are you going to force somebody to carry a pocket card with them? I mean --

MR. REINHARD: Where is your pocket card?

MR. MAHN: -- I'm not going to carry it. I don't have it. I think we're just trying to reference if they're on -- if they're registered there. I mean, you leave the house, maybe to get -- I mean, who is going to monitor that?

MS. EULER: The consumers will.

MR. REINHARD: They haven't -- they've done a hell of a poor job up to this point.

UNIDENTIFIED: Yeah.

MR. MAHN: The consumer can't even
figure out NPS.

CHAIRMAN: They'll have a pocket card if they want it, you know.

MS. EULER: I'm just throwing out options. It's the Board's decision. I'm just helping you see some of your options.

CHAIRMAN: Okay. Okay. Any more discussion on that point? I thought that would be an easy one.

MR. SPEAKS: That's as clear as mud.

MS. DUNN: Well, what is the solution?

MS. EULER: So, what do you want to do?

(Several people talking simultaneously.)

MR. REINHARD: You've got people out selling. I mean, do you think do you think it's a big inconvenience for people to -- like, if they -- like him; I mean, if you sell for six different funeral homes, get six copies and stick them on the walls.

(Several people talking simultaneously.)

CHAIRMAN: I think the solution is like how you guys cross-reference the embalmers and the funeral directors on the establishments. It will have to be that way or how will you ever know?
MR. STALTER: I guess the issue is how do you display it while you're walking around?

MS. EULER: Okay. So, do we leave the rule the way it is?

MR. MAHN: So, stick it on the wall.

MR. STALTER: Yeah. Let's stick it on the wall wherever -- where you're represented that you are an agent out of.

CHAIRMAN: Yeah.

MR. REINHARD: Right.

CHAIRMAN: So, is that what this --

MR. REINHARD: I think that's the only practical way to do it.

CHAIRMAN: Is that what this says?

MS. EULER: You read it and tell me what you think it says. That's more important than what I think it says.

CHAIRMAN: You wrote it.

MS. EULER: I didn't write it. Sarah wrote it.

CHAIRMAN: Oh, okay. Well, get Sarah in here then. What did she mean?

MS. EULER: She ran away.

CHAIRMAN: I know. Did you see her run when you said that?
MS. EULER: Yeah.

MS. DUNN: Well, first of all, an agent doesn't have a license, like Bill said a while ago.

MS. EULER: Right. So, it should be license/registration.

MS. DUNN: Right.

MR. SPEAKS: Well, let's just stop and think this through a second. So, you've got somebody that's out selling and just going door to door, and the consumer becomes suspicious because they said, well, I represent XYZ funeral home. So, they should be able to go down to XYZ funeral home and look on the wall and say, oh, yeah, you know, John Doe does work here.


CHAIRMAN: I agree with it, yeah. Yeah. So, does all the legalese support that?

MS. EULER: Uh-huh.

MS. DUNN: So, then would this be -- substantiate an emergency?

MS. EULER: Since it's new licenses and this rule is about the new licenses and registrations, yes.
MS. DUNN: Okay. So, whatever the Board decides on, we would make the modification of license/registration for --

MS. EULER: And we take out licensed establishments, funeral directors, and embalmers --

MS. DUNN: Right.

MS. EULER: -- because they already have rules that cover this. So, this is just for sellers, agents, and providers.

MS. DUNN: Okay. So, get a motion.

CHAIRMAN: Somebody give me a motion for that.

MR. MAHN: First.

MR. FRAKER: Second.

CHAIRMAN: All in favor?

MR. REINHARD: Yes.

CHAIRMAN: Yes. Done. Okay.

MS. DUNN: Okay. Moving on.

MS. EULER: I have a question about this. I wasn't here for this part of the discussion, but doesn't this just say what's already in the statute?

MS. DUNN: Are you talking about corporate?
MS. EULER: Uh-huh. Oh, there's a typo. Okay. I see.

MS. DUNN: So, tell us.

MS. EULER: Oh, there's a typo in the statute and the "as" is left out.

MR. REINHARD: Does that void it?

MS. EULER: No.

MR. REINHARD: Oh, shoot.

MR. SPEAKS: Loophole.

MS. EULER: And what it does is saying each owner, director, manager, or controlling shareholder of the applicant corporation shall be eligible as if they were applying and at least one owner. See, those are inconsistent because one says -- it says each one should be and then it says and one. That's inconsistent. So, you can't have both A and B. And I don't think you want just B.

CHAIRMAN: Because?

MS. EULER: Because then Martin Vernon can be the one director --

MR. SPEAKS: Yeah. They're all crooked except for the one guy, and you'll send him up for the license.

MS. EULER: Exactly. And the rest of
them will be -- (inaudible.)

CHAIRMAN: What are you guys grinning about?

MR. REINHARD: (Inaudible.)

MS. EULER: So --

MR. SPEAKS: In the example, you're not the crooked one, Martin.

CHAIRMAN: Okay.

MS. EULER: Thanks for clarifying that, Brad. CHAIRMAN: Thank you.

MR. SPEAKS: He's puzzled.

MS. EULER: So, I --

MR. REINHARD: While you're pondering on that, Ralph Eggen called and wants to know why we have to have funeral-director licenses at all because he just had a family pull up there and take one out in the casket, and Ralph had a body go out of there in the back of pickup truck and a casket, and the family didn't have to have a funeral-director license like we have to have one.

MR. SPEAKS: Do you have Senate Bill 1 in front of you or are you reading off of this?

MS. EULER: I have Senate Bill 1 in front of me. I think you should say officer
and not owner.

CHAIRMAN: Because you're not blood related, I guess.

MS. DUNN: Where? Officer?

MR. REINHARD: I'll tell him.

MS. EULER: My suggestion would be that you do A and not B; take out B. And for A, instead of owner, say each officer, director, manager, or controlling shareholder of the applicant corporation shall be eligible for licensure as if they were applying for licensure as an individual, because that mirrors the language of the statute.

MR. SPEAKS: Sharon, how are you going to know, so a publicly held company like Mr. Moody's client --

MS. EULER: Well, that's about what I was to say.

MR. SPEAKS: -- controlling shareholder actually has some hedge fund in New York City?

MS. EULER: That's exactly the point I was about to make. And I wasn't here for the discussion, I don't know if you discussed that. If you want to limit that to people who actually have something to do with it,
because I am willing to bet that SCI has an officer, a director, or a controlling shareholder that may have had a DUI at some point. Or -- well, I'm just throwing that out as an option. But, you know, they're in Holland. I don't know if you have a lot of business in Holland or not, but I'm throwing that out. It has nothing to do with the operation here in Missouri. I'm wondering if you want to limit this to those people who are actually related to the business in Missouri.

MR. WARREN: But you don't you run into the same problem if you've got a big outfit like SCI, they may not have any Missouri specific. I mean, they might have somebody who's, like, the vice president for Missouri, you mean?

MS. EULER: Yeah.

MR. WARREN: Or whoever would be --

MS. EULER: Somebody who has some contact with Missouri because the guy in Holland who had a DUI, do we really care? I mean, it's up to the Board. Don't look --

CHAIRMAN: I already did. Too bad.

MS. EULER: I mean, it's up to --
MR. WARREN: Well, while you still have it there -- (inaudible) -- manager. So, if you have the State manager for, say, SCI, the Missouri State manager, then that would be the individual to get the license for the State of Missouri?

MS. EULER: Well, and that's exactly the point, that the corporation gets the license, or do you want to just leave it as is and do it on a case-by-case basis?

MR. WARREN: Well, wouldn't the chairman of the board or the president of the corporation apply on behalf of the corporation?

MS. EULER: I don't know who applies. Who applies on behalf of this? Yeah. You're asking me hard questions.

UNIDENTIFIED: Well, I guess it would be --

MS. EULER: Wouldn't it be the local people?

UNIDENTIFIED: Yeah. The local people -- (inaudible.)

MR. WARREN: I mean, I'm just talking about general corporate law who -- (inaudible.)

MS. EULER: Yeah. Or somebody who has
been authorized by the company to apply.

MR. WARREN: Right. Right. It could the president of the Missouri operations or something like that.

MS. EULER: Right.

MR. WARREN: Whoever the appropriate corporate officer in their structure would be, and they would have to choose that individual and be willing to defend that choice, you know.

MS. EULER: Yeah. So, I throw that out. The Board can do with it as it wishes.

CHAIRMAN: I don't think the Board has a clue.

MR. MAHN: We've been talking about it for so long, I forgot what we're talking about.

CHAIRMAN: So, best advice is what?

MR. REINHARD: Yes.

MS. EULER: Well, you can leave it, you can change -- make only A, change owner to officer.

CHAIRMAN: That wasn't the question. Best advice.

MS. EULER: I'm giving you my best advice.

CHAIRMAN: Oh, no. You said I could.
MS. EULER: Wait for it.

CHAIRMAN: Okay.

MS. EULER: And then deal with things on a case-by-case basis as the applications come in.

CHAIRMAN: Is that best advice?

MS. EULER: Yeah. And then if you -- it looks like you need a rule or if it's going to be an issue, then we can do a rule then.

CHAIRMAN: Okay. Do you all -- somebody make a motion that we --

MR. REINHARD: Down the road?

MR. STALTER: Down the road. That's what I was waiting about for an hour.

MS. EULER: No. That you do A, you strike B, but you do accept paragraph A changing owner to officer, is what I would recommend.

MS. DUNN: As a regular rule or --

MS. EULER: As an emergency rule.

MS. DUNN: As an emergency.

MR. REINHARD: And what if they're --

MS. DUNN: So, use A, strike owner to officer, and eliminate B?
MS. EULER: Correct.

MS. DUNN: Motion?

MR. FRAKER: I'll make a motion.

MS. EULER: Also, I think it needs to
be provider or seller.

MR. FRAKER: Okay.

MR. STALTER: Can I ask a question?
Then let's just -- since we're picking on SCI,
you know, it said that SCI's -- the president
of Missouri SCI has some type of -- he's not
a licensed funeral director or an embalmer or
anything like that.

MS. EULER: Uh-huh.

MR. STALTER: But then there is some
issue where he wouldn't be eligible because of
some kind of a past record, that then that
affects SCI's provider licenses?

MS. EULER: I think under the statute,
arguably, the Board could deny on that basis.
Realistically, I don't think that's going to
happen.

MR. SPEAKS: Yeah. It's just like the
individual case, like this guy, you know.

MS. EULER: But if the Board is faced
--
MR. SPEAKS: The Board has the discretion.

MS. EULER: Right. The Board has discretion, but if the Board has somebody who's been convicted of embezzling $600 million in preneed funds, and they form a corporation and apply for licensure, then the Board can deny that.

MR. SPEAKS: Now, you've got a leg to stand on.

MR. STALTER: But let's step back. Now, we're not talking about SCI's Missouri president, we're talking about somebody that's not even in the state of Missouri.

MS. EULER: I know.

MR. STALTER: And then that applies, too?

MS. EULER: Under the statute, it does.

MR. SPEAKS: But what it says is each owner or director or controlling shareholder.

MR. STALTER: Yeah. Each officer.

MR. SPEAKS: I don't know if you can change that by rule.

MS. EULER: And I agree that that -- but for emergency-rule basis, I don't now that
we need to address that right now. If it
looks like it's becoming an issue --

MR. STALTER: Well, I agree. I think
that's why I'm -- my driving point is, this
might be something you might want to raise,
but I think SCI would probably have something
to say about that, and so would Stuart and --
(inaudible.)

MS. EULER: Well, there are others.

MR. STALTER: Yeah.

MS. EULER: Because this -- the point
of this statute is really, I think, intended
to apply to somebody who is trying to use a
corporate entity as a shield and say, oh, no,
the corporation has not been convicted of a
felony, you have to give me a license.

MR. STALTER: I understand, but I
think if you throw that net too wide.

MS. EULER: I agree.

MR. STALTER: Okay.

MS. EULER: And I think the Board is
going to have to deal with that on a
case-by-case basis. And if it looks like it's
becoming an issue, we can revisit whether we
need a rule. That would just be my
recommendation. The Board can do with it as they wish.

CHAIRMAN: And I think we had a motion for that; right?

MR. REINHARD: And a second.

CHAIRMAN: And Jim seconded it?

MR. REINHARD: Uh-huh.

CHAIRMAN: Todd?

MR. MAHN: Yes.

CHAIRMAN: All right. It passes.

MS. RUSSELL: So, it's not an emergency rule?

MS. EULER: Yes. It is an emergency rule.

CHAIRMAN: And all of that included the -- what's the verbiage?

MS. EULER: Competent, substantial evidence to support the need for the rule.

CHAIRMAN: All right. Okay. The next one?

MS. EULER: And, Becky, you got that that applies both to providers and sellers?

MS. DUNN: Yes, ma'am.

MS. EULER: Okay. And that'll change the authority statute, too.
MS. DUNN: Okay.

MS. EULER: The next rule, I think, needs to apply to sellers and to providers. And the display issue is taken care of in another rule, so we don't need that. And the rest of this looks like it mirrors the funeral-establishment rule, so that's consistent.

CHAIRMAN: I was getting ready to say.

MS. EULER: And the comment, the answer is no, because we don't do that for funeral establishments.

CHAIRMAN: Okay.

MS. EULER: So, make it apply to both sellers and providers throughout and take out the sentence that says the license issued by the Board shall be displayed in a conspicuous location accessible to the general public at that location.

CHAIRMAN: Okay. All right. Need a motion.

MR. MAHN: Motion.

CHAIRMAN: Second?

MR. REINHARD: Second.

CHAIRMAN: Okay. Jim seconds. Gary?
MR. FRAKER: Yes.

CHAIRMAN: All right. An emergency rule and finding there is competent and substantial evidence that there is a need for the rule. The next one.

MS. EULER: And, again, it needs to be sellers and providers, both. But this is for a biannual renewal, and sellers and providers are annual. So, we need to change that to say annual instead of biannual.

CHAIRMAN: So, you said change it back to annual; correct?

MS. EULER: Yes.

CHAIRMAN: And strike the biannual?

MS. EULER: Uh-huh.

CHAIRMAN: Okay. All right.

MS. EULER: And it would seem to me if -- and we also need to add the appropriate section for providers so it's sellers and providers, that if a seller, one of the prerequisites for them to be renewed is that they file annual reports.

CHAIRMAN: Makes sense. Okay.

MS. RUSSELL: What was that, Sharon?

MS. EULER: That they need to file
their annual reports.

MS. RUSSELL: Oh.

MR. REINHARD: That's logical.

MS. EULER: Huh?

MR. REINHARD: That's logical.

MS. EULER: Yeah.

MR. REINHARD: So, we need to make a motion.

CHAIRMAN: Correct. Jim makes the motion.

MS. EULER: What's the -- hang on a minute. It says this seems inconsistent with 320.4. What does that say? 320.4. Oh, it's not, no.

UNIDENTIFIED: Right.

MS. DUNN: Okay. So, we're going to change two years to annual, we're going to include seller and provider, we're going to make sure this --

MS. EULER: Wait a minute. You know what? I think that we can't do this rule for sellers because of the section. I'm looking on page 7 of Senate Bill 1. Sub 4 says any license which has not been renewed as provided by this section shall expire. A licensee who
fails to apply for renewal within two years of reinstatement of renewal date may apply for reinstatement by satisfying the requirements of subsection 3 and paying a delinquent fee. So, the statute already sets out what you need to do if you don't --

MS. DUNN: Renew.

MS. EULER: -- renew. We need to set a fee for this.

CHAIRMAN: Meaning just the renewal fee?

MS. EULER: Yeah. Which we do next week.

MR. STALTER: Is there really an emergency need for this one?

MS. EULER: Huh?

MR. STALTER: Is there an emergency need for the renewal?

MS. EULER: Well, you see, I don't think so. I don't think this needs to be an emergency rule, and I really don't think that this rule is needed because the statute really sets forth everything that's in this rule. The only thing that's -- yeah. I don't think the rule is needed.
MS. DUNN: So, you don't need a rule with regard to the penalty fee?

MS. EULER: You need a rule with regard to the fee, but that's not what this rule is.

MS. DUNN: Okay.

MS. EULER: So, I don't think this is needed as an emergency rule because it's not going to come into play for at least a year, and the emergency rule will have expired by then.

CHAIRMAN: Okay.

MS. DUNN: So, hold it for a regular rule?

MS. EULER: I don't even -- I don't think you need it.

UNIDENTIFIED: No.

MS. EULER: Because the statute sets forth everything that this rule says.

MS. DUNN: Okay.

MS. EULER: So, I don't think you need it. That would be my recommendation.

CHAIRMAN: So, can we just go -- just blow by it and go on, or do you need a motion of some kind?
MS. DUNN: Let's just do a motion that we do not need it.

MS. EULER: A motion that we don't need this rule.

MS. DUNN: Do not need this rule.

CHAIRMAN: Make a motion.

MR. FRAKER: Make the motion.

CHAIRMAN: Gary made the motion.

MR. MAHN: Second.

CHAIRMAN: Todd seconds. Jim?

MR. REINHARD: Fine with me.

CHAIRMAN: Fine with you.

MS. DUNN: Because it doesn't be found to be competent and supportive --

CHAIRMAN: Because it doesn't -- as Becky said -- found to be competent and substantial evidence.

MS. EULER: There you go.

CHAIRMAN: Okay. Well, we surely need the other one if you have to display the license.

MR. MAHN: Which one?

CHAIRMAN: Todd, just make a motion to take them all and let's be done with it.

MS. DUNN: Are you okay with this one,
Sharon?

MS. EULER: Yeah.

MR. REINHARD: Can we do that?

CHAIRMAN: Huh?

MR. REINHARD: Can we do that?

MS. DUNN: So, we just need a motion to approve.

CHAIRMAN: Anything go in that that we need to do, or is it okay?

MS. DUNN: Sharon says it's okay.

CHAIRMAN: Okay. Legal counsel thinks rule for license, a funeral director must report each seller is okay. Need a motion to make emergency rule.

MR. FRAKER: So moved.

CHAIRMAN: Gary makes the motion.

MR. MAHN: Second.

CHAIRMAN: Todd seconds. Jim?

MR. REINHARD: Third.

CHAIRMAN: Jim says yes. That it is found to what?

MS. DUNN: Competent.

CHAIRMAN: That is found competent and substantial evidence -- that there is substantial evidence for the need for an
emergency rule. It is done.

MR. MAHN: Everything?

CHAIRMAN: No. I wish. Are you willing to take them that way?

MS. EULER: Martin, can we take just, like, a five-minute, ten-minute little break?

CHAIRMAN: Legal counsel is requesting a five-minute break or a ten-minute break, or however long it takes.

(Off the record)

CHAIRMAN: The next one is emergency rule, preneed agent must take Missouri Law exam.

MS. RUSSELL: Would you change that word again, Sharon, for requirement for registration?

MS. EULER: Registration, yes.

CHAIRMAN: Anything else you need to discuss on that or go?

MS. EULER: I wonder if we need to add here that they can register -- they can send in their application for registration before they take the Law exam, that they need to send their application for registration in by October 31st.
MS. HAYES: On that note, we will have to send out that certificate of eligibility for that Law exam before they can -- (inaudible.)

MS. DUNN: There is a certificate of eligibility that we send to the International Conference so that they know this person is eligible to take.

MS. EULER: But when they send in their notice of intent to apply, that would trigger that.

MS. DUNN: Okay.

MS. HAYES: And that would be their way of knowing that we got their form, too.

MS. EULER: Yeah.

MS. HAYES: They're going to get that certificate back.

MS. DUNN: Right.

CHAIRMAN: Does that work? Anything else?

MS. RUSSELL: Didn't she say that --

MR. STALTER: Can you repeat that part again for us?

MS. EULER: That they need to send in their application for registration by October
MR. STALTER: Okay.

MS. EULER: -- but they have until December to take the license -- the exam -- till they can pass the exam. So, they can send in their application before they've passed the exam.

MR. STALTER: And this is just everybody excluding currently licensed funeral directors --

MS. EULER: Right.

MR. STALTER: -- because they're -- (inaudible.)

MS. EULER: Right. This is just for people who need to be registered as an agent and have to take the Missouri Law.

CHAIRMAN: So, do we need to clean anything else up here with this, or just the motion and go?

MS. EULER: No. Motion to go.

CHAIRMAN: Motion for preneed agents to take the Missouri Law exam for emergency rule?

MR. MAHN: First.

MR. FRAKER: Second.
CHAIRMAN: Jim?

MR. REINHARD: Yes. Second.

CHAIRMAN: It passes emergency rule.

MS. EULER: And a finding of substantial and competent evidence to support the need for the rule?

CHAIRMAN: That, it is.

MS. EULER: On this next one, does this rule say anything that the statute does not already say?

CHAIRMAN: It does or it doesn't?

MS. EULER: It is an addition, so it's an appropriate rule.

CHAIRMAN: Okay.

MR. STALTER: But you don't want to mention joint-account contracts when you're talking about 80 percent. Next-to-the-last line.

MS. EULER: That is -- that is correct. It's just trusts, so we take out the word "joint account" in the next-to-the-last line and the third line from the bottom. And I think we just say against a preneed seller and take out the words "of a preneed trust," because nobody sells preneed trusts. Would
you like me to read that?

MS. DUNN: Yes.

MS. EULER: Pursuant to section 333.330.4 RSMo., the Missouri State Board of Embalmers and Funeral Directors shall not be entitled to seek injunctive relief against a preneed seller if there is a shortage in the preneed trust greater than 20 percent of the total amount required to be held or deposited into the trust pursuant to Chapter 436 -- and that should set out the sections -- that is exclusively the result of normal fluctuations in the market. That could be worded a little better, but that works.

CHAIRMAN: Any other corrections or thoughts that we need to go? Motion to go to emergency rule?

MR. MAHN: First.

CHAIRMAN: Todd makes the motion.

MR. REINHARD: Second.

CHAIRMAN: Jim seconds. Gary?

MR. FRAKER: Yes.

CHAIRMAN: It passes finding that there is competent and substantial evidence that there is a need for an emergency rule.
Next?

MS. EULER: I think that's fine, and that's the last one.

CHAIRMAN: Okay. Okay. Need a motion for financial welfare cause for injunction to become an emergency rule.

MR. FRAKER: I'll make the motion.

CHAIRMAN: Gary makes the motion.

MR. MAHN: Second.

CHAIRMAN: Todd seconds. Jim?

MR. REINHARD: Yes.

CHAIRMAN: And it passes for there is findings that there is competent and substantial evidence that there is need for an emergency rule.

MS. EULER: Okay.

CHAIRMAN: And we are done with that. And we are done with emergency rule-making as of today.

MS. DUNN: Okay. Now, we did have some additional things to review, but we can do those next week. We may run short on some time next week, so if the Board is okay with that, you may give a directive to draft emergency rule, but we may not bring it back.
to the Board for review before August 28th.

Does that make sense?

CHAIRMAN: Does that make sense? Does that make sense?

MS. EULER: Yeah.

MS. DUNN: Because we're going to be short time frames.

MS. EULER: And I would encourage and ask that since we aren't going to have time to bring stuff back, that the Board members read group-two rules and the group-three rules when we get them, and if there is anything that raises concern or questions, let Becky know ASAP so we can make any proposed changes to the rules so that when we look at them next week, we're all ready to go. We've all looked at the rules, we've all addressed our concerns, and we're ready to approve as they are.

CHAIRMAN: So, we have two. When will we have three in our hands?

MS. EULER: We will get three as soon as Sarah gets them done, and we hope that will be this week.

CHAIRMAN: Okay. So, you have two in
your hands, you'll have three very shortly, and you should have any concerns about those ready to go when you get here next week.

MS. EULER: Right.

MR. STALTER: When do you need comments, Becky?

MS. EULER: For you, Bill, 7:00 tonight.

MS. EULER: Everybody else, you could get them by the end of Thursday.

MS. DUNN: When do you need them?

MS. EULER: I think if you could get them by the close of business on Thursday or first thing Friday morning. For those of you who are wondering why I'm harassing Bill, Bill was very prompt and timely in having his responses in, and I gave him a gold star for punctuality.

MR. STALTER: And I'm not going to make it this week. That's why I'm asking. I mean, when it -- kind of a cutoff date so that you can incorporate it into the blended comments.

MS. EULER: Well, for the group-three rules?
MR. STALTER: Yeah. I mean, I see group three. I'm thinking of --

MS. EULER: We haven't -- when we get them, we'll include a notice as to when we need comments by.

MR. STALTER: Okay.

MS. EULER: Because I don't know when we're going to get them.

CHAIRMAN: Anything else?

MS. EULER: Hang on just a minute. I just got an e-mail that may be somewhat relevant.

MR. REINHARD: Turn the tape off.

MS. DUNN: Board members, we still need to go back into close, so don't be packing up your bags yet.

MR. REINHARD: Turn your computer off.

UNIDENTIFIED: Don't pack your gear up yet.

MR. REINHARD: Todd, go ahead. Tell her how your wigwags were on when we were in St. Louis.

MS. DUNN: So, we're going -- next Tuesday, 9:00.

MS. RUSSELL: And then maybe Wednesday.
MS. DUNN: Maybe Wednesday.

MS. EULER: But we hope to be done on Tuesday. Okay. I have nothing more.

CHAIRMAN: Okay. All right. So, we need a motion to go into closed, and --

MR. FRAKER: I'll make a motion to go into closed.

MR. MAHN: Second.

CHAIRMAN: There it is. Thank you all for coming.

(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 19, 2009; that said proceedings were recorded by me and afterwards transcribed under my direct supervision.

Given at my office this 18th day of September, 2009.

[Signature]

KRISTY B. BRADSHAW, CCR
August 19

Board Meeting Addendum Working Documents

Date
Draft SB1 Implementation GROUP III
Public Comments
Date
Bill Stalter August 19 2009 comments
Don Otto's Comments for 8-19
Board Meeting Addendum Working Documents
Draft SB1 Implementation GROUP III
SBI Implementor - Group III

436.456. Purchaser cancellation

At any time before final disposition, or before the
2 funeral or burial services, facilities, or merchandise described in a
3 preneed contract are furnished, the purchaser may cancel the contract,
4 if designated as revocable, without cause. In order to cancel the
5 contract the purchaser shall:

6 (1) In the case of a joint account-funded preneed contract,
7 deliver written notice of the cancellation to the seller and the financial
8 institution. Within fifteen days of receipt of notice of the cancellation,
9 the financial institution shall distribute all deposited funds to the
10 purchaser. Interest shall be distributed as provided in the agreement
11 with the seller and purchaser;

12 (2) In the case of an insurance-funded preneed contract, deliver
13 written notice of the cancellation to the seller. Within fifteen days of
14 receipt of notice of the cancellation, the seller shall notify the
15 purchaser that the cancellation of the contract shall not cancel any life
16 insurance funding the contract and that insurance cancellation is
17 required to be made in writing to the insurer;

18 (3) In the case of a trust-funded preneed contract, deliver
19 written notice of the cancellation to the seller and trustee. Within
20 fifteen days of receipt of notice of the cancellation, the trustee shall
21 distribute one hundred percent of the trust property including any
22 percentage of the total payments received on the trust-funded contract
23 that have been withdrawn from the account under section 436.430.4 but
24 excluding the income, to the purchaser of the contract;

25 (4) In the case of a guaranteed installment payment contract
26 where the beneficiary dies before all installments have been paid, the
27 purchaser shall pay the seller the amount remaining due under the
28 contract in order to receive the goods and services set out in the
29 contract, otherwise the purchaser or their estate will receive full credit
30 for all payments the purchaser has made towards the cost of the
31 beneficiary's funeral at the provider current prices.
436.457. Seller cancellation

1. A seller shall have the right to cancel a trust-funded 2 or joint-account funded preneed contract if the purchaser is in default 3 of any installment payment for over sixty days.

4 2. Prior to cancelling the contract, the seller shall notify the 5 purchaser and provider in writing that the contract shall be cancelled 6 if payment is not received within thirty days of the postmarked date of 7 the notice. The notice shall include the amount of payments due, the 8 date the payment is due, and the date of cancellation.

9 3. If the purchaser fails to remit the payments due within thirty 10 days of the postmarked date of the notice, then the seller, at its option, 11 may either cancel the contract or may continue the contract as a 12 nonguaranteed contract where the purchaser will receive full credit for 13 all payments the purchaser has made into the trust towards the cost of 14 the beneficiary's funeral service or merchandise from the provider.

15 4. Upon cancellation by the seller under this section, eighty-five 16 percent of the contract payments shall be refunded to the 17 purchaser. All remaining funds shall be distributed to the seller.

Comment [K6]: Seller gets maximum of 15% of payments plus income if any, right? Need a rule?
436.458. Purchaser change of provider

1. A purchaser may select an alternative provider as the
2 designated provider under the original contract if the purchaser
3 notifies the seller and original provider in writing of the purchaser's
4 intent, stating the name of the alternative provider and the alternative
5 provider consents to the new designation. Purchasers shall not be
6 penalized or assessed any additional fee or cost for such transfer of the
7 provider designation.

8 2. The seller shall pay the newly designated provider all
9 payments owed to the original provider under the contract. The newly
10 designated provider shall assume all rights, duties, obligations, and
11 liabilities as the original provider under the contract. Interest shall
12 continue to be allocated to the seller as provided under the contract.

13 3. In the case of a trust funded contract and upon written notice
14 to the seller of the purchaser’s intent to select an alternative provider
15 under subsection 1 of this section, the seller shall either continue the
16 trust with the new provider in place of, and to receive all payment
17 owed to, the original provider under the original agreement, or pay to
18 the new trust all of the trust property, including principal and income.

Comment [K7]: Once a customer selects a different provider, the seller has
the option to either establish a trust where the new provider receives credit for all
principal or pay principal and income to the new provider?

Comment [K8]: Can 15% be retained by the original provider based on
436.450?

Comment [K9]: Could define what counts as notice to the seller from the
purchaser, but wouldn’t have to. Notarized?

Comment [K10]: If the alternative provider elects to transfer the trust, it
should receive the trust value (as opposed to payments plus income). These transfers could take time to

effect.
436.460. Seller annual reports

1. Each seller shall file an annual report with the board which shall contain the following information:

3 (1) The contract number of each preneed contract sold since the filing of the last report with an indication of, and whether it is funded by a trust, insurance or joint account;

6 (2) The total number and total face value of preneed contracts sold since the filing of the last report;

8 (3) The contract amount of each preneed contract sold since the filing of the last report, identified by contract;

10 (4) The name, address, and license number of all preneed agents authorized to sell preneed contracts on behalf of the seller;

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

14 (6) The list including the name, address, contract number and whether it is funded by a trust, insurance or joint account of all Missouri preneed contracts fulfilled, cancelled or transferred by the seller during the preceding calendar year;

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

20 (8) The name and address of the person designated by the seller as custodian of the seller's books and records relating to the sale of preneed contracts;

23 (9) Written consent authorizing the board to order an investigation, examination and, if necessary, an audit of any joint or trust account established under sections 436.400 to 436.520, designated by depository or account number;

27 (10) Written consent authorizing the board to order an investigation, examination and if necessary an audit of its books and records relating to the sale of preneed contracts; and

30 (11) Certification under oath that the report is complete and correct attested to by an officer of the seller. The seller or officer shall be subject to the penalty of making a false affidavit or declaration.

Comment [K1]: May want to require by rule that a board form be used. I would not promulgate the form itself as a rule, as then any change to that form would require a new rule.

Comment [K2]: May want to define the highlighted items, but wouldn't have to.

Comment [K13]: The aggregate market value as of the report date.

Comment [K14]: What is "the list"?

Comment [K15]: May want to require by rule that a board form be used for written consents.

Comment [K16]: May want to define the terms investigation, examination and audit by rule.

Comment [K17]: Should be a part of the report form required by rule.
33 2. A seller that sells or has sold trust-funded preneed contracts shall also include in the annual report required by section 1 of this section:

36 (1) The name and address of the financial institution in which it maintains a preneed trust account and the account numbers of such trust accounts;

39 (2) The trust fund balance as reported in the previous year's report;

41 (3) The current face value of the trust fund;

42 (4) Principal contributions received by the trustee since the previous report;

44 (5) Total trust earnings and total distributions to the seller since the previous report;

46 (6) Authorization of the board to request from the trustee a copy of any trust statement, as part of an investigation, examination or audit of the preneed seller;

49 (7) Total expenses, excluding distributions to the seller, since the previous report; and

51 (8) Certification under oath that the information required by subdivisions (1) to (7) of this subsection is complete and correct and attested to by a corporate officer of the trustee. The trustee shall be subject to the penalty of making a false affidavit or declaration.

55 3. A seller that sells or who has sold joint account-funded preneed contracts shall also include in the annual report required by subsection 1 of this section:

58 (1) The name and address of the financial institution in Missouri in which it maintains the joint account and the account numbers for each joint account;

61 (2) The amount on deposit in each joint account;

62 (3) The joint account balance as reported in the previous year's report;

64 (4) Principal contributions placed into each joint account since
65 the filing of the previous report;

66 (5) Total earnings since the previous report;

67 (6) Total distributions to the seller from each joint account since
68 the previous report;

69 (7) Total expenses deducted from the joint account, excluding
70 distributions to the seller, since the previous report; and

71 (8) Certification under oath that the information required by
72 subdivisions (1) to (7) of this subsection is complete and correct and
73 attested to by an authorized representative of the financial
74 institution. The affiant shall be subject to the penalty of making a false
75 affidavit or declaration.

76 4. A seller that sells or who has sold any insurance-funded
77 preneed contracts shall also include in the annual report required by
78 subsection 1 of this section:

79 (1) The name and address of each insurance company issuing
80 insurance to fund a preneed contract sold by the seller during the
81 preceding year;

82 (2) The status and total face value of each policy;

83 (3) The amount of funds the seller directly received on each
84 contract and the date the amount was forwarded to any insurance
85 company; and

86 (4) Certification under oath that the information required by
87 subsections 1 to 3 of this section is complete and correct attested to by
88 an authorized representative of the insurer. The affiant shall be
89 subject to the penalty of making a false affidavit or declaration.

90 5. Each seller shall remit an annual reporting fee in an amount
91 established by the board by rule for each preneed contract sold in the
92 year since the date the seller filed its last annual report with the
93 board. This reporting fee shall be paid annually and may be collected
94 from the purchaser of the preneed contract as an additional charge or
95 remitted to the board from the funds of the seller. The reporting fee
96 shall be in addition to any other fees authorized under sections 436.400
97 to 436.520.

98 6. All reports required by this section shall be filed by the thirty-
99 day of October of each year or by the date established by the

Comment [K34]: Should be part of board form required by rule.

Comment [K25]: The Board may want to give thought to a spreadsheet format for reporting joint accounts.

Comment [K26]: Could define highlighted terms by rule. Status as relevant to the board?

Comment [K27]: Should be part of board form required by rule.

Comment [K28]: Yeild rule – setting amounts, deadlines, how and where to remit, etc.

Comment [K29]: Will need to address by rule how to do this in transition – how those who haven’t filed an annual report before have to do this.

Comment [K30]: I want different that 1099s, need to establish by rule. Also should address Oct. 2009 by rule if first transition year will be different than subsequent years. Coordinate transition timelines with other transition dates.
board by rule. Annual reports filed after the date provided herein shall be subject to a late fee in an amount established by rule of the board.

If a seller fails to file the annual report on or before its due date, his or her real estate seller license shall automatically be suspended until such time as the annual report is filed and all applicable fees have been paid.

This section shall apply to contracts entered into before August 28, 2009.

Comment [K31]: Need rule Can there be a waiver of late fee

Comment [K32]: May need a rule. Need to specify if automatic suspension takes effect on Nov. 1 (immediately after reporting deadline)?

Comment [K33]: "automatic" suspensions without notice could cause problems for both licensees and the Board. The validity of any contracts written during the suspension would be in doubt.

Comment [K34]: Clearly—does this mean applies to contracts before 8/28/09 only or also?
436.465. Record retention

A seller shall maintain:
2 (1) Adequate records of all preneed contracts and related
3 agreements with providers, trustees of a preneed trust, and financial
4 institutions holding a joint account established under sections 436.400
5 to 436.520;

6 (2) Records of preneed contracts, including financial institution
7 statements and death certificates, shall be maintained by the seller for
8 the duration of the contract and for no less than five years after the
9 performance or cancellation of the contract.

Comment [K35]: Could define highlighted terms by rle
Look to requirements as a fiduciary?

Comment [K36]: Adequate records
for trust funded contracts should
include line item breakdown of
individual contracts with balances,
value and income/expenses.

Comment [K37]: Maintained within
the state of Missouri in a format that is
accessible and will not degrade over
required preservation time, can be copied
or printed, may be outside of MO for good
cause with prior approval of board.

Comment [K38]: The five year
period is intended to cover the 'open'
audit period. To the extent the trust
is audited with passing colors, the
seller could be free to begin disposing
of records less than 5 years after
performance.
436.470. Complaints/Board inspections/Subpoenas/AG

1. Any person may file a complaint with the board to
2 notify the board of an alleged violation of this chapter. The board shall
3 investigate each such complaint.

4 2. The board shall have authority to conduct inspections and
5 investigations of providers, sellers, and preneed agents and conduct
6 financial examinations of the books and records of providers, sellers,
7 and preneed agents and any trust or joint account to determine
8 compliance with sections 436.400 to 436.520, or to determine whether
9 grounds exist for disciplining a person licensed or registered under
10 sections 333.310 to 333.340, RSMo, at the discretion of the board and
11 with or without cause. The board shall conduct financial examinations
12 of the books and records of each seller as authorized by this section at
13 least once every five years, subject to available funding.

14 3. Upon determining that an inspection, investigation,
15 examination, or audit shall be conducted, the board shall issue a notice
16 authorizing an employee or other person appointed by the board to
17 perform such inspection, investigation, examination, or audit. The
18 notice shall instruct the person appointed by the board as to the scope
19 of the inspection, investigation, examination or audit.

20 4. The board shall not appoint or authorize any person to
21 conduct an inspection, investigation, examination, or audit under this
22 section if the individual has a conflict of interest or is affiliated with
23 the management of, or owns a pecuniary interest in, any person subject
24 to inspection, investigation, examination, or audit under chapter 333,
25 RSMo, or sections 436.400 to 436.520.

26 5. The board may request that the director of the division of
27 professional registration, the director of the department of insurance,
28 financial institutions and professional registration, or the office of the
29 attorney general designate one or more investigators or financial
30 examiners to assist in any investigation, examination, or audit, and
31 such assistance shall not be unreasonably withheld.

32 6. The person conducting the inspection, investigation, or audit
33 may enter the office, premises, establishment, or place of business of
34 any seller or licensed provider of preneed contracts, or any office,
35 premises, establishment, or place where the practice of selling or
36 providing preneed funerals is conducted, or where such practice is
37 advertised as being conducted for the purpose of conducting the
38 inspection, investigation, examination, or audit.

39 7. Upon request by the board, a licensee or registrant shall make
40 the books and records of the licensee or registrant available to the
41 board for inspection and copying at any reasonable time, including any
42 insurance, trust, joint account, or financial institution records deemed
43 necessary by the board to determine compliance with sections 436.400
44 to 436.520.

45 8. The board shall have the power to issue subpoenas to compel
46 the production of records and papers by any licensee, trustee or
47 registrant of the board. Subpoenas issued under this section shall be
48 served in the same manner as subpoenas in a criminal case.

49 9. All sellers, providers, preneed agents, and trustees shall
50 cooperate with the board or its designee, the division of finance, the
51 department of insurance, financial institutions and professional
52 registration, and the office of the attorney general in any inspection,
53 investigation, examination, or audit brought under this section.

54 10. This section shall not be construed to limit the board's
55 authority to file a complaint with the administrative hearing
56 commission charging a licensee or registrant with any actionable
57 conduct or violation, regardless of whether such complaint exceeds the
58 scope of acts charged in a preliminary public complaint filed with the
59 board and whether any public complaint has been filed with the board.

60 11. The board, the division of finance, the department of
61 insurance, financial institutions and professional registration, and the
62 office of the attorney general may share information relating to any
63 preneed inspection, investigation, examination, or audit.

64 12. If an inspection, investigation, examination, or audit reveals
65 a violation of sections 436.400 to 436.520, the office of the attorney
66 general may initiate a judicial proceeding to:

67 (1) Declare rights;

68 (2) Approve a nonjudicial settlement;

69 (3) Interpret or construe the terms of the trust;

70 (4) Determine the validity of a trust or of any of its terms;

71 (5) Compel a trustee to report or account;
72 (6) Enjoin a seller, provider, or preneed agent from performing
73 a particular act;

74 (7) Enjoin a trustee from performing a particular act or grant to
75 a trustee any necessary or desirable power;

76 (8) Review the actions of a trustee, including the exercise of a
77 discretionary power;

78 (9) Appoint or remove a trustee;

79 (10) Determine trustee liability and grant any available remedy
80 for a breach of trust;

81 (11) Approve employment and compensation of preneed agents;

82 (12) Determine the propriety of investments;

83 (13) Determine the timing and quantity of distributions and
84 dispositions of assets; or

85 (14) Utilize any other power or authority vested in the attorney
86 general by law.
Upon the death or legal incapacity of a purchaser, all
rights and remedies granted to the purchaser under sections 436.400 to
436.520 shall be enforceable by and accrue to the benefit of the
purchaser's legal representative or his or her estate, and all payments
otherwise payable to the purchaser shall be paid to that person.
436.485. Criminal penalties/Ch. 407 violation

1. Any person, including the officers, directors, partners, agents, or employees of such person, who shall knowingly and willfully violate or assist or enable any person to violate any provision of sections 436.400 to 436.520 by incompetence, misconduct, gross negligence, fraud, misrepresentation, or dishonesty is guilty of a class C felony. Each violation of any provision of sections 436.400 to 436.520 constitutes a separate offense and may be prosecuted individually. The attorney general shall have concurrent jurisdiction with any local prosecutor to prosecute under this section.

10 2. Any violation of the provisions of sections 436.400 to 436.520 shall constitute a violation of the provisions of section 407.020, RSMo. In any proceeding brought by the attorney general for a violation of the provisions of sections 436.400 to 436.520, the court may order all relief and penalties authorized under chapter 407, RSMo, and, in addition to imposing the penalties provided for in sections 436.400 to 436.520, order the revocation or suspension of the license or registration of a defendant seller, provider, or proceeds agent.
436.490. Provide; cease business

1. A provider that intends to sell or otherwise dispose
2 of all or a majority of its business assets, or its stock if a corporation,
3 shall notify the board at least sixty days prior to selling or otherwise
4 disposing of its business assets or stock, or ceasing to do business as a
5 provider, and shall file a notification report on a form established by
6 the board.

7 2. The report required by this section shall include:

8 (1) The name, phone number, and address of the buyer of
9 any outstanding preneed contract for which the licensee is the
10 designated provider;

11 (2) The name and license numbers of all sellers authorized to
12 designate the licensee as a provider in a preneed contract;

13 (3) The name, address, and license number of the provider
14 assuming or agreeing to assume the licensee's obligations as a provider
15 under a preneed contract, if any;

16 (4) The name, address, and phone number of a custodian who
17 will maintain the books and records of the provider containing
18 information about preneed contracts in which the licensee is or was
19 formerly designated as provider;

20 (5) A final annual report containing the information required by
21 section 436.460;

22 (6) The date the provider intends to sell or otherwise dispose of
23 its business assets or stock, or cease doing business; and

24 (7) Any other information required by any other applicable
25 statute or regulation enacted pursuant to state or federal law.

26 3. Within three days after the provider sells or disposes of its
27 assets or stock or ceases doing business, the former provider shall
28 notify each seller in writing that the former provider has sold or
29 disposed of its assets or stock or has ceased doing business.
1. A seller that intends to sell or otherwise dispose of all
2 or a majority of its business assets or its stock shall notify the board at
3 least sixty days prior to selling or otherwise disposing of its assets or
4 stock, or ceasing to do business as a seller, and shall file a notification
5 report on a form established by the board.\[Comment [K56]: Need a form and a
rule\]

6 2. The report required by this section shall include:

7 (1) A notarized and signed statement from the person assuming
8 or agreeing to assume the obligations of the seller indicating that the
9 assuming seller has been provided with a copy of the seller's final
10 annual report and has consented to assuming the outstanding
11 obligations of the seller;\[Comment [K57]: Will the Board use its audit powers to provide some
assurance to buyers?\]

12 (2) In lieu of the notarized statement required by subdivision (1)
13 of this subsection, the seller may file a plan detailing how the assets of
14 the seller will be set aside and used to service all outstanding preneed
15 contracts sold by the seller; and

16 (3) Any other information required by any other applicable
17 statute or regulation enacted pursuant to state or federal law.

18 3. Within thirty days after assuming the obligations of a seller
19 under this section, the assuming seller shall:

20 (1) Notify each provider in writing that the former seller has
21 sold or disposed of its assets or stock or has ceased doing business; and

22 (2) Provide written notification to the purchasers of each
23 preneed contract assumed by the seller indicating that the former
24 seller has transferred ownership or has ceased doing business.

25 4. Nothing in this section shall be construed to require the board
26 to audit, inspect, investigate, examine, or edit the books and records of
27 a seller subject to the provisions of this section nor shall this section
28 be construed to amend, rescind, or supersede any duty imposed on, or
29 due diligence required of, an entity assuming the obligations of the
30 seller.

31 5. The office of the attorney general shall have the authority to
32 initiate legal action to compel or otherwise ensure compliance with this
33 section by a former provider licensee.
436.505. Credit life

A preneed contract may offer the purchaser the option
to acquire and maintain credit life insurance on the life of the
purchaser. Such insurance shall provide for the payment of death
benefits to the seller in an amount equal to the total of all contract
payments unpaid as of the date of such purchaser's death, and shall be
used solely to make those unpaid payments. Any such credit life
insurance shall be provided by a duly authorized insurance company
and the preneed contract shall clearly identify the name of the insurer
and the amount of payment allocated to the premium payment for the
credit life. No seller or provider may provide any form of self insured
credit life.
436.510. Provider may demand payment from trustee

If a seller shall fail to make timely payment of an
2 amount due a purchaser or a provider under the provisions of sections
3 436.400 to 436.520, the purchaser or provider, as appropriate, shall have
4 the right, in addition to other rights and remedies against such seller,
5 to make demand upon the trustee of the preneed trust for the contract
6 to distribute to the purchaser or provider from the trust, as damages,
7 an amount equal to all deposits made into the trust for the contract.

Comment [K62]: Need a regulation setting out conditions (timing and release) for trustee to be protected.
436.520. Rulemaking authority

1. The board shall promulgate and enforce rules for administration and enforcement of sections 436.400 to 436.520 including
2 the establishment of the amount of any fees authorized thereunder for
3 the transaction of its business and for standards of service and practice
4 to be followed for the licensing and registration of providers, sellers,
5 and preneed agents deemed necessary for the public good and
6 consistent with the laws of this state. Such fees shall be set at a level
7 to produce revenue which does not substantially exceed the cost and
8 expense of administering this chapter.

10 2. Any rule or portion of a rule, as that term is defined in section
11 536.010, RSMo, that is created under the authority delegated in this
12 section shall become effective only if it complies with and is subject to
13 all of the provisions of chapter 536, RSMo, and, if applicable, section
14 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable
15 and if any of the powers vested with the general assembly under
16 chapter 536, RSMo, to review, to delay the effective date, or to
17 disapprove and annul a rule are subsequently held unconstitutional,
18 then the grant of rulemaking authority and any rule proposed or
19 adopted after August 28, 2009, shall be invalid and void.
Section 1. Closed records

The board shall maintain as a closed and confidential record, not subject to discovery unless the person provides written consent for disclosure, all personal information about any individual whose purchase or beneficiary, including but not limited to name, address, Social Security number, financial institution account numbers, and any health information disclosed in the purchase contract or any document prepared in conjunction with the purchase contract; provided, however, that the board may disclose such confidential information without the consent of the person involved in the course of voluntary interstate exchange of information; or in the course of any litigation concerning that person or the provider, seller, or sales agent involved with the purchase contract; or pursuant to a lawful request or to other administrative or law enforcement agencies acting within the scope of their statutory authority. In any such litigation, the board and its attorneys shall take reasonable precautions to ensure the protection of such information from disclosure to the public.
August 19

Public Comments

Bill Stalter August 19 2009 comments
of both the seller and the purchaser or under a pay-on-death designation or as required to pay reasonable expenses of administering the account.

3. All consideration paid by the purchaser under a joint account-funded contract shall be deposited into a joint account as authorized by this section within ten days of receipt of payment by the seller.

4. The financial institution shall hold, invest, and reinvest funds deposited under this section in other accounts offered to depositors by the financial institutions as provided in the written agreement of the purchaser and the seller, provided the financial institution shall not invest or reinvest any funds deposited under this section in term life insurance or any investment that does not reasonably have the potential to gain income or increase in value.

5. Income generated by preneed funds deposited under this section shall be used to pay the reasonable expenses of administering the account as charged by the financial institution and the balance of the income shall be distributed or reinvested upon fulfillment of the contract, cancellation or transfer pursuant to the provisions of this chapter.

6. Within fifteen days after a provider and a witness certifies to the financial institution in writing that the provider has furnished the final disposition, funeral, and burial services and facilities, and merchandise as required by the preneed contract, or has provided alternative funeral benefits for the beneficiary under special arrangements made with the purchaser, the financial institution shall distribute the deposited funds to the seller if the certification has been approved by the purchaser. The seller shall pay the provider within ten days of receipt of funds.

7. Any seller, provider, or preneed agent shall not procure or accept a loan against any investment, or asset of, or belonging to a joint account. As of August 28, 2009, it shall be prohibited to 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.

436.456. At any time before final disposition, or before the funeral or burial services, facilities, or merchandise described in a preneed contract are furnished, the purchaser may cancel the contract,
Summary of Comments on SB 0001 (0404.05) Establishes licensing and contract requirements for preneed funeral contract sellers, providers, and seller agents.

This page contains no comments
4 if designated as revocable, without cause. In order to cancel the
5 contract the purchaser shall:
6  (1) In the case of a joint account-funded preneed contract,
7 deliver written notice of the cancellation to the seller and the financial
8 institution. Within fifteen days of receipt of notice of the cancellation,
9 the financial institution shall distribute all deposited funds to the
10 purchaser. Interest shall be distributed as provided in the agreement
11 with the seller and purchaser;
12 (2) In the case of an insurance-funded preneed contract, deliver
13 written notice of the cancellation to the seller. Within fifteen days of
14 receipt of notice of the cancellation, the seller shall notify the
15 purchaser that the cancellation of the contract shall not cancel any life
16 insurance funding the contract and that insurance cancellation is
17 required to be made in writing to the insurer;
18 (3) In the case of a trust-funded preneed contract, deliver
19 written notice of the cancellation to the seller and trustee. Within
20 fifteen days of receipt of notice of the cancellation, the trustee shall
21 distribute one hundred percent of the trust property including any
22 percentage of the total payments received on the trust-funded contract
23 that have been withdrawn from the account under section 436.430.4 but
24 excluding the income, to the purchaser of the contract;
25 (4) In the case of a guaranteed installment payment contract
26 where the beneficiary dies before all installments have been paid, the
27 purchaser shall pay the seller the amount remaining due under the
28 contract in order to receive the goods and services set out in the
29 contract, otherwise the purchaser or their estate will receive full credit
30 for all payments the purchaser has made towards the cost of the
31 beneficiary's funeral at the provider current prices.

436.467. 1. A seller shall have the right to cancel a trust-funded
2 or joint-account funded preneed contract if the purchaser is in default
3 of any installment payment for over sixty days.
4 2. Prior to cancelling the contract, the seller shall notify the
5 purchaser and provider in writing that the contract shall be cancelled
6 if payment is not received within thirty days of the postmarked date of
7 the notice. The notice shall include the amount of payments due, the
date the payment is due, and the date of cancellation.
9 3. If the purchaser fails to remit the payments due within thirty
For consistency with trust funded contract refunds, the seller may include contract provisions allowing it to regain accrued interest. In the absence of such language, a regulation may be needed to govern the parties' rights to interest.

The reference to "100% of the trust property" is confusing. Who must bear the risk of the account value? I would think the intent would be a refund of payments less the origination fee.
days of the postmarked date of the notice, then the seller, at its option,
may either cancel the contract or may continue the contract as a
nonguaranteed contract where the purchaser will receive full credit for
all payments the purchaser has made into the trust towards the cost of
the beneficiary's funeral service or merchandise from the provider.

4. Upon cancellation by the seller under this section, eighty-five
percent of the contract payments shall be refunded to the
purchaser. All remaining funds shall be distributed to the seller.

436.458. 1. A purchaser may select an alternative provider as the
designated provider under the original contract if the purchaser
notifies the seller and original provider in writing of the purchaser's
intent, stating the name of the alternative provider and the alternative
provider consents to the new designation. Purchasers shall not be
penalized or assessed any additional fee or cost for such transfer of the
provider designation.

2. The seller shall pay the newly designated provider all
payments owed to the original provider under the contract. The newly
designated provider shall assume all rights, duties, obligations, and
liabilities as the original provider under the contract. Interest shall
continue to be allocated to the seller as provided under the contract.

3. In the case of a trust funded contract and upon written notice
to the seller of the purchaser's intent to select an alternative provider
under subsection 1 of this section, the seller shall either continue the
trust with the new provider in place of, and to receive all payment
owed to, the original provider under the original agreement, or pay to
the new trust all of the trust property, including principal and income.

436.460. 1. Each seller shall file an annual report with the board
which shall contain the following information:

(1) The contract number of each preneed contract sold since the
filing of the last report with an indication of, and whether it is funded
by a trust, insurance or joint account;

(2) The total number and total face value of preneed contracts
sold since the filing of the last report;

(3) The contract amount of each preneed contract sold since the
filing of the last report, identified by contract;

(4) The name, address, and license number of all preneed agents
authorized to sell preneed contracts on behalf of the seller;
If the alternative provider elects to transfer the trust, it should receive the trust value (as opposed to payments plus income). These transfers could take time to effect.
12 (5) The date the report is submitted and the date of the last report;
13 (6) The list including the name, address, contract number and whether it is funded by a trust, insurance or joint account of all Missouri preneed contracts fulfilled, cancelled or transferred by the seller during the preceding calendar year;
14 (7) The name and address of each provider with whom it is under contract;
15 (8) The name and address of the person designated by the seller as custodian of the seller's books and records relating to the sale of preneed contracts;
16 (9) Written consent authorizing the board to order an investigation, examination and, if necessary, an audit of any joint or trust account established under sections 436.400 to 436.520, designated by depository or account number;
17 (10) Written consent authorizing the board to order an investigation, examination and if necessary an audit of its books and records relating to the sale of preneed contracts; and
18 (11) Certification under oath that the report is complete and correct attested to by an officer of the seller. The seller or officer shall be subject to the penalty of making a false affidavit or declaration.
19 2. A seller that sells or has sold trust-funded preneed contracts shall also include in the annual report required by section 1 of this section:
20 (1) The name and address of the financial institution in which it maintains a preneed trust account and the account numbers of such trust accounts;
21 (2) The trust fund balance as reported in the previous year's report;
22 (3) The current face value of the trust fund;
23 (4) Principal contributions received by the trustee since the previous report;
24 (5) Total trust earnings and total distributions to the seller since the previous report;
25 (6) Authorization of the board to request from the trustee a copy of any trust statement, as part of an investigation, examination or audit of the preneed seller;
I think the intent would be the aggregate payment balance of the trust.

The aggregate market value as of the report date.
(7) Total expenses, excluding distributions to the seller, since the previous report; and

(8) Certification under oath that the information required by subdivisions (1) to (7) of this subsection is complete and correct and attested to by a corporate officer of the trustee. The trustee shall be subject to the penalty of making a false affidavit or declaration.

3. A seller that sells or who has sold joint account-funded preneed contracts shall also include in the annual report required by subsection 1 of this section:

(1) The name and address of the financial institution in Missouri in which it maintains the joint account and the account numbers for each joint account;

(2) The amount on deposit in each joint account;

(3) The joint account balance as reported in the previous year's report;

(4) Principal contributions placed into each joint account since the filing of the previous report;

(5) Total earnings since the previous report;

(6) Total distributions to the seller from each joint account since the previous report;

(7) Total expenses deducted from the joint account, excluding distributions to the seller, since the previous report; and

(8) Certification under oath that the information required by subdivisions (1) to (7) of this subsection is complete and correct and attested to by an authorized representative of the financial institution. The affiant shall be subject to the penalty of making a false affidavit or declaration.

4. A seller that sells or who has sold any insurance-funded preneed contracts shall also include in the annual report required by subsection 1 of this section:

(1) The name and address of each insurance company issuing insurance to fund a preneed contract sold by the seller during the preceding year;

(2) The status and total face value of each policy;

(3) The amount of funds the seller directly received on each contract and the date the amount was forwarded to any insurance company; and
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The Board may want to give thought to a spreadsheet format for reporting joint accounts.
(4) Certification under oath that the information required by subsections 1 to 3 of this section is complete and correct attested to by an authorized representative of the insurer. The affiant shall be subject to the penalty of making a false affidavit or declaration.

5. Each seller shall remit an annual reporting fee in an amount established by the board by rule for each preneed contract sold in the year since the date the seller filed its last annual report with the board. This reporting fee shall be paid annually and may be collected from the purchaser of the preneed contract as an additional charge or remitted to the board from the funds of the seller. The reporting fee shall be in addition to any other fees authorized under sections 436.400 to 436.520.

6. All reports required by this section shall be filed by the thirty-first day of October of each year or by the date established by the board by rule. Annual reports filed after the date provided herein shall be subject to a late fee in an amount established by rule of the board.

7. If a seller fails to file the annual report on or before its due date, his or her preneed seller license shall automatically be suspended until such time as the annual report is filed and all applicable fees have been paid.

8. This section shall apply to contracts entered into before August 28, 2009.

436.465. A seller shall maintain:

(1) Adequate records of all preneed contracts and related agreements with providers, trustees of a preneed trust, and financial institutions holding a joint account established under sections 436.400 to 436.520.

(2) Records of preneed contracts, including financial institution statements and death certificates, shall be maintained by the seller for the duration of the contract and for no less than five years after the performance or cancellation of the contract.

436.470. 1. Any person may file a complaint with the board to notify the board of an alleged violation of this chapter. The board shall investigate each such complaint.

2. The board shall have authority to conduct inspections and investigations of providers, sellers, and preneed agents and conduct financial examinations of the books and records of providers, sellers,
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<td>Note</td>
<td>8/12/2009</td>
<td>2:50:43 PM</td>
<td>The five-year period is intended to cover the 'open' audit period. To the extent the trust is audited with passing colors, the seller could be free to begin disposing of records less than 6 years after performance.</td>
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and preneed agents and any trust or joint account to determine
compliance with sections 436.400 to 436.520, or to determine whether
grounds exist for disciplining a person licensed or registered under
sections 333.310 to 333.340, RSMo, at the discretion of the board and
with or without cause. The board shall conduct a financial examination
of the books and records of each seller as authorized by this section at
least once every five years, subject to available funding.

3. Upon determining that an inspection, investigation,
examination, or audit shall be conducted, the board shall issue a notice
authorizing an employee or other person appointed by the board to
perform such inspection, investigation, examination, or audit. The
notice shall instruct the person appointed by the board as to the scope
of the inspection, investigation, examination or audit.

4. The board shall not appoint or authorize any person to
conduct an inspection, investigation, examination, or audit under this
section if the individual has a conflict of interest or is affiliated with
the management of, or owns a pecuniary interest in, any person subject
to inspection, investigation, examination, or audit under chapter 333,
RSMo, or sections 436.400 to 436.520.

5. The board may request that the director of the division of
professional registration, the director of the department of insurance,
financial institutions and professional registration, or the office of the
attorney general designate one or more investigators or financial
examiners to assist in any investigation, examination, or audit, and
such assistance shall not be unreasonably withheld.

6. The person conducting the inspection, investigation, or audit
may enter the office, premises, establishment, or place of business of
any seller or licensed provider of preneed contracts, or any office,
premises, establishment, or place where the practice of selling or
providing preneed funerals is conducted, or where such practice is
advertised as being conducted for the purpose of conducting the
inspection, investigation, examination, or audit.

7. Upon request by the board, a licensee or registrant shall make
the books and records of the licensee or registrant available to the
board for inspection and copying at any reasonable time, including, any
insurance, trust, joint account, or financial institution records deemed
necessary by the board to determine compliance with sections 436.400
The term 'financial examination' provides the Board flexibility in structuring a review process of sellers.
3. The board shall have the power to issue subpoenas to compel the production of records and papers by any licensee, trustee or registrant of the board. Subpoenas issued under this section shall be served in the same manner as subpoenas in a criminal case.

3. All sellers, providers, preneed agents, and trustees shall cooperate with the board or its designee, the division of finance, the department of insurance, financial institutions and professional registration, and the office of the attorney general in any inspection, investigation, examination, or audit brought under this section.

10. This section shall not be construed to limit the board's authority to file a complaint with the administrative hearing commission charging a licensee or registrant with any actionable conduct or violation, regardless of whether such complaint exceeds the scope of acts charged in a preliminary public complaint filed with the board and whether any public complaint has been filed with the board.

11. The board, the division of finance, the department of insurance, financial institutions and professional registration, and the office of the attorney general may share information relating to any preneed inspection, investigation, examination, or audit.

12. If an inspection, investigation, examination, or audit reveals a violation of sections 436.400 to 436.520, the office of the attorney general may initiate a judicial proceeding to:

1. Declare rights;
2. Approve a nonjudicial settlement;
3. Interpret or construe the terms of the trust;
4. Determine the validity of a trust or of any of its terms;
5. Compel a trustee to report or account;
6. Enjoin a seller, provider, or preneed agent from performing a particular act;
7. Enjoin a trustee from performing a particular act or grant to a trustee any necessary or desirable power;
8. Review the actions of a trustee, including the exercise of a discretionary power;
9. Appoint or remove a trustee;
10. Determine trustee liability and grant any available remedy for a breach of trust;
This page contains no comments
(11) Approve employment and compensation of preneed agents;
(12) Determine the propriety of investments;
(13) Determine the timing and quantity of distributions and
dispositions of assets; or
(14) Utilize any other power or authority vested in the attorney
general by law.

Upon the death or legal incapacity of a purchaser, all
rights and remedies granted to the purchaser under sections 436.400 to
436.520 shall be enforceable by and accrue to the benefit of the
purchaser's legal representative or his or her estate, and all payments
otherwise payable to the purchaser shall be paid to that person.

436.486. 1. Any person, including the officers, directors,
partners, agents, or employees of such person, who shall knowingly and
willfully violate or assist or enable any person to violate any provision
of sections 436.400 to 436.520 by incompetence, misconduct, gross
negligence, fraud, misrepresentation, or dishonesty is guilty of a class
C felony. Each violation of any provision of sections 436.400 to 436.520
constitutes a separate offense and may be prosecuted individually. The
attorney general shall have concurrent jurisdiction with any local
prosecutor to prosecute under this section.

2. Any violation of the provisions of sections 436.400 to 436.520
shall constitute a violation of the provisions of section 407.020, RSMo.
In any proceeding brought by the attorney general for a violation of the
provisions of sections 436.400 to 436.520, the court may order all relief
and penalties authorized under chapter 407, RSMo, and, in addition to
imposing the penalties provided for in sections 436.400 to 436.520, order
the revocation or suspension of the license or registration of a
defendant seller, provider, or preneed agent.

436.400. 1. A provider that intends to sell or otherwise dispose
of all or a majority of its business assets, or its stock if a corporation,
shall notify the board at least sixty days prior to selling or otherwise
disposing of its business assets or stock, or ceasing to do business as a
provider, and shall file a notification report on a form established by
the board.

2. The report required by this section shall include:
(1) The name, phone number, and address of the purchasers of
any outstanding preneed contract for which the licensee is the
This section needs to be consistent with any enforceable right of survivor designation.
designated provider;
(2) The name and license numbers of all sellers authorized to designate the licensee as a provider in a preneed contract;
(3) The name, address, and license number of the provider assuming or agreeing to assume the licensee's obligations as a provider under a preneed contract, if any;
(4) The name, address, and phone number of a custodian who will maintain the books and records of the provider containing information about preneed contracts in which the licensee is or was formerly designated as provider;
(5) A final annual report containing the information required by section 436.460;
(6) The date the provider intends to sell or otherwise dispose of its business assets or stock, or cease doing business; and
(7) Any other information required by any other applicable statute or regulation enacted pursuant to state or federal law.

3. Within three days after the provider sells or disposes of its assets or stock or ceases doing business, the former provider shall notify each seller in writing that the former provider has sold or disposed of its assets or stock or has ceased doing business.

436.500. 1. A seller that intends to sell or otherwise dispose of all or a majority of its business assets or its stock shall notify the board at least sixty days prior to selling or otherwise disposing of its assets or stock, or ceasing to do business as a seller, and shall file a notification report on a form established by the board.

2. The report required by this section shall include:
(1) A notarized and signed statement from the person assuming or agreeing to assume the obligations of the seller indicating that the assuming seller has been provided with a copy of the seller's final annual report and has consented to assuming the outstanding obligations of the seller;  
(2) In lieu of the notarized statement required by subdivision (1) of this subsection, the seller may file a plan detailing how the assets of the seller will be set aside and used to service all outstanding preneed contracts sold by the seller; and
(3) Any other information required by any other applicable statute or regulation enacted pursuant to state or federal law.
Will the Board use its audit powers to provide some assurance to buyers?
3. Within thirty days after assuming the obligations of a seller under this section, the assuming seller shall:

   (1) Notify each provider in writing that the former seller has sold or disposed of its assets or stock or has ceased doing business; and

   (2) Provide written notification to the purchasers of each preneed contract assumed by the seller indicating that the former seller has transferred ownership or has ceased doing business.

4. Nothing in this section shall be construed to require the board to audit, inspect, investigate, examine, or edit the books and records of a seller subject to the provisions of this section nor shall this section be construed to amend, rescind, or supersede any duty imposed on, or due diligence required of, an entity assuming the obligations of the seller.

5. The office of the attorney general shall have the authority to initiate legal action to compel or otherwise ensure compliance with this section by a former provider licensee.

436.505. A preneed contract may offer the purchaser the option to acquire and maintain credit life insurance on the life of the purchaser. Such insurance shall provide for the payment of death benefits to the seller in an amount equal to the total of all contract payments unpaid as of the date of such purchaser's death, and shall be used solely to make those unpaid payments. Any such credit life insurance shall be provided by a duly authorized insurance company and the preneed contract shall clearly identify the name of the insurer and the amount of payment allocated to the premium payment for the credit life. No seller or provider may provide any form of self insured credit life.

436.510. If a seller shall fail to make timely payment of an amount due a purchaser or a provider under the provisions of sections 436.400 to 436.520, the purchaser or provider, as appropriate, shall have the right, in addition to other rights and remedies against such seller, to make demand upon the trustee of the preneed trust for the contract to distribute to the purchaser or provider from the trust, as damages, an amount equal to all deposits made into the trust for the contract.

436.520. 1. The board shall promulgate and enforce rules for administration and enforcement of sections 436.400 to 436.520 including the establishment of the amount of any fees authorized thereunder for
Need a regulation setting out conditions (timing and release) for trusties to be protected.
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. Such fees shall be set at a level
to produce revenue which does not substantially exceed the cost and
expense of administering this chapter.

2. Any rule or portion of a rule, as that term is defined in section
536.019, 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
536.023, RSMo. This section and chapter 536, RSMo, are severable
and if any of the powers vested with the general assembly under
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.

Section 1. The board shall maintain as a closed and confidential
record, not subject to discovery unless the person provides written
consent for disclosure, all personal information about any individual
preneed purchaser or beneficiary, including but not limited to name,
address, Social Security number, financial institution account numbers,
and any health information disclosed in the preneed contract or any
document prepared in conjunction with the preneed contract; provided,
however, that the board may disclose such confidential information
without the consent of the person involved in the course of voluntary
interstate exchange of information; or in the course of any litigation
concerning that person or the provider, seller, or sales agent involved
with the preneed contract; or pursuant to a lawful request or to other
administrative or law enforcement agencies acting within the scope of
their statutory authority. In any such litigation, the board and its
attorneys shall take reasonable precautions to ensure the protection of
such information from disclosure to the public.

[533.121. 1. The board may refuse to issue any certificate
of registration or authority, permit or license required pursuant to
this chapter for one or any combination of causes stated in
subsection 2 of this section. The board shall notify the applicant
in writing of the reasons for the refusal and shall advise the
This page contains no comments
August 19

Public Comments
Don Otto's Comments for 8-19
Don Otto's Comments

K1 Has not been a problem with current 436 requirements don't think rule needed.

K2 No rule needed should be in contract.

K3 Could have rule that says If contract is silent to how interest is distributed, it is refunded to purchaser

K4. This is a joint account with both names on it. Don't see assignment as an issue.

K5 Comment about risk is wrong. The purchaser gets whatever the trust is worth at time of cancellation plus the 10% back (if it was withheld) but no income. It was worded this way on purpose so as to not imply that there was a guarantee as to the trust value. No different than if you cash in a mutual fund that has lost value, the bank does not make up that loss. Sen. Scott's comment on this was "the funeral home/seller is not a bank, if the purchaser wants to invest the money himself, they should go just open up an account on their own."

K6 Once again, purchaser loses interest if they default and do not cure after given the chance. The funeral home is not a bank as Sen. Scott said several times.

K7-10 If the purchaser wants to change funeral homes, the Seller has a choice. First it can, almost literally, "white out" the old funeral home and write in the new funeral home on the contract (sorry, couldn't resist). In this case the new funeral home would get whatever would have been paid to the original funeral home at the time of need. So, if the first funeral home/seller retains the 15% allowed, then the new funeral home would be paid 85% plus the accumulated interest. This is fair as, otherwise, funeral home #2 would have "free sale staff" because funeral home number 1 was paying the expenses and salaries of the salespeople but funeral home #2 would get the benefit. The new funeral home steps into the shoes old funeral home as they exist at the time of the notice of transfer so the seller can keep the. So (K9) the seller CAN keep the 15%. If this happens both the seller and the new provider need to agree to abide by the original contracts. Probably need a rule to make it clear that the new provider must agree in writing to honor the terms of the original contract to effectuate the transfer

Alternatively, the Seller can, at its option pay all of the money that is in the trust at the time of the transfer which again, would not include the 15% if it was retained. The purpose of this was to avoid a situation where a seller was forced to be in a contractual relationship with a provider it did not want to do business with. A rule that said that, upon payment to the new provider under this section the original seller and trustee are relieved of all future contract obligations would be good, but need to make it clear it does not relieve them of any wrongdoing before the transfer.

K11 This does not seem to be a big problem currently but a lot more entities may be filling out forms in the future.
K13 not sure what this comment means?

O14 Probably should have said “A list that includes...” this would be a good one for a rule to make it clear what should be on the report under this paragraph.

K15 Board form probably a good idea.

K16 defining might cause more problems and restrict what can do.

K18 comment adds requirements not in statute

K19 Most of these terms have definitions from UTA and case law.

K20-21 Should be total amounts not per contract, if want to look at individual contracts board can do so.

K28 everybody very interested in what the charge should be and when need to start collecting it.

K31 I think there can be a waiver if put in the rule, says “as established by the board” and I think that gives leeway for waiver.

K32-33 Rule should say that any contracts sold during suspension are valid IF seller is reinstated. Not a lot different than if you let your corporate good standing lapse the reinstatement is retroactive to date of termination.

K34 I know it was meant to be “also” but this could be one to add to a consent bill cleaning up language.

K36 MFT can do that easily but not sure others can.

K37 Seems to me the “records have to be available in Missouri to meet all of the requirements of inspection and cooperation

K38 I think statute is clear. 5 years after contract is either fulfilled or cancelled.

K39-40 if a rule be careful do not lose the flexibility the statute gives, the flexibility was there on purpose so the board does not have to do a full-blown “audit” as defined by a CPA.

K41 the word “notice” is used in a way that I think it is clear that we are talking about notice to the licensee, otherwise, the word “notice” does not make sense, would just be “appointment” of the investigator or something like that.

K42 Is there anything from other statutes or boards that is helpful here?

K43 per 41 above, I think notice of the investigation at least is required, but would be good to have a rule that entering premise would be during normal working hours otherwise could be abusive.

K44 I think you need board action here not just an employee.
K48 Is a question as to who does the inspection that triggers the authority of the AG to do what is in the list.

K49 Be careful not to confuse the beneficiary of the contract (the person being buried) and the purchaser that may not be the next-of-kin of the beneficiary. Also don’t confuse right of sepulcher for the purchaser with the right to control contractual matters.

There are several issues here: First, the purchaser may not be the next-of-kin of the beneficiary. The next of kin decides what the final disposition will be. The next of kin, then, can override what is spelled out in a preneed even if the preneed has been paid in full and even if the deceased is the one that paid for it. Now, if the next of kin does override the preneed then the next of kin is responsible for paying for what they want to have done. The purchaser of the preneed in this instance is under no obligation pay for what the next of kin wants if it is not what was in the preneed. This does cause conflicts and keeps attorneys fully employed but nothing in rule can really change that. “NEXT OF KIN ALWAYS WIN!” The new Right of Sepulcher law just makes it easier to designate who that next of kin is.

What THIS provision of 436 is dealing with is who controls the preneed if the purchaser dies or is incapacitate. It is NOT a right of sepulcher issue but is the same as who controls any contract when a person dies or is incapacitated. In other words, if a purchaser has made a Right of Sepulcher designation, it does not effect one way or the other who gets a refund on a contract the purchaser paid for.
Additional Handouts – August 19, 2009
Proposed Emergency Rule for Notice of Intent to Apply

Title: Filing of Notice of Intent to Apply

Purpose: This emergency rule describes the Board’s procedure for filing a Notice of Intent to Apply for Licensure/Registration under the new requirements contained in Chapters 333 and 436 which will become effective on August 28, 2009 and the result of filing the Notice.

(1) Any person wishing to conduct business as a preneed seller or preneed provider or wishing to register as a preneed sales agent (the “Applicant”) must fully complete and file with the State Board a “Notice of Intent to Apply for Licensure/Registration” (“Notice of Intent”) prior to engaging in any conduct for which a preneed seller license, a preneed provider license or a preneed sales agent registration is required. The Board shall provide the Notice of Intent as a .pdf document on its website. No fee shall be required to accompany the Notice of Intent. Only the official Notice of Intent form shall be accepted by the Board.

(2) Applicants may file the Notice of Intent with the Board by hand delivery, by mail, by fax or by other electronic means such as e-mail. If the Notice of Intent is filed by fax or other electronic means, the Applicant shall also provide the original signed document to the Board by mail or other delivery method.

(3) All Applicants must meet the requirements for licensure as set forth in Chapter 333, RSMo, and must certify that, to the best of their knowledge, they are eligible for licensure/registration.

(4) If the Board determines that the Applicant lacks the statutory qualifications for licensure/registration, the Board may terminate the temporary authorization to practice under the Notice of Intent by notifying the Applicant in writing of the termination and the reason for the termination. An Applicant may apply for full licensure or registration even if the Board has terminated his/her authority to practice pursuant to the Notice of Intent.

(5) Any Applicant who has filed a Notice of Intent must file their completed Application for licensure or registration with the Board no later than October 1, 2009.

(6) The Applicant shall keep a copy of the Notice of Intent and shall prominently display this Notice of Intent as if it were a license or registration issued pursuant to Chapter 333, RSMo.
(7) Any person with a filed Notice of Intent shall be authorized to engage in the practice of preneed selling, providing or as a sales agent, as so indicated on the Notice of Intent, provided that the Applicant has timely filed his/her Application for Licensure and/or Registration. This authorization to practice shall be effective from the date the Board receives the Notice of Intent and shall end on the date the Board either issues a license or registration or denies the application for licensure/registration or until midnight on December 31, 2009, whichever comes first. The Board shall promptly notify the Applicant of its decision to issue a license/registration or its denial of same.

(8) Any conduct that may be cause for discipline that occurs between August 28, 2009 and December 31, 2009 shall be considered by the Board in its decision to issue or deny any Application for licensure and/or registration. In addition, if the Board issues a license or registration and later discovers conduct that would be cause for discipline occurred between August 28, 2009 and December 31, 2009, the Board shall have authority to seek discipline against the licensee or registree for that conduct as if the person were fully licensed or registered while operating under the authority of the Notice of Intent.

Authority: 333.011, 333.315, 333.320, 333.325 and 333.340

Proposed Emergency Rule Regarding Filing of Annual Reports

Title: Filing of Annual Reports

Purpose: This emergency rule prescribes the Board's process for the filing of annual reports under the revised sections of Chapters 333 and 436.

For reporting year ending October 31, 2009, preneed sellers who were registered with the Board prior to August 28, 2009, may file an annual report as set forth in Section 436.021.2(3), RSMo (2000) to meet the annual report requirement of Section 436.460, RSMo, Supp. 2009.

Authority: 333.340 and 436.460
NOTICE OF INTENT

I HEREBY NOTIFY THE STATE BOARD OF EMBALMERS AND FUNERAL DIRECTORS OF MY INTENT TO APPLY FOR A LICENSE/REGISTRATION AS A PRENEED SELLER, PROVIDER OR SALES AGENT AS INDICATED BELOW PURSUANT TO EMERGENCY RULE.

INSTRUCTIONS

Any person wishing to engage in the practice of preneed selling, providing or as a preneed sales agent must fully complete this form and provide it to the Board before engaging acting as a preneed seller, preneed provider or preneed sales agent.

1. This Notice of Intent shall serve as a temporary permit to practice until such time as the Applicant is either issued a license by the Board or the Board issues its notice of denial, or December 31, 2009, whichever comes first.
2. In addition, in order for this temporary permit to remain in effect, the Applicant must complete and file with the State Board before the Application for full licensure/registration no later than October 31, 2009. If the Board has not received the Application for License/Registration by October 31, 2009, this temporary permit shall be deemed null and void.
3. A single Notice of Intent may be used for the same person or entity seeking multiple licensure/registration. However, a separate Notice of Intent shall be required for each person or entity. Any corporation or business entity must be authorized to conduct business in Missouri.

If you have a disability and require accommodations addressed by the Americans with Disabilities Act, please notify this office at the time of application to ensure that reasonable accommodations are made for your needs. Notification may be made in writing and mailed to Missouri State Board of Embalmers and Funeral Directors, P.O. Box 423, Jefferson City, Missouri 65102. Notice of special needs must be received forty-five (45) days in advance of any scheduled examination date. The contact telephone number for the deaf or hearing impaired is (800) 735-2968.

PLEASE READ ALL CORRESPONDENCE THAT YOU RECEIVE FROM THE BOARD AS IT CONTAINS VERY IMPORTANT INFORMATION.

Please check the box or boxes indicating the type of licenses/registrations for which you intend to apply:

☐ Preneed Agent (must be an individual)
☐ Preneed Provider
☐ Preneed Seller

A. GENERAL INFORMATION

1. Last Name
2. First Name
3. Middle Initial Name (or Corporate/Entity Name)
4. Social Security Number/ MO EIN (Required)
5. Premises Address (Street, City, State, Zip)
6. Telephone Number
7. Mailing Address (Street, City, State, Zip)
8. Date of Birth (if individual)
9. Gender (if individual)

B. If a “YES” response is listed to questions A through D, applicant must provide a written explanation on a separate sheet of paper with the applicant’s signature notarized.

a. Have you ever had a professional license disciplined by another state or territory? If yes, explain fully.
   ☐ Yes ☐ No

b. Have you ever been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States whether or not sentence was imposed (includes suspended imposition of sentence (SIS)). If yes, explain fully.
   ☐ ☐

c. Have you ever been arrested, charged with or found guilty, or entered a plea of guilty or nolo contendere of a violation of any federal, state or municipal, drug or alcohol laws or rules whether or not sentence was imposed (includes suspended imposition of sentence (SIS)). If yes, explain fully.
C. If the Applicant is a Corporation/Entity please complete this section:

Registered Agent Name and Address: ____________________________  Person in Charge of Business: ____________________________

D. If applying for licensure as a Preneed Seller, please circle type of funding:
   Trust  Joint Account  Insurance

   Please list name(s) of preneed trustee(s), insurance company(ies), financial institution(s) holding joint accounts, as applicable: (attach pages, if needed)

E. If applying for registration as a preneed sales agent, please list all preneed sellers including names and addresses: (attach pages, if needed)

F. Please list all licenses and numbers currently held that are issued by the State Board of Embalmers and Funeral Directors:

F. AFFIDAVIT OF APPLICANT

I. ____________________________ ____________________________
   (APPLICANT SIGNATURE)  (APPLICANT NAME)

If corporation/entity: ________________

   Title ____________________________

   being first duly sworn upon my oath, state as follows:
   • That I have personally completed the foregoing application truthfully and completely, without omission;
   • That all the information and answers contained in the application and any attachments thereto are true and correct to my best knowledge and belief; and
   • That I realize that I made this affidavit knowingly and that any false acts, omissions or material omission herein subjects me to criminal penalties for making a false affidavit under Section 575.050, RSMo 2000, as supplemented.
   • I certify that to the best of my knowledge, I am eligible for licensure/registration.
   • If I am signing on behalf of a corporation or other entity that I have full authorization to sign on behalf of the entity.

G. NOTARY SECTION

STATE OF MISSOURI

CITY OF_________ COUNTY_________ NOTARY PUBLIC SEAL/STAMP

SUBSCRIBED AND SWORN TO OR ORDAINED AS A NOTARY PUBLIC THIS ______ day of _______, 20___.

______________________________
(NOTARY PUBLIC'S SIGNATURE)

______________________________
(Notary Public Name Printed or Typed)
Emergency rules for Group 1 following 8-5-09 meeting

Emergency rule: Corporation must be represented by an attorney

Title: Practice by a licensed attorney

Purpose: This rule states when and how a party must be represented by a licensed attorney in a matter involving a licensee or applicant of the Missouri State Board of Embalmers and Funeral Directors.

(1) Any individual may present that individual's own case without a licensed attorney in a before the Missouri State Board of Embalmers and Funeral Directors in which the individual is contesting a decision of the Missouri State Board of Embalmers and Funeral Directors regarding denial or discipline of a license.

(2) Any individual may file an initial complaint on behalf of another person, including a corporation or other legal entity in a matter involving a licensee or applicant of the Missouri State Board of Embalmers and Funeral Directors but any and all proceedings and filings following the filing of the initial complaint shall be conducted by a licensed attorney.

(3) Except as set forth in section (2) of this rule, only a licensed attorney may represent any other person, including a corporation or other legal entity in matters before the Board. The filing of any document in a matter involving a licensee or applicant of the Missouri State Board of Embalmers and Funeral Directors by a licensed attorney, unless stated otherwise therein, shall be deemed an entry of appearance. An attorney not authorized to practice in Missouri shall enter an appearance in accordance with Missouri Supreme Court Rules.

Authorized by: 333.340 and 333.011(6)

Emergency rule: Payment is not determining factor of "practice of funeral directing"

Title: Practice of funeral directing; payment not determining factor

Purpose: This rule explains that the receiving of payment for providing funeral services is not the determining factor in identifying the practice of funeral directing.

(1) In determining whether a person, pursuant to 333.011(6), is engaging in the practice of funeral directing pursuant to 333.011(8), the Board shall consider all activities listed in 333.011(8).

(2) Receipt of payment by any person for any or all services provided pursuant to this Chapter or Chapter 436, RSMo shall not be the determining factor.
in determining whether the person is engaging in the practice of funeral directing.

Authorized by: 333.340 and 333.011(8)

Emergency rule: Pre-need seller and agent must be licensed in Missouri

Title: Pre-need agent; requirements of agent’s seller

Purpose: This rule explains that any licensed pre-need agent in the State of Missouri must be selling pre-need contracts on behalf of a seller who is also licensed in the state of Missouri.

(1) Any pre-need agent licensed by the Missouri State Board of Embalmers and Funeral Directors to sell a pre-need contract for or on behalf of a seller must be the agent of a seller who is licensed to sell pre-need contracts by the Missouri State Board of Embalmers and Funeral Directors.

Authorized by: 333.340, 333.011(9), 333.320 and 333.325

Emergency rule: “Final Disposition” as defined in Chapter 193

Title: Use of term “final disposition” consistent with Chapter 193, RSMo

Purpose: This rule explains that use of the term “final disposition” in Chapters 333 and 436, RSMo shall be consistent with the definition of the term in Chapter 193, RSMo.

(1) For purposes of Chapters 333 and 436, RSMo, final disposition shall be defined in accordance with the definition contained in Section 193.015(3), RSMo.
(2) Use of the term final disposition in Chapters 333 and 436 shall be consistent with its use in Chapter 193, RSMo.

Authorized by: 333.340 and 333.011(10)

Emergency rule: “Provider” includes funeral establishment that has agreed to undertake obligations of pre-need contracts pursuant to Chapter 436

Title: Provider to include funeral establishments engaged in pre-need
Purpose: This rule explains that a provider in a pre-need contract includes, but is not limited to, a funeral establishment that has agreed to undertake the obligations of a pre-need contract under Chapter 436, RSMo.

(1) As defined by Section 333.011(10), the provider of services under any pre-need contract pursuant to Chapter 436, RSMo shall include any licensed funeral establishment that has agreed to undertake the obligations of a pre-need contract pursuant to Chapter 436, RSMo.

(2) Any provider who is a licensed funeral establishment who has agreed to undertake the obligations of a pre-need contract pursuant to Chapter 436, RSMo, must meet all requirements of both a licensed funeral establishment and a pre-need provider pursuant to Chapters 333 and 436, RSMo.

Authorized by 333.340 and 333.011(10), RSMo

Emergency rule: Display of License

Title: Licenses issued by the Missouri State Board of Embalmers and Funeral Directors must be displayed.

Purpose: This rule states that licensed establishments, funeral directors, embalmers, pre-need sellers, agents and providers must prominently display their license to practice issued by the Missouri State Board of Embalmers and Funeral Directors.

(1) All licenses, and any and all duplicate copies thereof, issued by the Missouri State Board of Embalmers and Funeral Directors shall be prominently displayed at all times in a conspicuous location or manner easily accessible to the public for each office or place of business of the licensee.

(2) All licenses shall be available at all times for inspection by any duly authorized agent of the Missouri State Board of Embalmers and Funeral Directors.

(3) The Missouri State Board of Embalmers and Funeral Directors may cause a complaint to be filed with the Administrative Hearing Commission pursuant to Section 333.330, RSMo, for the failure of a licensee to display his or her license as required by Section 333.091 and this regulation.

Authorized by 333 340, 333.091 and 333.330

Emergency rule: Corporate ownership of a corporate licensee

Title: Corporate ownership of a corporation holding a pre-need provider license.
Purpose: This rule prescribes the requirements regarding corporate ownership of a corporation that holds a pre-need provider license.

(1) If the applicant for a pre-need provider license pursuant to Section 333.315, RSMo is a corporation or other legal entity, referred to as "applicant corporation" and it is owned by a corporation, referred to as "owner corporation":

(a) each owner, director, manager or controlling shareholder of the applicant corporation shall be eligible for licensure as if they were applying for licensure as an individual; and

(b) at least one owner, director, manager or controlling shareholder of the owner corporation shall be eligible for licensure as if they were applying for licensure as an individual.

Authority: 333.340 and 333.315

Emergency rule: Licensees must file application for new license if change in ownership.

Title: New license required for change of ownership

Purpose: This rule states that a new license is required for a change in ownership of a pre-need seller.

(1) The pre-need seller license issued by the board is effective for a specific name of a person or entity authorized to conduct business in Missouri. The license issued by the board shall be displayed in a conspicuous location accessible to the general public at that location. Whenever the ownership, location or name of the Missouri licensed pre-need seller is changed, a new license shall be obtained.

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

(B) A corporation is considered by law to be a separate person. If a corporation holds a Missouri pre-need seller's license, it is not necessary to obtain a new pre-need seller license or to file an amended application for a pre-need seller license if the owners of a minority interest in the stock change. However, as a separate person, if the corporation begins ownership of an entity which holds a Missouri pre-need seller license or ceases ownership of an entity which holds a Missouri pre-need seller license, a new pre-need seller license shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

Authority: 333.340 and 333.320

Emergency rule: Failure to renew a license within 2 years requires completion of application process

Title: Failure to renew a license within 2 years; process required.

Purpose: This rule describes the process for a licensee who fails to renew his or her license within 2 years.

(1) Any pre-need seller issued a license pursuant to Section 333.320, RSMo shall renew his or her license biennially and meet all requirements established pursuant to Section 333.320, RSMo;

(2) Any pre-need seller shall be issued a new license by the board within two years of the renewal date upon completion of all renewal requirements contained in Section 333.320 and payment of appropriate fees set by the Board.

(3) Any pre-need seller license not renewed within two years of the date of renewal shall be void.

(4) Any pre-need seller whose license becomes void for failure to renew within two years of the renewal date who wishes to be licensed by the board must file a new application and meet all requirements of a new application pursuant to Section 333.320 and any corresponding validly promulgated rules of the board.

Authority: Section 333.340 and 333.320
Emergency rule: Licensed funeral director must report each seller for whom he or she is an agent.

Title: Funeral Director agent registration

Purpose: This rule establishes the reporting requirement for any funeral directors serving as sellers' agents.

(1) Any funeral director acting as a pre-need agent shall report the name and address of each pre-need seller for whom the funeral director is authorized to sell, negotiate, or solicit pre-need contracts to the Board on a form prescribed by the Board.

(2) Any funeral director shall also identify him or herself as acting as a pre-need agent on his or her biennial report form to the board by checking the appropriate box on the form prescribed by the board.

Authority: Section 333.340 and 333.325.4

Emergency rule: Pre-need agents must take Missouri law exam.

Title: Certifying pre-need seller agents to take the Missouri law exam.

Purpose: This rule prescribes the process for certifying pre-need seller agents to take the Missouri law exam and a requirement for licensure.

(1) All pre-need seller agents applying for licensure with the board shall achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam. Successful completion of the Law exam shall be a prerequisite to licensure. This exam may be taken any time after filing the Notice of Intent to Apply. Pre-need agent applicants must successfully complete the Missouri Law exam on or before December 31, 2009, prior to the expiration of the Notice of Intent to Apply. The Missouri Law exam covers knowledge of Chapter 333, RSMo and the rules governing the practice of embalming, funeral directing and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition and transportation of dead human bodies. The Missouri Law section also contains questions regarding Chapter 436, RSMo relating to pre-need statutes and Chapters 193 and 194, RSMo relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations and Occupational Safety and Health Administration (OSHA) requirements.
as they apply to Missouri licensees. Notification of intent to take this examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination.

Authority: 333.34C and 333.325.5

**Emergency rule: Normal market fluctuation resulting in a shortage in a pre-need trust is not a basis for injunctive relief.**

**Title:** Normal market fluctuation is not a basis for injunctive relief.

**Purpose:** This rule provides that normal market fluctuation that result in a shortage to a pre-need trust or joint account do not constitute cause to seek an injunction against a seller of a pre-need contract.

(1) Pursuant to Section 333.330.4, RSMo, the Missouri Board of Embalmers and Funeral Directors shall not be entitled to seek injunctive relief against a seller of a pre-need trust if there is a shortage greater than twenty percent of the total amount required to be held or deposited into the trust or joint account pursuant to Chapter 436 in the pre-need trust or joint account that is exclusively the result of normal fluctuations in the market.

Authority: Section 333.340 and 333.330

**Emergency rule: Financial welfare cause for injunction**

**Title:** Danger to financial welfare is cause for injunction.

**Purpose:** This rule states that serious danger to an individual's financial welfare is cause for the State Board of Embalmers and Funeral Directors to seek an injunction pursuant to Section 333.335.1(2), RSMo.

(1) For purposes of Section 333.335, RSMo, the Missouri State Board of Embalmers and Funeral Directors shall be entitled to seek injunctive relief against any person from engaging in any business or practice authorized by a registration or authority, permit, or license issued under this chapter that presents a substantial probability of serious danger to the health, safety or welfare of any resident of this state or client or customer of the licensee or registrant.

(2) For purposes of Section 333.335, RSMo, serious danger to the welfare of any resident or client or customer shall include, but is not limited to, the financial welfare of the resident, client or customer.
Authority: Section 333.340 and 333.335.
Emergency Rules for Group 1 following 8-5-09 meeting

- If the Board has approved the rule to go forward, the word APPROVED appears before the rule.
- The approved emergency rules appear first in this document, pages 2-7, followed by the emergency rules still needing approval, pages 8-11.
- Rules from this group the Board determined were not emergency rules are now contained in a separate document.
Emergency rule: Pre-need sellers and providers must be licensed and preneed seller agents must be registered in the State of Missouri to do business.

Title: Pre-need agent; requirements of the agent's seller

Purpose: This rule explains that any licensed pre-need agent in the State of Missouri must be selling pre-need contracts on behalf of a seller who is licensed in the state of Missouri.

(1) Any pre-need agent registered by the Missouri State Board of Embalmers and Funeral Directors to sell a pre-need contract for or on behalf of a seller must be the agent of a seller who is licensed to sell pre-need contracts by the Missouri State Board of Embalmers and Funeral Directors.

Authorized by: 333.340, 333.011(9), 333.320 and 333.325
Emergency rule: "Final Disposition" as defined in Chapter 193

Title: Use of term "final disposition" consistent with Chapter 193, RSMo

Purpose: This rule explains that use of the term "final disposition" in Chapters 333 and 436, RSMo shall be consistent with the definition of the term in Chapter 193, RSMo.

(1) For purposes of Chapters 333 and 436, RSMo, final disposition shall be defined in accordance with the definition contained in Section 193.015(3), RSMo.

(2) Use of the term final disposition in Chapters 333 and 436 shall be consistent with its use in Chapter 193, RSMo.

Authorized by: 333.340 and 333.011(10)
**Emergency rule: “Provider” includes funeral establishment that has agreed to undertake obligations of pre-need contracts pursuant to Chapter 436**

**Title:** Provider to include funeral establishments engaged in pre-need

**Purpose:** This rule explains that a provider in a pre-need contract includes, but is not limited to, a funeral establishment that has agreed to undertake the obligations of a pre-need contract under Sections 436.400 through 436.520, RSMo.

1. As defined by Section 333.011(10), the provider of services under any pre-need contract pursuant to Sections 436.400 to 436.520, RSMo shall include any licensed funeral establishment that has agreed to undertake the obligations of a pre-need contract pursuant to Sections 436.400 to 436.520, RSMo.

2. Any provider who is a licensed funeral establishment who has agreed to undertake the obligations of a pre-need contract pursuant to Sections 436.400 to 436.520, RSMo, must meet all requirements of both a licensed funeral establishment and a pre-need provider pursuant to Chapter 333 and Sections 436.400 to 436.520, RSMo.

**Authorized by 335.340 and 333.011(10), RSMo**
Emergency rule: Licensed funeral director must report each seller for whom he or she is an agent.

Title: Funeral Director agent registration

Purpose: This rule establishes the reporting requirement for any funeral directors serving as sellers’ agents.

(1) Any funeral director acting as a pre-need agent shall report the name and address of each pre-need seller for whom the funeral director is authorized to sell, negotiate, or solicit pre-need contracts to the Board on a form prescribed by the Board.

(2) Any funeral director shall also identify him or herself as acting as a pre-need agent on his or her biennial report form to the board by checking the appropriate box on the form prescribed by the board.

Authority: Section 333.340 and 333.325.4
Emergency rule: Pre-need agents must take Missouri law exam.

Title: Certifying pre-need seller agents to take the Missouri law exam.

Purpose: This rule prescribes the process for certifying pre-need seller agents to take the Missouri law exam and a requirement for registration.

All pre-need seller agents registering with the board shall achieve a grade of seventy-five percent (75%) or greater on the Missouri Law exam. Successful completion of the Law exam shall be a prerequisite to registration. This exam may be taken any time after filing the Notice of Intent to Apply. Pre-need agent applicants must successfully complete the Missouri Law exam on or before December 31, 2009, prior to the expiration of the Notice of Intent to Apply. The Missouri Law exam covers knowledge of Chapter 333, RSMo and the rules governing the practice of embalming, funeral directing and funeral home licensing, along with government benefits, statutes and rules governing the care, custody, shelter, disposition and transportation of dead human bodies. The Missouri Law section also contains questions regarding Sections 436.400 to 436.520, RSMo relating to pre-need statutes and Chapters 193 and 194, RSMo relating to the Missouri Department of Health and Senior Services statutes, as well as questions regarding Federal Trade Commission rules and regulations and Occupational Safety and Health Administration (OSHA) requirements as they apply to Missouri licensees. Notification of intent to take this examination shall be received by the board at least fifteen (15) working days prior to the date the candidate plans to sit for the examination.

Authority: 333.340 and 333.325.5
Emergency rule: Financial welfare cause for injunction

Title: Danger to financial welfare is cause for injunction.

Purpose: This rule states that serious danger to an individual's financial welfare is cause for the State Board of Embalmers and Funeral Directors to seek an injunction pursuant to Section 333.335.1(2), RSMo.

(1) For purposes of Section 333.335, RSMo, the Missouri State Board of Embalmers and Funeral Directors shall be entitled to seek injunctive relief against any person from engaging in any business or practice authorized by a registration or authority, permit, or license issued under this chapter that presents a substantial probability of serious danger to the health, safety or welfare of any resident of this state or client or customer of the licensee or registrant.

(2) For purposes of Section 333.335, RSMo, serious danger to the welfare of any resident or client or customer shall include, but is not limited to, the financial welfare of the resident, client or customer.

Authority: Section 333.340 and 333.335.
Emergency rule: Corporate ownership of a corporate licensee

Title: Corporate ownership of a corporation holding a pre-need provider license.

Purpose: This rule prescribes the requirements regarding corporate ownership of a corporation that holds a pre-need provider or seller’s license.

(1) If the applicant for a pre-need provider or seller’s license pursuant to Section 333.315, RSMo is a corporation or other legal entity, referred to as “applicant corporation” and it is owned by a corporation, referred to as “owner corporation”:

(a) each officer, director, manager or controlling shareholder of the applicant corporation shall be eligible for licensure as if they were applying for licensure as an individual; and

Authority: 333.340 and 333.315
Emergency rule: Licensees must file application for new license if change in ownership.

Title: New license required for change of ownership

Purpose: This rule states that a new license is required for a change in ownership of a pre-need provider or seller.

(1) The pre-need seller or provider's license issued by the board is effective for a specific name of a person or entity authorized to conduct business in Missouri. Whenever the ownership, location or name of the Missouri licensed pre-need seller or provider is changed, a new license shall be obtained.

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

(B) A corporation is considered by law to be a separate person. If a corporation holds a Missouri pre-need seller's license, it is not necessary to obtain a new pre-need seller license or to file an amended application for a pre-need seller license if the owners of a minority interest in the stock change. However, as a separate person, if the corporation begins ownership of an entity which holds a Missouri pre-need seller license or ceases ownership of an entity which holds a Missouri pre-need seller license, a new pre-need seller license shall be obtained regardless of the relationship of the previous or subsequent owner to the corporation.

Authority: 333.340 and 333.320
Emergency rule: Display of License

Title: Licenses issued by the Missouri State Board of Embalmers and Funeral Directors must be displayed.

Purpose: This rule states that pre-need sellers, providers and seller’s agents must prominently display their license or registration to practice issued by the Missouri State Board of Embalmers and Funeral Directors.

(1) All licenses or registrations, and any and all duplicate copies thereof, issued by the Missouri State Board of Embalmers and Funeral Directors shall be prominently displayed at all times in a conspicuous location or manner easily accessible to the public for each office or place of business of the licensee or registrant.

(2) All licenses or registrations shall be available at all times for inspection by any duly authorized agent of the Missouri State Board of Embalmers and Funeral Directors.

(3) The Missouri State Board of Embalmers and Funeral Directors may cause a complaint to be filed with the Administrative Hearing Commission pursuant to Section 333.330, RSMo, for the failure of a licensee or registrant to display his or her license or registration as required by Section 333.091 and this regulation.

Authorized by 333.340, 333.091 and 333.330
Emergency rule: Normal market fluctuation resulting in a shortage in a pre-need trust is not a basis for injunctive relief.

Title: Normal market fluctuation is not a basis for injunctive relief.

Purpose: This rule provides that normal market fluctuation that result in a shortage to a pre-need trust or joint account do not constitute cause to seek an injunction against a seller of a pre-need contract.

(1) Pursuant to Section 333.330.4, RSMo, the Missouri State Board of Embalmers and Funeral Directors shall not be entitled to seek injunctive relief against a seller if there is a shortage in the preneed trust greater than twenty percent of the total amount required to be held or deposited into the trust pursuant to Sections 436.400 through 436.520, RSMo in the pre-need trust that is exclusively the result of normal fluctuations in the market.

Authority: Section 333.340 and 333.330
**Group 2 rules**

**Rule re: single premium annuity contracts**

**Title:** Replacement single premium annuity contracts

**Purpose:** This rule states that while only single premium annuity contracts can fund an insurance-funded preneed contract, purchasers may purchase replacement single premium annuity contracts during the contract period.

(1) An insurance-funded preneed contract may be funded by an insurance policy or a single premium annuity contract.

(2) An insurance-funded preneed contract may not be funded by an annuity other than a single premium annuity contract.

(3) If a purchaser funds an insurance-funded preneed contract with a single premium annuity contract, the purchaser may replace the single premium annuity contract with another single premium annuity contract at any time in the duration of the preneed contract.

(4) Any replacement single premium annuity contract must meet all the requirements of the initial annuity contract, Chapter 333, Chapter 436 and any other requirements under state or federal law.

**Authority:** 333.340 and 436.405

**Rule re: activities that do not constitute preneed under Chapter 436**

**Title:** Activities that do not constitute preneed under Chapter 436

**Purpose:** This rule identifies activities that do not constitute preneed under Chapter 436 and do not require regulation for preneed under Chapter 436.

The following activities do not constitute a preneed contract under the terms and conditions of Chapter 436:

(1) Sale of funeral merchandise where the purchaser takes immediate possession of the funeral merchandise;

(2) The preplanning of funeral arrangements with a licensed funeral director where there is no exchange of payment or anything of value for the future services; and

(3) Naming a funeral establishment as the beneficiary to a life insurance policy outside a preneed contract as defined by Section 436.405.1(7).

**Authority:** 333.340 and 436.405
Rule re: types of financing available; other financing still preneed

Title: Preneed contracts with non-compliant financing mechanisms are still subject to the provisions in Chapter 436.

Purpose: This rule identifies the acceptable funding mechanisms for preneed contracts.

(1) Preneed contracts shall only be funded by:

(a) A preneed trust as defined by 436.405(8);
(b) An insurance policy or single premium annuity contract as defined by § 436.405(3); or
(c) A joint account as defined by § 436.405.4.

(2) Preneed contracts funded by any other mechanism shall be non-compliant with the requirements of Chapter 436. All non-compliant preneed contracts shall still be subject to regulation by the Board under Chapter 436.

Authority: 333.340 and 436.405

Rule re: meaning of final disposition

Title: Final disposition shall be used consistently with definition in § 193.015(3)

Purpose: This rule explains the use of the term final disposition as it relates to preneed contracts under Chapter 436.

(1) For purposes of Chapters 333 and 436, the definition of the term final disposition shall be consistent with the definition of the term final disposition contained in Section 193.015(3);
(2) For purposes of Chapters 333 and 436, the use of the term final disposition shall be consistent with the use of the term final disposition contained in Section 193.015(3)

Authority: 193.015, 333.340 and 436.405

Rule re: Cemetery exception

Title: Endowed care cemetery exception.

Purpose: This rule describes the exception to preneed contract requirements under Chapter 436 for endowed care cemeteries.

(1) The provisions of sections 436.400 to 436.520 shall not apply to contracts or other arrangements 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, as defined by Chapter 214, or for which a deposit into
a segregated account is required under Chapter 214.

(2) The provisions of Chapter 436 shall apply to the contract sold by the
operator as described in (1) above if the contract or arrangement includes
services that may only be provided by a licensed funeral director;

(3) This exception to the requirements of Chapter 436 shall be contract
specific.

Authority: 333.340 and 436.410

Rule re: seller obligations

Title: Provider and seller obligations under Chapter 436

Purpose: This rule clarifies the duties of the seller of a preneed contract.

Except as otherwise provided in Sections 436.400 to 436.520 and any rules
validly promulgated pursuant to those sections:

(1) The seller shall be obligated to collect and properly deposit and disburse
all payments made by, or on behalf of, a purchaser of a preneed contract;

(2) Alternatively, the preneed contract may permit the purchaser to make
payment directly to the trustee or insurance company named in the
contract in lieu of making payment to the trustee;

(3) All sellers of preneed contracts in the State of Missouri shall designate an
individual within the seller’s business who will accept notice regarding any
actors of the Board on behalf of the seller. The designation shall be
made in writing and provided to the Board. If the designee changes, the
seller shall make the Board aware of the change in writing 5 business
days prior to the change in designee becoming effective, or if the seller
does not have notice 5 days prior, then within 3 business days of the
change in designee.

Authority: 333.340 and 436.415

Title: Grandfather clause

Purpose: This rule clarifies the treatment of contracts made prior to August 28,
2009.

(1) Preneed contracts made before August 28, 2009 shall be considered to be in
accordance with the revised sections of Chapter 333 and 436,
Authority 333.340, 436.412 and 436.415

Rule re: Provider and Seller requirements under the preneed contract

Title: Requirements for notice by provider under preneed contract

Purpose: This rule sets out the requirements for notice by a provider under a preneed contract.

(1) A provider shall notify the Board within 15 days of authorizing or agreeing to allow a seller to designate himself or herself as the provider under a preneed contract. Such notice shall be in writing and shall include:
   (a) Name and address of the seller;
   (b) Name and address of the provider;
   (c) License number of the seller;
   (d) License number of the provider;
   (e) Effective date of the authorization or agreement;
   (f) Signature of the seller, provider, purchaser, and, if applicable, the seller's agent;
   (g) Notice with the Board may be filed electronically but the original document shall be provided to the Board by mail following the electronic filing.

(2) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the last signature on the agreement;

(3) The contract must be signed by the purchaser, provider and seller or seller's agent of the preneed contract;

(4) If an agent of the seller signs the contract, the seller must also sign the contract but need not be present at the time it is signed with the purchaser;

(5) The purchaser of the preneed contract shall receive either a copy or original of the contract and upon request a copy of any agreements or contracts between the seller and provider regarding the purchaser's contract.

(6) If the provider and seller are the same legal person, the provider must still provide notice as required by this Rule to the Board that he or she is the provider for the seller. However, a contract between the seller and provider, if the seller and provider is the same legal person, is not required.

(7) If the provider and seller are the same legal person, the preneed contract and any other contracts or agreements necessary to the preneed contract must contain:
   a. One signature line indicating that signature belongs both to the seller and provider; or
   b. Separate signature lines for the seller and provider.

Authority: 333.3.40 and 436.420
Rule re: Contract requirements

Title: Consumer contract requirements

Purpose: This rule identifies requirements of all preneed contracts.

(1) All preneed contracts and any agreements necessary to the preneed contract shall be in writing in Times New Roman or similar font in at least 8-point font size;

(2) A preneed contract can contain both guaranteed and non-guaranteed items. Any preneed contract containing both guaranteed and non-guaranteed items shall clearly identify in writing in the contract that the contract contains both guaranteed and non-guaranteed items;

(3) A preneed contract is voidable by order of a court of competent jurisdiction. Upon order of the court, the contract is voidable. Notice of the voidable contract must be provided to the seller and provider. The purchaser, upon notice, may then exercise the right to void the contract. Upon a valid court order and notice, a preneed contract is void.

(4) All money under the preneed contract, including but not limited to payments, interest payments, and fees, is recoverable by the purchaser only if the purchaser elects to void the contract following receipt of a valid court order and notice to the seller and provider;

(5) The effective date of any preneed contract or agreement necessary to a preneed contract shall be the date of the final signature — provider, purchaser, seller’s agent or seller — on the agreement;

(6) The seller, or his agent, must provide the purchaser with a fully executed original or copy of the preneed contract within five business days of the effective date of the contract;

(7) All preneed contracts executed in the State of Missouri shall be accompanied by a disclosure sheet containing all necessary consumer disclosures on a form prescribed by the Board;

(8) Preneed contracts can be cancelled or rescinded pursuant to Chapter 436. The process for concluding the affairs of the preneed contract that is rescinded or cancelled shall be the same and the purchaser, seller and provider shall have the same rights and obligations under cancellation and rescission.

(9) PUBLIC ASSISTANCE: STAFF WILL CONTACT MO HEALTHNET; RULE FOLLOWING CONTACT.

Disclosure sheet and requirements

Authority: 333.340 and 436.425
Rule re: trust funded contract requirements

Title: Requirements for deposit of and verification of payments

Purpose: This rule identifies what payments must be deposited into the preneed trust under a trust funded preneed contract and the seller’s reporting requirements for deposits.

1. The seller of a preneed contract funded by a trust shall deposit all payments received pursuant to the terms of the preneed contract into the trust within sixty days of receipt of the funds by the seller, his agent or designee.
2. The seller need not deposit other payments such as fees or costs that are not terms of the contract in the trust.
3. Within 30 days of request by the purchaser, the seller shall provide to the purchaser under a preneed contract, a written statement of all deposits made to the trust. The written statement shall include a detailed description of all deposits made by type of deposit and date of deposit. The written statement shall also include the principal and interest paid to date for the trust. The written statement shall be signed by the seller.

Authority: 333.340 and 436.430

Rule re: Trustee investment restrictions

Title: Trustee investment restrictions under a trust funded preneed contract

Purpose: This rule identifies the investment restrictions of a trustee under a trust funded preneed contract.

1. A trustee shall not make decisions to invest any trust fund under a preneed contract with those individuals or entities contained in §§ 436.445(1) through (4), who are, or may be, related to that preneed contract or trust;
2. The trustee investment restrictions contained in §§ 436.445(1) through (4) shall not apply to those individuals or entities related to other preneed contracts or trusts.

Authority: 333.340 and 436.445

Rule re: Insurance funded contracts

Title: Insurance funded contracts

Purpose: This rule identifies payment issues in insurance funded preneed contracts.
(1) Payments collected by or on behalf of the seller which must be promptly remitted to the insurer or the insurer’s designee do not include administrative or other fees built into the preneed contract;

(2) The purchaser of an insurance funded preneed contract, may, upon agreement with the seller and provider, submit payments directly to the insurer or insurer’s designee;

(3) For any overages under the preneed contract that exceed the costs under the contract, the overages shall be distributed:
   a. To the estate of the beneficiary named in the insurance policy; or
   b. If the policy holder received public assistance to the State of Missouri if the State of Missouri was named as beneficiary or to the estate of the beneficiary if the State of Missouri was not named.

Authority: 333.340 and 436.450