

FIRST REGULAR SESSION

SENATE BILL NO. 498

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WASSON.

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ADRIANE D. CROUSE, Secretary.

2243S.011

AN ACT

To repeal sections 436.405, 436.430, 436.450, 436.456, 436.457, and 436.460, RSMo, and to enact in lieu thereof six new sections relating to preneed funeral contracts.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 436.405, 436.430, 436.450, 436.456, 436.457, and
2 436.460, RSMo, are repealed and six new sections enacted in lieu thereof, to be
3 known as sections 436.405, 436.430, 436.450, 436.456, 436.457, and 436.460, to
4 read as follows:

436.405. 1. As used in sections 436.400 to 436.520, unless the context
2 otherwise requires, the following terms shall mean:

3 (1) "Beneficiary", the individual who is to be the subject of the disposition
4 or who will receive funeral services, facilities, or merchandise described in a
5 preneed contract;

6 (2) "Board", the board of embalmers and funeral directors;

7 (3) "Guaranteed contract", a preneed contract in which the seller
8 promises, assures, or guarantees to the purchaser that all or any portion of the
9 costs for the disposition, services, facilities, or merchandise identified in a
10 preneed contract will be no greater than the amount designated in the contract
11 upon the preneed beneficiary's death or that such costs will be otherwise limited
12 or restricted;

13 (4) "Insurance-funded preneed contract", a preneed contract which is
14 designated to be funded by payments or proceeds from an insurance policy or a
15 deferred annuity contract **where the annuitant is the beneficiary of the**
16 **preneed contract**, that is not classified as a variable annuity, and has death

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 benefit proceeds that are never less than the sum of premiums paid;

18 (5) "Joint account-funded preneed contract", a preneed contract which
19 designates that payments for the preneed contract made by or on behalf of the
20 purchaser will be deposited and maintained in a joint account in the names of the
21 purchaser and seller, as provided in this chapter;

22 (6) "Market value", a fair market value:

23 (a) As to cash, the amount thereof;

24 (b) As to a security as of any date, the price for the security as of that
25 date obtained from a generally recognized source, or to the extent no generally
26 recognized source exists, the price to sell the security in an orderly transaction
27 between unrelated market participants at the measurement date; and

28 (c) As to any other asset, the price to sell the asset in an orderly
29 transaction between unrelated market participants at the measurement date
30 consistent with statements of financial accounting standards;

31 (7) "Nonguaranteed contract", a preneed contract in which the seller does
32 not promise, assure, or guarantee that all or any portion of the costs for the
33 disposition, facilities, service, or merchandise identified in a preneed contract will
34 be limited to the amount designated in the contract upon the preneed
35 beneficiary's death or that such costs will be otherwise limited or restricted;

36 (8) "Preneed contract", any contract or other arrangement which provides
37 for the final disposition in Missouri of a dead human body, funeral or burial
38 services or facilities, or funeral merchandise, where such disposition, services,
39 facilities, or merchandise are not immediately required. Such contracts include,
40 but are not limited to, agreements providing for a membership fee or any other
41 fee for the purpose of furnishing final disposition, funeral or burial services or
42 facilities, or funeral merchandise at a discount or at a future date;

43 (9) "Preneed trust", a trust to receive deposits of, administer, and disburse
44 payments received under preneed contracts, together with income thereon;

45 (10) "Purchaser", the person who is obligated to pay under a preneed
46 contract;

47 (11) "Trustee", the trustee of a preneed trust, including successor trustees;

48 (12) "Trust-funded preneed contract", a preneed contract which provides
49 that payments for the preneed contract shall be deposited and maintained in
50 trust.

51 2. All terms defined in chapter 333 shall be deemed to have the same
52 meaning when used in sections 436.400 to 436.520.

436.430. 1. A trust-funded guaranteed preneed contract shall comply with
2 sections 436.400 to 436.520 and the specific requirements of this section.

3 2. A seller must deposit all payments received on a preneed contract into
4 the designated preneed trust within [sixty] **thirty** days of receipt of the funds by
5 the seller, the preneed sales agent or designee. A seller may not require the
6 consumer to pay any fees or other charges except as authorized by the provisions
7 of chapter 333 and this chapter or other state or federal law.

8 3. A seller may request the trustee to distribute to the seller an amount
9 up to the first five percent of the total amount of any preneed contract as an
10 origination fee. The seller may make this request at any time after five percent
11 of the total amount of the preneed contract has been deposited into the
12 trust. The trustee shall make this distribution to the seller within fifteen days
13 of the receipt of the request.

14 4. In addition to the origination fee, the trustee may distribute to the
15 seller an amount up to ten percent of the face value of the contract on a preneed
16 contract at any time after the consumer payment has been deposited into the
17 trust. The seller may make written request for this distribution and the trustee
18 shall make this distribution to the seller within fifteen days of the receipt of the
19 request or as may be provided in any written agreement between the seller and
20 the trustee.

21 5. The trustee of a preneed trust shall be a state- or federally-chartered
22 financial institution authorized to exercise trust powers in Missouri. The trustee
23 shall accept all deposits made to it for a preneed contract and shall hold,
24 administer, and distribute such deposits, in trust, as trust principal, under
25 sections 436.400 to 436.520.

26 6. The financial institution referenced herein may neither control, be
27 controlled by, nor be under common control with the seller or preneed agent. The
28 terms "control", "controlled by" and "under common control with" means the direct
29 or indirect possession of the power to direct or cause the direction of the
30 management and policies of a person, whether through the ownership of voting
31 securities, by contract other than a commercial contract for goods or
32 nonmanagement services, or otherwise, unless the power is the result of an
33 official position with or corporate office held by the person. Control shall be
34 presumed to exist if any person, directly or indirectly, owns, controls, holds with
35 the power to vote, or holds proxies representing ten percent or more of the voting
36 securities. This presumption may be rebutted by a showing to the board that

37 control does not in fact exist.

38 7. Payments regarding two or more preneed contracts may be deposited
39 into and commingled in the same preneed trust, so long as the trustee maintains
40 adequate records that individually and separately identify the payments,
41 earnings, and distributions for each preneed contract.

42 8. Within a reasonable time after accepting a trusteeship or receiving
43 trust assets, a trustee shall review the trust assets and make and implement
44 decisions concerning the retention and disposition of assets in order to bring the
45 trust portfolio into compliance with the purposes, terms, distribution
46 requirements, other circumstances of the trust, and all other requirements of
47 sections 436.400 to 436.520.

48 9. All expenses of establishing and administering a preneed trust,
49 including trustee's fees, legal and accounting fees, investment expenses, and taxes
50 may be paid from income generated from the investment of the trust
51 assets. Principal of the trust shall not be used to pay the costs of administration.
52 If the income of the trust is insufficient to pay the costs of administration, those
53 costs shall be paid as per the written agreements between the seller, provider and
54 the trustee.

55 10. The seller and provider of a trust-funded guaranteed preneed contract
56 shall be entitled to all income, including, but not limited to, interest, dividends,
57 capital gains, and losses generated by the investment of preneed trust property
58 regarding such contract as stipulated in the contract between the seller and
59 provider. Income of the trust, excluding expenses allowed under [this] subsection
60 **9 of this section**, shall accrue through the life of the trust, except in instances
61 when a contract is cancelled. The trustee of the trust may distribute market
62 value of all income, net of losses, to the seller upon, but not before, the final
63 disposition of the beneficiary and provision of the funeral and burial services and
64 facilities, and merchandise to, or for, the benefit of the beneficiary. This
65 subsection shall apply to trusts established on or after August 28, 2009.

66 11. Providers shall request payment by submitting a certificate of
67 performance to the seller certifying that the provider has rendered services under
68 the contract or as requested. The certificate shall be signed by both the provider
69 and the person authorized to make arrangements on behalf of the beneficiary. If
70 there is no written contract between the seller and provider, the provider shall
71 be entitled to the market value of all trust assets allocable to the preneed
72 contract. Sellers shall remit payment to the provider within sixty days of

73 receiving the certificate of performance.

74 12. If a seller fails to make timely payment of an amount due a provider
75 under sections 436.400 to 436.520, the provider shall have the right, in addition
76 to other rights and remedies against such seller, to make demand upon the
77 trustee of the preneed trust for the contract to distribute to the provider from the
78 trust all amounts to which the seller would be entitled to receive for the preneed
79 contract.

80 13. The trustee of a preneed trust, including trusts established before
81 August 28, 2009, shall maintain adequate books and records of all transactions
82 administered over the life of the trust and pertaining to the trust generally. The
83 trustee shall assist the seller who established the trust or its successor in interest
84 in the preparation of the annual report described in section 436.460. The seller
85 shall furnish to each contract purchaser, within thirty days after receipt of the
86 purchaser's written request, a written statement of all deposits made to such
87 trust regarding such purchaser's contract including the principal and interest
88 paid to date.

89 14. A preneed trust, including trusts established before August 28, 2009,
90 shall terminate when the trust principal no longer includes any payments made
91 under any preneed contract, and upon such termination the trustee shall
92 distribute all trust property, including principal and undistributed income, to the
93 seller which established the trust.

 436.450. 1. An insurance-funded preneed contract shall comply with
2 sections 436.400 to 436.520 and the specific requirements of this section.

3 2. A seller, provider, or any preneed agent shall not receive or collect from
4 the purchaser of an insurance-funded preneed contract any amount in excess of
5 what is required to pay the premiums on the insurance policy as assessed or
6 required by the insurer as premium payments for the insurance policy except for
7 any amount required or authorized by this chapter or by rule. A seller shall not
8 receive or collect any administrative or other fee from the purchaser for or in
9 connection with an insurance-funded preneed contract, other than those fees or
10 amounts assessed by the insurer. As of August 29, 2009, no preneed seller,
11 provider, or agent shall use any existing preneed contract as collateral or security
12 pledged for a loan or take preneed funds of any existing preneed contract as a
13 loan for any purpose other than as authorized by this chapter.

14 3. Payments collected by or on behalf of a seller for an insurance-funded
15 preneed contract shall be promptly remitted to the insurer or the insurer's

16 designee as required by the insurer; provided that payments shall not be retained
17 or held by the seller or preneed agent for more than thirty days from the date of
18 receipt.

19 4. It is unlawful for a seller, provider, or preneed agent to procure or
20 accept a loan against any insurance contract used to fund a preneed contract.

21 5. Laws regulating insurance shall not apply to preneed contracts, but
22 shall apply to any insurance or annuity sold with a preneed contract; provided,
23 however, the provisions of sections 436.400 to 436.520 shall not apply to annuities
24 or insurance policies regulated by chapters 374, 375, and 376 used to fund preneed
25 funeral agreements, contracts, or programs.

26 6. This section shall apply to all preneed contracts including those entered
27 into before August 28, 2009.

28 7. For any insurance-funded preneed contract sold after August 28, 2009,
29 the following shall apply:

30 (1) The purchaser or beneficiary **of the preneed contract** shall be the
31 owner of the insurance policy purchased to fund a preneed contract; and

32 (2) An insurance-funded preneed contract shall be valid and enforceable
33 only if the seller or provider is named as the beneficiary or assignee of the life
34 insurance policy funding the contract.

35 8. If the proceeds of the life insurance policy exceed the actual cost of the
36 goods and services provided pursuant to the nonguaranteed preneed contract, any
37 overage shall be paid to the estate of the beneficiary, or, if the beneficiary
38 received public assistance, to the state of Missouri.

436.456. At any time before final disposition, or before the funeral or
2 burial services, facilities, or merchandise described in a preneed contract are
3 furnished, the purchaser may cancel the contract, if designated as revocable,
4 without cause. In order to cancel the contract the purchaser shall:

5 (1) In the case of a joint account-funded preneed contract, deliver written
6 notice of the cancellation to the seller. Within fifteen days of receipt of notice of
7 the cancellation, the seller shall take whatever steps may be required by the
8 financial institution to obtain the funds from the financial institution. Upon
9 receipt of the funds from the financial institution, the seller shall distribute the
10 principal to the purchaser. Interest shall be distributed as provided in the
11 agreement with the seller and purchaser;

12 (2) In the case of an insurance-funded preneed contract, deliver written
13 notice of the cancellation to the seller. Within fifteen days of receipt of notice of

14 the cancellation, the seller shall notify the purchaser that the cancellation of the
15 contract shall not cancel any life insurance funding the contract and that
16 insurance cancellation is required to be made in writing to the insurer;

17 (3) In the case of a trust-funded preneed contract, deliver written notice
18 of the cancellation to the seller and trustee. Within fifteen days of receipt of
19 notice of the cancellation, the trustee shall distribute one hundred percent of the
20 trust property including any percentage of the total payments received on the
21 trust-funded contract that have been withdrawn from the account under
22 subsection 4 of section 436.430 but excluding the income, to the purchaser of the
23 contract;

24 (4) In the case of a guaranteed installment payment contract where the
25 beneficiary dies before all installments have been paid, the purchaser shall pay
26 the seller the amount remaining due under the contract in order to receive the
27 goods and services set out in the contract, otherwise the purchaser or their estate
28 will receive full credit for all payments the purchaser has made towards the cost
29 of the beneficiary's funeral at the [provider] **provider's** current prices.

436.457. 1. A seller shall have the right to cancel a trust-funded or
2 joint-account funded preneed contract if the purchaser is in default of any
3 installment payment for over sixty days.

4 2. Prior to cancelling the contract, the seller shall notify the purchaser
5 and provider in writing that the contract shall be cancelled if payment is not
6 received within thirty days of the postmarked date of the notice. The notice shall
7 include the amount of payments due, the date the payment is due, and the date
8 of cancellation.

9 3. If the purchaser fails to remit the payments due within thirty days of
10 the postmarked date of the notice, then the seller, at its option, may either cancel
11 the contract or may continue the contract as a nonguaranteed contract where the
12 purchaser will receive full credit for all payments the purchaser has made into
13 the trust towards the cost of the beneficiary's funeral service or merchandise from
14 the provider.

15 4. Upon cancellation by the seller under this section, eighty-five percent
16 of the contract payments shall be refunded to the purchaser. All remaining funds
17 shall be distributed to the seller.

18 **5. Where the consideration for a preneed contract includes the**
19 **seller or provider being made the beneficiary or assignee of a life**
20 **insurance policy, should that life insurance policy have lapsed, no**

21 **longer be in force, or have had loans taken against it, the seller may**
22 **cancel the contract and shall refund to the purchaser other payments**
23 **in accordance with this section apart from insurance premiums that**
24 **were made by the purchaser of the contract.**

436.460. 1. Each seller shall file an annual report with the board which
2 shall contain the following information:

3 (1) The contract number of each preneed contract sold since the filing of
4 the last report with an indication of, and whether it is funded by a trust,
5 insurance or joint account;

6 (2) The total number and total face value of preneed contracts sold since
7 the filing of the last report;

8 (3) The contract amount of each preneed contract sold since the filing of
9 the last report, identified by contract;

10 (4) The name, address, and license number of all preneed agents
11 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;

13 (6) The list including the name, address, contract number and whether it
14 is funded by a trust, insurance or joint account of all Missouri preneed contracts
15 fulfilled, cancelled or transferred by the seller during the preceding calendar year;

16 (7) The name and address of each provider with whom it is under
17 contract;

18 (8) The name and address of the person designated by the seller as
19 custodian of the seller's books and records relating to the sale of preneed
20 contracts;

21 (9) Written consent authorizing the board to order an investigation,
22 examination and, if necessary, an audit of any joint or trust account established
23 under sections 436.400 to 436.520, designated by depository or account number;

24 (10) Written consent authorizing the board to order an investigation,
25 examination and if necessary an audit of its books and records relating to the sale
26 of preneed contracts; and

27 (11) Certification under oath that the report is complete and correct
28 attested to by an officer of the seller. The seller or officer shall be subject to the
29 penalty of making a false affidavit or declaration.

30 2. A seller that sells or has sold trust-funded preneed contracts shall also
31 include in the annual report required by subsection 1 of this section:

32 (1) The name and address of the financial institution in which it

33 maintains a preneed trust account and the account numbers of such trust
34 accounts;

35 (2) The trust fund balance as reported in the previous year's report;

36 (3) The current [face] **market** value of the trust fund;

37 (4) Principal contributions received by the trustee since the previous
38 report;

39 (5) Total trust earnings and total distributions to the seller since the
40 previous report;

41 (6) Authorization of the board to request from the trustee a copy of any
42 trust statement, as part of an investigation, examination or audit of the preneed
43 seller;

44 (7) Total expenses, excluding distributions to the seller, since the previous
45 report; and

46 (8) Certification under oath that the information required by subdivisions
47 (1) to (7) of this subsection is complete and correct and attested to by a corporate
48 officer of the trustee. The trustee shall be subject to the penalty of making a
49 false affidavit or declaration.

50 3. A seller that sells or who has sold joint account-funded preneed
51 contracts shall also include in the annual report required by subsection 1 of this
52 section:

53 (1) The name and address of the financial institution in Missouri in which
54 it maintains the joint account and the account numbers for each joint account;

55 (2) The amount on deposit in each joint account;

56 (3) The joint account balance as reported in the previous year's report;

57 (4) Principal contributions placed into each joint account since the filing
58 of the previous report;

59 (5) Total earnings since the previous report;

60 (6) Total distributions to the seller from each joint account since the
61 previous report;

62 (7) Total expenses deducted from the joint account, excluding distributions
63 to the seller, since the previous report; and

64 (8) Certification under oath that the information required by subdivisions
65 (1) to (7) of this subsection is complete and correct and attested to by an
66 authorized representative of the financial institution. The affiant shall be subject
67 to the penalty of making a false affidavit or declaration.

68 4. A seller that sells or who has sold any insurance-funded preneed

69 contracts shall also include in the annual report required by subsection 1 of this
70 section:

71 (1) The name and address of each insurance company issuing insurance
72 to fund a preneed contract sold by the seller during the preceding year;

73 (2) The status and total face value of each policy **as requested by the**
74 **board;**

75 (3) The amount of funds the seller directly received on each contract and
76 the date the amount was forwarded to any insurance company; and

77 (4) Certification under oath that the information required by subsections
78 1 to 3 of this section is complete and correct attested to by an authorized
79 representative of the insurer. The affiant shall be subject to the penalty of
80 making a false affidavit or declaration.

81 5. Each seller shall remit an annual reporting fee in an amount
82 established by the board by rule for each preneed contract sold in the year since
83 the date the seller filed its last annual report with the board. This reporting fee
84 shall be paid annually and may be collected from the purchaser of the preneed
85 contract as an additional charge or remitted to the board from the funds of the
86 seller. The reporting fee shall be in addition to any other fees authorized under
87 sections 436.400 to 436.520.

88 6. All reports required by this section shall be filed by the thirty-first day
89 of October of each year or by the date established by the board by rule. Annual
90 reports filed after the date provided herein shall be subject to a late fee in an
91 amount established by rule of the board.

92 7. If a seller fails to file the annual report on or before its due date, his
93 or her preneed seller license shall automatically be suspended until such time as
94 the annual report is filed and all applicable fees have been paid.

95 8. This section shall apply to contracts entered into before August 28,
96 2009.

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