

SECOND REGULAR SESSION

SENATE BILL NO. 943

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time January 22, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

4849S.02I

AN ACT

To repeal sections 333.330, 436.405, 436.430, 436.450, 436.455, 436.456, 436.457, and 436.460, RSMo, and to enact in lieu thereof eight new sections relating to preneed funeral contracts.

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

Section A. Sections 333.330, 436.405, 436.430, 436.450, 436.455, 436.456, 2 436.457, and 436.460, RSMo, are repealed and eight new sections enacted in lieu 3 thereof, to be known as sections 333.330, 436.405, 436.430, 436.450, 436.455, 4 436.456, 436.457, and 436.460, to read as follows:

333.330. 1. The board may refuse to issue any certificate of registration 2 or authority, permit, or license required under this chapter for one or any 3 combination of causes stated in subsection 2 of this section. The board shall 4 notify the applicant in writing of the reasons for the refusal and shall advise the 5 applicant of his or her right to file a complaint with the administrative hearing 6 commission as provided by chapter 621.

7 2. The board may cause a complaint to be filed with the administrative 8 hearing commission as provided by chapter 621 against any holder of any 9 certificate of registration or authority, permit, or license required by this chapter, 10 or any person who has failed to renew or has surrendered his or her certificate 11 of registration or authority, permit, or license for any one or any combination of 12 the following causes:

13 (1) Use of any controlled substance, as defined in chapter 195, or alcoholic 14 beverage to an extent that such use impairs a person's ability to perform the work 15 of any profession licensed or regulated by this chapter;

16 (2) The person has been finally adjudicated and found guilty, or entered

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

17 a plea of guilty or nolo contendere, in a criminal prosecution under the laws of
18 any state or of the United States, for any offense reasonably related to the
19 qualifications, functions, or duties of any profession licensed or regulated under
20 this chapter, for any offense involving a controlled substance, or for any offense
21 an essential element of which is fraud, dishonesty, or an act of violence;

22 (3) Use of fraud, deception, misrepresentation, or bribery in securing any
23 certificate of registration or authority, permit, or license issued under this
24 chapter or in obtaining permission to take any examination given or required
25 under this chapter;

26 (4) Obtaining or attempting to obtain any fee, charge, tuition, or other
27 compensation by fraud, deception, or misrepresentation;

28 (5) Incompetency, misconduct, gross negligence, fraud, misrepresentation,
29 or dishonesty in the performance of the functions or duties of any profession
30 licensed or regulated by this chapter;

31 (6) Violation of, or assisting or enabling any person to violate, any
32 provision of this chapter, or of any lawful rule or regulation adopted pursuant
33 thereto;

34 (7) Impersonation of any person holding a certificate of registration or
35 authority, permit, or license or allowing any person to use his or her certificate
36 of registration or authority, permit, license, or diploma from any school;

37 (8) Disciplinary action against the holder of a license or other right to
38 practice any profession regulated by this chapter granted by another state,
39 territory, federal agency, or country upon grounds for which revocation or
40 suspension is authorized in this state;

41 (9) A person is finally adjudged mentally incompetent by a court of
42 competent jurisdiction;

43 (10) Misappropriation or theft of preneed funds;

44 (11) Assisting or enabling any person to practice or offer to practice any
45 profession licensed or regulated by this chapter regulating preneed who is not
46 licensed or registered and currently eligible to practice thereunder;

47 (12) Issuance of a certificate of registration or authority, permit, or license
48 based upon a material mistake of fact;

49 (13) Failure to display a valid certificate or license if so required by this
50 chapter regulating preneed or any rule established thereunder;

51 (14) Violation of any professional trust or confidence;

52 (15) Making or filing any report required by sections 436.400 to 436.520

53 regulating preneed which the licensee knows to be false or knowingly failing to
54 make or file a report required by such sections;

55 (16) Use of any advertisement or solicitation which is false, misleading,
56 or deceptive to the general public or persons to whom the advertisement or
57 solicitation is primarily directed; or

58 (17) Willfully and through undue influence selling a funeral;

59 (18) Willfully and through undue influence selling a preneed contract;

60 (19) Violation of any of the provisions of chapter 193, 194, 407, or 436;

61 (20) Presigning a death certificate or signing a death certificate on a body
62 not yet embalmed by, or under the personal supervision of, the licensee;

63 (21) Failure to execute and sign the death certificate on a body embalmed
64 by, or under the personal supervision of, a licensee;

65 (22) Failure to refuse to properly guard against contagious, infectious, or
66 communicable diseases or the spread thereof;

67 (23) Refusing to surrender a dead human body upon request by the next
68 of kin, legal representative, or other person entitled to the custody and control of
69 the body;

70 **(24) Failure to maintain and deposit into a special account,**
71 **separate and apart from his or her personal or other business accounts,**
72 **within five days of receipt all moneys received pursuant to subsection**
73 **2 of section 436.430, subsection 3 of section 436.450, and subsection 3 of**
74 **section 436.455.**

75 3. After the filing of such complaint, the proceedings shall be conducted
76 in accordance with the provisions of chapter 621. Upon a finding by the
77 administrative hearing commission that the grounds, provided in subsection 2 of
78 this section, for disciplinary action are met, the board may, singly or in
79 combination, censure or place the person named in the complaint on probation on
80 such terms and conditions as the board deems appropriate for a period not to
81 exceed five years, or may suspend, for a period not to exceed three years, or
82 revoke any certificate of registration or authority, permit, or license issued under
83 this chapter.

84 4. In addition to all other powers and authority granted by the board, the
85 board may seek an injunction, restraining order or other order from the circuit
86 court of Cole County to enjoin any seller from engaging in preneed sales upon a
87 showing by the board that the seller has failed to make deposits into the preneed
88 trust, has obtained funds out of the trust to which the seller is not entitled or has

89 exercised influence or control over the trustee or has engaged in any other act
90 that has resulted in a shortage in any preneed trust or joint account which
91 exceeds twenty percent of the total amount required to be held or deposited into
92 the trust or joint account under the provisions of sections 436.400 to 436.520. In
93 addition to the power to enjoin for this conduct, the circuit court of Cole County
94 shall also be entitled to suspend or revoke the preneed seller's license and any
95 other license issued pursuant to this chapter, held by the seller.

96 5. An individual whose certificate of registration or authority, permit, or
97 license has been revoked shall wait three years from the date of revocation to
98 apply for any certificate of registration or authority, permit, or license under this
99 chapter, either as an individual or as a manager, director, shareholder, or partner
100 of any business entity. Any certificate of registration or authority, permit, or
101 license shall be issued at the discretion of the board after compliance with all the
102 requirements of this chapter relative to the licensing or registration of the
103 applicant for the first time.

104 6. Use of the procedures set out in this section shall not preclude the
105 application of the provisions of subsection 2 of section 333.335.

 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
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. **Unless a seller sells five or less preneed contracts in a**

4 **calendar year**, a seller must deposit all payments received on a preneed
5 contract into **an escrow account within five days of receipt of the**
6 **funds. All sellers shall deposit all payments received on a preneed**
7 **contract into** the designated preneed trust within [sixty] **ten** days of receipt of
8 the funds by the seller, the preneed sales agent or designee. A seller may not
9 require the consumer to pay any fees or other charges except as authorized by the
10 provisions of chapter 333 and this chapter or other state or federal law.

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

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

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

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

40 control does not in fact exist.

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

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

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

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

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

76 receiving the certificate of performance.

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

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

92 14. A preneed trust, including trusts established before August 28, 2009,
93 shall terminate when the trust principal no longer includes any payments made
94 under any preneed contract, and upon such termination the trustee shall
95 distribute all trust property, including principal and undistributed income, to the
96 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] **immediately** remitted to the insurer or the

16 insurer's designee as required by the insurer[; provided that] **or placed in an**
17 **escrow account within five days of receiving payment, unless the seller**
18 **sells five or less preneed contracts in a calendar year.** Payments shall not
19 be retained or held by [the] **any** seller or preneed agent for more than [thirty]
20 **ten** days from the date of receipt.

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

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

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

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

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

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

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

436.455. 1. A joint account-funded preneed contract shall comply with
2 sections 436.400 to 436.520 and the specific requirements of this section.

3 2. In lieu of a trust-funded or insurance-funded preneed contract, the
4 seller and the purchaser may agree in writing that all funds paid by the
5 purchaser or beneficiary for the preneed contract shall be deposited with a
6 financial institution chartered and regulated by the federal or state government
7 authorized to do business in Missouri in an account in the joint names and under
8 the joint control of the seller and purchaser, beneficiary or party holding power
9 of attorney over the beneficiary's estate, or in an account titled in the
10 beneficiary's name and payable on the beneficiary's death to the seller. There
11 shall be a separate joint account established for each preneed contract sold or

12 arranged under this section. Funds shall only be withdrawn or paid from the
13 account upon the signatures of both the seller and the purchaser or under a
14 pay-on-death designation or as required to pay reasonable expenses of
15 administering the account.

16 **3. Unless a seller sells five or less preneed contracts in a**
17 **calendar year, the seller shall deposit all consideration paid by the**
18 **purchaser under a joint-funded preneed contract into an escrow**
19 **account within five days of receipt of payment by the seller.** All
20 consideration paid by the purchaser under a joint account-funded contract shall
21 be deposited into a joint account as authorized by this section within ten days of
22 receipt of payment by the seller.

23 4. The financial institution shall hold, invest, and reinvest funds
24 deposited under this section in other accounts offered to depositors by the
25 financial institutions as provided in the written agreement of the purchaser and
26 the seller, provided the financial institution shall not invest or reinvest any funds
27 deposited under this section in term life insurance or any investment that does
28 not reasonably have the potential to gain income or increase in value.

29 5. Income generated by preneed funds deposited under this section shall
30 be used to pay the reasonable expenses of administering the account as charged
31 by the financial institution and the balance of the income shall be distributed or
32 reinvested upon fulfillment of the contract, cancellation or transfer pursuant to
33 the provisions of this chapter.

34 6. Within fifteen days after a provider delivers a copy of a certificate of
35 performance to the seller, signed by the provider and the person authorized to
36 make arrangements on behalf of the beneficiary, certifying that the provider has
37 furnished the final disposition, funeral, and burial services and facilities, and
38 merchandise as required by the preneed contract, or has provided alternative
39 funeral benefits for the beneficiary under special arrangements made with the
40 purchaser, the seller shall take whatever steps are required by the financial
41 institution to secure payment of the funds from the financial institution. The
42 seller shall pay the provider within ten days of receipt of funds.

43 7. Any seller, provider, or preneed agent shall not procure or accept a loan
44 against any investment, or asset of, or belonging to a joint account. As of August
45 28, 2009, it shall be prohibited to use any existing preneed contract as collateral
46 or security pledged for a loan, or take preneed funds of any existing preneed
47 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
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 **if 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.

✓

Unofficial

Bill

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