

SECOND REGULAR SESSION

HOUSE BILL NO. 1842

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GARDNER.

4929H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 436.405, 436.425, 436.455, 436.456, 436.465, and 436.470, RSMo, and to enact in lieu thereof six new sections relating to account-funded preneed funeral contracts.

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

Section A. Sections 436.405, 436.425, 436.455, 436.456, 436.465, and 436.470, RSMo, are repealed and six new sections enacted in lieu thereof, to be known as sections 436.405, 436.425, 436.455, 436.456, 436.465, and 436.470, to read as follows:

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

(1) **"Account-funded preneed contract"**, a preneed contract that designates that payments for the preneed contract made by or on behalf of the purchaser shall be deposited and maintained in an account in the name of the seller for the benefit of the beneficiary, as provided in this chapter;

(2) **"Beneficiary"**, the individual who is to be the subject of the disposition or who will receive funeral services, facilities, or merchandise described in a [preneed] preneed contract;

[2] (3) **"Board"**, the board of embalmers and funeral directors;

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

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

16 [(4)] (5) "Insurance-funded [preened] **preneed** contract", a [preened] **preneed** contract
17 which is designated to be funded by payments or proceeds from an insurance policy or a deferred
18 annuity contract that is not classified as a variable annuity and has death benefit proceeds that
19 are never less than the sum of premiums paid;

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

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

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

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

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

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

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

44 (9) "[Preened] **Preneed** trust", a trust to receive deposits of, administer, and disburse
45 payments received under [preened] **preneed** contracts, together with income thereon;

46 (10) "Purchaser", the person who is obligated to pay under a [preened] **preneed** contract;

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

48 (12) "Trust-funded [preened] **preneed** contract", a [preened] **preneed** contract which
49 provides that payments for the [preened] **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 meaning when
52 used in sections 436.400 to 436.520.

 436.425. 1. All [preened] **preneed** contracts shall be sequentially numbered and in
2 writing and in a font type and size that are easily read, and shall clearly and conspicuously:

3 (1) Include the name, address and phone number of the purchaser, beneficiary, provider
4 and seller;

5 (2) Identify the name, address, phone and license number of the provider and the seller;

6 (3) Set out in detail the disposition, funeral and burial services and facilities, and
7 merchandise requested;

8 (4) Identify whether the contract is [trust funded] **trust-funded**, [insurance funded]
9 **insurance-funded**, or [joint account funded] **account-funded**;

10 (5) Include notice that the cancellation of the contract shall not cancel any life insurance
11 funding the contract, and that insurance cancellation is required to be made in writing to the
12 insurer;

13 (6) Include notice that the purchaser will only receive the cash surrender value of any
14 insurance policy funding the contract if cancelled after a designated time, which may be less than
15 the amount paid into the policy;

16 (7) Include notice that the board provides by rule that the purchaser has the right to
17 transfer the provider designation to another provider;

18 (8) Prominently identify whether the contract is revocable or irrevocable;

19 (9) Set forth the terms for cancellation by the purchaser or by the seller;

20 (10) Identify any [preened] **preneed** trust or [joint] account into which contract payments
21 shall be deposited, including the name and address of the corresponding trustee or financial
22 institution;

23 (11) Include the name, address and phone number of any insurance company issuing an
24 insurance policy used to fund the [preened] **preneed** contract;

25 (12) Include the name and signature of the purchaser, the provider or its authorized
26 representative, the [preened] **preneed** agent responsible for the sale of the contract, and the seller
27 or its authorized representative;

28 (13) Prominently identify whether the contract is a guaranteed or nonguaranteed contract;

29 (14) Include any applicable consumer disclosures required by the board by rule; and

30 (15) Include a disclosure on all guaranteed installment payment contracts informing the
31 purchaser what will take place in the event the beneficiary dies before all installments have been
32 paid, including an explanation of what will be owed by the purchaser for the funeral services in
33 such an event;

34 (16) Comply with the provisions of sections 436.400 to 436.520 or any rule promulgated
35 thereunder.

36 2. A [preened] **preneed** contract shall be voidable and unenforceable at the option of the
37 purchaser, or the purchaser's legal representative, if it is determined in a court of competent
38 jurisdiction that the contract is not in compliance with this section or not issued by a seller
39 licensed under chapter 333, or if the provider has not consented to serve as provider at the time
40 the contract was executed. Upon exercising the option by written notice to the seller and
41 provider, all payments made under such contract shall be recoverable by the purchaser, or the
42 purchaser's legal representative, from the contract seller, trustee, or other payee thereof.

43 3. A beneficiary who seeks to become eligible to receive public assistance under chapter
44 208 or any other applicable state or federal law may irrevocably waive [their] **the beneficiary's**
45 rights to receive any refund or payment of any moneys from the funds or insurance used to fund
46 [their preened] **the beneficiary's preneed** contract. Such irrevocable waiver may be executed
47 at any time and shall be in writing, signed and dated by the beneficiary and shall be delivered to
48 the seller and any applicable trustee, financial institution or insurance company.

49 4. All purchasers shall have the right as provided in this chapter to cancel or rescind a
50 revocable [preened] **preneed** contract and transfer any [preened] **preneed** contract with or
51 without cause.

52 5. A [preened] **preneed** contract, shall not be changed from a trust-funded,
53 insurance-funded, or [joint] account-funded [preened] **preneed** contract without the written
54 consent of the purchaser.

436.455. 1. [A joint] **An** account-funded [preened] **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 [preened] **preneed** contract, the seller
4 and the purchaser may agree in writing that all funds paid by the purchaser or beneficiary for the
5 [preened] **preneed** contract shall be deposited with a financial institution chartered and regulated
6 by the federal or state government authorized to do business in Missouri in an account in the
7 [joint names] **the name of the seller for the benefit of the beneficiary** and under the [joint]
8 control of the seller [and purchaser], beneficiary or party holding power of attorney over the
9 beneficiary's estate, or in an account titled in the [beneficiary's] **seller's** name [and payable on
10 the beneficiary's death to the seller] **for the benefit of beneficiary**. There shall be a separate
11 [joint] account established for each [preened] **preneed** contract sold or arranged under this
12 section. Funds shall only be withdrawn or paid from the account upon the signatures of both the
13 seller and the purchaser **for a revocable contract**, or under a pay-on-death designation or as
14 required to pay reasonable expenses of administering the account **for an irrevocable or**
15 **revocable contract**.

16 3. All consideration paid by the purchaser under [a joint] **an** account-funded contract
17 shall be deposited into [a joint] **an** account as authorized by this section within ten days of
18 receipt of payment by the seller.

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

24 5. Income generated by [preened] **preneed** funds deposited under this section shall be
25 used to pay the reasonable expenses of administering the account as charged by the financial
26 institution and the balance of the income shall be distributed or reinvested upon fulfillment of
27 the contract, cancellation or transfer pursuant to the provisions of this chapter.

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

36 7. Any seller, provider, or [preened] **preneed** agent shall not procure or accept a loan
37 against any investment, or asset of, or belonging to [a joint] **an** account. As of August 28, 2009,
38 it shall be prohibited to use any existing [preened] **preneed** contract as collateral or security
39 pledged for a loan, or take [preened] **preneed** funds of any existing [preened] **preneed** contract
40 as a loan or for any purpose other than as authorized by this chapter.

41 **8. The funds of any account under this section shall not be subject to garnishment**
42 **or other legal process by a creditor.**

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

5 (1) In the case of [a joint] **an** account-funded [preened] **preneed** contract, deliver written
6 notice of the cancellation to the seller. Within fifteen days of receipt of notice of the
7 cancellation, the seller shall take whatever steps may be required by the financial institution to
8 obtain the funds from the financial institution. Upon receipt of the funds from the financial

9 institution, the seller shall distribute the principal to the purchaser. Interest shall be distributed
10 as provided in the agreement with the seller and purchaser;

11 (2) In the case of an insurance-funded [preened] **preneed** contract, deliver written notice
12 of the cancellation to the seller. Within fifteen days of receipt of notice of the cancellation, the
13 seller shall notify the purchaser that the cancellation of the contract shall not cancel any life
14 insurance funding the contract and that insurance cancellation is required to be made in writing
15 to the insurer;

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

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

436.465. A seller shall maintain:

2 (1) Adequate records of all [preened] **preneed** contracts and related agreements with
3 providers, trustees of a [preened] **preneed** trust, and financial institutions holding [a joint] **an**
4 account established under sections 436.400 to 436.520;

5 (2) Records of [preened] **preneed** contracts, including financial institution statements
6 and death certificates, shall be maintained by the seller for the duration of the contract and for
7 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
2 alleged violation of this chapter. The board shall investigate each such complaint.

3 2. The board shall have authority to conduct inspections and investigations of providers,
4 sellers, and [preened] **preneed** agents and conduct financial examinations of the books and
5 records of providers, sellers, and [preened] **preneed** agents and any trust or [joint] account to
6 determine compliance with sections 436.400 to 436.520, or to determine whether grounds exist
7 for disciplining a person licensed or registered under sections 333.310 to 333.340, at the
8 discretion of the board and with or without cause. The board shall conduct a financial
9 examination of the books and records of each seller as authorized by this section at least once
10 every five years, subject to available funding.

11 3. Upon determining that an inspection, investigation, examination, or audit shall be
12 conducted, the board shall issue a notice authorizing an employee or other person appointed by
13 the board to perform such inspection, investigation, examination, or audit. The notice shall
14 instruct the person appointed by the board as to the scope of the inspection, investigation,
15 examination or audit.

16 4. The board shall not appoint or authorize any person to conduct an inspection,
17 investigation, examination, or audit under this section if the individual has a conflict of interest
18 or is affiliated with the management of, or owns a pecuniary interest in, any person subject to
19 inspection, investigation, examination, or audit under chapter 333 or sections 436.400 to
20 436.520.

21 5. The board may request that the director of the division of professional registration, the
22 director of the department of insurance, financial institutions and professional registration, or the
23 office of the attorney general designate one or more investigators or financial examiners to assist
24 in any investigation, examination, or audit, and such assistance shall not be unreasonably
25 withheld.

26 6. The person conducting the inspection, investigation, or audit may enter the office,
27 premises, establishment, or place of business of any seller or licensed provider of [preened]
28 **preneed** contracts, or any office, premises, establishment, or place where the practice of selling
29 or providing [preened] **preneed** funerals is conducted, or where such practice is advertised as
30 being conducted for the purpose of conducting the inspection, investigation, examination, or
31 audit.

32 7. Upon request by the board, a licensee or registrant shall make the books and records
33 of the licensee or registrant available to the board for inspection and copying at any reasonable
34 time, including, any insurance, trust, [joint] account, or financial institution records deemed
35 necessary by the board to determine compliance with sections 436.400 to 436.520.

36 8. The board shall have the power to issue subpoenas to compel the production of
37 records and papers by any licensee, trustee or registrant of the board. Subpoenas issued under
38 this section shall be served in the same manner as subpoenas in a criminal case.

39 9. All sellers, providers, [preened] **preneed** agents, and trustees shall cooperate with the
40 board or its designee, the division of finance, the department of insurance, financial institutions
41 and professional registration, and the office of the attorney general in any inspection,
42 investigation, examination, or audit brought under this section.

43 10. This section shall not be construed to limit the board's authority to file a complaint
44 with the administrative hearing commission charging a licensee or registrant with any actionable
45 conduct or violation, regardless of whether such complaint exceeds the scope of acts charged in

46 a preliminary public complaint filed with the board and whether any public complaint has been
47 filed with the board.

48 11. The board, the division of finance, the department of insurance, financial institutions
49 and professional registration, and the office of the attorney general may share information
50 relating to any [preened] **preneed** inspection, investigation, examination, or audit.

51 12. If an inspection, investigation, examination, or audit reveals a violation of sections
52 436.400 to 436.520, the office of the attorney general may initiate a judicial proceeding to:

53 (1) Declare rights;

54 (2) Approve a nonjudicial settlement;

55 (3) Interpret or construe the terms of the trust;

56 (4) Determine the validity of a trust or of any of its terms;

57 (5) Compel a trustee to report or account;

58 (6) Enjoin a seller, provider, or [preened] **preneed** agent from performing a particular
59 act;

60 (7) Enjoin a trustee from performing a particular act or grant to a trustee any necessary
61 or desirable power;

62 (8) Review the actions of a trustee, including the exercise of a discretionary power;

63 (9) Appoint or remove a trustee;

64 (10) Determine trustee liability and grant any available remedy for a breach of trust;

65 (11) Approve employment and compensation of [preened] **preneed** agents;

66 (12) Determine the propriety of investments;

67 (13) Determine the timing and quantity of distributions and dispositions of assets; or

68 (14) Utilize any other power or authority vested in the attorney general by law.

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