

SECOND REGULAR SESSION

HOUSE BILL NO. 1805

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES RANSALL, BERKSTRESSER AND GRAHAM (Co-sponsors).

Read 1st time February 5, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4301L.011

AN ACT

To repeal sections 436.005, 436.007, and 436.015, RSMo, and to enact in lieu thereof four new sections relating to casket retailers.

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

Section A. Sections 436.005, 436.007, and 436.015, RSMo, are repealed and four new
2 sections enacted in lieu thereof, to be known as sections 436.005, 436.007, 436.009, and
3 436.015, to read as follows:

436.005. As used in sections 436.005 to 436.071, unless the context otherwise requires,
2 the following terms shall mean:

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

5 (2) "Division", the division of professional registration of the department of economic
6 development;

7 (3) "Funeral merchandise", caskets, grave vaults, or receptacles, and other personal
8 property incidental to a funeral or burial service, and such term shall also include grave lots,
9 grave space, grave markers, monuments, tombstones, crypts, niches or mausoleums if, but only
10 if, such items are sold:

11 (a) By a companion agreement which is sold in contemplation of trade or barter for grave
12 vaults or funeral or burial services and funeral merchandise; or

13 (b) At prices, in excess of prevailing market prices, intended to be offset by reductions
14 in the costs of funeral or burial services or facilities which are not immediately required;

15 (4) **"Immediate delivery", the purchaser takes delivery of the item purchased at a**

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

16 **location specified by the purchaser within forty-eight hours of the date of purchase;**

17 (5) "Person", any individual, partnership, corporation, cooperative, association, or other
18 entity;

19 [(5)] (6) "Preneed contract", any contract or other arrangement which requires the current
20 payment of money or other property in consideration for the final disposition of a dead human
21 body, or for funeral or burial services or facilities, or for funeral merchandise, where such
22 disposition, services, facilities or merchandise are not immediately required, including, but not
23 limited to, an agreement providing for a membership fee or any other fee having as its purpose
24 the furnishing of burial or funeral services or merchandise at a discount, except for contracts of
25 insurance, including payment of proceeds from contracts of insurance, unless the preneed seller
26 or provider is named as the owner or beneficiary in the contract of insurance;

27 [(6)] (7) "Preneed trust", a trust established by a seller, as grantor, to receive deposits of,
28 administer, and disburse payments received under preneed contracts by such seller, together with
29 income thereon;

30 [(7)] (8) "Provider", the person obligated to provide the disposition and funeral services,
31 facilities, or merchandise described in a preneed contract;

32 [(8)] (9) "Purchaser", the person who is obligated to make payments under a preneed
33 contract;

34 [(9)] (10) "Seller", the person who sells a preneed contract to a purchaser and who is
35 obligated to collect and administer all payments made under such preneed contract;

36 [(10)] (11) "State board", the Missouri state board of embalmers and funeral directors;

37 [(11)] (12) "Trustee", the trustee of a preneed trust, including successor trustees.

436.007. 1. Each preneed contract made after August 13, 1982, shall be void and
2 unenforceable unless:

3 (1) It is in writing;

4 (2) It is executed by a seller who is in compliance with the provisions of section 436.021;

5 (3) It identifies the contract beneficiary and sets out in detail the final disposition of the
6 dead body and funeral services, facilities, and merchandise to be provided;

7 (4) It identifies the preneed trust into which contract payments shall be deposited,
8 including the name and address of the trustee thereof;

9 (5) The terms of such trust and related agreements among two or more of the contract
10 seller, the contract provider, and the trustee of such trust are in compliance with the provisions
11 of sections 436.005 to 436.071;

12 (6) It contains the name and address of the seller and the provider.

13 2. If a preneed contract does not comply with the provisions of sections 436.005 to
14 436.071, all payments made under such contract shall be recoverable by the purchaser, his heirs,

15 or legal representative, from the contract seller or other payee thereof, together with interest at
16 the rate of ten percent per annum and all reasonable costs of collection, including attorneys' fees.

17 3. Each preneed contract made before August 13, 1982, and all payments and
18 disbursements under such contract shall continue to be governed by sections 436.010 to 436.080,
19 as those sections existed at the time the contract was made; but, the provisions of subsection 2
20 of section 436.035 may be applied to all preneed contracts which are executory on August 13,
21 1982.

22 4. Subject to the provisions of subdivision [(5)] (6) of section 436.005, the provisions
23 of sections 436.005 to 436.071 shall apply to the assignment of proceeds of any contract of
24 insurance for the purpose of funding a preneed contract or written in conjunction with a preneed
25 contract. Laws regulating insurance shall not apply to preneed contracts, but shall apply to any
26 insurance sold with a preneed contract.

27 5. No preneed contract shall become effective unless and until the purchaser thereof has
28 placed his signature in a space provided on such contract, or application therefor, and the
29 purchaser has received a copy of such contract signed by the seller.

30 6. The seller and the provider of a preneed contract may be the same person.

**436.009. No person shall offer funeral merchandise for sale where such
2 merchandise is not immediately required unless the purchaser takes immediate delivery
3 or unless the person offering such merchandise for sale has, prior to making such an offer,
4 registered with the state board as a seller or as a provider. If such a person registers as a
5 provider, the person must furnish the state board in writing in advance of offering such
6 goods the name and address of at least one seller authorized by the provider to sell preneed
7 contracts in which the provider is named pursuant to section 436.015. Any person other
8 than licensed funeral establishments, registered preneed sellers, and endowed care
9 cemeteries offering to sell funeral merchandise to the public in this state shall be deemed
10 to have consented to authorize the state board, the attorney general, or persons authorized
11 by them, to inspect their books and records to the extent necessary to insure compliance
12 with this section.**

436.015. 1. No person shall perform or agree to perform the obligations of, or be
2 designated as, the provider under a preneed contract unless, at the time of such performance,
3 agreement or designation:

4 (1) Such person is licensed by the state board as a funeral establishment pursuant to the
5 provisions of section 333.061, RSMo, but such person need not be licensed as a funeral
6 establishment if he is the owner of real estate situated in Missouri which has been formally
7 dedicated for the burial of dead human bodies and the contract only provides for the delivery of
8 one or more grave vaults at a future time and is in compliance with the provisions of chapter 214,

9 RSMo, or such person sells funeral merchandise at retail pursuant to section 436.009; and

10 (2) Such person is registered with the state board and files with the state board a written
11 consent authorizing the state board to order an examination and if necessary an audit by the staff
12 of the division of professional registration who are not connected with the board of its books and
13 records which contain information concerning preneed contracts sold for, in behalf of, or in
14 which he is named as provider of the described funeral merchandise or services.

15 2. Each provider under one or more preneed contracts shall:

16 (1) Furnish the state board in writing with the name and address of each seller authorized
17 by the provider to sell preneed contracts in which the provider is named as such within fifteen
18 days after the provider signs a written agreement or authorization permitting the seller to sell
19 preneed contracts designating or obligating the provider as the "provider" under the contract.
20 This notification requirement shall include a provider who, itself, acts as seller;

21 (2) File annually with the state board a report which shall contain:

22 (a) The business name or names of the provider and all addresses from which it engages
23 in the practice of its business;

24 (b) The name and address of each seller with whom it has entered into a written
25 agreement since last filing a report;

26 (c) The name and address of the custodian of its books and records containing
27 information about preneed contract sales and services;

28 (3) Cooperate with the state board, the office of the attorney general of Missouri, and the
29 division in any investigation, examination or audit brought under the provisions of sections
30 436.005 to 436.071;

31 (4) At least thirty days prior to selling or otherwise disposing of its business assets, or
32 its stock if a corporation, or ceasing to do business, give written notification to the state board
33 and to all sellers with whom it has one or more preneed contracts of its intent to engage in such
34 sale or to cease doing business. In the case of a sale of assets or stock, the written notice shall
35 also contain the name and address of the purchaser. Upon receipt of such written notification,
36 the state board may take reasonable and necessary action to determine that any preneed contracts
37 which the provider is obligated to service will be satisfied at the time of need. The state board
38 may waive the requirements of this subsection, or may shorten the period of notification
39 whenever in its discretion it determines that compliance with its provisions are not necessary.
40 Failure of the state board to take action regarding such sale or termination of business within
41 thirty days shall constitute such a waiver.

42 3. It is a violation of the provisions of sections 436.005 to 436.071 and subdivision (3)
43 of section 333.121, RSMo, for any person to sell, transfer or otherwise dispose of the assets of
44 a provider without first complying with the provisions of subdivision (4) of subsection 2 of this

45 section. This violation shall be in addition to the provisions of section 436.061.

46 4. If any licensed embalmer, funeral director or licensed funeral establishment shall
47 knowingly allow such licensee's name to be designated as the provider under, or used in
48 conjunction with the sale of, any preneed contract, such licensee shall be liable for the provider's
49 obligations under such contract.

50 5. With respect to a provider or seller licensed under the provisions of chapter 333,
51 RSMo, any violation of the provisions of sections 436.005 to 436.071 shall constitute a violation
52 of subdivision (3) of section 333.121, RSMo.