

SECOND REGULAR SESSION

# HOUSE BILL NO. 2523

98TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE FRAKER.

6259H.011

D. ADAM CRUMBLISS, Chief Clerk

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## AN ACT

To repeal sections 436.415 and 436.460, RSMo, and to enact in lieu thereof two new sections relating to preneed contracts.

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

Section A. Sections 436.415 and 436.460, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 436.415 and 436.460, to read as follows:

436.415. 1. Except as otherwise provided in sections 436.400 to 436.520, the provider designated in a preneed contract shall be obligated to provide final disposition, funeral or burial services and facilities, and funeral merchandise as described in the preneed contract.

2. The seller designated in a preneed contract shall be obligated to collect and properly deposit and disburse all payments made by, or on behalf of, a purchaser of a preneed contract and ensure that [is] its statutorily and contractual duties are met, in compliance with sections 436.400 to 436.520.

**3. Notwithstanding any other provision in this chapter or chapter 333, the contractual obligations of a provider and seller toward any seller, purchaser, provider, or beneficiary under a preneed contract or provider-seller contractual agreement shall not cease due to any failure to renew a provider or seller license, or the revocation or suspension of a seller or provided license; provided that, the preneed contract or provider-seller contractual agreement was entered into while the seller and provider held valid licenses. Nothing in this subsection relieves any provider from having a valid and current funeral establishment license at the time of providing the final disposition, funeral or burial services and facilities, and funeral merchandise as described in the preneed contract.**

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.

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

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

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

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

(4) The name, address, and license number of all preneed agents authorized to sell preneed contracts on behalf of the seller;

(5) The date the report is submitted and the date of the last report;

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

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

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

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

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

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

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

(1) The name and address of the financial institution in which it maintains a preneed trust account and the account numbers of such trust accounts;

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

(3) The current face value of the trust fund;

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

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

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

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

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

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

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

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

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

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

48 (5) Total earnings since the previous report;

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

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

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

56 4. A seller that sells or who has sold any insurance-funded preneed contracts shall also  
57 include in the annual report required by subsection 1 of this section:

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

60 (2) The status and total face value of each policy;

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

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

66 5. Each seller shall remit an annual reporting fee in an amount established by the board  
67 by rule for each preneed contract sold in the year since the date the seller filed its last annual  
68 report with the board. This reporting fee shall be paid annually and may be collected from the  
69 purchaser of the preneed contract as an additional charge or remitted to the board from the funds  
70 of the seller. The reporting fee shall be in addition to any other fees authorized under sections  
71 436.400 to 436.520.

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

75           7. If a seller fails to file the annual report on or before its due date, his or her preneed  
76 seller license shall automatically be suspended until such time as the annual report is filed and  
77 all applicable fees have been paid, **at which time the license shall be reinstated from the due**  
78 **date; provided that, all other requirements of the license have been met. Any preneed**  
79 **contracts entered into while a license was suspended under this section are void and shall**  
80 **either be rewritten after license reinstatement or all moneys paid by the purchaser**  
81 **refunded. A license suspended by this subsection shall not relieve the seller of the**  
82 **obligation to meet its contractual and statutory requirements toward providers,**  
83 **purchasers, or beneficiaries of any preneed contract entered into while the seller held a**  
84 **valid license. Nothing in this subsection relieves any provider from having a valid and**  
85 **current funeral establishment license at the time of providing the final disposition, funeral**  
86 **or burial services and facilities, and funeral merchandise as described in the preneed**  
87 **contract.**

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

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