

FIRST REGULAR SESSION

# SENATE BILL NO. 337

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR WIELAND.

Read 1st time February 4, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1376S.02I

## AN ACT

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

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

Section A. Sections 436.415 and 436.460, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 436.415 and 436.460, to read as follows: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 statutorily] **statutory** 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 to the contrary, the contractual obligations of a provider and seller towards 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 provider or seller license, provided that the preneed contract or provider-seller contractual agreement was entered into while the provider and seller held a valid license.**

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

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

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 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 available to the**  
74 **seller;**

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] **seller**. The affiant shall be subject to the penalty  
80 of 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. **The board by rule may set a lower reporting**  
88 **fee or require no reporting fee for preneed contracts where the sole**  
89 **consideration for the preneed contract is where the seller or provider**  
90 **has been made the beneficiary or the assignee of an insurance policy**  
91 **that was in force more than one year prior to the date of the preneed**  
92 **contract.**

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

97 7. If a seller fails to file the annual report on or before its due date, his  
98 or her preneed seller license shall automatically be suspended until such time as  
99 the annual report is filed and all applicable fees have been paid **at which time**  
100 **the license shall be reinstated from the due date provided that all other**  
101 **requirements of the license have been met. Any preneed contracts**  
102 **entered into while a license was suspended pursuant to this section are**  
103 **void and shall either be rewritten after license reinstatement or all**  
104 **moneys paid by the purchaser refunded. A license suspended by this**  
105 **subsection shall not relieve the seller of the obligation to meet its**  
106 **contractual and statutory requirements towards providers, purchasers,**  
107 **or beneficiaries of any preneed contract entered into while the seller**  
108 **held a valid license.**

109 8. This section shall apply to contracts entered into before August 28,  
110 2009.

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