

# SENATE BILL NO. 32

## 102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR O'LAUGHLIN.

0602S.01I

KRISTINA MARTIN, Secretary

### AN ACT

To repeal sections 333.315, 333.320, 333.330, 436.460, and 436.470, RSMo, and to enact in lieu thereof five new sections relating to preneed funeral contracts, with penalty provisions.

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

Section A. Sections 333.315, 333.320, 333.330, 436.460, and 436.470, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 333.315, 333.320, 333.330, 436.460, and 436.470, to read as follows:

333.315. 1. No person shall be designated as a provider or agree to perform the obligations of a provider under a preneed contract unless, at the time of such agreement or designation, such person is licensed as a preneed provider by the board. Nothing in this section shall exempt any person from meeting the licensure requirements for a funeral establishment as provided in this chapter.

2. An applicant for a preneed provider license shall:

(1) File an application on a form established by the board and pay an application fee in an amount established by the board by rule;

(2) Be authorized and registered with the Missouri secretary of state to conduct business in Missouri;

(3) Identify the name and address of a custodian of records responsible for maintaining the books and records of the provider relating to preneed contracts;

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

18           (4) Identify the name and address of each seller  
19 authorized by the provider to sell preneed contracts in  
20 which the provider is designated or obligated as the  
21 provider;

22           (5) File with the state board a written consent  
23 authorizing the state board **and the department of commerce**  
24 **and insurance** to inspect or order an investigation,  
25 examination, or audit of the provider's books and records  
26 which contain information concerning preneed contracts sold  
27 for or on behalf of a seller [or in which the applicant is  
28 named] **for which the applicant has been designated** as a  
29 provider; and

30           (6) If the applicant is a corporation, each officer,  
31 director, manager, or controlling shareholder shall be  
32 eligible for licensure if they were applying for licensure  
33 as an individual.

34           3. Each preneed provider shall apply to renew his or  
35 her license on or before October thirty-first of each year  
36 or a date established by the division of professional  
37 registration pursuant to section 324.001. A license which  
38 has not been renewed prior to the renewal date shall  
39 expire. Applicants for renewal shall:

40           (1) File an application for renewal on a form  
41 established by the board by rule;

42           (2) Pay a renewal fee in an amount established by the  
43 board by rule, however no renewal fee shall be required for  
44 any funeral establishment whose Missouri license is current  
45 and active;

46           (3) Be authorized and registered with the Missouri  
47 secretary of state to conduct business in Missouri;

48           (4) File an annual report with the state board which  
49 shall contain:

50 (a) The name and address of a custodian of records  
51 responsible for maintaining the books and records of the  
52 provider relating to preneed contracts;

53 (b) The business name or names used by the provider  
54 and all addresses from which it engages in the practice of  
55 its business;

56 (c) The name and address of each seller with whom it  
57 has entered into a written agreement since last filing an  
58 annual report with the board authorizing the seller to  
59 designate or obligate the licensee as the provider in a  
60 preneed contract; and

61 (d) Any information required by any other applicable  
62 statute or regulation enacted pursuant to state or federal  
63 law.

64 4. A license which has not been renewed as provided by  
65 this section shall expire. A licensee who fails to apply  
66 for renewal may apply for reinstatement within two years of  
67 the renewal date by satisfying the requirements of  
68 subsection 3 of this section and paying a delinquent fee as  
69 established by the board by rule.

333.320. 1. No person shall sell, perform, or agree  
2 to perform the seller's obligations under, or be designated  
3 as the seller of, any preneed contract unless, at the time  
4 of the sale, performance, agreement, or designation, such  
5 person is licensed by the board as a seller and authorized  
6 and registered with the Missouri secretary of state to  
7 conduct business in Missouri.

8 2. An applicant for a preneed seller license shall:

9 (1) File an application on a form established by the  
10 board and pay an application fee in an amount established by  
11 the board by rule;

12           (2) Be an individual resident of Missouri who is  
13 eighteen years of age or older, or a business entity  
14 registered with the Missouri secretary of state to transact  
15 business in Missouri;

16           (3) If the applicant is a corporation, each officer,  
17 director, manager, or controlling shareholder, shall be  
18 eligible for licensure if they were applying for licensure  
19 as an individual;

20           (4) Meet all requirements for licensure;

21           (5) Identify the name and address of a custodian of  
22 records responsible for maintaining the books and records of  
23 the seller relating to preneed contracts;

24           (6) Identify the name and address of each licensed  
25 provider that has authorized the seller to designate such  
26 person as a provider under a preneed contract;

27           (7) **[Have established, as grantor, a preneed trust or**  
28 **an agreement to utilize a preneed trust with terms**  
29 **consistent with sections 436.400 to 436.520.] Maintain**  
30 **documents showing that the applicant is the grantor of a**  
31 **preneed trust as contemplated in this chapter and chapter**  
32 **436, provided that** a trust shall not be required if the  
33 applicant certifies to the board that the seller will only  
34 sell insurance-funded or joint account-funded preneed  
35 contracts;

36           (8) Identify the name and address of a trustee or, if  
37 applicable, the financial institution where any preneed  
38 trust or joint accounts will be maintained; and

39           (9) File with the board a written consent authorizing  
40 the state board **and the department of commerce and insurance**  
41 to inspect or order an investigation, examination, or audit  
42 of the seller's books and records which contain information

43 concerning preneed contracts sold by or on behalf of the  
44 seller.

45 3. Each seller shall apply to renew his or her license  
46 on or before October thirty-first of each year or a date  
47 established by the division of professional registration  
48 pursuant to section 324.001. A license which has not been  
49 renewed prior to the renewal date shall expire. Applicants  
50 for renewal shall:

51 (1) File an application for renewal on a form  
52 established by the board by rule;

53 (2) Pay a renewal fee in an amount established by the  
54 board by rule; and

55 (3) File annually with the board a signed and  
56 notarized annual report as required by section 436.460.

57 4. Any license which has not been renewed as provided  
58 by this section shall expire. A licensee who fails to apply  
59 for renewal within two years of the renewal date may apply  
60 for reinstatement by satisfying the requirements of  
61 subsection 3 of this section and paying a delinquent fee as  
62 established by the board by rule.

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

9 2. The board may cause a complaint to be filed with  
10 the administrative hearing commission as provided by chapter  
11 621 against any holder of any certificate of registration or  
12 authority, permit, or license required by this chapter, or

13 any person who has failed to renew or has surrendered his or  
14 her certificate of registration or authority, permit, or  
15 license for any one or any combination of the following  
16 causes:

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

21 (2) The person has been finally adjudicated and found  
22 guilty, or entered a plea of guilty or nolo contendere, in a  
23 criminal prosecution under the laws of any state or of the  
24 United States, for any offense reasonably related to the  
25 qualifications, functions, or duties of any profession  
26 licensed or regulated under this chapter, for any offense  
27 involving a controlled substance, or for any offense an  
28 essential element of which is fraud, dishonesty, or an act  
29 of violence;

30 (3) Use of fraud, deception, misrepresentation, or  
31 bribery in securing any certificate of registration or  
32 authority, permit, or license issued under this chapter or  
33 in obtaining permission to take any examination given or  
34 required under this chapter;

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

38 (5) Incompetency, misconduct, gross negligence, fraud,  
39 misrepresentation, or dishonesty in the performance of the  
40 functions or duties of any profession licensed or regulated  
41 by this chapter;

42 (6) Violation of, or assisting or enabling any person  
43 to violate, any provision of this chapter, or of any lawful  
44 rule or regulation adopted pursuant thereto;

45           (7) Impersonation of any person holding a certificate  
46 of registration or authority, permit, or license or allowing  
47 any person to use his or her certificate of registration or  
48 authority, permit, license, or diploma from any school;

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

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

56           (10) Misappropriation or theft of preneed funds;

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

61           (12) Issuance of a certificate of registration or  
62 authority, permit, or license based upon a material mistake  
63 of fact;

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

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

68           (15) Making or filing any report required by sections  
69 436.400 to 436.520 regulating preneed which the licensee  
70 knows to be false or knowingly failing to make or file a  
71 report required by such sections;

72           (16) Use of any advertisement or solicitation which is  
73 false, misleading, or deceptive to the general public or  
74 persons to whom the advertisement or solicitation is  
75 primarily directed; or

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

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

80           (19) Violation of any of the provisions of chapter  
81 193, 194, 407, or 436;

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

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

88           (22) Failure to refuse to properly guard against  
89 contagious, infectious, or communicable diseases or the  
90 spread thereof;

91           (23) Refusing to surrender a dead human body upon  
92 request by the next of kin, legal representative, or other  
93 person entitled to the custody and control of the body.

94           3. After the filing of such complaint, the proceedings  
95 shall be conducted in accordance with the provisions of  
96 chapter 621. Upon a finding by the administrative hearing  
97 commission that the grounds, provided in subsection 2 of  
98 this section, for disciplinary action are met, the board  
99 may, singly or in combination, censure or place the person  
100 named in the complaint on probation on such terms and  
101 conditions as the board deems appropriate for a period not  
102 to exceed five years, or may suspend, for a period not to  
103 exceed three years, or revoke any certificate of  
104 registration or authority, permit, or license issued under  
105 this chapter. **When the grounds for discipline include the**  
106 **mishandling of consumer preneed funds of twenty-five**  
107 **thousand dollars or more, whether by the improper withdrawal**



108 of funds or income from a preneed trust or preneed joint  
109 accounts, making an improper claim for insurance proceeds,  
110 or the failure to deposit or submit consumer funds pursuant  
111 to the terms of the preneed contract, the board may also  
112 impose a fine, not to exceed ten thousand dollars. The  
113 board may also, as part of any settlement agreement or  
114 disciplinary order, require the person to pay missing  
115 consumer funds back into the preneed trust, preneed joint  
116 account, or insurance company.

117 4. In addition to all other powers and authority  
118 granted by the board, the board may seek an injunction,  
119 restraining order or other order from the circuit court of  
120 Cole County to enjoin any seller from engaging in preneed  
121 sales upon a showing by the board that the seller has failed  
122 to make deposits into the preneed trust, has obtained funds  
123 out of the trust to which the seller is not entitled or has  
124 exercised influence or control over the trustee or has  
125 engaged in any other act that has resulted in a shortage in  
126 any preneed trust or joint account which exceeds twenty  
127 percent of the total amount required to be held or deposited  
128 into the trust or joint account under the provisions of  
129 sections 436.400 to 436.520. In addition to the power to  
130 enjoin for this conduct, the circuit court of Cole County  
131 shall also be entitled to suspend or revoke the preneed  
132 seller's license and any other license issued pursuant to  
133 this chapter, held by the seller.

134 5. An individual whose certificate of registration or  
135 authority, permit, or license has been revoked shall wait  
136 three years from the date of revocation to apply for any  
137 certificate of registration or authority, permit, or license  
138 under this chapter, either as an individual or as a manager,  
139 director, shareholder, or partner of any business entity.

140 Any certificate of registration or authority, permit, or  
141 license shall be issued at the discretion of the board after  
142 compliance with all the requirements of this chapter  
143 relative to the licensing or registration of the applicant  
144 for the first time.

145 6. Use of the procedures set out in this section shall  
146 not preclude the application of the provisions of subsection  
147 2 of section 333.335.

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

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

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

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

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

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

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

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

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

26           (9) Written consent authorizing the board to order an  
27 investigation, examination and, if necessary, an audit of  
28 any joint or trust account established under sections  
29 436.400 to 436.520, designated by depository or account  
30 number;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

73           (5) Total earnings since the previous report;

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

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

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

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

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

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

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

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

100           5. **(1)** Each seller shall remit an annual reporting  
101 fee in an amount established by the board by rule for each  
102 preneed contract sold in the year since the date the seller  
103 filed its last annual report with the board. This reporting  
104 fee shall be paid annually and may be collected from the  
105 purchaser of the preneed contract as an additional charge or  
106 remitted to the board from the funds of the seller. The  
107 reporting fee shall be in addition to any other fees  
108 authorized under sections 436.400 to 436.520.

109           **(2) There is hereby created in the state treasury the**  
110 **"Preneed Audit Fund". All reporting fees collected under**  
111 **this section shall be deposited in the fund. The state**  
112 **treasurer shall be custodian of the fund. In accordance**  
113 **with sections 30.170 and 30.180, the state treasurer may**  
114 **approve disbursements. The fund shall be a dedicated fund**  
115 **and money in the fund shall be used solely by the board, or**  
116 **by the department of commerce and insurance designee**

117 conducting an audit, investigation, or financial examination  
118 under section 436.470, to pay for the expenses of conducting  
119 preneed audits, examinations, and inspections. When a  
120 disciplinary order or settlement includes a finding of  
121 mishandling of consumer preneed funds of twenty-five  
122 thousand dollars or more, the board or administrative  
123 hearing commission may, as part of any disciplinary process  
124 under chapter 333 or sections 436.400 to 436.520, require  
125 the person to pay any portion of the expenses of the audit,  
126 examination, or inspection. Such payments shall be  
127 deposited in the fund. Notwithstanding the provisions of  
128 section 33.080 to the contrary, any moneys remaining in the  
129 fund at the end of the biennium shall not revert to the  
130 credit of the general revenue fund until the amount in the  
131 fund at the end of the biennium exceeds three times the  
132 amount of the appropriation from the fund for the preceding  
133 fiscal year. The state treasurer shall invest moneys in the  
134 fund in the same manner as other funds are invested. Any  
135 interest and moneys earned on such investments shall be  
136 credited to the fund.

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

142 7. If a seller fails to file the annual report on or  
143 before its due date, his or her preneed seller license shall  
144 automatically be suspended until such time as the annual  
145 report is filed and all applicable fees have been paid.

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

436.470. 1. Any person may file a complaint with the board to notify the board of an alleged violation of this chapter. The board shall investigate each such complaint.

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

**3. The board's financial examination guidelines shall include processes and procedures for determining adequacy of funding of sellers' preneed obligations, compliance of sellers' handling of consumer funds with this chapter, and compliance of trustees' administration of preneed trusts with this chapter. The preneed seller shall provide the following items for each financial examination:**

(1) A listing of all preneed contracts sold during the requested period;

(2) A listing of all outstanding preneed contracts;

(3) A listing of all preneed contracts cancelled or transferred during the requested period;

(4) A report from each financial institution or insurance company utilized by the seller which shows as of the examination date each active consumer name, account number, start date, contract purchase price, amount

32 received, amount on deposit, and account fair market value  
33 or insurance death benefit;

34 (5) Copies of preneed contract forms currently being  
35 used;

36 (6) A copy of the trust agreements with the trustees;

37 (7) A copy of all agreements with providers or preneed  
38 agents;

39 (8) Trustee transaction statements for periods  
40 designated by the board's financial examiners or the  
41 department of commerce and insurance designee; and

42 (9) Any other report or document related to the  
43 administration of the seller's preneed trust that may be  
44 requested.

45 [3.] 4. Upon determining that an inspection,  
46 investigation, examination, or audit shall be conducted, the  
47 board shall issue a notice authorizing an employee or other  
48 person appointed by the board to perform such inspection,  
49 investigation, examination, or audit. The notice shall  
50 instruct the person appointed by the board as to the scope  
51 of the inspection, investigation, examination or audit.

52 5. The board shall forward to the department of  
53 commerce and insurance each seller's preliminary financial  
54 examination report where an exception notes either the  
55 seller or any agent has failed to deposit in the aggregate  
56 twenty-five thousand dollars or more in consumer funds to a  
57 preneed trust, insurance, or joint bank accounts, or where a  
58 preneed trustee has made distributions in the aggregate of  
59 twenty-five thousand dollars or more that may not be  
60 authorized by this chapter. The board shall provide to the  
61 department of commerce and insurance monthly updates of the  
62 progress made by the seller to address the examination  
63 exceptions and correct the preneed funding deficiencies. On



64 the board's request or in its own discretion, the department  
65 of commerce and insurance may designate one of its offices  
66 or agencies to assume authority over the seller's financial  
67 examination and begin a more extensive audit of the seller's  
68 compliance with chapter 436.

69 [4.] 6. Neither the board nor the department of  
70 commerce and insurance shall [not] appoint or authorize any  
71 person to conduct an inspection, investigation, examination,  
72 or audit under this section if the individual has a conflict  
73 of interest or is affiliated with the management of, or owns  
74 a pecuniary interest in, any person subject to inspection,  
75 investigation, examination, or audit under chapter 333 or  
76 sections 436.400 to 436.520.

77 [5.] 7. The board may request that the director of the  
78 division of professional registration, the director of the  
79 department of commerce and insurance, or the office of the  
80 attorney general designate one or more investigators or  
81 financial examiners to assist in any investigation,  
82 examination, or audit, and such assistance shall not be  
83 unreasonably withheld.

84 [6.] 8. The person conducting the inspection,  
85 investigation, or audit may enter the office, premises,  
86 establishment, or place of business of any seller or  
87 licensed provider of preneed contracts, or any office,  
88 premises, establishment, or place where the practice of  
89 selling or providing preneed funerals is conducted, or where  
90 such practice is advertised as being conducted for the  
91 purpose of conducting the inspection, investigation,  
92 examination, or audit.

93 [7.] 9. Upon request by the board or the department of  
94 commerce and insurance, a licensee or registrant shall make  
95 the books and records of the licensee or registrant

96 available [to the board] for inspection and copying at any  
97 reasonable time, including, any insurance, trust, joint  
98 account, or financial institution records deemed necessary  
99 by the board to determine compliance with sections 436.400  
100 to 436.520.

101 [8.] 10. The board **and the department of commerce and**  
102 **insurance** shall have the power to issue subpoenas to compel  
103 the production of records and papers by any licensee[,  
104 trustee] or registrant of the board[. Subpoenas issued  
105 under this section shall be served in the same manner as  
106 subpoenas in a criminal case], **and of any financial**  
107 **institution holding preneed funds in any preneed trust,**  
108 **preneed joint account, or any other account holding funds**  
109 **paid for a preneed contract.**

110 [9.] 11. All sellers, providers, preneed agents, and  
111 trustees shall cooperate with the board or its designee, the  
112 division of finance, the department of commerce and  
113 insurance, and the office of the attorney general in any  
114 inspection, investigation, examination, or audit brought  
115 under this section.

116 [10.] 12. This section shall not be construed to limit  
117 the board's authority to file a complaint with the  
118 administrative hearing commission charging a licensee or  
119 registrant with any actionable conduct or violation,  
120 regardless of whether such complaint exceeds the scope of  
121 acts charged in a preliminary public complaint filed with  
122 the board and whether any public complaint has been filed  
123 with the board.

124 [11.] 13. The board, the division of finance, the  
125 department of commerce and insurance, and the office of the  
126 attorney general may share information relating to any  
127 preneed inspection, investigation, examination, or audit.

128 [12.] 14. If an inspection, investigation,  
129 examination, or audit reveals a **potential** violation of  
130 sections 436.400 to 436.520, the office of the attorney  
131 general may initiate a judicial proceeding to:

- 132 (1) Declare rights;
- 133 (2) Approve a nonjudicial settlement;
- 134 (3) Interpret or construe the terms of the trust;
- 135 (4) Determine the validity of a trust or of any of its  
136 terms;
- 137 (5) Compel a trustee to report or account;
- 138 (6) Enjoin a seller, provider, or preneed agent from  
139 performing a particular act;
- 140 (7) Enjoin a trustee from performing a particular act  
141 or grant to a trustee any necessary or desirable power;
- 142 (8) Review the actions of a trustee, including the  
143 exercise of a discretionary power;
- 144 (9) Appoint or remove a trustee;
- 145 (10) Determine trustee liability and grant any  
146 available remedy for a breach of trust;
- 147 (11) Approve employment and compensation of preneed  
148 agents;
- 149 (12) Determine the propriety of investments;
- 150 (13) Determine the timing and quantity of  
151 distributions and dispositions of assets; or
- 152 (14) Utilize any other power or authority vested in  
153 the attorney general by law.

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