

523A.404 Merchandise delivered to the purchaser or warehoused.

1. Trust requirements do not apply to payments made pursuant to a purchase agreement executed prior to July 1, 2007, for outer burial containers made of either polystyrene or polypropylene or cemetery merchandise delivered to the purchaser or stored in an independent third-party storage facility not owned or controlled by the seller when approved by the commissioner. The seller or the storage facility must demonstrate that they will do all of the following:

- a. Issue a receipt of ownership in the name of the purchaser and deliver it to the purchaser.
- b. Insure the merchandise against loss.
- c. Protect the merchandise against damage.
- d. Transfer title to the purchaser.
- e. Appropriately identify and describe the merchandise in a manner that it can be distinguished from other similar items.
- f. Use a method of storage that allows for visual examinations of the merchandise.
- g. Have adequate, computerized recordkeeping systems in place to identify, describe, and count each item in storage, including the ownership of each item, and provide an aggregate listing with numerical totals.
- h. File a consent to be examined and inspected by the commissioner.
- i. Provide reports to the commissioner, annually, by an independent certified public accountant, which shall include a physical count of merchandise held in storage and a review of information, including the seller's revenue and sales records, as necessary to verify the adequacy of the number of items held at the storage facility.
- j. Satisfy the annual reporting requirements of section 523A.204.

2. Lawn crypts may be delivered in lieu of trusting. For this purpose, delivery means installation in a grave owned by the purchaser. The seller shall do all of the following:

- a. Notify the administrator before the lawn crypts are installed.
- b. Identify the intended location of the lawn crypts within the cemetery.
- c. Provide documentation adequately demonstrating delivery has occurred. Adequate documentation includes but is not limited to photographs and third-party certifications.

3. Cemetery merchandise and funeral merchandise shall not be deemed delivered to the purchaser or warehoused if the merchandise is subject to a lien or security interest by any party other than the seller.

4. A seller is prohibited from requiring delivery as a condition of the sale.

5. A seller shall provide services necessary for the installation or burial of outer burial containers sold by the seller. This subsection shall not require the seller to provide for the opening or closing of the interment or entombment space, unless the purchase agreement provides otherwise.

2001 Acts, ch 118, §31; 2007 Acts, ch 175, §14, 15, 62