

523A.402 Purchase agreements funded by annuity proceeds.

1. A purchase agreement may be funded by proceeds derived from a new or existing annuity issued by an insurance company authorized to do business and doing business within this state.

2. Such funding may be in lieu of the trust requirements of this chapter when the purchaser assigns the proceeds of an existing annuity.

3. Such funding may be in lieu of the trust requirements of this chapter when a new annuity is purchased to fund the purchase agreement, with a face amount equal to or greater than the current retail price of the cemetery merchandise, funeral merchandise, and funeral services to be delivered under the purchase agreement or, if less, a face amount equal to the total of all payments to be submitted by the purchaser pursuant to the purchase agreement.

4. The premiums of any new annuity shall be fully paid within thirty days after execution of the purchase agreement or, with respect to a purchase agreement that provides for periodic payments, the premiums shall be paid directly by the purchaser to the insurance company issuing the annuity.

5. The annuity shall satisfy the following conditions:

a. Except as necessary and appropriate to satisfy the requirements regarding burial trust funds under Tit. XIX of the federal Social Security Act, the annuity shall not be owned by the seller or irrevocably assigned to the seller and any designation of the seller as a beneficiary shall not be made irrevocable.

b. The annuity shall provide that any assignment of benefits is contingent upon the seller's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

c. The annuity shall have an increasing death benefit or similar feature that provides some means for increasing the funding as the cost of cemetery merchandise, funeral merchandise, and funeral services increases.

6. With the written consent of the purchaser, an existing prepaid purchase agreement with trust-funded benefits may be converted to a prepaid purchase agreement with annuity-funded benefits provided the seller and the annuity benefits comply with the following provisions:

a. The transfer of the trust funds to the insurance company must be at least equal to the full sum required to be deposited as trust principal under the trust-funded prepaid purchase agreement plus all net earnings accumulated with respect thereto, as of the transfer date. Commissions, allowances, surrender charges or other forms of compensation or expense loads, premium expense, administrative charges or expenses, or fees shall not be deducted from the trust funds transferred pursuant to the conversion.

b. The face amount of any annuity issued on an individual must be no less than the amount of principal and interest transferred for that individual to the insurance company, and any supplemental annuity issued to cover the unfunded portion of the purchase agreement must have a face amount that is at least as great as the unfunded principal balance. The face amount of the annuity purchased shall not, under any circumstances, be less than the total of all payments made by the purchaser pursuant to the agreement plus all net earnings accumulated with respect thereto, as of the transfer date.

c. The annuity shall not be contestable, or limit death benefits in the case of suicide, with respect to that portion of the face amount of the annuity which is required by paragraph "b". The annuity shall not refer to physical examination, or otherwise operate as an exclusion, limitation, or condition other than requiring submission of proof of death or surrender of the annuity at the time the prepaid purchase agreement is funded, matures, or is canceled, as the case may be.

d. The seller shall maintain a copy of any prepaid trust-funded purchase agreement that was converted to a prepaid annuity-funded purchase agreement and retain the payment history records for each converted purchase agreement prior to conversion until the cemetery merchandise, funeral merchandise, and funeral services have been delivered.

7. The seller of a purchase agreement subject to this chapter which is to be funded by annuity proceeds shall obtain all licenses required to be obtained and comply with all reporting requirements under this chapter. A parent company, provider, or seller shall not pledge, borrow from, or otherwise encumber an annuity funding a purchase agreement.

8. An insurance company issuing annuities funding purchase agreements subject to this chapter shall file an annual report with the commissioner on a form prescribed by the commissioner. The report shall list the applicable annuities outstanding for each seller. Computer printouts may be submitted so long as each legibly provides the same information required in the prescribed form.

9. The commissioner, by rule, may require written trust agreements and establish conditions for trusts holding annuities or maintaining ownership rights under annuities. The seller or any officer, director, agent, employee, or affiliate of the seller shall not serve as a trustee. The commissioner may require amendments to a trust agreement that is not in accord with the provisions of this chapter or rules adopted under this chapter.

2001 Acts, ch 118, §29; 2002 Acts, ch 1119, §81; 2004 Acts, ch 1110, §65; 2005 Acts, ch 19, §107; 2005 Acts, ch 70, §50; 2007 Acts, ch 175, §58 – 61; 2008 Acts, ch 1123, §45; 2010 Acts, ch 1061, §180; 2010 Acts, ch 1121, §25