

523A.401 Purchase agreements funded by insurance proceeds.

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

2. Such funding may be in lieu of the trusting requirements of [this chapter](#) when the purchaser assigns the proceeds of an existing insurance policy.

3. Such funding may be in lieu of the trusting requirements of [this chapter](#) when a new insurance policy 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. If a preneed funeral purchase agreement contains a provision stating that the agreement will be funded by the purchase of a new insurance policy, the insurance producer who sells the insurance policy that will fund the purchase agreement shall require that any payment made by the purchaser shall be made payable only to the insurance company designated in the purchase agreement. The insurance producer shall remit the insurance policy application and the premium made payable to the insurance company designated in the purchase agreement to the insurance company within thirty calendar 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 that issues the insurance policy.

5. Any new insurance policy 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 policy shall not be owned by the seller, the policy shall not be irrevocably assigned to the seller, and the assignment of proceeds from the insurance policy to the seller shall be limited to the seller's interests as they appear in the purchase agreement, and conditioned on the seller's delivery of cemetery merchandise, funeral merchandise, and funeral services pursuant to a purchase agreement.

b. The policy 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 policy 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 insurance-funded benefits provided the seller and the insurance 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 policy fees shall not be deducted from the trust funds transferred pursuant to the conversion.

b. The face amount of any insurance policy 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 insurance policy 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 insurance 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 insurance policy shall not be contestable, or limit death benefits in the case of suicide, with respect to that portion of the face amount of the policy that is required by paragraph "b". The policy 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 policy 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 insurance-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 insurance 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 insurance policy funding a purchase agreement.

8. An insurance company issuing policies 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 insurance policies outstanding for each seller.

9. The commissioner, by rule, may require written trust agreements and establish conditions for trusts holding insurance policies or maintaining ownership rights under insurance policies. 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](#).

10. All records maintained by the commissioner under [this section](#) shall be confidential pursuant to [section 22.7, subsection 58](#), and shall not be made available for inspection or copying except upon approval of the commissioner or the attorney general, or except when sought by the insurance company to whom the records relate. Such records shall be privileged and confidential in any judicial or administrative proceeding except any of the following:

- a. An action commenced by the commissioner.
- b. An administrative proceeding brought by the insurance division.
- c. An action or proceeding which arises out of the criminal provisions of the laws of this state or of the United States.
- d. An action brought by the insurance division or the attorney general to recover moneys for embezzlement, misappropriation, or misuse of trust funds.

2001 Acts, ch 118, §28; 2001 Acts, ch 176, §73; 2004 Acts, ch 1110, §64; 2007 Acts, ch 175, §54 – 57; 2008 Acts, ch 1123, §44; 2010 Acts, ch 1061, §180; 2010 Acts, ch 1121, §24; 2015 Acts, ch 128, §33, 34, 50, 51; 2022 Acts, ch 1047, §2

Referred to in §22.7(58), 523A.201, 523A.605, 523A.807