

Article - Insurance

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§16–113.

(a) Subject to the approval of the Commissioner, an insurer authorized to deliver or issue for delivery an annuity contract in the State may deliver or issue for delivery funding agreements.

(b) A funding agreement may be issued to:

(1) a person, or a subsidiary of the person, that is authorized by a state or foreign country to engage in the insurance business; or

(2) a person, other than a person or a subsidiary of the person that is authorized to engage in the insurance business, to fund:

(i) benefits directly or indirectly under an employee benefit plan, as defined in the federal Employee Retirement Income Security Act of 1974, that is maintained in the United States, or under a similar plan maintained in a foreign country;

(ii) the activities of an organization exempt from taxation under § 501(c) of the Internal Revenue Code, or of a similar organization in a foreign country;

(iii) a program, or plan as defined in § 457 of the Internal Revenue Code, of the federal government, a state or political subdivision of a state, or a foreign country or political subdivision of a foreign country;

(iv) an agreement that provides for periodic payments in satisfaction of a claim; or

(v) a program of an institution that has assets in excess of \$25,000,000.

(c) (1) An amount may not be guaranteed or credited under a funding agreement except on a reasonable assumption as to investment income and expenses and on a basis equitable to all holders of funding agreements of a given class.

(2) A funding agreement may not provide for payment to or by the insurer based on a mortality or morbidity contingency.

(d) (1) Under a funding agreement, an insurer may allocate amounts paid to the insurer and proceeds applied under optional modes of settlement to the insurer's general account or to one or more separate accounts.

(2) Amounts allocated to the insurer's general account and any resulting accumulations shall be invested and reinvested in accordance with the provisions of

this article governing investment of the reserves of life insurers.

(3) Amounts allocated to a separate account and any resulting accumulations may be invested and reinvested subject only to §§ 5–506, 5–507, and 5–512(b), (e), (f), (g), (h), and (i) of this article and regulations adopted under subsection (e) of this section.

- (e) (1) The Commissioner may adopt regulations governing:
- (i) the standards for approval of forms of funding agreements;
 - (ii) the reserves to be maintained by insurers that issue funding agreements;
 - (iii) the accounting and reporting of funds credited under funding agreements;
 - (iv) the disclosure of information to holders and prospective holders of funding agreements; and
 - (v) the qualification and compensation of persons that sell funding agreements on behalf of insurers.

(2) With respect to separate accounts and any resulting accumulations, the Commissioner shall adopt regulations governing the type and amount of investments that may be made under a funding agreement.

(3) Notwithstanding any other provision of law, the Commissioner has sole authority to regulate:

- (i) the issuance and sale of funding agreements; and
 - (ii) the persons that sell funding agreements on behalf of insurers.
- (f) (1) The issuance or delivery of a funding agreement is not the business of life insurance, annuities, health insurance, property insurance, casualty insurance, surety insurance, marine insurance, wet marine and transportation insurance, title insurance, or reinsurance, but is an insurance business.

(2) Solely for the purpose of application of the Tax - General Article, the funding agreements authorized by this section are deemed to be annuity contracts.

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