



## Ohio Revised Code

### Section 3901.34 Transactions to which insurer is a party; dividends and distributions to shareholders.

Effective: July 21, 2022

Legislation: Senate Bill 256 - 134th General Assembly

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(A) Transactions within an insurance holding company system to which an insurer subject to registration is a party shall be subject to the following standards:

(1) The terms shall be fair and reasonable.

(2) Charges or fees for services performed shall be reasonable.

(3) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices that are consistently applied.

(4) The books, accounts, and records of each party shall be so maintained as to clearly and accurately disclose the precise nature and details of the transactions including such accounting information as is necessary to support the reasonableness of the charges or fees to the respective parties.

(5) The insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(6) Agreements for cost-sharing services and management services shall include such provisions as required by the superintendent of insurance in rule or regulation;

(7) If an insurer subject to sections 3901.32 to 3901.37 of the Revised Code is deemed by the superintendent to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation, or a delinquency proceeding, then the superintendent may require the insurer to secure and maintain either a deposit, held by the superintendent, or a bond, as determined by the insurer at the insurer's discretion, for the protection of the insurer for the duration of the contract or agreement, or the existence of the condition for which the superintendent required the



deposit or the bond.

(8) In determining whether a deposit or a bond is required, the superintendent may consider whether concerns exist with respect to the affiliated person's ability to fulfill the contract or agreement if the insurer were to be put into liquidation. Once the insurer is deemed to be in a hazardous financial condition or a condition that would be grounds for supervision, conservation or a delinquency proceeding, and a deposit or bond is necessary, the superintendent has discretion to determine the amount of the deposit or bond, not to exceed the value of the contract or agreement in any one year, and whether such deposit or bond shall be required for a single contract, multiple contracts, or a contract only with a specific person or persons;

(9)(a) All records and data of the insurer held by an affiliate are and remain the property of the insurer, are subject to control of the insurer, are identifiable, and are segregated or readily capable of segregation, at no additional cost to the insurer, from all other persons' records and data. This includes all records and data that are otherwise the property of the insurer, in whatever form maintained, including:

(i) Claims and claim files;

(ii) Policyholder lists;

(iii) Application files;

(iv) Litigation files;

(v) Premium records;

(vi) Rate books;

(vii) Underwriting manuals;

(viii) Personnel records;



- (ix) Financial records or similar records within the possession, custody, or control of the affiliate.
  
- (b) At the request of the insurer, the affiliate shall provide that the receiver can:
  - (i) Obtain a complete set of all records of any type that pertain to the insurer's business;
  
  - (ii) Obtain access to the operating systems on which the data is maintained;
  
  - (iii) Obtain the software that runs those systems either through assumption of licensing agreements or otherwise;
  
  - (iv) Restrict the use of the data by the affiliate if it is not operating the insurer's business.
  
- (c) The affiliate shall provide a waiver of any landlord lien or other encumbrance to give the insurer access to all records and data in the event of the affiliate's default under a lease or other agreement.
  
- (10) Premiums or other funds belonging to the insurer that are collected by or held by an affiliate are the exclusive property of the insurer and are subject to the control of the insurer. Any right of offset in the event an insurer is placed into receivership is subject to Chapter 3903. of the Revised Code.
  
- (B) For the purposes of this section, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, may be considered:
  - (1) The size of the insurer as measured by its assets, capital, surplus, reserves, premium writings, insurance in force, and other appropriate criteria;
  
  - (2) The extent to which the insurer's business is diversified among the several lines of insurance;
  
  - (3) The number and size of risks insured in each line of business;
  
  - (4) The extent of the geographical dispersion of the insurer's insured risks;



- (5) The nature and extent of the insurer's reinsurance program;
  - (6) The quality, diversification, and liquidity of the insurer's investment portfolio;
  - (7) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;
  - (8) The adequacy of the insurer's reserves;
  - (9) The quality and liquidity of investments in subsidiaries. The superintendent may discount any such investment or treat any investment as a nonadmitted asset for purposes of determining the adequacy of surplus as regards policyholders whenever the investment so warrants.
  - (10) The quality of the insurer's earnings and the extent to which the reported earnings include extraordinary items;
  - (11) The surplus as regards policyholders maintained by other comparable insurers in respect of the factors enumerated in this division.
- (C) No insurer subject to registration under section 3901.33 of the Revised Code shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders and the declaration of any such dividend or distribution shall be conditional and shall confer no rights upon shareholders until thirty days after the superintendent has received notice of the declaration thereof and has not within the thirty-day period disapproved the dividend or distribution, or the superintendent has approved the dividend or distribution within the thirty-day period.

Prior to paying any dividend or distribution, the insurer shall notify the superintendent on a form provided by the superintendent for informational purposes within five business days following its declaration of any dividend or distribution and at least ten calendar days prior to payment of such dividend or distribution, such ten-calendar-day period to be measured from the date of the superintendent's receipt of the notice.

For the purposes of this section, an extraordinary dividend or distribution includes any dividend or



distribution of cash or other property, whose fair market value, together with that of other dividends or distributions made within the preceding twelve months, exceeds the greater of ten per cent of the insurer's surplus as regards policyholders as of the thirty-first day of December next preceding, or the net income of the insurer for the twelve-month period ending the thirty-first day of December next preceding, but shall not include pro rata distributions of any class of the insurer's own securities.

Any dividend or distribution paid from other than earned surplus shall be considered an extraordinary dividend or extraordinary distribution. For the purposes of this section, "earned surplus" means an amount equal to an insurer's unassigned funds as set forth in its most recent statutory financial statement submitted to the superintendent, including net unrealized capital gains and losses or revaluation of assets.