

RCW 48.31B.030 Insurer subject to registration—Standards for transactions within a holding company system—Extraordinary dividends or distributions—Insurer's surplus—Officers and directors. (1) (a)

Transactions within an insurance holding company system to which an insurer subject to registration is a party are subject to the following standards:

(i) The terms must be fair and reasonable;

(ii) Agreements for cost-sharing services and management must include such provisions as required by rule issued by the commissioner;

(iii) Charges or fees for services performed must be fair and reasonable;

(iv) Expenses incurred and payment received must be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(v) The books, accounts, and records of each party to all such transactions must be so maintained as to clearly and accurately disclose the 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; and

(vi) The insurer's surplus regarding policyholders following any dividends or distributions to shareholders or affiliates must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(b) The following transactions involving a domestic insurer and a person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed pursuant to this section, which are subject to the materiality standards contained in this subsection (1)(b), may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into the transaction at least thirty days before, or such shorter period as the commissioner may permit, and the commissioner has not disapproved it within that period. The notice for amendments or modifications must include the reasons for the change and the financial impact on the domestic insurer. Informal notice must be reported, within thirty days after a termination of a previously filed agreement, to the commissioner for determination of the type of filing required, if any:

(i) Sales, purchases, exchanges, loans or extensions of credit, guarantees, or investments if the transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders;

(B) With respect to life insurers, three percent of the insurer's admitted assets; each as of December 31st next preceding;

(ii) Loans or extensions of credit to any person who is not an affiliate, where the insurer makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in, an affiliate of the insurer making the loans or extensions of credit if the transactions are equal to or exceed:

(A) With respect to nonlife insurers, the lesser of three percent of the insurer's admitted assets or twenty-five percent of surplus as regards policyholders;

(B) With respect to life insurers, three percent of the insurer's admitted assets; each as of December 31st next preceding;

(iii) Reinsurance agreements or modifications thereto, including:

(A) All reinsurance pooling agreements;

(B) Agreements in which the reinsurance premium or a change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the next three years, equals or exceeds five percent of the insurer's surplus as regards policyholders, as of December 31st next preceding, including those agreements that may require as consideration the transfer of assets from an insurer to a nonaffiliate, if an agreement or understanding exists between the insurer and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the insurer;

(iv) All management agreements, service contracts, tax allocation agreements, guarantees, and all cost-sharing arrangements;

(v) Guarantees when made by a domestic insurer. However, a guarantee which is quantifiable as to amount is not subject to the notice requirements of this subsection (1)(b)(v) unless it exceeds the lesser of one-half of one percent of the insurer's admitted assets or ten percent of surplus as regards policyholders as of December 31st next preceding. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this subsection (1)(b)(v);

(vi) Direct or indirect acquisitions or investments in a person that controls the insurer or in an affiliate of the insurer in an amount which, together with its present holdings in such investments, exceeds two and one-half percent of the insurer's surplus to policyholders. Direct or indirect acquisitions or investments in subsidiaries acquired according to RCW 48.31B.010 or authorized according to chapter 48.13 RCW, or in nonsubsidiary insurance affiliates that are subject to this chapter, are exempt from this requirement; and

(vii) Any material transactions, specified by rule, which the commissioner determines may adversely affect the interests of the insurer's policyholders.

This subsection does not authorize or permit any transaction which, in the case of an insurer not a member of the same insurance holding company system, would be otherwise contrary to law.

(c) A domestic insurer may not enter into transactions which are part of a plan or series of like transactions with persons within the insurance holding company system if the purpose of those separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise. If the commissioner determines that the separate transactions were entered into over any twelve-month period for that purpose, the commissioner may exercise his or her authority under RCW 48.31B.045.

(d) The commissioner, in reviewing transactions under (b) of this subsection, must consider whether the transactions comply with the standards set forth in (a) of this subsection and whether they may adversely affect the interests of policyholders.

(e) The commissioner must be notified within thirty days of an investment of the domestic insurer in any one corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent of the corporation's voting securities.

(2)(a) A domestic insurer shall not pay an extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty days after the commissioner declares that he or she has

received notice of the declaration thereof and has not within that period disapproved the payment, or until the commissioner has approved the payment within the thirty-day period.

(b) For purposes of this section, an extraordinary dividend or distribution is 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 lesser of:

(i) Ten percent of the insurer's surplus as regards policyholders or net worth as of December next preceding; or

(ii) The net gain from operations of the insurer, if the insurer is a life insurance company, or the net income if the company is not a life insurance company, not including realized capital gains for the twelve-month period ending December next preceding, but does not include pro rata distributions of any class of the insurer's own securities.

(c) In determining whether a dividend or distribution is extraordinary, an insurer other than a life insurer may carry forward net income from the previous two calendar years that has not already been paid out as dividends. This carry forward provision must be computed by taking the net income from the second and third preceding calendar years, not including realized capital gains, less dividends paid in the second and immediate preceding calendar years.

(d) Notwithstanding any other provision of law, an insurer may declare an extraordinary dividend or distribution that is conditional upon the commissioner's approval. The declaration confers no rights upon shareholders until: (i) The commissioner has approved the payment of the dividend or distribution; or (ii) the commissioner has not disapproved the payment within the thirty-day period referred to in (a) of this subsection.

(3) For purposes of this chapter, 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, must be considered:

(a) The size of the insurer as measured by its assets, capital and surplus, reserves, premium writings, insurance in force, and other appropriate criteria;

(b) The extent to which the insurer's business is diversified among several lines of insurance;

(c) The number and size of risks insured in each line of business;

(d) The extent of the geographical dispersion of the insurer's insured risks;

(e) The nature and extent of the insurer's reinsurance program;

(f) The quality, diversification, and liquidity of the insurer's investment portfolio;

(g) The recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(h) The surplus as regards policyholders maintained by other comparable insurers;

(i) The adequacy of the insurer's reserves; and

(j) The quality and liquidity of investments in affiliates. The commissioner may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in the judgment of the commissioner the investment so warrants.

(4) (a) Notwithstanding the control of a domestic insurer by any person, the officers and directors of the insurer are not thereby relieved of any obligation or liability to which they would otherwise be subject by law, and the insurer must be managed so as to assure its separate operating identity consistent with this title.

(b) This section does not preclude a domestic insurer from having or sharing a common management or cooperative or joint use of personnel, property, or services with one or more other persons under arrangements meeting the standards of subsection (1) (a) of this section.

(c) At least one-third of a domestic insurer's directors and at least one-third of the members of each committee of the insurer's board of directors must be persons who are not: (i) Officers or employees of the insurer or of any entity that controls, is controlled by, or is under common control with the insurer; or (ii) beneficial owners of a controlling interest in the voting securities of the insurer or of any such entity. A quorum for transacting business at a meeting of the insurer's board of directors or any committee of the board of directors must include at least one such person.

(d) The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors who are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and who are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees have responsibility for nominating candidates for director for election by shareholders or policyholders, evaluating the performance of officers deemed to be principal officers of the insurer, and recommending to the board of directors the selection and compensation of the principal officers.

(e) The provisions of (c) and (d) of this subsection do not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual holding company, or publicly held corporation, has a board of directors and committees thereof that meet the requirements of (c) and (d) of this subsection with respect to such controlling entity.

(f) An insurer may make application to the commissioner for a waiver from the requirements of this subsection, if the insurer's annual direct written and assumed premium, excluding premiums reinsured with the federal crop insurance corporation and federal flood program, is less than three hundred million dollars. An insurer may also make application to the commissioner for a waiver from the requirements of this subsection based upon unique circumstances. The commissioner may consider various factors including, but not limited to, the type of business entity, volume of business written, availability of qualified board members, or the ownership or organizational structure of the entity. [2015 c 122 § 6; 1993 c 462 § 7.]

Effective dates—2015 c 122: See note following RCW 48.31B.005.