

521A.5 Standards.

1. *Transactions within a holding company system affecting domestic insurers.*

a. Material transactions by registered insurers with their affiliates are subject to the following standards:

- (1) The terms shall be fair and reasonable.
- (2) Agreements for cost-sharing services and management shall include such provisions as required by rule issued by the commissioner.
- (3) Charges or fees for services performed shall be reasonable.
- (4) Expenses incurred and payment received shall be allocated to the insurer in conformity with customary and consistently applied insurance accounting practices.
- (5) 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.
- (6) After any material transaction with an affiliate and after any dividends or distributions to shareholder affiliates, the insurer's surplus as regards policyholders shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

b. A domestic insurer and a person in its holding company system shall not enter into any of the following transactions between each other involving amounts equal to or exceeding the lesser of three percent of a nonlife insurer's admitted assets or twenty-five percent of the surplus as regards policyholders with respect to nonlife insurers, and equal to or exceeding three percent of the insurer's admitted assets with respect to life insurers, each as of the next preceding December 31, unless the domestic insurer notifies the commissioner in writing of its intention to enter into the transaction at least thirty days prior to entering into the transaction or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the transaction within the time period:

- (1) Sales.
- (2) Purchases.
- (3) Exchanges.
- (4) Loans or extensions of credit.
- (5) Investments.
- (6) Loans or extensions of credit to a person who is not an affiliate, if the domestic 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 domestic insurer making the loans or extensions of credit.

c. A domestic insurer and a person in its holding company system shall not enter into any of the following transactions, unless the domestic insurer notifies the commissioner in writing of its intention to enter into the transaction at least thirty days prior to entering into the transaction or within a shorter time permitted by the commissioner and the commissioner has not disapproved of the transaction within the time period:

- (1) All reinsurance pooling agreements.
- (2) All reinsurance agreements or modifications to such 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 the next preceding December 31, including those agreements which 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 such assets will be transferred to one or more affiliates of the insurer.
- (3) All management agreements, service contracts, tax allocation agreements, guarantees, and all other cost-sharing arrangements. A guarantee which is quantifiable as to amount is not subject to the notice requirements of this paragraph "c" 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 the next preceding December 31. Further, all guarantees which are not quantifiable as to amount are subject to the notice requirements of this paragraph "c".
- (4) 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 pursuant to [section 521A.2](#) or authorized under any other section of [this chapter](#), or in nonsubsidiary insurance affiliates that are subject to the provisions of [this chapter](#), are exempt from this subparagraph.

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

d. [This subsection](#) does not authorize or permit any transactions which in the case of an insurer would be otherwise contrary to law.

e. A domestic insurer shall not enter into transactions which are part of a plan or series of like transactions with a person or persons within the 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 such separate transactions were entered into over a twelve-month period for that purpose, the commissioner may exercise the authority under [section 521A.10](#).

f. The commissioner, in reviewing transactions pursuant to paragraphs "b" and "c", shall consider whether the transactions comply with the standards set forth in paragraph "a".

g. A domestic insurer shall notify the commissioner within thirty days of an investment of the insurer in a corporation if the total investment in the corporation by the insurance holding company system exceeds ten percent of the corporation's voting securities.

2. *Adequacy of surplus.* 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, shall 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 the 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.

j. The quality and liquidity of investments in subsidiaries made pursuant to [section 521A.2](#). 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 commissioner's judgment such investment so warrants.

k. The quality of the company's earnings and the extent to which the reported earnings include extraordinary items.

3. *Dividends and other distributions.*

a. (1) A domestic insurer may declare and pay dividends to its shareholders only from earned surplus.

(2) For the purposes of this paragraph, "earned surplus" means surplus as regards policyholders less paid-in and contributed surplus, and may include a fair revaluation of assets by the board of directors that is reasonable under the circumstances. Assets revalued by the board of directors cannot be included in earned surplus until thirty days after the commissioner has received notice of the revaluation and has approved the revaluation. The commissioner shall approve or disapprove the revaluation within thirty days after receiving notice of the revaluation unless for good cause the commissioner extends the approval period for an additional thirty days.

b. (1) A domestic insurer shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until thirty days after the commissioner has received notice of the declaration of the dividend or distribution and has not disapproved such

payment within the period, or until the time the commissioner has approved the payment within the thirty-day period.

(2) For purposes of this paragraph, 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 the following:

(a) Ten percent of insurer’s surplus as regards policyholders as of the thirty-first day of December next preceding.

(b) The net gain from operations of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, for the twelve-month period ending the thirty-first day of December next preceding.

(3) An extraordinary dividend or distribution does not include pro rata distributions of any class of the insurer’s own securities.

c. A domestic insurer subject to registration under [section 521A.4](#) shall report to the commissioner all dividends to shareholders within five business days following the declaration of the dividends and not less than fourteen days prior to the payment of the dividends. This report shall also include a schedule setting forth all dividends or other distributions made within the previous twelve months.

d. Notwithstanding any other provision of law, a domestic insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner’s approval of the dividend or distribution. Such declaration does not confer any rights upon shareholders until the commissioner has approved the payment of the dividend or distribution or the commissioner has not disapproved the payment within the thirty-day period as provided in paragraph “b”.

4. *Management of domestic insurers subject to registration.*

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

b. Nothing in [this section](#) shall 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 [this section](#).

c. Not less than one-third of the directors of a domestic insurer, and not less than one-third of the members of each committee of the board of directors of any domestic insurer, shall be persons 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 entity. At least one such person must be included in any quorum for the transaction of business at any meeting of the board of directors or any committee of the board of directors.

d. The board of directors of a domestic insurer shall establish one or more committees comprised solely of directors or other persons appointed by the board, the majority of whom are not officers or employees of the insurer or of any entity controlling, controlled by, or under common control with the insurer and are not beneficial owners of a controlling interest in the voting stock of the insurer or any such entity. The committee or committees shall have responsibility for recommending or 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 paragraphs “c” and “d” shall not apply to a domestic insurer if the person controlling the insurer, such as an insurer, a mutual insurance holding company, or a publicly held corporation, has a board of directors and committees of the board of directors that meet the requirements of paragraphs “c” and “d” 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.

[C71, 73, 75, 77, 79, 81, §521A.5]

[86 Acts, ch 1102, §19, 20; 91 Acts, ch 26, §54; 92 Acts, ch 1117, §40, 43; 93 Acts, ch 88, §27 – 30; 94 Acts, ch 1006, §1; 94 Acts, ch 1023, §125; 2012 Acts, ch 1023, §157; 2014 Acts, ch 1018, §14 – 17; 2015 Acts, ch 128, §25, 50, 51; 2016 Acts, ch 1073, §157](#)

Referred to in [§508.33A](#), [521A.4](#), [521A.7](#), [521A.10](#)