



Ohio Revised Code

Section 3901.64 Terms of reinsurance or security agreement.

Effective: September 4, 2014

Legislation: Senate Bill 140 - 130th General Assembly

(A) A domestic ceding insurer may take credit for any reinsurance ceded as provided in sections 3901.61 to 3901.63 of the Revised Code only if the reinsurance agreement contained in the reinsurance contract, and any agreement that provides security for the payment of the obligations under the reinsurance agreement, including any trust agreement, provide, in substance, for the following:

(1) In the event of the insolvency of the ceding insurer, the reinsurance, whether paid directly or from trust assets securing the reinsurance agreement, shall be payable by the assuming insurer on the basis of the liability of the ceding insurer under the policy or contract reinsured, without any diminution because the ceding insurer is insolvent or because the liquidator or statutory receiver has failed to pay all or any portion of any claims;

(2) The reinsurance payments, whether paid directly or from trust assets securing the reinsurance agreement, shall be made by the assuming insurer directly to the ceding insurer, or in the event of its insolvency or liquidation, to its liquidator or statutory receiver except where the reinsurance contract or other written agreement specifically provides for direct payment of the reinsurance to the insured or beneficiary of the insurance policy in the event of the insolvency of the ceding insurer.

(B)(1) The reinsurance agreement may provide that the domiciliary liquidator or statutory receiver shall give written notice to the assuming insurer that a claim is pending against the ceding insurer on the policy or contract reinsured. The notice shall be given within a reasonable amount of time after the claim is filed with the liquidator or statutory receiver. During the pendency of the claim, any assuming insurer may investigate the claim and interpose, at its own expense, in the proceeding where the claim is to be adjudicated any defenses which it deems to be available to the ceding insurer or its liquidator.

(2) The expense may be filed as a claim against the insolvent ceding insurer to the extent of a



proportionate share of the benefit that may accrue to the ceding insurer solely as a result of the defense undertaken by the assuming insurer. Where two or more assuming insurers are involved in the same claim and a majority in interest elect to interpose a defense to the claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the ceding insurer.

(C) If the assuming insurer is not licensed, or accredited or certified to transact insurance or reinsurance in this state, the credit permitted by division (A)(4) of section 3901.62 of the Revised Code shall not be allowed unless the assuming insurer agrees to do both of the following in the reinsurance agreements:

(1)(a) If the assuming insurer fails to perform its obligations under the terms of the reinsurance agreement, at the request of the ceding insurer, the assuming insurer shall submit to the jurisdiction of any court of competent jurisdiction in any state within the United States, comply with all requirements necessary to give the court jurisdiction, and abide by the final decision of the court or of any appellate court in the event of an appeal.

(b) The assuming insurer shall designate the superintendent or a designated attorney as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(2) This division is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(D) If the assuming insurer does not meet the requirements of division (A)(1), (2), or (3) of section 3901.62 of the Revised Code, the credit permitted by divisions (A)(4) and (5) of that section shall not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(1) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by division (C)(1) of section 3901.62 of the Revised Code, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country



of domicile, the trustee shall comply with an order of the superintendent with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the superintendent with regulatory oversight all of the assets of the trust fund.

(2) The assets shall be distributed by, and claims shall be filed with and valued by, the superintendent with regulatory oversight in accordance with the laws of the state, in which the trust is domiciled, that are applicable to the liquidation of domestic insurance companies.

(3) If the superintendent with regulatory oversight determines that the assets of the trust fund, or any part thereof, are not necessary to satisfy the claims of the ceding insurers within the United States or the grantor of the trust, the superintendent with regulatory oversight shall return the assets or part thereof to the trustee for distribution in accordance with the trust agreement.

(4) The grantor shall waive any right otherwise available to it under the laws of the United States that are inconsistent with this division.