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I N S E N A T E

January 29, 2016

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the insurance law, in relation to the distribution of dividends by domestic stock life insurers

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subsection (a) of section 4207 of the insurance law, as
2 amended by a chapter of the laws of 2015 amending the insurance law
3 relating to the distribution of dividends by domestic stock life insurers,
4 as proposed in legislative bills numbers S.1380-B and A.5202-B, is
5 amended to read as follows:

6 (a)(1) FOR PURPOSES OF THIS SUBSECTION, "EARNED SURPLUS" MEANS AN
7 AMOUNT EQUAL TO AN INSURER'S POSITIVE UNASSIGNED FUNDS, EXCLUDING EIGHT-
8 Y-FIVE PERCENT OF THE CHANGE IN NET UNREALIZED CAPITAL GAINS OR LOSSES
9 LESS CAPITAL GAINS TAX, FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR AS
10 SET FORTH IN THE INSURER'S MOST RECENT ANNUAL STATUTORY FINANCIAL STATE-
11 MENT FILED WITH THE SUPERINTENDENT PURSUANT TO SECTION THREE HUNDRED
12 SEVEN OF THIS CHAPTER.

13 (2) Notwithstanding paragraph [two] FIVE of this subsection, any
14 domestic stock life insurance company may distribute a dividend to its
15 shareholders OUT OF EARNED SURPLUS where the aggregate amount of such
16 dividends in any calendar year does not exceed the greater of:

17 (A) ten percent of its surplus to policyholders as of the immediately
18 preceding calendar year; or

19 (B) its net gain from operations for the immediately preceding calen-
20 dar year, not including realized capital gains, not to exceed[: (i)
21 fifteen percent of its surplus to policyholders as of the immediately
22 preceding calendar year, if its net gain from operations, not including
23 realized capital gains, has been negative in any one or more of the
24 immediately preceding three calendar years or otherwise (ii) twenty-
25 five] THIRTY percent of its surplus to policyholders as of the imme-
26 diately preceding calendar year; provided, however, that, notwithstand-
27 ing this paragraph, in no event may a dividend be distributed without
28 approval of the superintendent, in accordance with paragraph [two] FIVE

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 of this subsection, in the calendar year immediately following a calen-
2 dar year for which its net gain from operations, not including realized
3 capital gains, was negative.

4 [(2)] (3) NOTWITHSTANDING PARAGRAPH FIVE OF THIS SUBSECTION, ANY
5 DOMESTIC STOCK LIFE INSURANCE COMPANY MAY DISTRIBUTE A DIVIDEND TO ITS
6 SHAREHOLDERS WHERE THE AGGREGATE AMOUNT OF SUCH DIVIDENDS IN ANY CALEN-
7 DAR YEAR DOES NOT EXCEED THE LESSER OF:

8 (A) TEN PERCENT OF ITS SURPLUS TO POLICYHOLDERS AS OF THE IMMEDIATELY
9 PRECEDING CALENDAR YEAR; OR

10 (B) ITS NET GAIN FROM OPERATIONS FOR THE IMMEDIATELY PRECEDING CALEN-
11 DAR YEAR, NOT INCLUDING REALIZED CAPITAL GAINS.

12 (4) AN INSURER SHALL NOT DISTRIBUTE A DIVIDEND PURSUANT TO BOTH PARA-
13 GRAPH TWO AND PARAGRAPH THREE OF THIS SUBSECTION.

14 (5) Except as provided in [paragraph one] PARAGRAPHS TWO AND THREE of
15 this subsection, no domestic stock life insurance company shall distrib-
16 ute any dividend to its shareholders unless a notice of its intention to
17 declare such dividend and the amount thereof shall have been filed with
18 the superintendent not less than thirty days in advance of such proposed
19 declaration. The superintendent may disapprove such distribution by
20 giving written notice to such company within thirty days after such
21 filing that [he] THE SUPERINTENDENT finds that the financial condition
22 of the company does not warrant such distribution.

23 [(3)] (6) With respect to dividends to shareholders distributed pursu-
24 ant to paragraph [one] TWO of this subsection, every domestic stock life
25 insurance company shall report to the superintendent all such dividends
26 within five business days following the declaration thereof and at least
27 ten days prior to the payment thereof.

28 [(4)] (7) A domestic stock life insurance company's surplus to policy-
29 holders following any distribution of dividends to its shareholders
30 under paragraph [one] TWO of this subsection shall be reasonable in
31 relation to the company's outstanding liabilities and adequate to meet
32 its financial needs.

33 (8) WITH RESPECT TO DIVIDENDS TO SHAREHOLDERS DISTRIBUTED PURSUANT TO
34 PARAGRAPH TWO OF THIS SUBSECTION, THE SUPERINTENDENT MAY LIMIT OR DISAL-
35 LOW DIVIDENDS IF THE SUPERINTENDENT DETERMINES THAT THE:

36 (A) DOMESTIC STOCK LIFE INSURANCE COMPANY'S SURPLUS TO POLICYHOLDERS
37 IS NOT REASONABLE IN RELATION TO THE COMPANY'S OUTSTANDING LIABILITIES
38 AND NOT ADEQUATE TO MEET ITS FINANCIAL NEEDS; OR

39 (B) DOMESTIC STOCK LIFE INSURANCE COMPANY IS FINANCIALLY DISTRESSED OR
40 TROUBLED.

41 S 2. This act shall take effect on the same date and in the same
42 manner as a chapter of the laws of 2015 amending the insurance law
43 relating to the distribution of dividends by domestic stock life insur-
44 ers, as proposed in legislative bills numbers S.1380-B and A.5202-B,
45 takes effect.