S T A T E O F N E W Y O R K

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I N S E N A T E

January 8, 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:

Section 1. Subsection (a) of section 4207 of the insurance law, as amended by chapter 586 of the laws of 2015, is amended to read as follows:

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

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

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

(B) its net gain from operations for the immediately preceding calendar year, not including realized capital gains, not to exceed[: (i) fifteen percent of its surplus to policyholders as of the immediately preceding calendar year, if its net gain from operations, not including realized capital gains, has been negative in any one or more of the immediately preceding three calendar years or otherwise (ii) twenty-five] THIRTY percent of its surplus to policyholders as of the immediately preceding calendar year; provided, however, that, notwithstanding this paragraph, in no event may a dividend be distributed without approval of the superintendent, in accordance with paragraph [two] FIVE of this subsection, in the calendar year immediately following a calen-

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

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dar year for which its net gain from operations, not including realized capital gains, was negative.

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

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

(B) ITS NET GAIN FROM OPERATIONS FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR, NOT INCLUDING REALIZED CAPITAL GAINS.

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

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

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

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

(8) WITH RESPECT TO DIVIDENDS TO SHAREHOLDERS DISTRIBUTED PURSUANT TO PARAGRAPH TWO OF THIS SUBSECTION, THE SUPERINTENDENT MAY LIMIT OR DISALLOW DIVIDENDS IF THE SUPERINTENDENT DETERMINES THAT THE:

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

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

S 2. This act shall take effect immediately.