§ 4105. Domestic stock companies; declaration and payment of dividends. (a) Except as provided in subsection (c) of this section no domestic stock property/casualty insurance company shall declare or distribute any dividend to shareholders except out of earned surplus. Notwithstanding the foregoing, the superintendent may permit a domestic stock property/casualty insurance company to restate its earned surplus under a plan of quasi-reorganization in accordance with regulations as may be promulgated by the superintendent. No domestic stock property/casualty insurance company shall declare or distribute any dividend to shareholders which, together with all dividends declared or distributed by it during the next preceding twelve months, exceeds the lesser of ten percent of its surplus to policyholders as shown by its last statement on file with the superintendent, or one hundred percent of adjusted net investment income during such period unless, upon prior application therefor, the superintendent approves a greater dividend distribution based upon his finding that the insurer will retain sufficient surplus to support its obligations and writings.

In this section, (1) "earned surplus" means the portion of the surplus that represents the net earnings, gains or profits, after deduction of all losses, that have not been distributed to the shareholders as dividends, or transferred to stated capital or capital surplus or applied to other purposes permitted by law but does not include unrealized appreciation of assets;

(2) "adjusted net investment income" means net investment income for the twelve months immediately preceding the declaration or distribution of the current dividend increased by the excess, if any, of net investment income over dividends declared or distributed during the period commencing thirty-six months prior to the declaration or distribution of the current dividend and ending twelve months prior thereto; and

(3) "surplus" means the amount of the insurer's admitted assets in excess of its capital and liabilities, and both "surplus" and "surplus to policyholders" include any voluntary reserves, or any part thereof, which are not required by law.

(b) If the superintendent finds, after notice and hearing, that any such company has distributed any dividend in violation of this section,

he may order the company to cease doing any new business until the amount of the dividend has been restored to the company. The directors of any such company who vote in favor of the declaration and distribution of any dividend in violation of this section shall, in addition to all other liabilities or penalties prescribed by law, be jointly and severally liable to the creditors, including policyholder creditors, of the company to the extent of the dividend so declared and distributed, and every shareholder receiving any such dividend shall be liable to the creditors of the company to the extent of the dividend received by such shareholder.

(c) Such company may declare and distribute a stock dividend to its shareholders whenever it shall have a surplus, as defined in subsection (a) hereof, in an amount at least equal to the sum of the dividend and thirty percent of its unearned premium liability as shown by its last statement on file with the superintendent and, for such purpose, the company may increase its capital stock from such surplus in the manner prescribed in section one thousand two hundred six of this chapter, and it shall distribute the additional or increased stock to its shareholders in proportion to the stock held by each, respectively.