§ 4207. Dividends to shareholders of life, and accident and health insurance companies. (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 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 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 five of this subsection, in the calendar year immediately following a calendar year for which its net gain from operations, not including realized capital gains, was negative.

(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 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 the superintendent finds that the financial condition of the company does not warrant such distribution.

(6) With respect to dividends to shareholders distributed pursuant to paragraph 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.

(7) A domestic stock life insurance company's surplus to policyholders following any distribution of dividends to its shareholders under paragraph 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.

(b) (1) Except as provided in paragraph three hereof, no domestic stock accident and health insurance company shall declare or distribute any dividend on its capital stock, except out of earned surplus, as defined in subsection (a) of section four thousand one hundred five of this chapter. Notwithstanding the forgoing, the superintendent may permit a domestic stock accident and health 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 accident and health insurance company shall declare or distribute any dividend to shareholders which, together with all such 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

for such period unless, upon prior application therefor, the superintendent approves a greater dividend payment based upon his finding that the insurer will retain sufficient surplus to support its obligations and writings. Within the meaning of this section, "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; "surplus" means the amount of the insurer's admitted assets in excess of its capital and its liabilities; and both "surplus" and "surplus to policyholders" shall include any voluntary reserves, or any part thereof, which are not required by law.

(2) If the superintendent finds, after notice to and hearing of such company, that any such company has distributed any dividend in violation of this subsection, he may order such company to cease doing any new business until the amount of such dividend has been restored to such 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 such company to the extent of the dividend so declared and paid, and every shareholder receiving any such dividend shall be liable to such creditors of such company to the extent of the dividend received by such shareholder.

(3) Any domestic stock accident and health insurance company may declare and distribute a stock dividend to its shareholders whenever it shall have a surplus as defined in paragraph one hereof, in an amount at least equal to the sum of such dividend and thirty percent of its unearned premium liability as shown by its last statement on file in the office of the superintendent and, for such purpose, such 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 such additional or increased stock to its shareholders in proportion to the stock held by each, respectively.

(c) Any stock accident and health insurance company authorized to do

business in this state may include in its charter a provision authorizing the board of directors to permit its policyholders from time to time to participate in the profits of its operations through the payment of dividends to policyholders. For the purpose of carrying into effect any such provision, the board of directors may from time to time make reasonable classifications of policies. Every such classification of risks shall be filed with the superintendent and shall not be effective as to policies issued or delivered in this state unless approved by the superintendent as fair and equitable and not unfairly discriminatory. Any such classification approved by the superintendent shall remain in effect in this state until disapproved by him or until withdrawn or modified with his approval by the company filing the same. No dividends to policyholders shall be declared or paid by any such company except out of its earned surplus, as defined in subsection (a) of section four thousand one hundred five of this chapter.