

(b) [For the purpose of this section, extraordinary] (1) ~~(I)~~ IN THIS SUBSECTION "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.

~~2.~~ (II) "EARNED SURPLUS" DOES NOT INCLUDE UNREALIZED CAPITAL GAINS OR REEVALUATION OF ASSETS.

(2) EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS SUBSECTION, EXTRAORDINARY dividend or distribution includes any dividend or distribution of cash or other property, but not including pro rata distributions of any class of the insurer's own securities, whose fair market value together with that of other dividends or distributions made within the preceding twelve months [exceed the greater of:

(1) (i)] EXCEEDS 10 percent, except for insurance subsidiaries of the Medical Mutual Liability Insurance Society of Maryland (Article 48A, Subtitle 36 of the Code) which shall be 5 percent, of the insurer's surplus as regards policyholders as of the 31st day of December next preceding [if the remaining surplus as regards policyholders after payment of any such dividend will be less than the sum of \$10,000,000 plus 10 percent of the insurer's admitted assets; or

(ii) 25 percent of the insurer's surplus as regards policyholders as of the 31st day of December next preceding, if the remaining surplus as regards policyholders after payment of any such dividend will be equal to or greater than the sum of \$10,000,000 plus 10 percent of the insurer's admitted assets; or

(2) (i) From July 1, 1986 through December 31, 1987, the net gain from operation of the insurer, if the insurer is a life insurer, or 100 percent of the net investment income, if the insurer is not a life insurer, for the twelve-month period ending the 31st day of December next preceding;

(ii) From January 1, 1988 through December 31, 1988, the net gain from operation of the insurer, if the insurer is a life insurer, or 50 percent of the net investment income, if the insurer is not a life insurer, for the 12-month period ending the 31st day of December next preceding; and

(iii) From January 1, 1989 and thereafter, the net gain from operation of the insurer, if the insurer is a life insurer, or the net income, if the insurer is not a life insurer, for the 12-month period ending the 31st day of December next preceding.

(b-1) In determining whether a dividend or distribution is extraordinary under subsection (b)(2)(iii) of this section, an insurer may include positive net income from the previous 5 calendar years that has not already been paid out as dividends].

(3) (I) THIS PARAGRAPH APPLIES IF AN INSURER:

1. HAS AN EARNED SURPLUS THAT EXCEEDS 10% OF POLICYHOLDER SURPLUS AS OF THE 31ST DAY OF DECEMBER NEXT PRECEDING; AND