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BULLETIN

TO: All Alabama Domestic Insurers
FROM: Walter A. Bell, Commissioner of Insurance 
DATE: October 4, 2007
RE: Dividend Requirements

It has come to the attention of the Department that some Alabama domestic insurers and their independent auditors may not be familiar with the dividend requirements set forth in Sections 27-27-37 and 27-29-5 Code of Alabama 1975. The payment of dividends and extraordinary dividend must adhere to these statutes.

Section 27-27-37, Code of Alabama 1975, states:

- (a) A domestic stock insurer shall not pay any cash dividend to stockholders except out of the part of its available surplus funds which is derived from realized net profits on its business.
- (b) A stock dividend may be paid out of any available surplus funds in excess of the aggregate amount of surplus loaned to the insurer under Section 27-27-40.
- (c) A dividend otherwise proper may be payable out of the insurer's surplus even though its total surplus is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof if payment is conditioned upon receipt of the commissioner's approval and the insurer does not pay the dividend until the commissioner has done the following:

- (1) Approved the payment of the dividend, or
- (2) Not disapproved the payment of the dividend within 30 days after receipt of notice from the insurer of the declaration thereof.

The requirements for extraordinary dividends are set forth in Section 27-29-5(g), Code of Alabama 1975, which states:

(1) A domestic insurer shall not pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until 30 days after the commissioner has received notice of the declaration of the dividend or distribution and has not disapproved such payment within the period, or until the time the commissioner has approved the payment within the 30-day period.

For purposes of this paragraph, an “extraordinary dividend or distribution” includes any dividend or distribution or cash or other property, whose fair market value together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of the following:

(a) Ten percent of the insurer’s surplus as regards policyholders as of the 31st day of December next preceding; or.

(b) The net gain from operations 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.

An extraordinary dividend or distribution does not include pro rata distributions of any class of the insurer’s own securities.

(2) A domestic insurer subject to registration under Section 27-29-4 shall report to the commissioner all dividends to shareholders within five business days following the declaration of the dividends and not less than 10 days prior to the payment of the dividends. This report shall also include a schedule setting forth all dividends or other distributions made within the previous 12 months.

(3) Notwithstanding any other provision of law, a domestic insurer may declare an extraordinary dividend or distribution which is conditional upon the commissioner's approval of the dividend or distribution. Such declaration does not confer any rights upon shareholders until the commissioner has not disapproved the payment within the 30-day period as provided in subdivision (1).

(4) The commissioner shall assess such reasonable charges as he or she deems necessary for the review conducted pursuant to this section. All funds received shall be deposited in the State Treasury to the credit of the Special Examination Revolving Fund, from which the expenses incurred shall be paid.

Therefore, when a domestic insurer decides to pay dividends to its shareholders, these statutes must be followed. Please make certain all the appropriate persons within your company are aware of these requirements, along with your independent auditors.

WAB/EB/ss