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HOUSE BILL 258

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Mimi Stewart

AN ACT

**RELATING TO INSURANCE; PROVIDING FOR CRIMINAL HISTORY
BACKGROUND INVESTIGATIONS; PROVIDING FOR EXTENDED
APPLICABILITY OF THE INSURANCE FRAUD ACT; AMENDING SECTIONS OF
THE NMSA 1978.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. Section 59A-11-2 NMSA 1978 (being Laws 1984,
Chapter 127, Section 181, as amended by Laws 1999, Chapter
272, Section 3 and also by Laws 1999, Chapter 289, Section 4)
is amended to read:**

"59A-11-2. APPLICATION FOR LICENSE--INDIVIDUAL. --

**A. Where a license is required under the Insurance
Code for categories referred to in Section 59A-11-1 NMSA 1978,
application by an individual shall be filed with, and on a
form prescribed and furnished by, the superintendent. The**

1 application shall be signed by the applicant, under oath if
2 required by the form, and by or on behalf of the proposed
3 principal where expressly required in the form.

4 B. The application form may require information
5 about the applicant as to:

6 (1) name, date of birth, social security
7 number, residence and business address if applicable;

8 (2) personal history, business experience in
9 general;

10 (3) experience or special training or
11 education in the kind of business to be transacted under the
12 license applied for;

13 (4) previous licensing;

14 (5) type of license applied for and kinds of
15 insurance or transactions to be covered thereby;

16 (6) proof of applicant's identity; and

17 (7) such other pertinent information and
18 matters as the superintendent may reasonably require.

19 C. Application for license as insurance agent
20 shall be accompanied by appointment of the applicant as agent
21 by at least one insurer, conditioned upon issuance of the
22 license. Application for license as insurance solicitor or as
23 agent or solicitor as to dental and health care plan, motor
24 club, bail bondsman, and other principals shall be accompanied
25 by appointment of the applicant by the proposed principal as

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1 solicitor or agent, as the case may be, subject to issuance of
2 the license applied for.

3 D. In all such appointments the principal or
4 principal's representative if so required by the
5 superintendent shall certify in writing as to his knowledge of
6 the applicant, as to the applicant's residence, experience had
7 or special training received or to be given as to business to
8 be transacted under the license, the applicant's business and
9 personal reputation, whether the applicant is trustworthy and
10 worthy of licensing, and whether satisfied that the applicant
11 intends in good faith to engage in the business to be covered
12 by the license, and appointment of the applicant is not to
13 enable the applicant to evade the intent or spirit of any
14 controlled business, anti-rebate or anti-discrimination law or
15 other law.

16 E. The application form shall also require
17 information as to additional matters expressly required to be
18 included therein in articles of the Insurance Code relating to
19 particular licenses.

20 F. The application shall be accompanied by the
21 applicable license application filing fee specified in Section
22 59A-6-1 NMSA 1978, by bond where expressly required under
23 other provisions of the Insurance Code, and by the fee
24 specified in such fee schedule for any examination required
25 under the Insurance Code to be taken and passed by the

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1 applicant prior to licensing.

2 G. The superintendent shall require a criminal
3 history background investigation of the applicant for a
4 license by means of fingerprint checks by the department of
5 public safety and the federal bureau of investigation.

6 H. The superintendent shall obtain from the
7 department of public safety and the federal bureau of
8 investigation, at the expense of the applicant for a license,
9 criminal history information concerning each applicant, using
10 the applicant's fingerprints or other identifying information.
11 The information shall be used by the superintendent solely in
12 determining whether to grant the application.

13 I. The superintendent shall not grant a license to
14 an applicant who has been convicted of a felony involving
15 dishonesty or breach of trust."

16 Section 2. Section 59A-11-14 NMSA 1978 (being Laws 1984,
17 Chapter 127, Section 193) is amended to read:

18 "59A-11-14. SUSPENSION, REVOCATION, REFUSAL TO CONTINUE
19 LICENSE-- GROUND. --

20 A. In addition to reason therefor provided under
21 other provisions of the Insurance Code as to particular
22 licenses, the superintendent may suspend, revoke or refuse to
23 continue any license issued under [~~this~~] Chapter 59A, Article
24 11 NMSA 1978 for any of the following reasons applicable as to
25 licensee:

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1 (1) for any cause for which issuance of the
2 license could have been refused had it then existed and been
3 known to the superintendent;

4 (2) violation of any provision of the
5 Insurance Code or other law applicable to the business
6 transacted under the license;

7 (3) ~~[willful]~~ willful failure to comply with,
8 or ~~[willful]~~ willful violation of, any lawful order or rule ~~[or~~
9 ~~regulation]~~ of the superintendent;

10 (4) material ~~misstatement~~, misrepresentation
11 or fraud in obtaining the license;

12 (5) failure to pass any examination required
13 by the superintendent, subsequent to issue of license, under
14 Subsection D of Section ~~[189 of this article]~~ 59A-11-10 NMSA
15 1978;

16 (6) misappropriation, conversion or unlawful
17 withholding, or failure or refusal to pay over upon demand,
18 any money belonging to insurers or others and received in
19 conduct of business under the license;

20 (7) fraudulent or dishonest practices in
21 conduct of business under the license;

22 (8) intentional material misrepresentation of
23 the terms of any existing or proposed insurance policy,
24 contract or other service within scope of the license;

25 (9) conviction by final judgment of a felony

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1 involving ~~[moral turpitude]~~ dishonesty or breach of trust;

2 (10) aiding, abetting or assisting another
3 person to violate any provision of the Insurance Code; or

4 (11) if in conduct of affairs under the
5 license, the licensee has used fraudulent, coercive or
6 dishonest practices, or has shown himself to be incompetent,
7 untrustworthy, financially irresponsible or a source of injury
8 and loss to the public; or that the interests of the insureds
9 or the public are not being properly served under the license.

10 B. The superintendent may suspend, revoke or
11 refuse to continue the license of a firm or corporation for
12 any of such causes as relate to any individual designated in
13 or registered as to the license to exercise its powers.

14 C. The superintendent may require a criminal
15 history background investigation of a current license holder
16 by means of fingerprint checks by the department of public
17 safety and the federal bureau of investigation, at the expense
18 of the license holder, using the license holder's fingerprints
19 or other identifying information. The information shall be
20 used by the superintendent solely in determining whether to
21 suspend, revoke or refuse to continue a license. "

22 Section 3. Section 59A-30-14 NMSA 1978 (being Laws 1985,
23 Chapter 28, Section 14, as amended by Laws 1999, Chapter 60,
24 Section 21 and also by Laws 1999, Chapter 289, Section 27) is
25 amended to read:

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1 "59A-30-14. OTHER PROVISIONS APPLICABLE. --To the extent
2 not in conflict with the New Mexico Title Insurance Law, the
3 following articles and provisions of the Insurance Code shall
4 also apply to title insurers, title insurance agents and the
5 business of title insurance:

6 [~~Article 1. Scope of Code; Initial Definitions; General~~
7 ~~Penalty]~~

8 A. Chapter 59A, Article 1 NMSA 1978;

9 B. Chapter 59A, Article 2 [~~Department of Insurance]~~
10 NMSA 1978;

11 C. Chapter 59A, Article 4 [~~Examinations, Hearings~~
12 ~~and Appeals]~~ NMSA 1978;

13 D. Chapter 59A, Article 5 [~~Authorization of~~
14 ~~Insurers and General Requirements]~~ NMSA 1978;

15 E. Chapter 59A, Article 6 [~~Fees and Taxes]~~ NMSA
16 1978;

17 F. Chapter 59A, Article 7 [~~Kinds of Insurance;~~
18 ~~Limits of Risk; Reinsurance]~~ NMSA 1978;

19 G. Chapter 59A, Article 8 [~~Assets and Liabilities]~~
20 NMSA 1978;

21 H. Chapter 59A, Article 9 [~~Investments]~~ NMSA 1978;

22 I. Chapter 59A, Article 10 [~~Administration of~~
23 ~~Deposits; Trusteed Assets of Alien Insurer]~~ NMSA 1978;

24 J. Chapter 59A, Article 11 [~~Licensing Procedures;~~
25 ~~Agents, Solicitors, Brokers, Adjusters and Others]~~ NMSA 1978;

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- K. Chapter 59A, Article 12 [~~Insurance Agents, Brokers and Solicitors~~] NMSA 1978;
- ~~[Article 15]~~ L. the Unauthorized Insurers Law;
- M. Chapter 59A, Article 16 [~~Trade Practices and Frauds~~] NMSA 1978;
- N. the Insurance Fraud Act;
- O. Chapter 59A, Article 34 NMSA 1978; and
- P. The Insurance Holding Company Law. "

Section 4. Section 59A-44-41 NMSA 1978 (being Laws 1989, Chapter 388, Section 41, as amended) is amended to read:

"59A-44-41. APPLICABILITY OF INSURANCE CODE. --To the extent not in conflict with the express provisions of Chapter 59A, Article 44 NMSA 1978 and the reasonable implications thereof, the following provisions of the Insurance Code shall also apply as to fraternal benefit societies, and for such purpose a society may therein be referred to as an "insurer":

- A. Chapter 59A, Article 1 NMSA 1978;
- B. Chapter 59A, Article 2 NMSA 1978;
- C. Chapter 59A, Article 4 NMSA 1978;
- D. Sections 59A-8-1 and 59A-8-2 NMSA 1978;
- E. Section 59A-12-22 NMSA 1978;
- F. the Insurance Fraud Act;
- ~~[F.]~~ G. Chapter 59A, Article 18 NMSA 1978;
- ~~[G. Chapter 59A, Article 19 NMSA 1978;~~
- H. ~~Chapter 59A, Article 24A NMSA 1978]~~

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1 H. the Policy Language Simplification Law;

2 I. the Medicare Supplement Act;

3 ~~[I.]~~ J. Chapter 59A, Articles 20 and 22 NMSA 1978;

4 and

5 ~~[J. Chapter 59A, Article 41 NMSA 1978]~~

6 K. the Insurers Conservation, Rehabilitation and
7 Liquidation Law. "

8 Section 5. Section 59A-46-30 NMSA 1978 (being Laws 1993,
9 Chapter 266, Section 29, as amended) is amended to read:

10 "59A-46-30. STATUTORY CONSTRUCTION AND RELATIONSHIP TO
11 OTHER LAWS. --

12 A. The provisions of the Insurance Code other than
13 Chapter 59A, Article 46 NMSA 1978 shall not apply to health
14 maintenance organizations except as expressly provided in the
15 Insurance Code and that article. To the extent reasonable and
16 not inconsistent with the provisions of that article, the
17 following articles and provisions of the Insurance Code shall
18 also apply to health maintenance organizations and their
19 promoters, sponsors, directors, officers, employees, agents,
20 solicitors and other representatives. For the purposes of
21 such applicability, a health maintenance organization may
22 therein be referred to as an "insurer":

23 (1) Chapter 59A, Article 1 NMSA 1978;

24 (2) Chapter 59A, Article 2 NMSA 1978;

25 (3) Chapter 59A, Article 4 NMSA 1978;

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- 1 (4) Subsection C of Section 59A-5-22 NMSA
2 1978;
- 3 (5) Sections 59A-6-2 through 59A-6-4 and
4 59A-6-6 NMSA 1978;
- 5 (6) Chapter 59A, Article 8 NMSA 1978;
- 6 (7) Chapter 59A, Article 10 NMSA 1978;
- 7 (8) Section 59A-12-22 NMSA 1978;
- 8 (9) Chapter 59A, Article 16 NMSA 1978;
- 9 (10) Chapter 59A, Article 18 NMSA 1978;
- 10 [~~(11) Chapter 59A, Article 19 NMSA 1978~~
11 ~~(12) Section 59A-22-2.1 NMSA 1978;~~]
- 12 (11) the Policy Language Simplification Law;
13 [~~(13)~~] (12) Section 59A-22-14 NMSA 1978;
14 (13) the Insurance Fraud Act;
- 15 (14) [~~Chapter 59A, Article 23B NMSA 1978~~] the
16 Minimum Healthcare Protection Act;
- 17 (15) Sections 59A-34-2, 59A-34-7 through
18 59A-34-13, 59A-34-17, 59A-34-23, 59A-34-33, 59A-34-36,
19 59A-34-37, 59A-34-40 through 59A-34-42 and 59A-34-44 through
20 59A-34-46 NMSA 1978;
- 21 (16) [~~Chapter 59A, Article 37 NMSA 1978~~] The
22 Insurance Holding Company Law; and
- 23 (17) the Patient Protection Act.
- 24 B. Solicitation of enrollees by a health
25 maintenance organization granted a certificate of authority,

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1 or its representatives, shall not be construed as violating
2 any provision of law relating to solicitation or advertising
3 by health professionals, but health professionals shall be
4 individually subject to the laws, rules [~~regulations~~] and
5 ethical provisions governing their individual professions.

6 C. Any health maintenance organization authorized
7 under the provisions of the Health Maintenance Organization
8 Law shall not be deemed to be practicing medicine and shall be
9 exempt from the provisions of laws relating to the practice of
10 medicine. "

11 Section 6. Section 59A-47-33 NMSA 1978 (being Laws 1984,
12 Chapter 127, Section 879.32, as amended) is amended to read:

13 "59A-47-33. OTHER PROVISIONS APPLICABLE. --The provisions
14 of the Insurance Code other than Chapter 59A, Article 47 NMSA
15 1978 shall not apply to health care plans except as expressly
16 provided in the Insurance Code and that article. To the
17 extent reasonable and not inconsistent with the provisions of
18 that article, the following articles and provisions of the
19 Insurance Code shall also apply to health care plans, their
20 promoters, sponsors, directors, officers, employees, agents,
21 solicitors and other representatives; and, for the purposes of
22 such applicability, a health care plan may therein be referred
23 to as an "insurer":

24 A. Chapter 59A, Article 1 NMSA 1978;

25 B. Chapter 59A, Article 2 NMSA 1978;

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- 1 C. Chapter 59A, Article 4 NMSA 1978;
- 2 D. Subsection C of Section 59A-5-22 NMSA 1978;
- 3 E. Sections 59A-6-2 through 59A-6-4 and
- 4 59A-6-6 NMSA 1978;
- 5 F. Section 59A-7-11 NMSA 1978;
- 6 G. Chapter 59A, Article 8 NMSA 1978;
- 7 H. Chapter 59A, Article 10 NMSA 1978;
- 8 I. Section 59A-12-22 NMSA 1978;
- 9 J. Chapter 59A, Article 16 NMSA 1978;
- 10 K. the Insurance Fraud Act;
- 11 [~~K.~~] L. Chapter 59A, Article 18 NMSA 1978;
- 12 [~~L. Chapter 59A, Article 19 NMSA 1978~~
- 13 ~~M. Section 59A-22-2.1 NMSA 1978]~~
- 14 M. the Policy Language Simplification Law;
- 15 N. Subsections B through E of Section 59A-22-5
- 16 NMSA 1978;
- 17 O. Section 59A-22-14 NMSA 1978;
- 18 P. Section 59A-22-34.1 NMSA 1978;
- 19 Q. Section 59A-22-39 NMSA 1978;
- 20 R. Section 59A-22-40 NMSA 1978;
- 21 S. Section 59A-22-41 NMSA 1978;
- 22 T. Sections 59A-34-7 through 59A-34-13, 59A-34-17,
- 23 59A-34-23, 59A-34-33, 59A-34-40 through 59A-34-42 and
- 24 59A-34-44 through 59A-34-46 NMSA 1978;
- 25 U. [~~Chapter 59A, Article 37 NMSA 1978]~~ The

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1 Insurance Holding Company Law, except Section 59A-37-7 NMSA
2 1978;

3 V. Section 59A-46-15 NMSA 1978; and

4 W. the Patient Protection Act. "

5 Section 7. Section 59A-48-19 NMSA 1978 (being Laws
6 1984, Chapter 127, Section 898) is amended to read:

7 "59A-48-19. OTHER PROVISIONS APPLICABLE. -- In addition
8 to those referred to in [~~this article~~] Chapter 59A, Article 48
9 NMSA 1978, the following articles and provisions of the
10 Insurance Code shall also apply, to the extent reasonably
11 applicable and subject to the provisions of [~~this~~] that
12 article, as to prepaid dental plan organizations, their
13 sponsors, directors, officers, personnel and representatives
14 and member contracts. For the purposes of this provision,
15 such organizations may be referred to as "insurers" and such
16 contracts as "policies":

17 A. [~~Article 1 (scope of code, initial definitions,~~
18 ~~general penalty)~~] Chapter 59A, Article 1 NMSA 1978;

19 B. Chapter 59A, Article 2 [~~(department of~~
20 ~~insurance)~~] NMSA 1978;

21 C. Chapter 59A, Article 4 [~~(examinations, hearings~~
22 ~~and appeals)~~] NMSA 1978;

23 D. Subsection C of Section [~~89 (certificate of~~
24 ~~authority at all times property of the state)~~] 59A-5-22 NMSA
25 1978;

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1 E. Section [~~100 (reciprocity provision)~~] 59A-5-33
2 NMSA 1978;

3 F. Sections [~~101 (fee schedule), 103 (must pay tax~~
4 ~~on withdrawal from state), 104 (penalty for failure to report~~
5 ~~or pay tax or fees) and 106 (preemption and in lieu~~
6 ~~provision)~~] 59A-6-1, 59A-6-3, 59A-6-4 and 59A-6-6 NMSA 1978;

7 G. Section [~~117 (reinsurance)~~] 59A-7-11 NMSA 1978;

8 H. Chapter 59A, Article 8 [~~(assets and~~
9 ~~liabilities)~~] NMSA 1978;

10 I. Chapter 59A, Article 10 [~~(administration of~~
11 ~~deposits)~~] NMSA 1978;

12 J. Section [~~223 (fiduciary funds -- agents, etc.)~~]
13 59A-12-22 NMSA 1978;

14 K. the Insurance Fraud Act;

15 [~~K.~~] L. Chapter 59A, Article 18 [~~(the insurance~~
16 ~~contract)~~] NMSA 1978;

17 [~~L. Article 19 (policy language simplification)~~];
18 and

19 M the Policy Language Simplification Law; and

20 [~~M.~~] N. Section [556 (records and accounts)]
21 59A-34-10 NMSA 1978, as to domestic prepaid dental plans [~~and~~

22 ~~N. Article 53 (transitory provisions)]~~. "

23 Section 8. Section 59A-50-21 NMSA 1978 (being Laws 1984,
24 Chapter 127, Section 927) is amended to read:

25 "59A-50-21. OTHER PROVISIONS APPLICABLE. -- In addition to

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1 those referred to in [~~this article~~] Chapter 59A, Article 50
2 NMSA 1978 as to particular matters, the following articles and
3 provisions of the Insurance Code shall also, to the extent
4 reasonably applicable and not in conflict with the provisions
5 of [~~this article~~] Chapter 59A, Article 50 NMSA 1978 and the
6 reasonable implications thereof, apply as to motor clubs,
7 their sponsors, directors, officers, representatives,
8 personnel and operations. For the purposes of such
9 applicability, a motor club may be referred to in such
10 articles and provisions as an "insurer":

11 A. [~~Article 1 (scope of code; initial definitions;~~
12 ~~general penalty)~~] Chapter 59A, Article 1 NMSA 1978;

13 B. Chapter 59A, Article 2 [~~(department of~~
14 ~~insurance)~~] NMSA 1978;

15 C. Chapter 59A, Article 4 [~~(examinations, hearings~~
16 ~~and appeals)~~] NMSA 1978;

17 D. Chapter 59A, Article 10 [~~(administration of~~
18 ~~deposits)~~] NMSA 1978;

19 E. Section [~~223 (fiduciary funds -- agents, etc.)~~]
20 59A-12-22 NMSA 1978;

21 F. Chapter 59A, Article 16 [~~(trade practices and~~
22 ~~frauds)~~] NMSA 1978;

23 [~~G. Article 41 (conservation, rehabilitation,~~
24 ~~liquidation); and~~

25 H. ~~Article 53 (transitory provisions)]~~

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G. the Insurance Fraud Act; and
H. the Insurers Conservation, Rehabilitation and
Liquidation Law. "