

1 SENATE BILL 104

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 Carroll H. Leavell

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9  
10 AN ACT

11 RELATING TO INSURANCE; AMENDING SECTIONS OF THE NEW MEXICO  
12 INSURANCE CODE; REMOVING THE REQUIREMENT THAT THE  
13 SUPERINTENDENT OF INSURANCE COMPLY WITH THE ADMINISTRATIVE  
14 PROCEDURES ACT; AMENDING REQUIREMENTS RELATED TO EXAMINATION  
15 REPORTS AND INVESTIGATORY HEARINGS; CHANGING ANNUAL FINANCIAL  
16 STATEMENT FILING PENALTIES; ENACTING A SEVERABILITY SECTION TO  
17 THE RISK-BASED CAPITAL ACT; CLARIFYING AND AMENDING THE  
18 CALCULATION AND REPORTING OF PREMIUM TAX; CLARIFYING THE USE OF  
19 NEW MEXICO MEDICAL INSURANCE POOL ASSESSMENTS AS PREMIUM TAX  
20 CREDITS; AMENDING PREMIUM TAX AND FEE LATE FILING AND PAYMENT  
21 PENALTIES; PROVIDING TIERED PENALTIES FOR LATE FILING AND  
22 PAYMENT OF TAXES AND FEES; REMOVING STOP-LOSS INSURANCE FROM  
23 THE LIST OF ACCIDENT AND HEALTH INSURANCE PRODUCTS; REVISING  
24 VARIOUS REQUIREMENTS RELATED TO SURPLUS LINES INSURANCE;  
25 ALLOWING INSURERS TO PAY CLAIMS BY ELECTRONIC FUND TRANSFER;

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1 AMENDING THE INSURANCE FRAUD ACT TO ESTABLISH A FEE PAYMENT  
2 DEADLINE AND LATE PAYMENT PENALTY; INCLUDING STUDENT HEALTH  
3 POLICIES WITHIN PROVISIONS RELATING TO INDIVIDUAL HEALTH  
4 INSURANCE; REMOVING STUDENT HEALTH PLANS FROM THE LIST OF  
5 BLANKET HEALTH INSURANCE PRODUCTS AND FROM THE LIST OF PRODUCTS  
6 THAT ARE NOT MANAGED HEALTH CARE PLANS; EXTENDING THE  
7 SUPERINTENDENT OF INSURANCE'S REVIEW PERIOD FOR MARKETING  
8 MATERIALS AND FOR CREDIT LIFE AND CREDIT HEALTH PRODUCT  
9 FILINGS; REPEALING THE SURPLUS LINES INSURANCE MULTISTATE  
10 COMPLIANCE COMPACT.

11  
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

13 SECTION 1. Section 59A-2-8 NMSA 1978 (being Laws 1984,  
14 Chapter 127, Section 26, as amended) is amended to read:

15 "59A-2-8. GENERAL POWERS AND DUTIES OF  
16 SUPERINTENDENT.--The superintendent shall:

17 A. organize and manage the office of superintendent  
18 of insurance and direct and supervise all its activities;

19 B. execute the duties imposed upon the  
20 superintendent by the Insurance Code;

21 C. enforce those provisions of the Insurance Code  
22 that are administered by the superintendent;

23 D. have the powers and authority expressly  
24 conferred by or reasonably implied from the provisions of the  
25 Insurance Code;

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1           E. conduct such examinations and investigations of  
2 insurance matters, in addition to those expressly authorized,  
3 as the superintendent may deem proper upon reasonable and  
4 probable cause to determine whether a person has violated a  
5 provision of the Insurance Code or to secure information useful  
6 in the lawful enforcement or administration of the provision;

7           F. have the power to sue or be sued;

8           G. have the power to make, enter into and enforce  
9 all contracts, agreements and other instruments necessary,  
10 convenient or desirable in the exercise of the superintendent's  
11 powers and functions and for the purposes of the Insurance  
12 Code;

13           H. prepare an annual budget for the office of  
14 superintendent of insurance;

15           I. have the right to require performance bonds of  
16 employees as the superintendent deems necessary pursuant to the  
17 Surety Bond Act. The office of superintendent of insurance  
18 shall pay the cost of required bonds; and

19           ~~[J. comply with the provisions of the~~  
20 ~~Administrative Procedures Act; and~~

21           ~~K.]~~ J. have such additional powers and duties as  
22 may be provided by other laws of this state."

23           SECTION 2. Section 59A-4-9 NMSA 1978 (being Laws 1984,  
24 Chapter 127, Section 53, as amended) is amended to read:

25           "59A-4-9. EXAMINATION REPORT--CONTENTS.--~~[Upon]~~ No later  
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1 than sixty days following completion of an examination, the  
2 examiner in charge shall ~~[make a true]~~ file with the office of  
3 superintendent of insurance a verified, written examination  
4 report ~~[thereof comprising]~~. The examination report shall  
5 comprise only facts appearing upon the books, records or other  
6 documents of the person examined, or from information provided  
7 to the examiner during the course of the examination by the  
8 examinee's officers or agents and other individuals examined  
9 concerning its affairs, together with ~~[such]~~ the conclusions  
10 and recommendations of the examiners as may reasonably be  
11 warranted from ~~[such]~~ the facts. The ~~[report of]~~ examination  
12 report shall be verified by the oath of the examiner in charge  
13 of the examination."

14 SECTION 3. Section 59A-4-10 NMSA 1978 (being Laws 1984,  
15 Chapter 127, Section 54, as amended) is amended to read:

16 "59A-4-10. EXAMINATION REPORT ~~[DISTRIBUTION]~~--CONFERENCE  
17 ~~[AND HEARING--ADOPTING]~~--ADOPTION ORDERS--INVESTIGATORY  
18 HEARINGS.--

19 A. Upon completion of the examination and receipt  
20 of the examination report, the superintendent shall ~~[furnish~~  
21 ~~two copies thereof]~~ transmit the report to the person examined  
22 and shall allow the person a reasonable period, but not to  
23 exceed twenty days, within which to review the report and to  
24 file with the superintendent in writing requested corrections  
25 or modifications, with the reasons therefor. For good ~~[cause]~~

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1 reason shown, the superintendent may grant reasonable extension  
2 of the review period.

3 B. ~~[As soon as reasonably possible]~~ Within twenty  
4 days after the superintendent's receipt of [~~such~~] the request,  
5 the person examined shall confer with the superintendent and  
6 examiner relative to requested corrections and modification.  
7 ~~[If through such conference the report is acceptable to the~~  
8 ~~person examined with such changes as the superintendent~~  
9 ~~approves, the superintendent shall adopt the report as so~~  
10 ~~changed. If the report is not acceptable, the superintendent~~  
11 ~~shall hold a hearing with respect to the report and adopt the~~  
12 ~~report with such changes as result with the superintendent's~~  
13 ~~approval from the conference and hearing.~~

14 C. ~~If no changes are requested, upon expiration of~~  
15 ~~the period allowed by the superintendent for review of the~~  
16 ~~report, the superintendent may adopt the report.~~

17 D. ~~At any point prior to adoption of the~~  
18 ~~examination report, the superintendent may reject the report~~  
19 ~~with directions to the examiners to reopen the examination for~~  
20 ~~purposes of obtaining additional data, documentation or~~  
21 ~~information, and the examiner in charge shall subsequently~~  
22 ~~report in accordance with Section 59A-4-9 NMSA 1978.]~~

23 C. Within thirty days of the end of the period  
24 allowed for the receipt of written submissions or rebuttals,  
25 the superintendent shall fully consider and review the

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1 examination report, together with any written submission or  
2 rebuttal, any conference and any relevant portion of the  
3 examiner's work papers and shall enter an order. An order  
4 entered pursuant to this subsection shall be accompanied by  
5 findings of fact and conclusions of law resulting from the  
6 superintendent's consideration and review of the examination  
7 report, any written submission or rebuttal, any conferences and  
8 any relevant portion of the examiner's work papers. An order  
9 shall be considered a final administrative decision that may be  
10 appealed pursuant to Section 59A-4-20 NMSA 1978. An order  
11 shall be served on all parties by certified mail, together with  
12 a copy of the adopted examination report. An order issued  
13 pursuant to this subsection shall:

14 (1) adopt the examination report as filed or  
15 with modification or corrections. If the examination report  
16 reveals that the person is operating in violation of statute,  
17 rule or prior order of the superintendent, the superintendent  
18 may order the person to take any action that the superintendent  
19 considers necessary and appropriate to cure the violation;

20 (2) reject the examination report with  
21 directions to the examiners to reopen the examination for  
22 purposes of obtaining additional data, documentation or  
23 information and refileing pursuant to Section 59A-4-9 NMSA 1978;  
24 or

25 (3) call for an investigatory hearing with no

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1 less than twenty days' notice to the person for purposes of  
2 obtaining additional documentation, data, information or  
3 testimony.

4 D. An investigatory hearing held pursuant to  
5 Paragraph (3) of Subsection C of this section:

6 (1) may be conducted by the superintendent or  
7 the superintendent may authorize a representative to conduct  
8 the hearing; provided that the superintendent shall not  
9 authorize an examiner to conduct the hearing;

10 (2) shall be conducted as a nonadversarial,  
11 confidential investigatory proceeding, as necessary for the  
12 resolution of any inconsistency, discrepancy or disputed issue  
13 apparent upon the face of the examination report or raised by  
14 or as a result of the superintendent's review of work papers  
15 and conferences or by the written submission or rebuttal of the  
16 person; and

17 (3) shall proceed expeditiously with discovery  
18 by the person limited to those work papers of the examiner that  
19 tend to substantiate any assertions set forth in any written  
20 submission or rebuttal.

21 E. Relating to an investigatory hearing held  
22 pursuant to Paragraph (3) of Subsection C of this section, the  
23 superintendent or the superintendent's representative may issue  
24 a subpoena to compel the attendance of any witness or the  
25 production of any document that the superintendent or the

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1 superintendent's representative deems relevant to the  
2 investigation, whether the document is under the control of the  
3 office of superintendent of insurance, the person being  
4 examined or any other person. Documents produced shall be  
5 included in the record and testimony taken by the  
6 superintendent or the superintendent's representative and shall  
7 be made under oath and preserved for the record. The  
8 superintendent or the superintendent's representative shall  
9 pose questions to any person subpoenaed. Thereafter, the  
10 person being examined and the office of superintendent of  
11 insurance may present testimony relevant to the investigation.  
12 Only the superintendent or the superintendent's representative  
13 shall conduct cross-examination. The person being examined and  
14 the office of superintendent of insurance shall be permitted to  
15 make closing statements and may be represented by counsel of  
16 the person's choice. Nothing in this section shall be  
17 construed to require the office of superintendent of insurance  
18 to disclose any information or record that would indicate or  
19 demonstrate the existence or content of any investigation or  
20 activity of a criminal justice agency.

21 F. Within twenty days of the conclusion of an  
22 investigatory hearing pursuant to Paragraph (3) of Subsection C  
23 of this section, the superintendent shall enter an order in  
24 accordance with Paragraph (1) of Subsection C of this section."

25 SECTION 4. Section 59A-4-12 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 56) is amended to read:

2 "59A-4-12. EXAMINATION REPORT--INFORMATION TO MANAGEMENT  
3 OF DOMESTIC ENTITIES.--If the examination is of a domestic  
4 insurer or other person domiciled in New Mexico, when the  
5 examination report has been filed for public inspection, the  
6 chief executive officer of the insurer or person shall cause to  
7 be delivered to each member of the examinee's board of  
8 directors, or other similar governing body, a copy of the  
9 report, or summary thereof, and of its recommendations approved  
10 by the superintendent [~~and the officer's certificate to the~~  
11 ~~effect that the report or summary has been so delivered shall~~  
12 ~~be deemed to constitute proof that the contents of the report~~  
13 ~~or summary are known to each such member~~]. Within ninety days  
14 of the issuance of the adopted report or within fifteen days  
15 after the first board meeting after the issuance of the adopted  
16 report, whichever occurs first, the insurer shall file  
17 affidavits executed by each of its directors stating under oath  
18 that they have received a copy of the adopted report and  
19 related orders."

20 SECTION 5. Section 59A-5-30 NMSA 1978 (being Laws 1984,  
21 Chapter 127, Section 97) is amended to read:

22 "59A-5-30. PENALTIES FOR LATE, FALSE ANNUAL STATEMENTS.--

23 A. Any insurer failing, without just cause  
24 reasonably beyond control of the insurer, to file its annual  
25 statement as required in Section [~~96 of this article~~] 59A-5-29

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1 NMSA 1978 shall be required to pay a penalty of one hundred  
2 dollars (\$100) for each day's delay, but not to exceed five  
3 thousand dollars (\$5,000) in aggregate amount. [~~to be recovered~~  
4 ~~in a civil action brought against the insurer in the name of~~  
5 ~~the State of New Mexico by the attorney general. Such]~~ This  
6 penalty may be in addition to any refusal to continue, or  
7 suspension or revocation of, the insurer's certificate of  
8 authority for such failure.

9 B. Any director, officer, agent or employee of any  
10 insurer who subscribes to, makes or concurs in making or  
11 publishing any annual or other statement of the insurer  
12 required by law, knowing the same to contain any material  
13 statement [~~which~~] that is false, shall upon conviction thereof  
14 be guilty of a misdemeanor and upon conviction shall be  
15 sentenced to a fine of not more than one thousand dollars  
16 (\$1,000), unless by its extent and nature the offense is  
17 punishable under other statutes as a felony."

18 SECTION 6. Section 59A-6-2 NMSA 1978 (being Laws 1984,  
19 Chapter 127, Section 102, as amended) is amended to read:

20 "59A-6-2. PREMIUM TAX--HEALTH INSURANCE PREMIUM SURTAX.--

21 A. The premium tax provided for in this section  
22 shall apply as to the following taxpayers:

23 (1) each insurer authorized to transact  
24 insurance in New Mexico;

25 (2) each insurer formerly authorized to

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1 transact insurance in New Mexico and receiving premiums on  
2 policies remaining in force in New Mexico, except that this  
3 provision shall not apply as to an insurer that withdrew from  
4 New Mexico prior to March 26, 1955;

5 (3) each plan operating under provisions of  
6 Chapter 59A, Articles 46 through 49 NMSA 1978;

7 (4) each property bondsman, as that person is  
8 defined in Section 59A-51-2 NMSA 1978, as to any consideration  
9 received as security or surety for a bail bond in connection  
10 with a judicial proceeding, which consideration shall be  
11 considered "gross premiums" for the purposes of this section;  
12 and

13 (5) each unauthorized insurer that has assumed  
14 a contract or policy of insurance directly or indirectly from  
15 an authorized or formerly authorized insurer and is receiving  
16 premiums on such policies remaining in force in New Mexico,  
17 except that this provision shall not apply if a ceding insurer  
18 continues to pay the tax provided in this section as to such  
19 policy or contract.

20 B. Each [~~such~~] taxpayer described in Subsection A  
21 of this section shall pay in accordance with this subsection a  
22 premium tax of three and three-thousandths percent of the  
23 [~~gross~~] direct premiums and membership and policy fees  
24 [~~received or~~] written by it, as reported in Schedule T and  
25 supporting schedules of its annual financial statement on

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1 insurance or contracts covering risks within this state during  
2 the preceding calendar year, less ~~[all return premiums,~~  
3 ~~including]~~ dividends paid or credited to policyholders or  
4 contract holders ~~[and premiums received for reinsurance on New~~  
5 ~~Mexico risks]~~.

6 C. In addition to the premium tax imposed pursuant  
7 to Subsection B of this section, each taxpayer described in  
8 Subsection A of this section that transacts health insurance in  
9 New Mexico or is a plan described in Chapter 59A, Article 46 or  
10 47 NMSA 1978 shall pay a health insurance premium surtax of one  
11 percent of the ~~[gross]~~ direct health insurance premiums and  
12 membership and policy fees ~~[received]~~ written by it on  
13 ~~[hospital and medical expense incurred insurance or contracts;~~  
14 ~~nonprofit health care service plan contracts, excluding dental~~  
15 ~~or vision only contracts; and health maintenance organization~~  
16 ~~subscriber contracts covering health risks within this state~~  
17 ~~during the preceding calendar year]~~ the following lines of  
18 business as reported in the exhibit of premiums, enrollment and  
19 utilization of a health insurer's annual financial statement:

- 20 (1) individual comprehensive;  
21 (2) group comprehensive;  
22 (3) medicare supplement; and  
23 (4) medicaid, pursuant to Title 19 of the  
24 federal Social Security Act; less ~~[all return health insurance~~  
25 ~~premiums, including]~~ dividends paid or credited to

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1 policyholders or contract holders [~~and health insurance~~  
2 ~~premiums received for reinsurance on New Mexico risks~~]. Except  
3 as provided in this section, all references in the Insurance  
4 Code to the premium tax shall include both the premium tax and  
5 the health insurance premium surtax.

6 D. For each calendar quarter, [~~an estimated~~] a  
7 payment of the premium tax and the health insurance premium  
8 surtax for that quarter shall be made on April 15, July 15,  
9 October 15 and the following January 15 and shall be  
10 accompanied by a copy of Schedule T of the insurer's quarterly  
11 financial statement and, if a health insurer, a copy of the  
12 exhibit of premiums, enrollment and utilization of the  
13 insurer's quarterly financial statement. The [~~estimated~~]  
14 payments shall be equal to [~~at least one-fourth of the payment~~  
15 ~~made during the previous calendar year or one-fifth of the~~  
16 ~~actual payment due for the current calendar year, whichever is~~  
17 ~~greater~~] the current actual tax due for the calendar quarter  
18 preceding the premium tax due date. The premium tax paid for  
19 each calendar quarter shall be based on all premiums written  
20 during that calendar quarter and shall not include any New  
21 Mexico medical insurance pool credits. The New Mexico medical  
22 insurance pool credits shall be granted only on the final  
23 annual premium tax return and shall be granted only after the  
24 New Mexico medical insurance pool issues its final assessments  
25 for the prior calendar year. The credits granted for the New

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1 Mexico medical insurance pool shall not exceed the annual  
2 premium tax due on the final annual premium tax return. The  
3 final adjustment for payments due for the prior year shall be  
4 made with the final premium tax return, which shall be filed on  
5 ~~[April]~~ March 15 of each year, at which time all taxes for that  
6 year are due. ~~[Dividends paid or credited to policyholders or~~  
7 ~~contract holders and refunds, savings, savings coupons and~~  
8 ~~similar returns or credits applied or credited to payment of~~  
9 ~~premiums for existing, new or additional insurance shall, in~~  
10 ~~the amount so used, constitute premiums subject to tax under~~  
11 ~~this section for the year in which so applied or credited.]~~

12 E. If an insurer amends its annual financial  
13 statement, it must file its amended annual financial statement  
14 and its amended final premium tax return within thirty days  
15 after the date of the amendment.

16 F. Exempted from the taxes imposed by this section  
17 are:

18 (1) premiums attributable to insurance or  
19 contracts purchased by the state or a political subdivision for  
20 the state's or political subdivision's active or retired  
21 employees; ~~and~~

22 (2) payments received by a health maintenance  
23 organization from the federal secretary of health and human  
24 services pursuant to a contract issued under the provisions of  
25 42 U.S.C. Section 1395 mm(g); and

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1                   (3) premiums written on federal employees'  
2 health benefit plans, Title 18 medicare, medicare part D,  
3 federally reinsured flood insurance and federally reinsured  
4 crop insurance."

5           SECTION 7. Section 59A-6-4 NMSA 1978 (being Laws 1984,  
6 Chapter 127, Section 104, as amended) is amended to read:

7           "59A-6-4. PENALTY FOR FAILURE TO REPORT OR PAY TAX OR  
8 FEES.--

9           A. Every insurer, bail bondsman, nonprofit health  
10 care plan, health maintenance organization, prepaid dental plan  
11 or prearranged funeral plan transacting business in New Mexico  
12 that fails to ~~[file when due any report for taxation,~~  
13 ~~regardless of whether tax is due, or to pay when due any tax or~~  
14 ~~fees as required in this article]~~ do any of the following shall  
15 be liable to the state for the amount thereof and for a penalty  
16 ~~[of one thousand dollars (\$1,000)]~~ as described in Subsection B  
17 of this section for each month or part thereof it has failed to  
18 ~~[file the report or pay the tax or fees after demand therefor.~~  
19 ~~Services of process in any action against a person to recover~~  
20 ~~the tax, fee or penalty may be made upon the superintendent as~~  
21 ~~attorney for service of process as provided in Section 59A-5-32~~  
22 ~~NMSA 1978]~~ fully remedy the infraction described in this  
23 subsection:

24                   (1) to file when due any report for taxation,  
25 regardless of whether tax is due;

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1                   (2) to pay when due any tax or fees as  
2 required pursuant to Chapter 59A, Article 6 NMSA 1978; or

3                   (3) within thirty days after the date of an  
4 amended financial statement, to file its amended annual  
5 financial statement and its amended premium tax return and to  
6 pay where required its amended premium tax if it has amended  
7 its annual financial statement.

8                   B. The penalty for each month or part thereof shall  
9 be:

10                   (1) two hundred fifty dollars (\$250) when the  
11 amount of unpaid taxes and fees is zero or is less than two  
12 hundred fifty dollars (\$250);

13                   (2) five hundred dollars (\$500) when the  
14 amount of unpaid taxes and fees is two hundred fifty dollars  
15 (\$250) or greater but less than five hundred dollars (\$500); or

16                   (3) one thousand dollars (\$1,000) when the  
17 amount of unpaid taxes and fees is five hundred dollars (\$500)  
18 or greater.

19                   C. Service of process in an action against a person  
20 to recover the tax, fee or penalty may be made upon the  
21 superintendent as attorney for service of process, as provided  
22 in Section 59A-5-32 NMSA 1978."

23                   SECTION 8. Section 59A-6-5 NMSA 1978 (being Laws 1984,  
24 Chapter 127, Section 105, as amended) is amended to read:

25                   "59A-6-5. DISTRIBUTION OF [~~DIVISION~~] OFFICE OF

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1 SUPERINTENDENT OF INSURANCE COLLECTIONS.--

2 A. All money received by the [~~division~~] office of  
3 superintendent of insurance for fees, licenses, penalties and  
4 taxes shall be paid daily by the superintendent to the state  
5 treasurer and credited to the "insurance department suspense  
6 fund" except as provided by:

7 (1) the Law Enforcement Protection Fund Act;  
8 and

9 (2) Section 59A-6-1.1 NMSA 1978.

10 B. The superintendent may authorize refund of money  
11 [~~erroneously~~] paid [~~as~~] in excess of liability for fees,  
12 licenses, penalties or taxes from the insurance department  
13 suspense fund under request for refund made within three years  
14 after the [~~erroneous~~] excess payment. In the case of premium  
15 taxes [~~erroneously~~] paid or overpaid in accordance with law,  
16 refund may also be requested as a credit against premium taxes  
17 due in any annual or quarterly premium tax return filed within  
18 three years of the [~~erroneous or~~] excess payment.

19 C. If required by a compact to which New Mexico has  
20 joined pursuant to law, the superintendent shall authorize the  
21 allocation of premiums collected pursuant to Section 59A-14-12  
22 NMSA 1978 to other states that have joined the compact pursuant  
23 to an allocation formula agreed upon by the compacting states.

24 D. The "insurance operations fund" is created in  
25 the state treasury. The fund shall consist of the

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1 distributions made to it pursuant to Subsection E of this  
2 section. The legislature shall annually appropriate from the  
3 fund to the ~~[division]~~ office of superintendent of insurance  
4 those amounts necessary for the ~~[division]~~ office of  
5 superintendent of insurance to carry out its responsibilities  
6 pursuant to the Insurance Code and other laws. Any balance in  
7 the fund at the end of a fiscal year greater than one-half of  
8 that fiscal year's appropriation shall revert to the general  
9 fund.

10 E. At the end of every month, after applicable  
11 refunds are made pursuant to Subsection B of this section and  
12 after any allocations have been made pursuant to Subsection C  
13 of this section, the treasurer shall make the following  
14 transfers from the balance remaining in the insurance  
15 department suspense fund:

16 (1) to the "fire protection fund", that part  
17 of the balance derived from property and vehicle insurance  
18 business;

19 (2) to the insurance operations fund, that  
20 part of the balance derived from the fees imposed pursuant to  
21 Subsections A and E of Section 59A-6-1 NMSA 1978 other than  
22 fees derived from property and vehicle insurance business; and

23 (3) to the general fund, the balance remaining  
24 in the insurance department suspense fund derived from all  
25 other kinds of insurance business."

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1           SECTION 9. Section 59A-7-3 NMSA 1978 (being Laws 2016,  
2 Chapter 89, Section 6) is amended to read:

3           "59A-7-3. ACCIDENT AND HEALTH INSURANCE.--

4           A. Accident and health includes:

- 5                   [A.] (1) accident;
- 6                   [B.] (2) accidental death and dismemberment;
- 7                   [C.] (3) blanket accident and sickness;
- 8                   [D.] (4) credit disability;
- 9                   [E.] (5) critical illness;
- 10                  [F.] (6) dental;
- 11                  [G.] (7) disability income;
- 12                  ~~[H.] excess or stop loss;~~
- 13                  [I.] (8) home health care;
- 14                  [J.] (9) hospital indemnity;
- 15                  [K.] (10) long-term care;
- 16                  [L.] (11) major medical;
- 17                  [M.] (12) medical expense;
- 18                  [N.] (13) medicare supplement;
- 19                  [O.] (14) prescription drug;
- 20                  [P.] (15) sickness;
- 21                  [Q.] (16) specified disease;
- 22                  [R.] (17) vision; and
- 23                  [S.] (18) similar products relating to

24 accident and health matters.

25           B. An insurer or a health maintenance organization

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1 authorized to transact accident and health insurance may write  
2 stop-loss liability insurance as listed in Subsection YY of  
3 Section 59A-7-6 NMSA 1978."

4 SECTION 10. Section 59A-14-2 NMSA 1978 (being Laws 1991,  
5 Chapter 125, Section 12, as amended) is amended to read:

6 "59A-14-2. DEFINITIONS.--As used in Chapter 59A, Article  
7 14 NMSA 1978:

8 A. "affiliate" means, with respect to an insured,  
9 any entity that controls, is controlled by or is under common  
10 control with the insured;

11 B. "affiliated group" means any group of entities  
12 that are all affiliated;

13 C. "association" means the national association of  
14 insurance commissioners or any successor entity;

15 D. "authorized insurer" means, with respect to New  
16 Mexico, an insurer holding a valid and subsisting certificate  
17 of authority, issued by the superintendent, to transact  
18 insurance in New Mexico;

19 [~~D.~~] E. "control" means that an entity:

20 (1) [~~an entity~~] directly or indirectly or  
21 acting through one or more other persons owns, controls or has  
22 the power to vote twenty-five percent or more of any class of  
23 voting securities of another entity; or

24 (2) [~~an entity~~] controls in any manner the  
25 election of a majority of the directors or trustees of another

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1 entity;

2 [E-] F. "eligible surplus lines insurer" means a  
3 qualified nonadmitted insurer [~~approved and listed pursuant to~~  
4 ~~Section 59A-14-4 NMSA 1978~~] with which a surplus lines broker  
5 may place surplus lines insurance pursuant to Section 59A-14-4  
6 NMSA 1978;

7 [F-] G. "exempt commercial purchaser" means any  
8 person purchasing commercial insurance that, at the time of  
9 placement, meets the following requirements:

10 (1) the person employs or retains a qualified  
11 risk manager to negotiate insurance coverage;

12 (2) the person has paid aggregate nationwide  
13 commercial property and casualty insurance premiums in excess  
14 of one hundred thousand dollars (\$100,000) in the immediately  
15 preceding twelve months; and

16 (3) the person:

17 (a) possesses a net worth in excess of  
18 twenty million dollars (\$20,000,000), provided that this amount  
19 shall be adjusted every five years by rule of the  
20 superintendent to account for the percentage change in the  
21 consumer price index;

22 (b) generates annual revenues in excess  
23 of fifty million dollars (\$50,000,000), provided that this  
24 amount shall be adjusted every five years by rule of the  
25 superintendent to account for the percentage change in the

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1 consumer price index;

2 (c) employs more than five hundred  
3 full-time or full-time-equivalent employees per insured entity  
4 or is a member of an affiliated group employing more than one  
5 thousand employees in the aggregate;

6 (d) is a not-for-profit organization or  
7 public entity generating annual budgeted expenditures of at  
8 least thirty million dollars (\$30,000,000), provided that this  
9 amount shall be adjusted every five years by rule of the  
10 superintendent to account for the percentage change in the  
11 consumer price index; or

12 (e) is a municipality with a population  
13 in excess of fifty thousand persons;

14 [~~G.~~] H. "export" means to place insurance with a  
15 nonadmitted insurer;

16 [~~H.~~] I. "home state" means, with respect to an  
17 insured:

18 [~~(1) except as provided in Paragraph (3) of~~  
19 ~~this subsection, the state in which an insured maintains its~~  
20 ~~principal place of business or, in the case of an individual,~~  
21 ~~the individual's principal residence;~~

22 [~~(2) except as provided in Paragraph (3) of~~  
23 ~~this subsection, if one hundred percent of the insured risk is~~  
24 ~~located out of the state referred to in Paragraph (1) of this~~  
25 ~~subsection, the state to which the greatest percentage of the~~

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1 ~~insured's taxable premium for that insurance contract is~~  
2 ~~allocated; or~~

3 ~~(3) if more than one insured from an~~  
4 ~~affiliated group are named insureds on a single nonadmitted~~  
5 ~~insurance contract, "home state" means the home state, as~~  
6 ~~determined pursuant to Paragraph (1) or (2) of this subsection,~~  
7 ~~of the member of the affiliated group that has the largest~~  
8 ~~percentage of premium attributed to it under the insurance~~  
9 ~~contract]~~

10 (1) the state:

11 (a) in which an insured maintains its  
12 principal place of business or, in the case of an individual,  
13 the individual's principal residence; or

14 (b) to which the greatest percentage of  
15 the insured's taxable premium for that insurance contract is  
16 allocated, if one hundred percent of the insured risk is  
17 located out of the state referred to in Subparagraph (a) of  
18 this paragraph; or

19 (2) if more than one insured from an  
20 affiliated group are named insureds on a single nonadmitted  
21 insurance contract, "home state" means the home state, as  
22 determined pursuant to Paragraph (1) of this subsection, of the  
23 member of the affiliated group that has the largest percentage  
24 of premium attributed to it under the insurance contract;

25 ~~[F.]~~ J. "independently procured insurance" means

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1 insurance procured directly by an insured from a nonadmitted  
2 insurer;

3 K. "nonadmitted insurance" means any property and  
4 casualty insurance permitted to be placed [~~directly or~~] through  
5 a surplus lines broker with an eligible surplus lines insurer;

6 [~~J-~~] L. "nonadmitted insurer" means an insurer not  
7 licensed to engage in the business of insurance in New Mexico  
8 but does not include a risk retention group, as "risk retention  
9 group" is defined in the federal Liability Risk Retention Act  
10 of 1986;

11 [~~K-~~] M. "premium tax" means, with respect to  
12 surplus lines, any tax, fee, assessment or other charge imposed  
13 by a government entity directly or indirectly based on any  
14 payment made as consideration for an insurance contract for  
15 such insurance, including premium deposits, assessments,  
16 registration fees and any other compensation given in  
17 consideration for a contract of insurance;

18 N. "principal place of business" means, with  
19 respect to determining the home state of the insured, the state  
20 where the insured maintains its headquarters and where the  
21 insured's high-level officers direct, control and coordinate  
22 the business activities of the insured;

23 O. "producing broker" means the broker or agent  
24 dealing directly with the person seeking insurance if the home  
25 state of the person seeking insurance is New Mexico;

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1                   ~~[H-]~~ P. "professional designation" means:

2                   (1) a designation as a chartered property and  
3 casualty underwriter issued by the American institute for  
4 chartered property and casualty underwriters;

5                   (2) a designation as an associate in risk  
6 management issued by the insurance institute of America;

7                   (3) a designation as a certified risk manager  
8 issued by the national alliance for insurance education and  
9 research;

10                   (4) a designation as a RIMS fellow issued by  
11 the global risk management institute; or

12                   (5) any other designation, certification or  
13 license determined by the superintendent to demonstrate minimum  
14 competency in risk management;

15                   ~~[M-]~~ Q. "qualified risk manager" means, with  
16 respect to an exempt commercial purchaser, a person who:

17                   (1) is an employee of, or a third-party  
18 consultant retained by, the exempt commercial purchaser;

19                   (2) provides skilled services in loss  
20 prevention, loss reduction, risk and insurance coverage  
21 analysis and purchase of insurance; and

22                   (3) has:

23                   (a) a bachelor's degree or higher from  
24 an accredited college or university in risk management,  
25 business administration, finance, economics or any other field

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1 determined by the superintendent to demonstrate minimum  
2 competence in risk management and either: 1) three years of  
3 experience in risk financing, claims administration, loss  
4 prevention, risk and insurance coverage analysis or purchase of  
5 commercial lines of insurance; or 2) a professional  
6 designation;

7 (b) a professional designation and at  
8 least seven years of experience in risk financing, claims  
9 administration, loss prevention, risk and insurance coverage  
10 analysis or purchase of commercial lines of insurance;

11 (c) at least ten years of experience in  
12 risk financing, claims administration, loss prevention, risk  
13 and insurance coverage analysis or purchase of commercial lines  
14 of insurance; or

15 (d) a graduate degree from an accredited  
16 college or university in risk management, business  
17 administration, finance, economics or any other field  
18 determined by the superintendent to demonstrate minimum  
19 competence in risk management;

20 R. "reinsurance" means the assumption by an insurer  
21 of all or part of a risk undertaken originally by another  
22 insurer;

23 [~~N.~~] S. "surplus lines broker" means an individual,  
24 firm or corporation licensed under Chapter 59A, Article 14 NMSA  
25 1978 to place insurance with eligible surplus lines insurers;

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1           [~~Θ-~~] T. "surplus lines insurance" means any  
2 insurance permitted to be exported through a surplus lines  
3 broker in accordance with the provisions of Chapter 59A,  
4 Article 14 NMSA 1978;

5           [~~P-~~] U. "type of insurance" means one of the types  
6 of insurance required to be reported in the annual statement  
7 that must be filed with the superintendent by authorized  
8 insurers; and

9           [~~Q-~~] V. "unauthorized insurer" means a nonadmitted  
10 insurer."

11           SECTION 11. Section 59A-14-4 NMSA 1978 (being Laws 1991,  
12 Chapter 125, Section 14, as amended) is amended to read:

13           "59A-14-4. ELIGIBLE SURPLUS LINES INSURERS REQUIRED.--

14           A. No person shall export insurance on behalf of an  
15 insured whose home state is New Mexico except as authorized by  
16 and in accordance with Chapter 59A, Article 14 NMSA 1978.

17           B. No surplus lines broker shall transact surplus  
18 lines insurance with an insurer other than an eligible surplus  
19 lines insurer.

20           C. To qualify as an eligible surplus lines insurer,  
21 a nonadmitted insurer shall file information demonstrating to  
22 the superintendent's satisfaction that:

23                   (1) the insurer is authorized to write the  
24 particular line of business in the state in which it is  
25 domiciled and:

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1 (a) the insurer has capital and surplus  
2 or their equivalent that equals the greater of: 1) fifteen  
3 million dollars (\$15,000,000); or 2) the minimum capital and  
4 surplus required in this state for that particular line of  
5 business; or

6 (b) the insurer has capital and surplus  
7 less than the amounts required in Subparagraph (a) of this  
8 paragraph but the superintendent affirmatively finds that the  
9 insurer is acceptable as an eligible surplus lines insurer.  
10 The finding shall be based upon such factors as quality of  
11 management, capital and surplus of any parent company, company  
12 underwriting profit and investment income trends and company  
13 record and reputation within the industry. In no event shall  
14 the superintendent make an affirmative finding of acceptability  
15 when the surplus lines insurer's capital and surplus is less  
16 than four million five hundred thousand dollars (\$4,500,000);

17 (2) the insurer is a member of an "insurance  
18 exchange", which is an association of syndicates or insurers  
19 created by the laws of individual states, and shall maintain  
20 capital and surplus, or the equivalent thereof, of not less  
21 than fifty million dollars (\$50,000,000) in the aggregate. For  
22 insurance exchanges that maintain funds for the protection of  
23 all insurance exchange policyholders, each individual syndicate  
24 shall maintain minimum capital and surplus, or the equivalent  
25 thereof, of not less than five million dollars (\$5,000,000).

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1 In the event the insurance exchange does not maintain funds for  
2 the protection of all insurance exchange policyholders, each  
3 individual syndicate shall meet the minimum capital and surplus  
4 requirements of Subparagraph (a) of Paragraph (1) of this  
5 subsection;

6 (3) if the insurer is an alien insurer, the  
7 insurer is listed on the quarterly listing of alien insurers  
8 maintained by the international insurers department of the  
9 association; or

10 (4) if, pursuant to law, New Mexico has joined  
11 a compact or multistate agreement for the regulation of surplus  
12 lines insurance and the state, through the compact commission,  
13 has adopted nationwide uniform eligibility requirements, the  
14 insurer is in compliance with those requirements.

15 D. The superintendent shall maintain a list of  
16 eligible surplus line insurers from those qualified nonadmitted  
17 insurers that ~~[qualify as an eligible surplus lines insurer~~  
18 ~~under this section]~~ file information to satisfy the criteria  
19 established under Subsection C of this section. In addition to  
20 the requirements of Subsection C of this section, in order to  
21 appear on the list of eligible surplus lines insurers, a  
22 nonadmitted insurer shall provide annually to the  
23 superintendent a copy of ~~[its]~~ the insurer's most current  
24 annual statement certified and sworn to by the insurer, unless  
25 the annual statement is available to the superintendent through

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1 the national association of insurance commissioners or from  
2 public sources. The statement shall be provided or made  
3 available at the same time it is provided to the insurer's  
4 domicile, but in no event more than nine months after the close  
5 of the period reported upon, and shall be either:

6 (1) filed with and approved by the regulatory  
7 authority in the insurer's domicile; or

8 (2) certified as correct and in accordance  
9 with applicable accounting principles by a public accounting  
10 firm licensed in the insurer's domicile.

11 In the case of an insurance exchange, the statement may be  
12 an aggregate combined statement of all underwriting syndicates  
13 operating during the period reported.

14 E. The listing [~~required~~] described by Subsection D  
15 of this section shall not be deemed to constitute or evidence  
16 the superintendent's [~~approval or~~] guaranty as to the financial  
17 condition or business practices of the insurer, and no insurer  
18 or other person shall allege orally or in writing that any such  
19 listing constitutes or implies the superintendent's approval.

20 F. The superintendent may adopt rules fixing  
21 reasonable conditions to be met by insurers for the listing.  
22 For good cause shown, the superintendent may in writing waive  
23 the requirements of this section to permit insurance to be  
24 placed as to a particular risk and insurer if the insurance is  
25 not otherwise reasonably obtainable."

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1           SECTION 12. Section 59A-14-4.1 NMSA 1978 (being Laws  
2 1991, Chapter 125, Section 15) is amended to read:

3           "59A-14-4.1. WITHDRAWAL OF ELIGIBILITY FROM A SURPLUS  
4 ~~[LINE]~~ LINES INSURER.--The superintendent may at any time  
5 declare an eligible surplus lines insurer to be ineligible if  
6 the superintendent has reason to believe that the insurer:

7           A. is in unsound financial condition;

8           B. is subject to delinquency proceedings in this  
9 state or any other jurisdiction;

10           C. is no longer eligible under Section 59A-14-4  
11 NMSA 1978;

12           D. has violated the laws of this state, including  
13 ~~[but not limited to]~~ any violation of the Insurance Code or the  
14 superintendent's orders;

15           E. does not make reasonably prompt payment of loss  
16 claims or other obligations in this state or elsewhere;

17           F. has failed within sixty days to satisfy a final  
18 judgment rendered against it or against an insured for which it  
19 is legally liable under the terms of a contract of surplus  
20 lines insurance; or

21           G. has failed to satisfy the superintendent that it  
22 is fit to be allowed to continue to do business in this state.

23           The superintendent shall promptly mail notice of all such  
24 declarations to the insurer and to every surplus lines broker.

25           Notice sent pursuant to this subsection to a licensed surplus

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1 lines broker may, at the option of the surplus lines broker, be  
2 sent by the superintendent via electronic mail."

3 SECTION 13. Section 59A-14-11 NMSA 1978 (being Laws 1991,  
4 Chapter 125, Section 17, as amended) is amended to read:

5 "59A-14-11. DUTY TO FILE REPORTS AND AFFIDAVITS.--

6 A. The producing broker shall complete, execute and  
7 provide to the surplus lines broker ~~[an affidavit]~~ a signed  
8 statement in substantially the form required by the  
9 superintendent, as to the diligent efforts to place the  
10 coverage with authorized insurers and the results thereof. The  
11 ~~[affidavit]~~ statement shall affirm that the insured was  
12 expressly advised prior to placement of the insurance and in  
13 the insurance policy that:

14 (1) the surplus lines insurer with which the  
15 insurance was to be placed is not an authorized insurer in this  
16 state and is not subject to the superintendent's supervision;  
17 and

18 (2) in the event the surplus lines insurer  
19 becomes insolvent, claims will not be paid nor will unearned  
20 premiums be returned by any New Mexico insurance guaranty fund.

21 B. ~~[Within sixty days after the end of each~~  
22 ~~calendar quarter, the surplus lines broker shall file with the~~  
23 ~~superintendent a copy of each of the producing broker~~  
24 ~~affidavits required by Subsection A of this section and a copy~~  
25 ~~of the policy declarations page of all surplus lines insurance~~

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1 ~~business transacted during the calendar quarter.]~~ The surplus  
2 lines broker shall preserve the original producing broker  
3 [~~affidavits~~] statements in compliance with Section [~~59A-14-10~~]  
4 59A-14-11 NMSA 1978. The declaration pages shall be  
5 confidential and shall not be subject to public inspection.  
6 The superintendent's copy of the [~~affidavits~~] statements shall  
7 be open to public inspection. If the producing broker has  
8 failed to provide the producing broker [~~affidavit~~] statement,  
9 the surplus lines broker shall at the time of quarterly filing  
10 notify the superintendent of the producing broker's failure to  
11 comply.

12 C. Each surplus lines broker shall, within sixty  
13 days after expiration of each calendar quarter, file with the  
14 superintendent a statement under the surplus lines broker's  
15 oath of all surplus lines insurance business transacted during  
16 such calendar quarter. The statement shall be on forms as  
17 prescribed and furnished by the superintendent and shall  
18 contain such information relative to the surplus lines  
19 insurance transaction as the superintendent may reasonably  
20 require for the purposes of Chapter 59A, Article 14 NMSA 1978."

21 SECTION 14. Section 59A-14-12 NMSA 1978 (being Laws 1984,  
22 Chapter 127, Section 250, as amended) is amended to read:

23 "59A-14-12. PREMIUM TAX ON SURPLUS LINES INSURANCE.--

24 A. Within sixty days after expiration of a calendar  
25 quarter, the surplus lines broker shall pay to the

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1 superintendent for the use of the state a tax on gross premiums  
2 received, less returned premiums, on surplus lines business  
3 where New Mexico is the home state of the insured transacted  
4 under the surplus lines broker's license during such calendar  
5 quarter as shown by the quarterly statement filed with the  
6 superintendent pursuant to Section 59A-14-11 NMSA 1978. The  
7 tax shall be at the same rate as is applicable to premiums of  
8 authorized insurers under Section 59A-6-2 NMSA 1978.

9 B. For purposes of this section, "premiums" shall  
10 include any additional amount charged the insured, including  
11 policy fees, risk purchasing group fees and inspection fees;  
12 but "premiums" shall not include any additional amount charged  
13 the insured for local, state or federal tax; regulatory  
14 authority fee; or examination fee, if any.

15 C. The superintendent may require surplus lines  
16 brokers [~~and insureds who have independently procured~~  
17 ~~insurance~~] to file tax allocation reports annually detailing  
18 the portion of the nonadmitted insurance policy premiums  
19 attributable to properties, risks or exposures located in each  
20 state.

21 D. A penalty of ten percent of the amount of tax  
22 originally due, plus one percent of such tax amount for each  
23 month or fraction thereof of delinquency after the first thirty  
24 days of delinquency, shall be paid by the surplus lines broker  
25 for failure to pay the tax in full within sixty days after

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1 expiration of the calendar quarter as provided in Subsection A  
2 of this section; except that the superintendent may waive or  
3 remit the penalty if the superintendent finds that the failure  
4 or delay in payment arose from excusable mistake or excusable  
5 inadvertence.

6 E. For a surplus lines policy issued to an insured  
7 whose home state is New Mexico and where only a portion of the  
8 risk is located in New Mexico, the entire premium tax shall be  
9 paid to the superintendent in accordance with this section. If  
10 the superintendent finds that it would increase the efficiency  
11 of the surplus lines insurance marketplace as well as the  
12 regulation of the surplus lines market, the superintendent may  
13 enter into a compact or multistate surplus lines agreement  
14 relating to eligibility for placement of surplus lines  
15 insurance and the payment, reporting, collection and  
16 apportionment of surplus lines premium taxes. If a surplus  
17 lines policy covers risks or exposures only partially in New  
18 Mexico and the superintendent has entered into an agreement  
19 with other states for the apportionment of premium taxes for  
20 multistate risks, the tax payable pursuant to this section  
21 shall be computed and paid upon the proportion of the premium  
22 that is properly allocable to the risks or exposures located in  
23 New Mexico in accordance with the terms of any such agreement."

24 SECTION 15. Section 59A-16-21 NMSA 1978 (being Laws 1984,  
25 Chapter 127, Section 287, as amended) is amended to read:

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1 "59A-16-21. PAYMENT OF CLAIM BY CHECK, [~~OR~~] DRAFT OR  
2 ELECTRONIC TRANSFER--FAILURE TO PAY--INTEREST.--

3 A. An insurer shall pay claims arising under its  
4 policies with checks or drafts [~~which~~], or, if a claimant  
5 requests, by electronic transfer of funds, that are promptly  
6 paid. Without amending other statutes dealing with checks,  
7 [~~and~~] drafts or electronic transfer of funds, a resident of New  
8 Mexico is granted a cause of action for ten percent of the  
9 amount of any check, [~~or~~] draft or electronic transfer of funds  
10 that is not paid or lawfully rejected within ten days of  
11 forwarding by a New Mexico financial institution, but in no  
12 case to be less than five hundred dollars (\$500) plus costs of  
13 suit and [~~attorneys'~~] attorney fees. The insurer shall not be  
14 required to pay such civil damages for delay if it proves that  
15 the delay in processing and payment was caused by a financial  
16 institution or postal or delivery service and the check, [~~or~~]  
17 draft or electronic transfer of funds was paid or lawfully  
18 rejected within forty-eight hours of actual receipt of the  
19 draft, [~~or~~] check or electronic transfer of funds by the person  
20 on whom drawn.

21 B. Notwithstanding any provision of the Insurance  
22 Code, any insurer issuing any policy, certificate or contract  
23 of insurance, surety, guaranty or indemnity of any kind or  
24 nature [~~which~~] that fails for a period of forty-five days,  
25 after required proof of loss has been furnished, to pay to the

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1 person entitled the amount justly due shall be liable for the  
2 amount due and unpaid with interest on that amount at the rate  
3 of one and one-half times the prime lending rate, as determined  
4 by the superintendent, for New Mexico banks per year during the  
5 period the claim is unpaid.

6 C. Subsection B of this section shall not apply to  
7 any claims in arbitration or litigation."

8 SECTION 16. Section 59A-16C-14 NMSA 1978 (being Laws  
9 1998, Chapter 115, Section 14, as amended) is amended to read:

10 "59A-16C-14. INSURANCE FRAUD FUND CREATED--  
11 APPROPRIATION.--

12 A. There is created an "insurance fraud fund" in the  
13 state treasury. All fees collected [~~under~~] pursuant to the  
14 provisions of the Insurance Fraud Act shall be deposited in the  
15 fund and are subject to appropriation for use in paying the  
16 expenses incurred by the superintendent in carrying out the  
17 provisions of the Insurance Fraud Act. Interest on the fund  
18 shall be credited to the fund. The fund is a continuing,  
19 nonreverting fund.

20 B. To implement the provisions of the Insurance Fraud  
21 Act, the superintendent shall determine a rate of assessment  
22 and collect a fee from authorized insurers in an amount not  
23 less than two hundred dollars (\$200) and not exceeding one-  
24 tenth of one percent of the correctly reported direct written  
25 premiums on policies written in New Mexico by the authorized

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1     insurers. The fee shall be due annually pursuant to rules  
2     promulgated by the superintendent. The failure of an insurer  
3     to pay this fee when due shall subject the insurer to a penalty  
4     of one thousand dollars (\$1,000) per month or part thereof in  
5     which the fee remains unpaid. The superintendent, after taking  
6     into account unexpended money produced by collection of the  
7     fee, shall adjust the rate of assessment each year to produce  
8     the amount of money that [he] the superintendent estimates will  
9     be necessary to pay expenses incurred by the superintendent in  
10    carrying out the provisions of the Insurance Fraud Act. [~~The~~  
11    ~~assessment for a title insurer, as defined in Section 59A-30-3~~  
12    ~~NMSA 1978, shall be determined by the superintendent at the~~  
13    ~~annual hearing conducted pursuant to Section 59A-30-8 NMSA~~  
14    ~~1978.~~]

15           C. In calculating the direct written premiums for an  
16    insurer pursuant to the provisions of this section, all direct  
17    written premiums for workers' compensation insurance and for  
18    all types of insurance that are exempted by federal law shall  
19    be excluded from the calculation.

20           D. The fees required by this section are in addition  
21    to all other taxes and fees now imposed or that may be  
22    subsequently imposed."

23           SECTION 17. Section 59A-22-1 NMSA 1978 (being Laws 1984,  
24    Chapter 127, Section 422) is amended to read:

25           "59A-22-1. SCOPE OF ARTICLE.--~~[This article]~~ Chapter 59A,

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1 Article 22 NMSA 1978 applies generally to policies of  
2 individual health insurance, including student health plan  
3 policies. Nothing in [~~this~~] that article shall apply to or  
4 affect:

5 A. any policy of [~~workmen's~~] workers' compensation  
6 insurance or any policy of liability insurance with or without  
7 supplementary expense coverage therein; [~~or~~]

8 B. life insurance, endowment or annuity contracts or  
9 contracts supplemental thereto [~~which~~] that contain only such  
10 provisions relating to health insurance as:

11 (1) provide additional benefits in case of death  
12 by accident; and

13 (2) operate to safeguard such contracts against  
14 lapse or to give a special surrender value or special benefit  
15 or annuity in event the insured or annuitant becomes totally  
16 and permanently disabled, as defined by the contract or  
17 supplemental contract;

18 C. group or blanket health insurance, except as  
19 stated in Chapter 59A, Article 23 [~~of the Insurance Code~~] NMSA  
20 1978; or

21 D. reinsurance."

22 SECTION 18. Section 59A-23-2 NMSA 1978 (being Laws 1984,  
23 Chapter 127, Section 461) is amended to read:

24 "59A-23-2. BLANKET HEALTH INSURANCE.--

25 A. Blanket health insurance is [~~hereby~~] declared to

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1 be that form of health insurance covering special groups of not  
2 [~~less~~] fewer than ten [~~(10)~~] persons as enumerated in one of  
3 the following paragraphs [~~(1) to (5) inclusive~~]:

4 (1) under a policy or contract issued to [~~any~~] a  
5 common carrier, which shall be deemed the policyholder,  
6 covering a group defined as all persons who may become  
7 passengers on [~~such~~] the common carrier;

8 (2) under a policy or contract issued to an  
9 employer [~~who~~] that shall be deemed the policyholder, covering  
10 [~~any~~] a group of employees defined by reference to exceptional  
11 hazards incident to [~~such~~] employment;

12 (3) under a policy or contract issued to a  
13 college, school or other institution of learning or to the head  
14 or principal thereof, who or which shall be deemed the  
15 policyholder, covering students and teachers;

16 (4) under a policy or contract issued in the  
17 name of [~~any~~] a volunteer fire department or first aid or other  
18 such volunteer group, which shall be deemed the policyholder,  
19 covering all of the members of [~~such~~] the department or group;  
20 or

21 (5) under a policy or contract issued to any  
22 other substantially similar group [~~which~~] that, in the  
23 discretion of the superintendent, may be subject to the  
24 issuance of a blanket health policy or contract.

25 B. An individual application shall not be required

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1 from a person covered under a blanket sickness or accident  
2 policy or contract.

3 C. All benefits under any blanket sickness and  
4 accident policy shall be payable to the person insured or [~~his~~]  
5 the person's agent, or to [~~his~~] the person's designated  
6 beneficiary or beneficiaries, or to [~~his~~] the person's estate,  
7 except that if the person insured [~~be~~] is a minor, such  
8 benefits may be made payable to [~~his~~] the minor's parent,  
9 guardian or other person actually supporting [~~him~~] the minor.

10 D. A blanket sickness or accident policy or contract  
11 issued to a college, school or other institution of learning or  
12 to the head or principal thereof shall not be identified or  
13 sold as a student health plan."

14 SECTION 19. Section 59A-23B-5 NMSA 1978 (being Laws 1991,  
15 Chapter 111, Section 5) is amended to read:

16 "59A-23B-5. POLICY OR PLAN DISCLOSURE REQUIREMENTS.--

17 A. Upon offering coverage under a policy or plan for  
18 any individual, family or group member, an insurer, fraternal  
19 benefit society, health maintenance organization or nonprofit  
20 healthcare plan shall provide the individual, family or group  
21 member with a written disclosure statement containing at least  
22 the following:

- 23 (1) a general explanation of those mandated  
24 benefits and providers not covered by the policy or plan;  
25 (2) an explanation of the managed care and cost

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1 control features of the policy or plan, along with all  
2 appropriate mailing addresses and telephone numbers to be  
3 utilized by the insured or enrollees seeking information or  
4 authorization; and

5 (3) an explanation of the primary and preventive  
6 care features of the policy or plan.

7 B. Any disclosure statement provided pursuant to  
8 Subsection A of this section shall be written in a clear and  
9 understandable form and format and shall be separate from the  
10 insurance policy or certificate or other evidence of coverage  
11 provided to the individual, family and group member.

12 C. Before any insurer, fraternal benefit society,  
13 health maintenance organization or nonprofit healthcare plan  
14 issues a policy or plan contract, the insurer, fraternal  
15 benefit society, health maintenance organization or nonprofit  
16 healthcare plan shall obtain from the prospective policyholder,  
17 contract holder or member a signed written statement in which  
18 the prospective policyholder, contract holder or member:

19 (1) certifies as to the eligibility of the  
20 individual, family or group for coverage under the policy or  
21 plan;

22 (2) acknowledges the limited nature of the  
23 coverage, including the managed care and cost control features  
24 of the policy or plan;

25 (3) acknowledges that if misrepresentations are

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1 made regarding eligibility for coverage under a policy or plan,  
2 the person making such misrepresentations shall forfeit  
3 coverage provided by the policy or plan if the insurer,  
4 fraternal benefit society, health maintenance organization or  
5 nonprofit healthcare plan relied upon the misrepresentation to  
6 its detriment; and

7 (4) acknowledges that the prospective  
8 policyholder, contract holder or member had, at the time of  
9 application for the policy or plan, been offered the  
10 opportunity to purchase coverage that included all applicable  
11 mandated benefits and the prospective policyholder, contract  
12 holder or member rejected such coverage.

13 D. A copy of the written statement required by  
14 Subsection C of this section shall be provided to the  
15 prospective policyholder, contract holder or member no later  
16 than at the time of delivery of the policy or plan and the  
17 original signed written statement shall be retained in the  
18 files of the insurer, fraternal benefit society, health  
19 maintenance organization or nonprofit healthcare plan while the  
20 policy or plan remains in effect or for three years, whichever  
21 is less.

22 E. Any material statement made by an applicant for  
23 coverage under a policy or plan that falsely certifies to the  
24 applicant's eligibility for coverage shall serve as the basis  
25 for termination of coverage under the policy or plan if the

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1 insurer, fraternal benefit society, health maintenance  
2 organization or nonprofit healthcare plan detrimentally relied  
3 upon the misrepresentation.

4 F. All printed, radio or television communication  
5 intended to be used for marketing a policy or plan in the state  
6 and the disclosures required by Subsection A of this section  
7 shall be submitted for review and approval by the  
8 superintendent [~~of insurance~~] prior to use. The superintendent  
9 [~~of insurance~~] shall complete the review within [~~thirty~~] sixty  
10 days or else the materials submitted shall be deemed approved  
11 for use."

12 SECTION 20. Section 59A-25-8 NMSA 1978 (being Laws 1984,  
13 Chapter 127, Section 479) is amended to read:

14 "59A-25-8. FILING, APPROVAL AND WITHDRAWAL OF FORMS.--

15 A. All policies, certificates of insurance, notice of  
16 proposed insurance, applications for insurance, endorsements  
17 and riders delivered or issued for delivery in this state and  
18 the schedules of premium rates pertaining [~~thereto~~] to them  
19 shall be filed by the insurer with the superintendent.

20 B. The superintendent shall, within [~~thirty (30)~~]  
21 sixty days after the filing of any such policies, certificates  
22 of insurance, notice of proposed insurance, applications for  
23 insurance, endorsements and riders, disapprove any [~~such~~] form  
24 if the benefits provided therein are not reasonable in relation  
25 to the premium charge or if it contains provisions [~~which~~] that

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1 are unjust, unfair, inequitable, misleading, deceptive or  
2 encourage misrepresentation of the coverage or that are  
3 contrary to [~~any~~] a provision of the Insurance Code or of [~~any~~]  
4 a rule or regulation promulgated thereunder.

5 C. If the superintendent notifies the insurer that  
6 the form is disapproved, it is unlawful thereafter for the  
7 insurer to issue or use [~~such~~] the form. In [~~such~~] the notice,  
8 the superintendent shall specify the reason for disapproval and  
9 state that a hearing will be granted within twenty [~~(20)~~] days  
10 after request in writing by the insurer. No such policy,  
11 certificate of insurance, notice of proposed insurance, nor any  
12 application, endorsement or rider, shall be issued or used  
13 until the expiration of thirty [~~(30)~~] days after it has been  
14 [~~so~~] filed, unless the superintendent gives [~~his~~] prior written  
15 approval thereto.

16 D. The superintendent may, at any time after a  
17 hearing held not less than twenty [~~(20)~~] days after written  
18 notice to the insurer, withdraw [~~his~~] approval of [~~any such~~] a  
19 form on any ground set forth in Subsection B [~~above~~] of this  
20 section. The written notice of hearing shall state the reason  
21 for the proposed withdrawal.

22 E. The insurer shall not issue [~~such~~] the forms or  
23 use them after the effective date of [~~such~~] withdrawal.

24 F. If a group policy of credit life insurance or  
25 credit health insurance has been or is delivered in another

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1 state, the insurer shall be required to file only the group  
2 certificate and notice of proposed insurance delivered or  
3 issued for delivery in this state as specified in Subsections B  
4 and D of Section [~~478 of this article~~] 59A-25-7 NMSA 1978, and  
5 [~~such~~] the forms shall be approved by the superintendent if  
6 they conform with the requirements specified in such  
7 subsections and if the schedules of premium rates applicable to  
8 the insurance evidenced by [~~such~~] the certificate or notice are  
9 not in excess of the insurer's schedules of premium rates filed  
10 with the superintendent."

11 SECTION 21. Section 59A-57-3 NMSA 1978 (being Laws 1998,  
12 Chapter 107, Section 3) is amended to read:

13 "59A-57-3. DEFINITIONS.--As used in the Patient  
14 Protection Act:

15 A. "continuous quality improvement" means an ongoing  
16 and systematic effort to measure, evaluate and improve a  
17 managed health care plan's process in order to improve  
18 continually the quality of health care services provided to  
19 enrollees;

20 B. "covered person", "enrollee", "patient" or  
21 "consumer" means an individual who is entitled to receive  
22 health care benefits provided by a managed health care plan;

23 C. "department" means the office of superintendent of  
24 insurance [~~department~~];

25 D. "emergency care" means health care procedures,

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1 treatments or services delivered to a covered person after the  
2 sudden onset of what reasonably appears to be a medical  
3 condition that manifests itself by symptoms of sufficient  
4 severity, including severe pain, that the absence of immediate  
5 medical attention could be reasonably expected by a reasonable  
6 layperson to result in jeopardy to a person's health, serious  
7 impairment of bodily functions, serious dysfunction of a bodily  
8 organ or part or disfigurement to a person;

9 E. "health care facility" means an institution  
10 providing health care services, including a hospital or other  
11 licensed inpatient center; an ambulatory surgical or treatment  
12 center; a skilled nursing center; a residential treatment  
13 center; a home health agency; a diagnostic, laboratory or  
14 imaging center; and a rehabilitation or other therapeutic  
15 health setting;

16 F. "health care insurer" means a person that has a  
17 valid certificate of authority in good standing under the  
18 Insurance Code to act as an insurer, health maintenance  
19 organization, nonprofit health care plan or prepaid dental  
20 plan;

21 G. "health care professional" means a physician or  
22 other health care practitioner, including a pharmacist, who is  
23 licensed, certified or otherwise authorized by the state to  
24 provide health care services consistent with state law;

25 H. "health care provider" or "provider" means a

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1 person that is licensed or otherwise authorized by the state to  
2 furnish health care services and includes health care  
3 professionals and health care facilities;

4 I. "health care services" includes, to the extent  
5 offered by the plan, physical health or community-based mental  
6 health or developmental disability services, including services  
7 for developmental delay;

8 J. "managed health care plan" or "plan" means a  
9 health care insurer or a provider service network when offering  
10 a benefit that either requires a covered person to use, or  
11 creates incentives, including financial incentives, for a  
12 covered person to use, health care providers managed, owned,  
13 under contract with or employed by the health care insurer or  
14 provider service network. "Managed health care plan" or "plan"  
15 does not include a health care insurer or provider service  
16 network offering a traditional fee-for-service indemnity  
17 benefit or a benefit that covers only short-term travel,  
18 accident-only, limited benefit [~~student health plan~~] or  
19 specified disease policies;

20 K. "person" means an individual or other legal  
21 entity;

22 L. "point-of-service plan" or "open plan" means a  
23 managed health care plan that allows enrollees to use health  
24 care providers other than providers under direct contract with  
25 or employed by the plan, even if the plan provides incentives,

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1 including financial incentives, for covered persons to use the  
2 plan's designated participating providers;

3 M. "provider service network" means two or more  
4 health care providers affiliated for the purpose of providing  
5 health care services to covered persons on a capitated or  
6 similar prepaid flat-rate basis that hold a certificate of  
7 authority pursuant to the Provider Service Network Act;

8 N. "superintendent" means the superintendent of  
9 insurance; and

10 O. "utilization review" means a system for reviewing  
11 the appropriate and efficient allocation of health care  
12 services given or proposed to be given to a patient or group of  
13 patients."

14 SECTION 22. A new section of the Risk-Based Capital Act  
15 is enacted to read:

16 "[NEW MATERIAL] SEVERABILITY.--If any part or application  
17 of the Risk-Based Capital Act is held invalid, the remainder or  
18 its application to other situations or persons shall not be  
19 affected."

20 SECTION 23. REPEAL.--Sections 59A-14A-1 and 59A-14A-2  
21 NMSA 1978 (being Laws 2011, Chapter 156, Sections 1 and 2) are  
22 repealed.