

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOUSE BILL 223

**53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018**

INTRODUCED BY

Jim R. Trujillo and Carl Trujillo

AN ACT

RELATING TO INSURANCE; TRANSFERRING THE DUTY TO COLLECT  
INSURANCE PREMIUM TAXES TO THE TAXATION AND REVENUE DEPARTMENT;  
TRANSFERRING FUNCTIONS, PERSONNEL, APPROPRIATIONS, MONEY,  
PROPERTY AND CONTRACTUAL OBLIGATIONS; AMENDING, REPEALING AND  
ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. [NEW MATERIAL] SHORT TITLE.--Sections 1  
through 7 of this act may be cited as the "Insurance Premium  
Tax Act".

SECTION 2. [NEW MATERIAL] DEFINITIONS.--As used in the  
Insurance Premium Tax Act:

A. "authorized insurer" means an insurer holding a  
valid and subsisting certificate of authority to transact  
insurance in this state;

underscoring material = new  
~~[bracketed material] = delete~~

underscoring material = new  
~~[bracketed material] = delete~~

1           B. "certificate of authority" means the certificate  
2 of authority required to transact insurance in this state  
3 pursuant to Section 59A-5-10 NMSA 1978;

4           C. "department" means the taxation and revenue  
5 department;

6           D. "health maintenance organization" means "health  
7 maintenance organization" as that term is used in Chapter 59A,  
8 Article 46 NMSA 1978;

9           E. "insurance" means a contract whereby a person  
10 undertakes to pay or indemnify another as to loss from certain  
11 specified contingencies or perils, or to pay or grant a  
12 specified amount or determinable benefit in connection with  
13 ascertainable risk contingencies, or to act as surety;

14           F. "insurer" includes every person engaged as  
15 principal and as indemnitor, surety or contractor in the  
16 business of entering into contracts of insurance;

17           G. "nonprofit health care plan" means "health care  
18 plan" as that term is used in Chapter 59A, Article 47 NMSA  
19 1978;

20           H. "state" means, when used in context indicating a  
21 jurisdiction other than New Mexico, any state, district,  
22 commonwealth, territory or possession of the United States of  
23 America;

24           I. "superintendent" means the superintendent of  
25 insurance or the superintendent's duly authorized

.208799.6SAmS

underscoring material = new  
~~[bracketed material] = delete~~

1 representative acting in official capacity;

2 J. "taxpayer" means:

3 (1) an authorized insurer;

4 (2) an insurer formerly authorized to transact  
5 insurance in New Mexico and receiving premiums on policies  
6 remaining in force in New Mexico, except an insurer that  
7 withdrew from New Mexico prior to March 26, 1955;

8 (3) a plan operating under provisions of  
9 Chapter 59A, Articles 14 and 46 through 49 NMSA 1978;

10 (4) a property bondsman, as that person is  
11 defined in Section 59A-51-2 NMSA 1978;

12 (5) an unauthorized insurer that has assumed a  
13 contract or policy of insurance directly or indirectly from an  
14 authorized or formerly authorized insurer and is receiving  
15 premiums on such policies remaining in force in New Mexico;  
16 provided that the ceding insurer does not continue to pay the  
17 taxes imposed pursuant to the Insurance Premium Tax Act as to  
18 such policy or contract; or

19 (6) an insured who in this state procures,  
20 continues or renews insurance with a nonadmitted insurer  
21 pursuant to Section 59A-15-4 NMSA 1978; and

22 K. "transact insurance" with respect to an  
23 insurance contract or a business of insurance includes any of  
24 the following, by mail or otherwise or whether or not for  
25 profit:

.208799.6SAmS

underscored material = new  
~~[bracketed material] = delete~~

- 1 (1) solicitation or inducement;
- 2 (2) negotiation;
- 3 (3) effectuation of an insurance contract;
- 4 (4) transaction of matters subsequent to
- 5 effectuation and arising out of such a contract;
- 6 (5) maintenance in this state of an office or
- 7 personnel performing any function in furtherance of an
- 8 insurer's business of insurance; or
- 9 (6) maintenance by an insurer of assets in
- 10 trust in this state for the benefit, security or protection of
- 11 its policyholders or its policyholders and creditors.

12 SECTION 3. [NEW MATERIAL] IMPOSITION AND RATE OF TAX--  
13 DENOMINATION OF "PREMIUM TAX" AND "HEALTH INSURANCE PREMIUM  
14 SURTAX".--

15 A. A tax is imposed at a rate of three and three-  
16 thousandths percent of the gross premiums and membership and  
17 policy fees received or written by a taxpayer, as reported by  
18 March 1 of each year to the department in the appropriate  
19 schedule, as determined by the department, of the taxpayer's  
20 annual financial statement on insurance or contracts covering  
21 risks within the state during the preceding calendar year, less  
22 all return premiums, including dividends paid or credited to  
23 policyholders or contract holders and premiums received for  
24 reinsurance on New Mexico risks. The tax imposed pursuant to  
25 this section may be referred to as the "premium tax".

.208799.6SAms

underscored material = new  
[bracketed material] = delete

1           B. For a taxpayer that is an insurer lawfully  
2 organized pursuant to the laws of the Republic of Mexico, the  
3 premium tax shall apply solely to the taxpayer's gross premium  
4 receipts from insurance policies issued by the taxpayer in New  
5 Mexico that cover residents of New Mexico or property or risks  
6 principally domiciled or located in New Mexico.

7           C. With respect to a taxpayer that is a property  
8 bondsman, "gross premiums" shall be considered any  
9 consideration received as security or surety for a bail bond in  
10 connection with a judicial proceeding.

11           D. In addition to the premium tax, a health  
12 insurance premium surtax is imposed at a rate of one percent of  
13 the gross health insurance premiums and membership and policy  
14 fees received by the taxpayer on hospital and medical expense  
15 incurred insurance or contracts; nonprofit health care plan  
16 contracts, excluding dental or vision only contracts; and  
17 health maintenance organization subscriber contracts covering  
18 health risks within this state during the preceding calendar  
19 year, less all return health insurance premiums, including  
20 dividends paid or credited to policyholders or contract holders  
21 and health insurance premiums received for reinsurance on New  
22 Mexico risks. The surtax imposed pursuant to this section may  
23 be referred to as the "health insurance premium surtax".

24           SECTION 4. [NEW MATERIAL] EXEMPTIONS.--Exempted from the  
25 taxes imposed pursuant to the Insurance Premium Tax Act are:

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1           A. premiums attributable to insurance or contracts  
2 purchased by the state or a political subdivision for the  
3 state's or political subdivision's active or retired employees;

4           B. payments received by a health maintenance  
5 organization from the federal secretary of health and human  
6 services pursuant to a risk-sharing contract issued under the  
7 provisions of 42 U.S.C. Section 1395mm(g);

8           C. any business transacted pursuant to the  
9 provisions of the Service Contract Regulation Act;

10          D. the premiums from each policy or plan issued or  
11 offered pursuant to the Minimum Healthcare Protection Act  
12 during the first three years of the issuance of the master  
13 policy or individual policy; and

14          E. the money collected and placed in trust pursuant  
15 to Section 59A-49-6 NMSA 1978.

16           SECTION 5. [NEW MATERIAL] CREDIT--MEDICAL INSURANCE POOL  
17 ASSESSMENTS.--The assessment for any New Mexico medical  
18 insurance pool member pursuant to Section 59A-54-10 NMSA 1978  
19 shall be allowed as a fifty percent credit on the tax return  
20 for that member and a seventy-five percent credit on the tax  
21 return for that member for the assessments attributable to pool  
22 policyholders that receive premiums, in whole or in part,  
23 through the federal Ryan White CARE Act, the Ted R. Montoya  
24 hemophilia program at the university of New Mexico health  
25 sciences center, the children's medical services bureau of the

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 public health division of the department of health or other  
2 program receiving state funding or assistance.

3 SECTION 6. [NEW MATERIAL] DATE PAYMENT DUE.--For each  
4 calendar quarter, an estimated payment of the premium tax and  
5 the health insurance premium surtax shall be made on April 15,  
6 July 15, October 15 and the following January 15. The  
7 estimated payments shall be equal to at least one-fourth of the  
8 payment made during the previous calendar year or one-fifth of  
9 the actual payment due for the current calendar year, whichever  
10 is greater. The final adjustment for payments due for the  
11 prior year shall be made with the return filed on April 15, at  
12 which time all taxes for that year are due. Dividends paid or  
13 credited to policyholders or contract holders and refunds,  
14 savings, savings coupons and similar returns or credits applied  
15 or credited to payment of premiums for existing, new or  
16 additional insurance shall, in the amount so used, constitute  
17 premiums subject to tax pursuant to the Insurance Premium Tax  
18 Act for the year in which so applied or credited.

19 SECTION 7. [NEW MATERIAL] DEPARTMENT SHALL PROMULGATE  
20 RULES.--The department shall promulgate rules to carry out the  
21 provisions of the Insurance Premium Tax Act.

22 SECTION 8. Section 7-1-2 NMSA 1978 (being Laws 1965,  
23 Chapter 248, Section 2, as amended) is amended to read:

24 "7-1-2. APPLICABILITY.--The Tax Administration Act  
25 applies to and governs:

.208799.6SAmS

underscoring material = new  
~~[bracketed material] = delete~~

1                   A. the administration and enforcement of the  
2 following taxes or tax acts as they now exist or may hereafter  
3 be amended:

- 4                   (1) Income Tax Act;
- 5                   (2) Withholding Tax Act;
- 6                   (3) Venture Capital Investment Act;
- 7                   (4) Gross Receipts and Compensating Tax Act  
8 and any state gross receipts tax;
- 9                   (5) Liquor Excise Tax Act;
- 10                  (6) Local Liquor Excise Tax Act;
- 11                  (7) any municipal local option gross receipts  
12 tax;
- 13                  (8) any county local option gross receipts  
14 tax;
- 15                  (9) Special Fuels Supplier Tax Act;
- 16                  (10) Gasoline Tax Act;
- 17                  (11) petroleum products loading fee, which fee  
18 shall be considered a tax for the purpose of the Tax  
19 Administration Act;
- 20                  (12) Alternative Fuel Tax Act;
- 21                  (13) Cigarette Tax Act;
- 22                  (14) Estate Tax Act;
- 23                  (15) Railroad Car Company Tax Act;
- 24                  (16) Investment Credit Act, rural job tax  
25 credit, Laboratory Partnership with Small Business Tax Credit



underscored material = new  
[bracketed material] = delete

- 1 Act, Technology Jobs and Research and Development Tax Credit
- 2 Act, Film Production Tax Credit Act, Affordable Housing Tax
- 3 Credit Act and high-wage jobs tax credit;
- 4 (17) Corporate Income and Franchise Tax Act;
- 5 (18) Uniform Division of Income for Tax
- 6 Purposes Act;
- 7 (19) Multistate Tax Compact;
- 8 (20) Tobacco Products Tax Act; ~~and~~
- 9 (21) the telecommunications relay service
- 10 surcharge imposed by Section 63-9F-11 NMSA 1978, which
- 11 surcharge shall be considered a tax for the purposes of the Tax
- 12 Administration Act; and
- 13 (22) Insurance Premium Tax Act;
- 14 B. the administration and enforcement of the
- 15 following taxes, surtaxes, advanced payments or tax acts as
- 16 they now exist or may hereafter be amended:
- 17 (1) Resources Excise Tax Act;
- 18 (2) Severance Tax Act;
- 19 (3) any severance surtax;
- 20 (4) Oil and Gas Severance Tax Act;
- 21 (5) Oil and Gas Conservation Tax Act;
- 22 (6) Oil and Gas Emergency School Tax Act;
- 23 (7) Oil and Gas Ad Valorem Production Tax Act;
- 24 (8) Natural Gas Processors Tax Act;
- 25 (9) Oil and Gas Production Equipment Ad

underscored material = new  
~~[bracketed material] = delete~~

1 Valorem Tax Act;

2 (10) Copper Production Ad Valorem Tax Act;

3 (11) any advance payment required to be made  
4 by any act specified in this subsection, which advance payment  
5 shall be considered a tax for the purposes of the Tax

6 Administration Act;

7 (12) Enhanced Oil Recovery Act;

8 (13) Natural Gas and Crude Oil Production  
9 Incentive Act; and

10 (14) intergovernmental production tax credit  
11 and intergovernmental production equipment tax credit;

12 C. the administration and enforcement of the  
13 following taxes, surcharges, fees or acts as they now exist or  
14 may hereafter be amended:

15 (1) Weight Distance Tax Act;

16 (2) the workers' compensation fee authorized  
17 by Section 52-5-19 NMSA 1978, which fee shall be considered a  
18 tax for purposes of the Tax Administration Act;

19 (3) Uniform Unclaimed Property Act (1995);

20 (4) 911 emergency surcharge and the network  
21 and database surcharge, which surcharges shall be considered  
22 taxes for purposes of the Tax Administration Act;

23 (5) the solid waste assessment fee authorized  
24 by the Solid Waste Act, which fee shall be considered a tax for  
25 purposes of the Tax Administration Act;

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 (6) the water conservation fee imposed by  
2 Section 74-1-13 NMSA 1978, which fee shall be considered a tax  
3 for the purposes of the Tax Administration Act; and

4 (7) the gaming tax imposed pursuant to the  
5 Gaming Control Act; and

6 D. the administration and enforcement of all other  
7 laws, with respect to which the department is charged with  
8 responsibilities pursuant to the Tax Administration Act, but  
9 only to the extent that the other laws do not conflict with the  
10 Tax Administration Act."

11 SECTION 9. A new section of the Tax Administration Act is  
12 enacted to read:

13 "[NEW MATERIAL] DISTRIBUTION--PREMIUM TAX.--

14 A. A distribution pursuant to Section 7-1-6.1 NMSA  
15 1978 shall be made to the law enforcement protection fund in an  
16 amount equal to ten percent of the net receipts attributable to  
17 the premium tax from life, general casualty and title insurance  
18 business.

19 B. A distribution pursuant to Section 7-1-6.1 NMSA  
20 1978 shall be made to the fire protection fund of the net  
21 receipts attributable to the premium tax derived from property  
22 and vehicle insurance business."

23 SECTION 10. Section 7-1-8.8 NMSA 1978 (being Laws 2009,  
24 Chapter 243, Section 10, as amended) is amended to read:

25 "7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER STATE

.208799.6SAmS

underscoring material = new  
~~[bracketed material] = delete~~

1 AGENCIES.--An employee of the department may reveal to:

2 A. a committee of the legislature for a valid  
3 legislative purpose, return information concerning any tax or  
4 fee imposed pursuant to the Cigarette Tax Act;

5 B. the attorney general, return information  
6 acquired pursuant to the Cigarette Tax Act for purposes of  
7 Section 6-4-13 NMSA 1978 and the master settlement agreement  
8 defined in Section 6-4-12 NMSA 1978;

9 C. the commissioner of public lands, return  
10 information for use in auditing that pertains to rentals,  
11 royalties, fees and other payments due the state under land  
12 sale, land lease or other land use contracts;

13 D. the secretary of human services or the  
14 secretary's delegate under a written agreement with the  
15 department, the last known address with date of all names  
16 certified to the department as being absent parents of children  
17 receiving public financial assistance, but only for the purpose  
18 of enforcing the support liability of the absent parents by the  
19 child support enforcement division or any successor  
20 organizational unit;

21 E. the department of information technology, by  
22 electronic media, a database updated quarterly that contains  
23 the names, addresses, county of address and taxpayer  
24 identification numbers of New Mexico personal income tax  
25 filers, but only for the purpose of producing the random jury

.208799.6SAmS

underscoring material = new  
~~[bracketed material] = delete~~

1 list for the selection of petit or grand jurors for the state  
2 courts pursuant to Section 38-5-3 NMSA 1978;

3 F. the state courts, the random jury lists produced  
4 by the department of information technology under Subsection E  
5 of this section;

6 G. the director of the New Mexico department of  
7 agriculture or the director's authorized representative, upon  
8 request of the director or representative, the names and  
9 addresses of all gasoline or special fuel distributors,  
10 wholesalers and retailers;

11 H. the public regulation commission, return  
12 information with respect to the Corporate Income and Franchise  
13 Tax Act required to enable the commission to carry out its  
14 duties;

15 I. the state racing commission, return information  
16 with respect to the state, municipal and county gross receipts  
17 taxes paid by racetracks;

18 J. the gaming control board, tax returns of license  
19 applicants and their affiliates as provided in Subsection E of  
20 Section 60-2E-14 NMSA 1978;

21 K. the director of the workers' compensation  
22 administration or to the director's representatives authorized  
23 for this purpose, return information to facilitate the  
24 identification of taxpayers that are delinquent or noncompliant  
25 in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA

.208799.6SAmS

underscoring material = new  
[bracketed material] = delete

1 1978;

2 L. the secretary of workforce solutions or the  
3 secretary's delegate, return information for use in enforcement  
4 of unemployment insurance collections pursuant to the terms of  
5 a written reciprocal agreement entered into by the department  
6 with the secretary of workforce solutions for exchange of  
7 information;

8 M. the New Mexico finance authority, information  
9 with respect to the amount of municipal and county gross  
10 receipts taxes collected by municipalities and counties  
11 pursuant to any local option municipal or county gross receipts  
12 taxes imposed, and information with respect to the amount of  
13 governmental gross receipts taxes paid by every agency,  
14 institution, instrumentality or political subdivision of the  
15 state pursuant to Section 7-9-4.3 NMSA 1978; ~~[and]~~

16 N. the secretary of human services or the  
17 secretary's delegate; provided that a person who receives the  
18 confidential return information on behalf of the human services  
19 department shall not reveal the information and shall be  
20 subject to the penalties in Section 7-1-76 NMSA 1978 if the  
21 person fails to maintain the confidentiality required:

22 (1) that return information needed for reports  
23 required to be made to the federal government concerning the  
24 use of federal funds for low-income working families; and

25 (2) the names and addresses of low-income

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 taxpayers for the limited purpose of outreach to those  
2 taxpayers; provided that the human services department shall  
3 pay the department for expenses incurred by the department to  
4 derive the information requested by the human services  
5 department if the information requested is not readily  
6 available in reports for which the department's information  
7 systems are programmed; and

8 0. the superintendent of insurance, return  
9 information with respect to the premium tax and the health  
10 insurance premium surtax."

11 SECTION 11. Section 29-13-3 NMSA 1978 (being Laws 1983,  
12 Chapter 289, Section 3, as amended) is amended to read:

13 "29-13-3. DISTRIBUTION OF CERTAIN INSURANCE COLLECTIONS--  
14 LAW ENFORCEMENT PROTECTION FUND CREATED.--There is created in  
15 the state treasury the "law enforcement protection fund". Ten  
16 percent of all money received for fees, licenses and penalties  
17 [~~and taxes~~] from life, general casualty and title insurance  
18 business pursuant to the New Mexico Insurance Code [~~except for~~  
19 ~~money received from the health insurance premium surtax,~~  
20 ~~imposed by Subsection C of Section 59A-6-2 NMSA 1978]~~ shall be  
21 paid monthly to the state treasurer and credited to the fund.  
22 On or before June 30 of each year, the state treasurer shall  
23 transfer to the general fund any balance in the law enforcement  
24 protection fund in excess of one hundred thousand dollars  
25 (\$100,000) that is not obligated for expenses in that current

.208799.6SAmS

underscoring material = new  
~~[bracketed material] = delete~~

1 fiscal year."

2 SECTION 12. Section 59A-5-33 NMSA 1978 (being Laws 1984,  
3 Chapter 127, Section 100) is amended to read:

4 "59A-5-33. RECIPROCITY PROVISION.--

5 A. When by or pursuant to the laws of any other  
6 state or foreign country or province, any [~~taxes~~] licenses and  
7 other fees, in the aggregate, and any fines, penalties, deposit  
8 requirements or other material requirements, obligations,  
9 prohibitions or restrictions are or would be imposed upon New  
10 Mexico insurers doing business or that might seek to do  
11 business in such state, country or province, or upon the agents  
12 or representatives of such insurers or upon brokers or  
13 adjusters, which are in excess of such [~~taxes~~] licenses and  
14 other fees, in the aggregate, or which are in excess of the  
15 fines, penalties, deposit or other requirements, obligations,  
16 prohibitions or restrictions directly imposed upon similar  
17 insurers, or upon the agents or representatives of such  
18 insurers, or upon brokers, or upon adjusters, of such other  
19 state, country, or province under the statutes of this state,  
20 so long as such laws of such other state, country or province  
21 continue in force or are so applied, the same [~~taxes~~] licenses  
22 and other fees, in the aggregate, or fines, penalties or  
23 deposit requirements or other material requirements,  
24 obligations, prohibitions or restrictions of whatever kind may  
25 be imposed by the superintendent upon the insurers, or upon the

.208799.6SAmS



underscored material = new  
[bracketed material] = delete

1 agents or [~~representatives~~] representatives of such insurers,  
2 or upon brokers of such other state, country or province, doing  
3 business or seeking to do business in New Mexico. Any [~~tax~~]  
4 license or other fee or obligation imposed by any city, county  
5 or other political subdivision or agency of such other state,  
6 country or province on New Mexico insurers or their agents,  
7 representatives, brokers or adjusters shall be deemed to be  
8 imposed by such state, country or province within the meaning  
9 of this section.

10 B. This section does not apply [~~as~~] to

11 [~~(1) personal income taxes; or~~

12 [~~(2) ad valorem taxes on real or personal~~  
13 ~~property; or~~

14 [~~(3)~~] special purpose obligations or  
15 assessments, or assessments under insurance guaranty fund laws,  
16 imposed by another state in connection with particular kinds of  
17 insurance, except that assessment of insurers for financing of  
18 public safety, health, and protection purposes is not exempt  
19 under this subsection. [~~Except that deductions from premium~~  
20 ~~taxes or other taxes otherwise payable, allowed on account of~~  
21 ~~real or personal property taxes paid, shall be taken into~~  
22 ~~consideration by the superintendent in determining propriety~~  
23 ~~and extent of reciprocity action under this section.]~~

24 C. For purposes of this section, domicile of an  
25 alien insurer, other than Canadian insurer, shall be [~~that~~] the

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 state designated by the insurer in writing and filed with the  
2 superintendent at the time of authorization in this state or  
3 within six [~~6~~] months after the effective date of the  
4 Insurance Code, whichever date is the later, and may be any one  
5 of the following states:

6 (1) that in which the insurer was first  
7 authorized to transact insurance; [~~or~~]

8 (2) that in which is located the insurer's  
9 principal place of business in the United States; or

10 (3) that in which is held the largest deposit  
11 of trusteed assets of the insurer for protection of its  
12 policyholders in the United States.

13 D. If the insurer makes no [~~such~~] designation [~~its~~]  
14 pursuant to Subsection C of this section, the insurer's  
15 domicile shall be deemed to be that state in which is located  
16 its principal place of business in the United States.

17 [~~D-~~] E. The domicile of a Canadian insurer shall be  
18 Canada and the province of Canada in which its head office is  
19 located."

20 **SECTION 13.** Section 59A-6-3 NMSA 1978 (being Laws 1984,  
21 Chapter 127, Section 103) is amended to read:

22 "59A-6-3. INSURER MUST PAY TAX ON WITHDRAWAL FROM  
23 STATE.--Any insurer holding certificate of authority to  
24 transact insurance in New Mexico [~~which~~] that ceases to do  
25 business in the state shall thereupon file with the

.208799.6Sams

underscoring material = new  
[bracketed material] = delete

1 ~~[superintendent]~~ secretary of taxation and revenue a report of  
2 its premiums collected to date of such cessation of business  
3 ~~[which]~~ that are subject to the premium tax ~~[as provided by~~  
4 ~~Section 102 of this article]~~ or the health insurance premium  
5 surtax and not theretofore reported, and forthwith pay to the  
6 ~~[superintendent]~~ secretary the tax thereon and surrender its  
7 certificate of authority to the superintendent. Upon receipt,  
8 the secretary shall submit a copy of the report to the  
9 superintendent."

10 SECTION 14. Section 59A-6-4 NMSA 1978 (being Laws 1984,  
11 Chapter 127, Section 104, as amended) is amended to read:

12 "59A-6-4. PENALTY FOR FAILURE TO ~~[REPORT OR]~~ PAY ~~[TAX OR]~~  
13 FEES.--Every insurer, nonprofit health care plan, health  
14 maintenance organization, prepaid dental plan or prearranged  
15 funeral plan transacting business in New Mexico that fails to  
16 ~~[file when due any report for taxation, regardless of whether~~  
17 ~~tax is due, or to]~~ pay when due any ~~[tax or]~~ fees as required  
18 in ~~[this]~~ Chapter 59A, Article 6 NMSA 1978 shall be liable to  
19 the state for the amount thereof and for penalty of one  
20 thousand dollars (\$1,000) for each month or part thereof it has  
21 failed to ~~[file the report or]~~ pay the ~~[tax or]~~ fees after  
22 demand therefor. Services of process in any action against a  
23 person to recover the ~~[tax]~~ fee or penalty may be made upon the  
24 superintendent as attorney for service of process as provided  
25 in Section 59A-5-32 NMSA 1978."

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 SECTION 15. Section 59A-6-5 NMSA 1978 (being Laws 1984,  
2 Chapter 127, Section 105, as amended) is amended to read:

3 "59A-6-5. DISTRIBUTION OF OFFICE COLLECTIONS.--

4 A. All money received by the office of  
5 superintendent of insurance for fees, licenses and penalties  
6 [~~and taxes~~] shall be paid daily by the superintendent to the  
7 state treasurer and credited to the "insurance department  
8 suspense fund" except as provided by the Law Enforcement  
9 Protection Fund Act.

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

underscored material = new  
[bracketed material] = delete

1 distributions made to it pursuant to Subsection [E] D of this  
2 section. The legislature shall annually appropriate from the  
3 fund to the division those amounts necessary for the division  
4 to carry out its responsibilities pursuant to the Insurance  
5 Code and other laws. Any balance in the fund at the end of a  
6 fiscal year shall revert to the general fund.

7 ~~[E.]~~ D. At the end of every month, after applicable  
8 refunds are made pursuant to Subsection B of this section, [~~and~~  
9 ~~after any allocations have been made pursuant to Subsection C~~  
10 ~~of this section~~] the state treasurer shall make the following  
11 transfers from the balance remaining in the insurance  
12 department suspense fund:

13 (1) to the "fire protection fund", that part  
14 of the balance derived from property and vehicle insurance  
15 business;

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

20 (3) to the general fund, the balance remaining  
21 in the insurance department suspense fund derived from all  
22 other kinds of insurance business."

23 **SECTION 16.** Section 59A-6-6 NMSA 1978 (being Laws 1984,  
24 Chapter 127, Section 106, as amended) is amended to read:

25 "59A-6-6. PREEMPTION AND IN LIEU PROVISION.--The state

.208799.6Sams

underscored material = new  
[bracketed material] = delete

1 government of New Mexico preempts the field of taxation of  
2 insurers, nonprofit health care plans, health maintenance  
3 organizations, prepaid dental plans, prearranged funeral plans  
4 and insurance producers as such. [~~and~~] The payment of the  
5 taxes, licenses and fees provided for in the Insurance Premium  
6 Tax Act and the Insurance Code shall be in lieu of all other  
7 taxes, licenses and fees of every kind now or hereafter imposed  
8 by this state or any political subdivision thereof on any of  
9 the foregoing specified entities, excepting the regular state,  
10 county and city taxes on property located in New Mexico and  
11 excepting the income tax on insurance producers. [~~No provision~~  
12 ~~of law enacted after January 1, 1985 shall be deemed to modify~~  
13 ~~this provision except by express reference to this section.]"~~

14 SECTION 17. Section 59A-14-12 NMSA 1978 (being Laws 1984,  
15 Chapter 127, Section 250, as amended) is amended to read:

16 "59A-14-12. [~~PREMIUM TAX ON~~] SURPLUS LINES INSURANCE--  
17 AUTHORITY TO ENTER INTO COMPACTS.--

18 [~~A. Within sixty days after expiration of a~~  
19 ~~calendar quarter, the surplus lines broker shall pay to the~~  
20 ~~superintendent for the use of the state a tax on gross premiums~~  
21 ~~received, less returned premiums, on surplus lines business~~  
22 ~~where New Mexico is the home state of the insured transacted~~  
23 ~~under the surplus lines broker's license during such calendar~~  
24 ~~quarter as shown by the quarterly statement filed with the~~  
25 ~~superintendent pursuant to Section 59A-14-11 NMSA 1978. The~~

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 ~~tax shall be at the same rate as is applicable to premiums of~~  
2 ~~authorized insurers under Section 59A-6-2 NMSA 1978.~~

3 ~~B. For purposes of this section, "premiums" shall~~  
4 ~~include any additional amount charged the insured, including~~  
5 ~~policy fees, risk purchasing group fees and inspection fees;~~  
6 ~~but "premiums" shall not include any additional amount charged~~  
7 ~~the insured for local, state or federal tax; regulatory~~  
8 ~~authority fee; or examination fee, if any.~~

9 ~~C. The superintendent may require surplus lines~~  
10 ~~brokers to file tax allocation reports annually detailing the~~  
11 ~~portion of the nonadmitted insurance policy premiums~~  
12 ~~attributable to properties, risks or exposures located in each~~  
13 ~~state.~~

14 ~~D. A penalty of ten percent of the amount of tax~~  
15 ~~originally due, plus one percent of such tax amount for each~~  
16 ~~month or fraction thereof of delinquency after the first thirty~~  
17 ~~days of delinquency, shall be paid by the surplus lines broker~~  
18 ~~for failure to pay the tax in full within sixty days after~~  
19 ~~expiration of the calendar quarter as provided in Subsection A~~  
20 ~~of this section; except that the superintendent may waive or~~  
21 ~~remit the penalty if the superintendent finds that the failure~~  
22 ~~or delay in payment arose from excusable mistake or excusable~~  
23 ~~inadvertence.~~

24 ~~E. For a surplus lines policy issued to an insured~~  
25 ~~whose home state is New Mexico and where only a portion of the~~

underscored material = new  
[bracketed material] = delete

1 ~~risk is located in New Mexico, the entire premium tax shall be~~  
2 ~~paid to the superintendent in accordance with this section.]~~

3       A. If the superintendent finds that it would  
4 increase the efficiency of the surplus lines insurance  
5 marketplace as well as the regulation of the surplus lines  
6 market, the superintendent may enter into a compact or  
7 multistate surplus lines agreement relating to eligibility for  
8 placement of surplus lines insurance and the ~~[payment,~~  
9 ~~reporting, collection and]~~ apportionment of surplus lines  
10 premium taxes. If a surplus lines policy covers risks or  
11 exposures only partially in New Mexico and the superintendent  
12 has entered into an agreement with other states for the  
13 apportionment of premium taxes for multistate risks, the ~~[tax]~~  
14 taxes payable pursuant to ~~[this section]~~ the Insurance Code and  
15 the Insurance Premium Tax Act shall be computed and paid upon  
16 the proportion of the premium that is properly allocable to the  
17 risks or exposures located in New Mexico in accordance with the  
18 terms of any such agreement.

19       B. If the superintendent enters into a compact or  
20 multistate surplus lines agreement pursuant to Subsection A of  
21 this section, the superintendent shall notify the secretary of  
22 taxation and revenue and submit a copy of the compact or  
23 agreement to the secretary, including the allocation amounts.

24       C. The superintendent may require surplus lines  
25 brokers to file tax allocation reports annually detailing the



underscored material = new  
[bracketed material] = delete

1 portion of the nonadmitted insurance policy premiums  
2 attributable to properties, risks or exposures located in each  
3 state."

4 SECTION 18. Section 59A-15-4 NMSA 1978 (being Laws 1984,  
5 Chapter 127, Section 259.1) is amended to read:

6 "59A-15-4. INSURANCE INDEPENDENTLY PROCURED--DUTY TO  
7 REPORT [~~AND PAY TAX~~].--

8 A. Each insured who in this state procures or  
9 continues or renews insurance with a nonadmitted insurer on a  
10 risk located or to be performed in whole or in part in this  
11 state, other than insurance procured through a surplus lines  
12 licensee pursuant to Chapter 59A, Article 14 [~~of the Insurance~~  
13 ~~Code~~] NMSA 1978 shall, within [~~90~~] ninety days after the date  
14 such insurance was so procured, continued or renewed, file a  
15 written report of the same with the superintendent, upon forms  
16 prescribed by [~~him~~] the superintendent, showing the name and  
17 address of the insured or insureds, name and address of the  
18 insurer, the subject of the insurance, a general description of  
19 the coverage, the amount of premium currently charged therefor  
20 and such additional pertinent information as is reasonably  
21 requested by the superintendent.

22 [~~B. Gross premiums charged for such insurance, less~~  
23 ~~any return premiums, are subject to a tax at the same rate as~~  
24 ~~is applicable to premium of authorized insurers under Section~~  
25 ~~102 of the Insurance Code. At the time of filing the report~~

underscored material = new  
[bracketed material] = delete

1 ~~required in the first paragraph of this section, the insured~~  
2 ~~shall pay the tax to the superintendent.~~

3 G.] B. If an independently procured policy covers  
4 risks or exposures only partially located or to be performed in  
5 this state, the ~~[tax payable]~~ taxes, fees and penalties imposed  
6 pursuant to the Insurance Code and the Insurance Premium Tax  
7 Act shall be computed on the portion of the premium properly  
8 attributable to the risks or exposures located or to be  
9 performed in this state and reported to the secretary of  
10 taxation and revenue. In no event, however, shall a tax be  
11 payable solely because the risk in question, or any portion  
12 thereof, is located or to be performed in this state.

13 ~~[D. Delinquent taxes hereunder shall bear interest~~  
14 ~~at the rate of twelve percent per annum.~~

15 F.] C. This section does not abrogate or modify,  
16 and shall not be construed or deemed to abrogate or modify, any  
17 provision of ~~[Section 258 or any other provision of this]~~ the  
18 Insurance Code.

19 ~~[E.]~~ D. This section does not apply to life  
20 insurance, health insurance or annuities."

21 SECTION 19. Section 59A-20-33 NMSA 1978 (being Laws 1984,  
22 Chapter 127, Section 398, as amended) is amended to read:

23 "59A-20-33. STANDARD NONFORFEITURE LAW--INDIVIDUAL  
24 DEFERRED ANNUITIES.--

25 A. This section shall not apply to any reinsurance,

underscoring material = new  
~~[bracketed material] = delete~~

1 group annuity purchased under a retirement plan or plan of  
2 deferred compensation established or maintained by an employer,  
3 including a partnership or sole proprietorship or by an  
4 employee organization, or by both, other than a plan providing  
5 individual retirement accounts or individual retirement  
6 annuities under Section 408 of the Internal Revenue Code of  
7 1986, as now or hereafter amended, premium deposit fund,  
8 variable annuity, investment annuity, immediate annuity, any  
9 deferred annuity contract after annuity payments have commenced  
10 or reversionary annuity, nor to any contract that shall be  
11 delivered outside this state through an agent or other  
12 representative of the insurer issuing the contract.

13 B. In the case of contracts issued on or after the  
14 operative date of this section as defined in Subsection ~~[L]~~ P  
15 of this section, no contract of annuity, except as stated in  
16 Subsection A of this section, shall be delivered or issued for  
17 delivery in this state unless it contains in substance the  
18 following provisions, or corresponding provisions ~~[which]~~ that  
19 in the opinion of the superintendent are at least as favorable  
20 to the contractholder, upon cessation of payment of  
21 considerations under the contract:

22 (1) that upon cessation of payment of  
23 considerations under a contract or upon the written request of  
24 the contract owner, the insurer shall grant a paid-up annuity  
25 benefit on a plan stipulated in the contract of such value as

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 is specified in Subsections [~~D, E, F, G and I~~] H, I, J, K and M  
2 of this section;

3 (2) if a contract provided for a lump sum  
4 settlement at maturity, or at any other time, that upon  
5 surrender of the contract at or prior to the commencement of  
6 any annuity payments, the insurer shall pay in lieu of any  
7 paid-up annuity benefit a cash surrender benefit of such amount  
8 as is specified in Subsections [~~D, E, G and I~~] H, I, K and M of  
9 this section. The insurer may reserve the right to defer the  
10 payment of such cash surrender benefit for a period not to  
11 exceed six months after demand therefor with surrender of the  
12 contract after making written request and receiving written  
13 approval of the superintendent. The request shall address the  
14 necessity and equatability to all policyholders of the  
15 deferral;

16 (3) a statement of the mortality table, if  
17 any, and interest rates used in calculating any minimum paid-up  
18 annuity, cash surrender or death benefits that are guaranteed  
19 under the contract, together with sufficient information to  
20 determine the amounts of such benefits; and

21 (4) a statement that any paid-up annuity, cash  
22 surrender or death benefits that may be available under the  
23 contract are not less than the minimum benefits required by any  
24 statute of the state in which the contract is delivered and an  
25 explanation of the manner in which such benefits are altered by

underscored material = new  
[bracketed material] = delete

1 the existence of any additional amounts credited by the insurer  
2 to the contract, any indebtedness to the insurer on the  
3 contract or any prior withdrawals from or partial surrenders of  
4 the contract.

5 C. Notwithstanding the requirements of this  
6 section, any deferred annuity contract may provide that if no  
7 considerations have been received under a contract for a period  
8 of two full years and the portion of the paid-up annuity  
9 benefit at maturity on the plan stipulated in the contract  
10 arising from prior considerations paid would be less than  
11 twenty dollars (\$20.00) monthly, the insurer may at its option  
12 terminate such contract by payment in cash of the then present  
13 value of such portion of the paid-up annuity benefit,  
14 calculated on the basis of the mortality table, if any, and  
15 interest rate specified in the contract for determining the  
16 paid-up annuity benefit, and by such payment shall be relieved  
17 of any further obligation under such contract.

18 [~~G.~~] D. The minimum values as specified in  
19 Subsections [~~D, E, F, G and I~~] H, I, J, K and M of this section  
20 of any paid-up annuity, cash surrender or death benefits  
21 available under an annuity contract shall be based upon minimum  
22 nonforfeiture amounts as defined in this section. [~~(1)~~] The  
23 minimum nonforfeiture amount at any time at or prior to the  
24 commencement of any annuity payments shall be equal to an  
25 accumulation up to such time at rates of interest as indicated

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 in [~~Paragraph (2) of~~] Subsection [G] E of this section of the  
2 net considerations, as hereinafter defined, paid prior to such  
3 time, decreased by the sum of [~~Subparagraphs (a) through (d)~~]  
4 Paragraphs (1) through (4) of this subsection:

5 [~~(a)~~] (1) any prior withdrawals from or  
6 partial surrenders of the contract accumulated at rates of  
7 interest as indicated in [~~Paragraph (2) of~~] Subsection [G] E of  
8 this section;

9 [~~(b)~~] (2) an annual contract charge of fifty  
10 dollars (\$50.00), accumulated at rates of interest as indicated  
11 in [~~Paragraphs (2) of~~] Subsection [G] E of this section;

12 [~~(c)~~] (3) any [~~premium~~] tax pursuant to the  
13 Insurance Premium Tax Act paid by the insurer for the contract,  
14 accumulated at rates of interest as indicated in [~~Paragraph (2)~~]  
15 ~~of~~] Subsection [G] E of this section; and

16 [~~(d)~~] (4) the amount of any indebtedness to  
17 the insurer on the contract, including interest due and  
18 accrued.

19 E. The net considerations for a given contract year  
20 used to define the minimum nonforfeiture amount shall be an  
21 amount equal to eighty-seven and one-half percent of the gross  
22 considerations credited to the contract during that contract  
23 year. [~~(2)~~] The interest rate used in determining minimum  
24 nonforfeiture amounts shall be an annual rate of interest  
25 determined as the lesser of three percent per annum and the

underscored material = new  
[bracketed material] = delete

1 following, which shall be specified in the contract if the  
2 interest rate will be reset:

3 [~~(a)~~] (1) the five-year constant maturity  
4 treasury rate reported by the federal reserve as of a date, or  
5 average over a period, rounded to the nearest one-twentieth  
6 percent, specified in the contract no longer than fifteen  
7 months prior to the contract issue date or redetermination date  
8 pursuant to [~~Subparagraph (d) of~~] Paragraph [2] (2) of [~~Section~~  
9 ~~G of~~] this [~~section; (b)~~] subsection reduced by one hundred  
10 twenty-five basis points, [~~(c)~~] where the resulting interest  
11 rate is not less than one percent; and

12 [~~(d)~~] (2) the interest rate shall apply for an  
13 initial period and may be redetermined for additional periods.  
14 The redetermination date, basis and period, if any, shall be  
15 stated in the contract. The basis is the date or average over  
16 a specified period that produces the value of the five-year  
17 constant maturity treasury rate to be used at each  
18 redetermination date.

19 [~~(3)~~] F. Notwithstanding the provisions of  
20 [~~Paragraphs (1) and (2) of Subsection G~~] Subsections D and E of  
21 this section, during the period or term that a contract  
22 provides substantive participation in an equity indexed  
23 benefit, it may increase the reduction described in  
24 [~~Subparagraph (b) of~~] Paragraph [~~(2)~~] (1) of Subsection [~~G~~] E  
25 of this section by up to an additional one hundred basis points

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 to reflect the value of the equity index benefit. The present  
2 value at the contract issue date, and at each redetermination  
3 date thereafter, of the additional reduction shall not exceed  
4 the market value of the benefit. The superintendent may  
5 require a demonstration that the present value of the reduction  
6 does not exceed the market value of the benefit. Lacking such  
7 a demonstration that is acceptable to the superintendent, the  
8 superintendent may disallow or limit the additional reduction.

9 [~~(4)~~] G. The superintendent may adopt rules to  
10 implement the provisions of [~~Paragraph (3) of~~] Subsection [~~G~~] F  
11 of this section and to provide for further adjustments to the  
12 calculation of minimum nonforfeiture amounts for contracts that  
13 provide substantive participation in an equity index benefit  
14 and for other contracts that the superintendent determines  
15 adjustments are justified.

16 [~~D-~~] H. Any paid-up annuity benefit available under  
17 a contract shall be such that its present value on the date  
18 annuity payments are to commence is at least equal to the  
19 minimum nonforfeiture amount on that date. Such present value  
20 shall be computed using the mortality table, if any, and the  
21 interest rates specified in the contract for determining the  
22 minimum paid-up annuity benefits guaranteed in the contract.

23 [~~E-~~] I. For contracts that provide cash surrender  
24 benefits, such cash surrender benefits available prior to  
25 maturity shall not be less than the present value as of the

.208799.6SAmS



underscoring material = new  
[bracketed material] = delete

1 date of surrender of that portion of the maturity value of the  
2 paid-up annuity benefit that would be provided under the  
3 contract at maturity arising from considerations paid prior to  
4 the time of cash surrender reduced by the amount appropriate to  
5 reflect any prior withdrawals from or partial surrenders of the  
6 contract, such present value being calculated on the basis of  
7 an interest rate not more than one percent higher than the  
8 interest rate specified in the contract for accumulating the  
9 net considerations to determine such maturity value, decreased  
10 by the amount of any indebtedness to the insurer on the  
11 contract, including interest due and accrued, and increased by  
12 any existing additional amounts credited by the insurer to the  
13 contract. In no event shall any cash surrender benefit be less  
14 than the minimum nonforfeiture amount at that time. The death  
15 benefit under such contracts shall be at least equal to the  
16 cash surrender benefit.

17 ~~[F-]~~ J. For contracts that do not provide cash  
18 surrender benefits, the present value of any paid-up annuity  
19 benefit available as a nonforfeiture option at any time prior  
20 to maturity shall not be less than the present value of that  
21 portion of the maturity value of the paid-up annuity benefit  
22 provided under the contract arising from considerations paid  
23 prior to the time the contract is surrendered in exchange for,  
24 or changed to, a deferred paid-up annuity, such present value  
25 being calculated for the period prior to the maturity date on

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 the basis of the interest rate specified in the contract for  
2 accumulating the net considerations to determine such maturity  
3 value, and increased by any existing additional amounts  
4 credited by the insurer to the contract. For contracts that do  
5 not provide any death benefits prior to the commencement of any  
6 annuity payments, such present values shall be calculated on  
7 the bases of such interest rate and the mortality table  
8 specified in the contract for determining the maturity value of  
9 the paid-up annuity benefit. However, in no event shall the  
10 present value of a paid-up annuity benefit be less than the  
11 minimum nonforfeiture amount at that time.

12 ~~[G.]~~ K. For the purpose of determining the benefits  
13 calculated under Subsections ~~[E and F]~~ I and J of this section,  
14 in the case of annuity contracts under which an election may be  
15 made to have annuity payments commence at optional maturity  
16 dates, the maturity date shall be deemed to be the latest date  
17 for which election shall be permitted by the contract, but  
18 shall not be deemed to be later than the anniversary of the  
19 contract next following the annuitant's seventieth birthday or  
20 the tenth anniversary of the contract, whichever is later.

21 ~~[H.]~~ L. Any contract that does not provide cash  
22 surrender benefits or does not provide death benefits at least  
23 equal to the minimum nonforfeiture amount prior to the  
24 commencement of any annuity payments shall include a statement  
25 in a prominent place in the contract that such benefits are not

underscored material = new  
[bracketed material] = delete

1 provided.

2           ~~[F.]~~ M. Any paid-up annuity, cash surrender or  
3 death benefits available at any time, other than on the  
4 contract anniversary under any contract with fixed scheduled  
5 considerations, shall be calculated with allowance for the  
6 lapse of time and the payment of any scheduled considerations  
7 beyond the beginning of the contract year in which cessation of  
8 payment of considerations under the contract occurs.

9           ~~[J.]~~ N. For any contract that provides, within the  
10 same contract by rider or supplemental contract provision, both  
11 annuity benefits and life insurance benefits that are in excess  
12 of the greater of cash surrender benefits or a return of the  
13 gross considerations with interest, the minimum nonforfeiture  
14 benefits shall be equal to the sum of the minimum nonforfeiture  
15 benefits for the annuity portion and the minimum nonforfeiture  
16 benefits, if any, for the life insurance portion computed as if  
17 each portion were a separate contract. Notwithstanding the  
18 provisions of Subsections ~~[D, E, F, G and I]~~ H, I, J, K and M  
19 of this section, additional benefits payable [~~(a)~~] in the event  
20 of total and permanent disability, [~~(b)~~] as reversionary  
21 annuity or deferred reversionary annuity benefits, or [~~(c)~~] as  
22 other policy benefits additional to life insurance, endowment  
23 and annuity benefits, and considerations for all such  
24 additional benefits, shall be disregarded in ascertaining the  
25 minimum nonforfeiture amounts, paid-up annuity, cash surrender

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 and death benefits that may be required by this section. The  
2 inclusion of such additional benefits shall not be required in  
3 any paid-up benefits, unless such additional benefits  
4 separately would require minimum nonforfeiture amounts, paid-up  
5 annuity, cash surrender and death benefits.

6 ~~[K-]~~ O. The superintendent may adopt rules to  
7 implement the provisions of this section.

8 ~~[L-]~~ P. After July 1, 2003, an insurer may elect to  
9 apply its provisions to annuity contracts on a contract-form  
10 by contract-form basis before July 1, 2005. In all other  
11 instances this section shall become operative with respect to  
12 annuity contracts issued by the insurer after June 30, 2005."

13 **SECTION 20.** Section 59A-22-50 NMSA 1978 (being Laws  
14 2010, Chapter 94, Section 1, as amended) is amended to read:

15 "59A-22-50. HEALTH INSURERS--DIRECT SERVICES.--

16 A. A health insurer shall make reimbursement for  
17 direct services at a level not less than eighty-five percent  
18 of premiums across all health product lines, except  
19 individually underwritten health insurance policies,  
20 contracts or plans, that are governed by the provisions of  
21 Chapter 59A, Article 22 NMSA 1978, the Health Maintenance  
22 Organization Law and the Nonprofit Health Care Plan Law.  
23 Reimbursement shall be made for direct services provided over  
24 the preceding three calendar years, but not earlier than  
25 calendar year 2010, as determined by reports filed with the

.208799.6SAmS

underscoring material = new  
~~[bracketed material] = delete~~

1 office of superintendent of insurance. Nothing in this  
2 subsection shall be construed to preclude a purchaser from  
3 negotiating an agreement with a health insurer that requires  
4 a higher amount of premiums paid to be used for reimbursement  
5 for direct services for one or more products or for one or  
6 more years.

7 B. For individually underwritten health care  
8 policies, plans or contracts, the superintendent shall  
9 establish, after notice and informal hearing, the level of  
10 reimbursement for direct services, as determined by the  
11 reports filed with the office of superintendent of insurance,  
12 as a percent of premiums. Additional informal hearings may  
13 be held at the superintendent's discretion. In establishing  
14 the level of reimbursement for direct services, the  
15 superintendent shall consider the costs associated with the  
16 individual marketing and medical underwriting of these  
17 policies, plans or contracts at a level not less than  
18 seventy-five percent of premiums. A health insurer writing  
19 these policies shall make reimbursement for direct services  
20 at a level not less than that level established by the  
21 superintendent pursuant to this subsection over the three  
22 calendar years preceding the date upon which that rate is  
23 established, but not earlier than calendar year 2010.

24 Nothing in this subsection shall be construed to preclude a  
25 purchaser of one of these policies, plans or contracts from

.208799.6SAmS

underscoring material = new  
~~[bracketed material] = delete~~

1 negotiating an agreement with a health insurer that requires  
2 a higher amount of premiums paid to be used for reimbursement  
3 for direct services.

4 C. An insurer that fails to comply with the  
5 reimbursement requirements pursuant to this section shall  
6 issue a dividend or credit against future premiums to all  
7 policyholders in an amount sufficient to assure that the  
8 benefits paid in the preceding three calendar years plus the  
9 amount of the dividends or credits are equal to the required  
10 direct services reimbursement level pursuant to Subsection A  
11 of this section for group health coverage and blanket health  
12 coverage or the required direct services reimbursement level  
13 pursuant to Subsection B of this section for individually  
14 underwritten health policies, contracts or plans for the  
15 preceding three calendar years. If the insurer fails to  
16 issue the dividend or credit in accordance with the  
17 requirements of this section, the superintendent shall  
18 enforce these requirements and may pursue any other penalties  
19 as provided by law, including general penalties pursuant to  
20 Section 59A-1-18 NMSA 1978.

21 D. After notice and hearing, the superintendent  
22 may adopt and promulgate reasonable rules necessary and  
23 proper to carry out the provisions of this section.

24 E. For the purposes of this section:

25 (1) "direct services" means services

underscoring material = new  
[bracketed material] = delete

1 rendered to an individual by a health insurer or a health  
2 care practitioner, facility or other provider, including case  
3 management, disease management, health education and  
4 promotion, preventive services, quality incentive payments to  
5 providers and any portion of an assessment that covers  
6 services rather than administration and for which an insurer  
7 does not receive a tax credit pursuant to the Medical  
8 Insurance Pool Act [~~or the Health Insurance Alliance Act~~];  
9 provided, however, that "direct services" does not include  
10 care coordination, utilization review or management or any  
11 other activity designed to manage utilization or services;

12 (2) "health insurer" means a person duly  
13 authorized to transact the business of health insurance in  
14 the state pursuant to the Insurance Code but does not include  
15 a person that only issues a limited-benefit policy intended  
16 to supplement major medical coverage, including medicare  
17 supplement, vision, dental, disease-specific, accident-only  
18 or hospital indemnity-only insurance policies, or that only  
19 issues policies for long-term care or disability income; and

20 (3) "premium" means all income received from  
21 individuals and private and public payers or sources for the  
22 procurement of health coverage, including capitated payments,  
23 self-funded administrative fees, self-funded claim  
24 reimbursements, recoveries from third parties or other  
25 insurers and interests less any [~~premium~~] tax paid pursuant

.208799.6SAmS

underscoring material = new  
[bracketed material] = delete

1 to [~~Section 59A-6-2 NMSA 1978~~] the Insurance Premium Tax Act  
2 and fees associated with participating in a health insurance  
3 exchange that serves as a clearinghouse for insurance."

4 SECTION 21. Section 59A-23C-10 NMSA 1978 (being Laws  
5 2010, Chapter 94, Section 2, as amended) is amended to read:

6 "59A-23C-10. HEALTH INSURERS--DIRECT SERVICES.--

7 A. A health insurer shall make reimbursement for  
8 direct services at a level not less than eighty-five percent  
9 of premiums across all health product lines over the  
10 preceding three calendar years, but not earlier than calendar  
11 year 2010, as determined by reports filed with the office of  
12 superintendent of insurance. Nothing in this subsection  
13 shall be construed to preclude a purchaser from negotiating  
14 an agreement with a health insurer that requires a higher  
15 amount of premiums paid to be used for reimbursement for  
16 direct services for one or more products or for one or more  
17 years.

18 B. An insurer that fails to comply with the  
19 eighty-five percent reimbursement requirement in Subsection A  
20 of this section shall issue a dividend or credit against  
21 future premiums to all policyholders in an amount sufficient  
22 to assure that the benefits paid in the preceding three  
23 calendar years plus the amount of the dividends or credits  
24 equal eighty-five percent of the premiums collected in the  
25 preceding three calendar years. If the insurer fails to

.208799.6SAmS



underscoring material = new  
[bracketed material] = delete

1 issue the dividend or credit in accordance with the  
2 requirements of this section, the superintendent shall  
3 enforce the requirements and may pursue any other penalties  
4 as provided by law, including general penalties pursuant to  
5 Section 59A-1-18 NMSA 1978.

6 C. After notice and hearing, the superintendent  
7 may adopt and promulgate reasonable rules necessary and  
8 proper to carry out the provisions of this section.

9 D. For the purposes of this section:

10 (1) "direct services" means services  
11 rendered to an individual by a health insurer or a health  
12 care practitioner, facility or other provider, including case  
13 management, disease management, health education and  
14 promotion, preventive services, quality incentive payments to  
15 providers and any portion of an assessment that covers  
16 services rather than administration and for which an insurer  
17 does not receive a tax credit pursuant to the Medical  
18 Insurance Pool Act [~~or the Health Insurance Alliance Act~~];  
19 provided, however, that "direct services" does not include  
20 care coordination, utilization review or management or any  
21 other activity designed to manage utilization or services;

22 (2) "health insurer" means a person duly  
23 authorized to transact the business of health insurance in  
24 the state pursuant to the Insurance Code but does not include  
25 a person that only issues a limited-benefit policy intended

underscored material = new  
[bracketed material] = delete

1 to supplement major medical coverage, including medicare  
2 supplement, vision, dental, disease-specific, accident-only  
3 or hospital indemnity-only insurance policies, or that only  
4 issues policies for long-term care or disability income; and

5 (3) "premium" means all income received from  
6 individuals and private and public payers or sources for the  
7 procurement of health coverage, including capitated payments,  
8 self-funded administrative fees, self-funded claim  
9 reimbursements, recoveries from third parties or other  
10 insurers and interests less any [premium] tax paid pursuant  
11 to [~~Section 59A-6-2 NMSA 1978~~] the Insurance Premium Tax Act  
12 and fees associated with participating in a health insurance  
13 exchange that serves as a clearinghouse for insurance."

14 SECTION 22. Section 59A-39-5 NMSA 1978 (being Laws  
15 1984, Chapter 127, Section 662) is amended to read:

16 "59A-39-5. ATTORNEY.--

17 A. "Attorney", as used in [~~this article~~] Chapter  
18 59A, Article 39 NMSA 1978, refers to the attorney-in-fact of  
19 a reciprocal insurer. The attorney may be an individual,  
20 firm or corporation.

21 B. The attorney of a foreign reciprocal insurer,  
22 which insurer is duly authorized to transact insurance in  
23 this state, shall not, by virtue of the discharge of its  
24 duties as such attorney with respect to the insurer's  
25 transactions in this state, be thereby deemed to be doing

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 business in this state within the meaning of any laws of this  
2 state applying to foreign persons, firms or corporations.

3 C. The subscribers and the attorney-in-fact  
4 comprise a reciprocal insurer and single entity for the  
5 purposes of the Insurance Premium Tax Act and Sections [102  
6 to 106 (premium tax and related provisions), inclusive, of  
7 the Insurance Code] 59A-6-3 through 59A-6-6 NMSA 1978 as to  
8 all operations under the insurer's certificate of authority."

9 SECTION 23. Section 59A-40-5 NMSA 1978 (being Laws  
10 1984, Chapter 127, Section 688) is amended to read:

11 "59A-40-5. [~~FEES, TAXES AND~~] REPORTS.--~~[The insurer~~  
12 ~~shall pay to New Mexico annually a premium tax based solely~~  
13 ~~upon its gross premium receipts from insurance policies~~  
14 ~~issued by it in New Mexico which cover residents of New~~  
15 ~~Mexico or property or risks principally domiciled or located~~  
16 ~~in this state, as shown by reports of the insurer filed with~~  
17 ~~the superintendent each year, upon the same percentage rate~~  
18 ~~and in the same manner as apply to authorized insurers~~  
19 ~~transacting in New Mexico the same kinds of insurance.] The~~  
20 insurer shall [also] pay [such other] any applicable fees and  
21 charges [and taxes] as are required under the Insurance Code  
22 to be paid by [such] other authorized insurers transacting in  
23 New Mexico the same kind of insurance. The insurer shall  
24 make the same reports to the superintendent and the national  
25 association of insurance commissioners as are required of

.208799.6SAmS

underscoring material = new  
~~[bracketed material] = delete~~

1 such other authorized insurers, but in such adapted forms as  
2 may for the purpose be prescribed by the superintendent."

3 SECTION 24. Section 59A-46-51 NMSA 1978 (being Laws  
4 2010, Chapter 94, Section 3, as amended) is amended to read:

5 "59A-46-51. HEALTH MAINTENANCE ORGANIZATIONS--DIRECT  
6 SERVICES.--

7 A. A health maintenance organization shall make  
8 reimbursement for direct services at a level not less than  
9 eighty-five percent of premiums across all health product  
10 lines, except individually underwritten health insurance  
11 policies, contracts or plans, that are governed by the  
12 provisions of Chapter 59A, Article 22 NMSA 1978, the Health  
13 Maintenance Organization Law and the Nonprofit Health Care  
14 Plan Law. Reimbursement shall be made for direct services  
15 provided over the preceding three calendar years, but not  
16 earlier than calendar year 2010, as determined by reports  
17 filed with the office of superintendent of insurance.

18 Nothing in this subsection shall be construed to preclude a  
19 purchaser from negotiating an agreement with a health  
20 maintenance organization that requires a higher amount of  
21 premiums paid to be used for reimbursement for direct  
22 services for one or more products or for one or more years.

23 B. For individually underwritten health care  
24 policies, plans or contracts, the superintendent shall  
25 establish, after notice and informal hearing, the level of

.208799.6Sams

underscoring material = new  
~~[bracketed material] = delete~~

1 reimbursement for direct services, as determined by the  
2 reports filed with the office of superintendent of insurance,  
3 as a percent of premiums. Additional informal hearings may  
4 be held at the superintendent's discretion. In establishing  
5 the level of reimbursement for direct services, the  
6 superintendent shall consider the costs associated with the  
7 individual marketing and medical underwriting of these  
8 policies, plans or contracts at a level not less than  
9 seventy-five percent of premiums. A health insurer or health  
10 maintenance organization writing these policies, plans or  
11 contracts shall make reimbursement for direct services at a  
12 level not less than that level established by the  
13 superintendent pursuant to this subsection over the three  
14 calendar years preceding the date upon which that rate is  
15 established, but not earlier than calendar year 2010.

16 Nothing in this subsection shall be construed to preclude a  
17 purchaser of one of these policies, plans or contracts from  
18 negotiating an agreement with a health insurer or health  
19 maintenance organization that requires a higher amount of  
20 premiums paid to be used for reimbursement for direct  
21 services.

22 C. A health maintenance organization that fails  
23 to comply with the reimbursement requirements pursuant to  
24 this section shall issue a dividend or credit against future  
25 premiums to all policy or contract holders in an amount

.208799.6SAmS

underscored material = new  
~~[bracketed material] = delete~~

1 sufficient to assure that the benefits paid in the preceding  
2 three calendar years plus the amount of the dividends or  
3 credits are equal to the required direct services  
4 reimbursement level pursuant to Subsection A of this section  
5 for group health coverage and blanket health coverage or the  
6 required direct services reimbursement level pursuant to  
7 Subsection B of this section for individually underwritten  
8 health policies, contracts or plans for the preceding three  
9 calendar years. If the insurer fails to issue the dividend  
10 or credit in accordance with the requirements of this  
11 section, the superintendent shall enforce these requirements  
12 and may pursue any other penalties as provided by law,  
13 including general penalties pursuant to Section 59A-1-18 NMSA  
14 1978.

15 D. After notice and hearing, the superintendent  
16 may adopt and promulgate reasonable rules necessary and  
17 proper to carry out the provisions of this section.

18 E. For the purposes of this section:

19 (1) "direct services" means services  
20 rendered to an individual by a health maintenance  
21 organization or a health care practitioner, facility or other  
22 provider, including case management, disease management,  
23 health education and promotion, preventive services, quality  
24 incentive payments to providers and any portion of an  
25 assessment that covers services rather than administration

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 and for which an insurer does not receive a tax credit  
2 pursuant to the Medical Insurance Pool Act [~~or the Health~~  
3 ~~Insurance Alliance Act~~]; provided, however, that "direct  
4 services" does not include care coordination, utilization  
5 review or management or any other activity designed to manage  
6 utilization or services;

7 (2) "health maintenance organization" means  
8 any person who undertakes to provide or arrange for the  
9 delivery of basic health care services to enrollees on a  
10 prepaid basis, except for enrollee responsibility for  
11 copayments or deductibles, but does not include a person that  
12 only issues a limited-benefit policy or contract intended to  
13 supplement major medical coverage, including medicare  
14 supplement, vision, dental, disease-specific, accident-only  
15 or hospital indemnity-only insurance policies, or that only  
16 issues policies for long-term care or disability income; and

17 (3) "premium" means all income received from  
18 individuals and private and public payers or sources for the  
19 procurement of health coverage, including capitated payments,  
20 self-funded administrative fees, self-funded claim  
21 reimbursements, recoveries from third parties or other  
22 insurers and interests less any [~~premium~~] tax paid pursuant  
23 to [~~Section 59A-6-2 NMSA 1978~~] the Insurance Premium Tax Act  
24 and fees associated with participating in a health insurance  
25 exchange that serves as a clearinghouse for insurance."

.208799.6SAmS

underscoring material = new  
~~[bracketed material] = delete~~

1           SECTION 25. Section 59A-47-3 NMSA 1978 (being Laws  
2 1984, Chapter 127, Section 879.1, as amended) is amended to  
3 read:

4           "59A-47-3. DEFINITIONS.--As used in Chapter 59A,  
5 Article 47 NMSA 1978:

6           A. "health care" means the treatment of persons  
7 for the prevention, cure or correction of any illness or  
8 physical or mental condition, including optometric services;

9           B. "item of health care" includes any services or  
10 materials used in health care;

11           C. "health care expense payment" means a payment  
12 for health care to a purveyor on behalf of a subscriber, or  
13 such a payment to the subscriber;

14           D. "purveyor" means a person who furnishes any  
15 item of health care and charges for that item;

16           E. "service benefit" means a payment that the  
17 purveyor has agreed to accept as payment in full for health  
18 care furnished the subscriber;

19           F. "indemnity benefit" means a payment that the  
20 purveyor has not agreed to accept as payment in full for  
21 health care furnished the subscriber;

22           G. "subscriber" means any individual who, because  
23 of a contract with a health care plan entered into by or for  
24 the individual, is entitled to have health care expense  
25 payments made on the individual's behalf or to the individual

.208799.6Sams



underscored material = new  
[bracketed material] = delete

1 by the health care plan;

2 H. "underwriting manual" means the health care  
3 plan's written criteria, approved by the superintendent, that  
4 defines the terms and conditions under which subscribers may  
5 be selected. The underwriting manual may be amended from  
6 time to time, but the amendment will not be effective until  
7 approved by the superintendent. The superintendent shall  
8 notify the health care plan filing the underwriting manual or  
9 the amendment thereto of the superintendent's approval or  
10 disapproval thereof in writing within thirty days after  
11 filing or within sixty days after filing if the  
12 superintendent shall so extend the time. If the  
13 superintendent fails to act within such period, the filing  
14 shall be deemed to be approved;

15 I. "acquisition expenses" includes all expenses  
16 incurred in connection with the solicitation and enrollment  
17 of subscribers;

18 J. "administration expenses" means all expenses  
19 of the health care plan other than the cost of health care  
20 expense payments and acquisition expenses;

21 K. "health care plan" means ~~[a nonprofit~~  
22 ~~corporation]~~ an organization that demonstrates to the  
23 superintendent that it has been granted exemption from the  
24 federal income tax by the United States commissioner of  
25 internal revenue as an organization described in Section

underscored material = new  
[bracketed material] = delete

1 501(c)(3) of the United States Internal Revenue Code of 1986,  
2 as that section may be amended or renumbered, and is  
3 authorized by the superintendent to enter into contracts with  
4 subscribers and to make health care expense payments;

5 L. "agent" means a person appointed by a health  
6 care plan authorized to transact business in this state to  
7 act as its representative in any given locality for  
8 soliciting health care policies and other related duties as  
9 may be authorized;

10 M. "solicitor" means a person employed by the  
11 licensed agent of a health care plan for the purpose of  
12 soliciting health care policies and other related duties in  
13 connection with the handling of the business of the agent as  
14 may be authorized and paid for the person's services either  
15 on a commission basis or salary basis or part by commission  
16 and part by salary;

17 N. "chiropractor" means any person holding a  
18 license provided for in the Chiropractic Physician Practice  
19 Act;

20 O. "doctor of oriental medicine" means any person  
21 licensed as a doctor of oriental medicine under the  
22 Acupuncture and Oriental Medicine Practice Act;

23 P. "pharmacist" means a person licensed as a  
24 pharmacist pursuant to the Pharmacy Act;

25 Q. "pharmacist clinician" means a pharmacist who

underscoring material = new  
~~[bracketed material]~~ = delete

1 exercises prescriptive authority pursuant to the Pharmacist  
2 Prescriptive Authority Act;

3 R. "credentialing" means the process of obtaining  
4 and verifying information about a provider and evaluating  
5 that provider when that provider seeks to become a  
6 participating provider; and

7 S. "provider" means a physician or other  
8 individual licensed or otherwise authorized to furnish health  
9 care services in the state."

10 SECTION 26. Section 59A-47-46 NMSA 1978 (being Laws  
11 2010, Chapter 94, Section 4, as amended) is amended to read:

12 "59A-47-46. HEALTH INSURERS--DIRECT SERVICES.--

13 A. A health care plan shall make reimbursement  
14 for direct services at a level not less than eighty-five  
15 percent of premiums across all health product lines, except  
16 individually underwritten health care policies, contracts or  
17 plans, that are governed by the provisions of Chapter 59A,  
18 Article 22 NMSA 1978, the Health Maintenance Organization Law  
19 and the Nonprofit Health Care Plan Law. Reimbursement shall  
20 be made for direct services provided over the preceding three  
21 calendar years, but not earlier than calendar year 2010, as  
22 determined by reports filed with the office of superintendent  
23 of insurance. Nothing in this subsection shall be construed  
24 to preclude a purchaser from negotiating an agreement with a  
25 health insurer that requires a higher amount of premiums paid

.208799.6SAmS

underscoring material = new  
~~[bracketed material] = delete~~

1 to be used for reimbursement for direct services for one or  
2 more products or for one or more years.

3 B. For individually underwritten health care  
4 policies, plans or contracts, the superintendent shall  
5 establish, after notice and informal hearing, the level of  
6 reimbursement for direct services as determined as a percent  
7 of premiums. Additional hearings may be held at the  
8 superintendent's discretion. In establishing the level of  
9 reimbursement for direct services, the superintendent shall  
10 consider the costs associated with the individual marketing  
11 and medical underwriting of these policies, plans or  
12 contracts at a level not less than seventy-five percent of  
13 premiums. A health insurer writing these policies, plans or  
14 contracts shall make reimbursement for direct services at a  
15 level not less than that level established by the  
16 superintendent pursuant to this subsection over the three  
17 calendar years preceding the date upon which that rate is  
18 established, but not earlier than calendar year 2010.

19 Nothing in this subsection shall be construed to preclude a  
20 purchaser of one of these policies, plans or contracts from  
21 negotiating an agreement with a health insurer that requires  
22 a higher amount of premiums paid to be used for reimbursement  
23 for direct services.

24 C. A health care plan that fails to comply with  
25 the reimbursement requirements pursuant to this section shall

.208799.6SAmS

underscored material = new  
~~[bracketed material] = delete~~

1 issue a dividend or credit against future premiums to all  
2 policyholders in an amount sufficient to assure that the  
3 benefits paid in the preceding three calendar years plus the  
4 amount of the dividends or credits are equal to the required  
5 direct services reimbursement level pursuant to Subsection A  
6 of this section for group health coverage and blanket health  
7 coverage or the required direct services reimbursement level  
8 pursuant to Subsection B of this section for individually  
9 underwritten health policies, contracts or plans for the  
10 preceding three calendar years. If the insurer fails to  
11 issue the dividend or credit in accordance with the  
12 requirements of this section, the superintendent shall  
13 enforce these requirements and may pursue any other penalties  
14 as provided by law, including general penalties pursuant to  
15 Section 59A-1-18 NMSA 1978.

16 D. After notice and hearing, the superintendent  
17 may adopt and promulgate reasonable rules necessary and  
18 proper to carry out the provisions of this section.

19 E. For the purposes of this section:

20 (1) "direct services" means services  
21 rendered to an individual by a health care plan, health  
22 insurer or a health care practitioner, facility or other  
23 provider, including case management, disease management,  
24 health education and promotion, preventive services, quality  
25 incentive payments to providers and any portion of an

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 assessment that covers services rather than administration  
2 and for which a health care plan or a health insurer does not  
3 receive a tax credit pursuant to the Medical Insurance Pool  
4 Act [~~or the Health Insurance Alliance Act~~]; provided,  
5 however, that "direct services" does not include care  
6 coordination, utilization review or management or any other  
7 activity designed to manage utilization or services;

8 (2) "health care plan" means a nonprofit  
9 corporation authorized by the superintendent to enter into  
10 contracts with subscribers and to make health care expense  
11 payments but does not include a person that only issues a  
12 limited-benefit policy intended to supplement major medical  
13 coverage, including medicare supplement, vision, dental,  
14 disease-specific, accident-only or hospital indemnity-only  
15 insurance policies, or that only issues policies for long-  
16 term care or disability income; and

17 (3) "premium" means all income received from  
18 individuals and private and public payers or sources for the  
19 procurement of health coverage, including capitated payments,  
20 self-funded administrative fees, self-funded claim  
21 reimbursements, recoveries from third parties or other  
22 insurers and interests less any [~~premium~~] tax paid pursuant  
23 to [~~Section 59A-6-2 NMSA 1978~~] the Insurance Premium Tax Act  
24 and fees associated with participating in a health insurance  
25 exchange that serves as a clearinghouse for insurance."

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1           SECTION 27. Section 59A-49-6 NMSA 1978 (being Laws  
2 1984, Chapter 127, Section 904) is amended to read:

3           "59A-49-6. TRUST FUND--ACCOUNTING--DEPOSIT, RESERVES  
4 AND PREMIUM TAX.--

5           A. In all cases where funeral plans are sold, all  
6 money paid, directly or indirectly, under such agreement, or  
7 under any agreement collateral thereto, shall be held in  
8 trust for the purpose for which it was paid until the  
9 obligation is fulfilled according to its terms; provided,  
10 however, that any payment made pursuant to this section shall  
11 be released upon death of the person for whose benefit such  
12 payment was made, and no payments so made shall be subject to  
13 forfeiture. Accruals of interest upon this money shall be  
14 subject to the same trust.

15           B. All funds received as herein provided shall be  
16 placed in trust with a trustee pursuant to an agreement  
17 executed by the depositor and trustee [~~which~~] that shall  
18 provide that the trustee shall hold the same in trust for the  
19 purposes for which deposited; that the trustee shall pay the  
20 same to the depositor upon the filing of a certified copy of  
21 the death certificate or other satisfactory evidence of the  
22 death of the beneficiary; and that the beneficiary or [~~his~~]  
23 the beneficiary's duly appointed guardian may, in writing,  
24 demand the return of the money, together with accrued  
25 interest, if any, less cost incurred in the operation of such

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 trust, and the depositor shall be entitled to receive such  
2 money from the trustee for payment to the beneficiary upon  
3 delivery of such written demand to the trustee. The payment  
4 of such funds and accumulated interest, pursuant to the terms  
5 of [~~this article~~] the Prearranged Funeral Plan Regulatory Law  
6 and the agreement herein referred to, shall relieve the  
7 trustee of any further liabilities with regard to such funds  
8 or interest thereon.

9 C. Each seller of funeral plans shall submit such  
10 accounting or accountings of all [~~monies~~] money collected or  
11 received on account of or in connection with the sale of  
12 funeral plans and of all money deposited or withdrawn from a  
13 trustee, as the superintendent may reasonably direct, by  
14 regulation or order.

15 D. [~~The premium tax as levied in Section 102 of~~  
16 ~~the Insurance Code shall not be applicable to money collected~~  
17 ~~and placed in trust pursuant to this section, nor shall]~~  
18 Funds collected and placed in [~~such a~~] trust pursuant to this  
19 section shall not be used as the basis for the calculation of  
20 the capital and surplus, general deposits and fees otherwise  
21 required under Section [~~83 of the Insurance Code~~] 59A-5-16  
22 NMSA 1978."

23 SECTION 28. Section 59A-54-10 NMSA 1978 (being Laws  
24 1987, Chapter 154, Section 10, as amended) is amended to  
25 read:

.208799.6SAmS



1 "59A-54-10. ASSESSMENTS.--

2 A. Following the close of each fiscal year, the  
3 pool administrator shall determine the net premium, being  
4 premiums less administrative expense allowances, the pool  
5 expenses and claim expense losses for the year, taking into  
6 account investment income and other appropriate gains and  
7 losses. The assessment for each insurer shall be determined  
8 by multiplying the total cost of pool operation by a  
9 fraction, the numerator of which equals that insurer's  
10 premium and subscriber contract charges or their equivalent  
11 for health insurance written in the state during the  
12 preceding calendar year and the denominator of which equals  
13 the total of all premiums and subscriber contract charges  
14 written in the state; provided that premium income shall  
15 include receipts of medicaid managed care premiums but shall  
16 not include any payments by the secretary of [~~health and~~]  
17 human services pursuant to a contract issued under Section  
18 1876 of the Social Security Act, as amended. The board may  
19 adopt other or additional methods of adjusting the formula to  
20 achieve equity of assessments among pool members, including  
21 assessment of health insurers and reinsurers based upon the  
22 number of persons they cover through primary, excess and  
23 stop-loss insurance in the state.

24 B. If assessments exceed actual losses and  
25 administrative expenses of the pool, the excess shall be held

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 at interest and used by the board to offset future losses or  
2 to reduce pool premiums. As used in this subsection, "future  
3 losses" includes reserves for incurred but not reported  
4 claims.

5 C. The proportion of participation of each member  
6 in the pool shall be determined annually by the board based  
7 on annual statements and other reports deemed necessary by  
8 the board and filed with it by the member. Any deficit  
9 incurred by the pool shall be recouped by assessments  
10 apportioned among the members of the pool pursuant to the  
11 assessment formula provided by Subsection A of this section.  
12 ~~[provided that the assessment for any pool member shall be~~  
13 ~~allowed as a fifty-percent credit on the premium tax return~~  
14 ~~for that member and a seventy-five-percent credit on the~~  
15 ~~premium tax return for that member for the assessments~~  
16 ~~attributable to pool policy holders that receive premiums, in~~  
17 ~~whole or in part, through the federal Ryan White CARE Act,~~  
18 ~~the Ted R. Montoya hemophilia program at the university of~~  
19 ~~New Mexico health sciences center, the children's medical~~  
20 ~~services bureau of the public health division of the~~  
21 ~~department of health or other program receiving state funding~~  
22 ~~or assistance.]~~

23 D. The board may abate or defer, in whole or in  
24 part, the assessment of a member of the pool if, in the  
25 opinion of the board, payment of the assessment would

.208799.6SAmS

underscored material = new  
[bracketed material] = delete

1 endanger the ability of the member to fulfill its contractual  
2 obligation. In the event an assessment against a member of  
3 the pool is abated or deferred in whole or in part, the  
4 amount by which such assessment is abated or deferred may be  
5 assessed against the other members in a manner consistent  
6 with the basis for assessments set forth in Subsection A of  
7 this section. The member receiving the abatement or  
8 deferment shall remain liable to the pool for the deficiency  
9 for four years."

10 SECTION 29. Section 59A-55-6 NMSA 1978 (being Laws  
11 1988, Chapter 125, Section 6, as amended) is amended to read:

12 "59A-55-6. [~~TAXATION OF~~] RISK RETENTION GROUPS--  
13 REPORTS.--

14 A. Each risk retention group shall [~~be liable for~~  
15 ~~the payment of premium taxes and taxes on premiums of direct~~  
16 ~~business for risks resident or located within New Mexico and~~  
17 ~~shall~~] report to the superintendent the net premium written  
18 for risks resident or located within New Mexico. [~~The risk~~  
19 ~~retention group shall be subject to taxation and any~~  
20 ~~applicable fines and penalties related thereto, on the same~~  
21 ~~basis as an admitted insurer.~~]

22 B. To the extent a licensed insurance [~~producers~~  
23 ~~are~~] producer is utilized pursuant to Section 59A-55-24 NMSA  
24 1978, [~~they~~] the licensed insurance producer shall report to  
25 the superintendent the premiums for direct business for risks

.208799.6SAmS

underscored material = new  
~~[bracketed material] = delete~~

1 resident or located within this state [~~which~~] that the  
2 insurance producers have placed with or on behalf of a risk  
3 retention group not licensed in this state.

4 C. To the extent that an insurance [~~producers~~  
5 ~~are~~] producer is utilized pursuant to Section 59A-55-24 NMSA  
6 1978, the insurance producer shall keep a complete and  
7 separate record of all policies procured from each such risk  
8 retention group, which record shall be open to examination by  
9 the superintendent and shall contain the information required  
10 by the superintendent by rule."

11 SECTION 30. TEMPORARY PROVISION--TRANSFER OF PERSONNEL,  
12 FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY AND CONTRACTUAL  
13 OBLIGATIONS.--

14 A. On the effective date of this act, all  
15 personnel directly involved with the audit and collection of  
16 the taxes imposed pursuant to the New Mexico Insurance Code  
17 prior to the effective date of this act, functions,  
18 appropriations, money, records, furniture, equipment and  
19 other property of, or attributable to, the financial audit  
20 bureau of the office of superintendent of insurance shall be  
21 transferred to the taxation and revenue department.

22 B. On the effective date of this act, no  
23 contractual obligations of the office of superintendent of  
24 insurance shall be binding on the taxation and revenue  
25 department.

.208799.6SAmS

1 SECTION 31. REPEAL.--Sections 59A-6-2, 59A-14-18,  
2 59A-23B-9 and 59A-55-21 NMSA 1978 (being Laws 1984, Chapter  
3 127, Sections 102 and 256, Laws 1991, Chapter 111, Section 9  
4 and Laws 1988, Chapter 125, Section 21, as amended) are  
5 repealed.

6 SECTION 32. EFFECTIVE DATE.--The effective date of the  
7 provisions of this act is January 1, 2019.

8 - 61 -  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

underscored material = new  
[bracketed material] = delete

