

1 SENATE BILL 378

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 George K. Munoz

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10 AN ACT

11 RELATING TO INSURANCE; ENACTING THE SELF-SERVICE STORAGE
12 INSURANCE LICENSE ACT; PROVIDING EXEMPTIONS FOR SELF-SERVICE
13 STORAGE INSURANCE PRODUCER LICENSEES; PROVIDING PENALTIES.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. A new section of the New Mexico Insurance Code
17 is enacted to read:

18 "[NEW MATERIAL] SHORT TITLE.--Sections 1 through 11 of
19 this act may be cited as the "Self-Service Storage Insurance
20 License Act"."

21 SECTION 2. A new section of the New Mexico Insurance Code
22 is enacted to read:

23 "[NEW MATERIAL] DEFINITIONS.--As used in the Self-Service
24 Storage Insurance License Act:

25 A. "occupant" means a person who is entitled to the

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1 use of storage space at a self-service storage facility, to the
2 exclusion of others, under terms of a rental agreement,
3 including a sublessee, successor or assignee;

4 B. "owner" means the owner, operator, franchisee,
5 lessor or sublessor of a self-service storage facility, agent
6 or any person authorized to manage the facility or to receive
7 rent from an occupant under a rental agreement;

8 C. "personal property" means movable property not
9 affixed to land, and includes goods, merchandise and household
10 items;

11 D. "rental agreement" means any written agreement
12 or lease between the owner and the occupant that establishes or
13 modifies the terms, conditions or rules or any other provisions
14 concerning the use and occupancy of storage space at a self-
15 service storage facility;

16 E. "self-service storage facility" means any real
17 property designed and used in the business of providing leased
18 or rented storage space to occupants who have access to such
19 facility for the purpose of storing and removing personal
20 property;

21 F. "self-service storage insurance" means personal
22 or commercial property insurance offered to an occupant in
23 connection with and incidental to the rental of storage space
24 at a self-service storage facility and that provides coverage
25 for the loss of or damage to the occupant's personal property

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1 that occurs at the self-service storage facility or when such
2 property is in transit to or from the facility during the
3 period of the rental agreement;

4 G. "self-service storage insurance producer" means
5 a business entity licensed only to offer insurance in
6 connection with, and incidental to, rental agreements on behalf
7 of an insurer authorized to write self-service storage
8 insurance; and

9 H. "supervising entity" means an insurer issuing
10 self-service storage insurance or a licensed insurance producer
11 licensed pursuant to Article 11 of the Insurance Code that is
12 authorized by an insurer to supervise the administration of a
13 self-service storage insurance program."

14 SECTION 3. A new section of the New Mexico Insurance Code
15 is enacted to read:

16 "[NEW MATERIAL] SELF-SERVICE STORAGE INSURANCE PRODUCER
17 LICENSE.--

18 A. The superintendent may issue a self-service
19 storage insurance producer license to an applicant who is
20 qualified to solicit or sell self-service storage insurance.

21 B. An owner shall not sell, solicit or offer
22 self-service storage insurance unless the owner has complied
23 with the requirements of the Self-Service Storage Insurance
24 License Act and has been issued a self-service storage
25 insurance producer license by the superintendent.

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1 C. A self-service storage insurance producer
2 license authorizes the licensee and its employees and
3 authorized representatives to sell, solicit and offer self-
4 service storage insurance to occupants at any self-service
5 storage facility at which the owner conducts business.

6 D. Self-service storage insurance producers shall
7 be licensed pursuant to Article 11 of the Insurance Code.

8 E. An owner is not required to be licensed as a
9 self-service storage insurance producer solely to display and
10 make available to occupants and prospective occupants brochures
11 and other promotional materials created by or on behalf of an
12 insurer, if the owner and its unlicensed employees and
13 authorized representatives do not sell, solicit or offer self-
14 service storage insurance.

15 F. A licensee pursuant to this section may provide
16 self-service storage insurance under an individual policy or
17 under a commercial, corporate, group or master policy.

18 G. An owner shall not:

19 (1) require an occupant to purchase insurance
20 offered by the owner as a requirement to lease storage space at
21 a self-service storage facility; or

22 (2) advertise, represent or otherwise hold the
23 owner's self out as a self-service storage insurance producer
24 unless licensed pursuant to the Self-Service Storage Insurance
25 License Act."

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1 SECTION 4. A new section of the New Mexico Insurance Code
2 is enacted to read:

3 "[NEW MATERIAL] REGISTRY OF AUTHORIZED LOCATIONS.--

4 A. Before offering self-service storage insurance
5 at a location, a self-service storage insurance producer shall
6 provide the superintendent with a complete list of each
7 location where the self-service storage insurance producer will
8 offer self-service storage insurance. The supervising entity
9 shall maintain a registry of each location at which a self-
10 service storage insurance producer is authorized to sell,
11 solicit or offer self-service storage insurance in this state.

12 B. The registry shall be made available for
13 inspection by the superintendent upon reasonable request.

14 C. A self-service storage insurance producer shall
15 notify the superintendent within thirty days after:

16 (1) engaging in the sale or solicitation of
17 self-service storage insurance at any additional location in
18 the state; or

19 (2) ceasing to sell, solicit or offer self-
20 service storage insurance."

21 SECTION 5. A new section of the New Mexico Insurance Code
22 is enacted to read:

23 "[NEW MATERIAL] DISCLOSURE OF TERMS.--

24 A. A self-service storage insurance producer shall
25 not sell, solicit or offer self-service storage insurance to

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1 occupants at any location unless the licensee makes available a
2 brochure or other written or electronic material that:

3 (1) discloses that self-service storage
4 insurance may provide a duplication of coverage already
5 provided by an occupant's homeowner's insurance policy,
6 renter's insurance policy, vehicle insurance policy, watercraft
7 insurance policy or other property insurance coverage;

8 (2) states that the purchase by the occupant
9 of the self-service storage insurance offered by the owner is
10 not required in order to lease storage space at the self-
11 service storage facility;

12 (3) provides the actual terms of the
13 self-service storage insurance coverage or summarizes the
14 material terms of the self-service storage insurance coverage,
15 including:

16 (a) the identity of the insurer;

17 (b) the price of coverage and how
18 payment shall be made;

19 (c) the identity of the supervising
20 entity;

21 (d) deductibles, exclusions and
22 conditions;

23 (e) benefits of the coverage; and

24 (f) key terms and conditions of
25 coverage;

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1 (4) summarizes the process for filing a claim;
2 and

3 (5) states that an occupant that purchases
4 self-service storage insurance may cancel the insurance at any
5 time by notifying the insurer or the supervising entity in
6 writing and shall receive a refund of any unearned premium
7 within twenty days of cancellation.

8 B. The written or electronic material required
9 pursuant to this section shall be submitted to the
10 superintendent for approval upon request."

11 SECTION 6. A new section of the New Mexico Insurance Code
12 is enacted to read:

13 "[NEW MATERIAL] AUTHORIZED EMPLOYEES AND
14 REPRESENTATIVES.--

15 A. At the time of filing a self-service storage
16 insurance producer license application, the applicant shall
17 establish a list of the names of all employees and authorized
18 representatives whose duties may include offering and selling
19 self-service storage insurance. The list shall be:

20 (1) maintained by the licensee in a form
21 prescribed by the superintendent;

22 (2) updated annually; and

23 (3) retained by the self-service storage
24 facility for three years and made available to the
25 superintendent for review and inspection upon request.

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1 B. An employee or authorized representative of a
2 self-service storage insurance producer who is at least
3 eighteen years of age and has been trained pursuant to Section
4 8 of the Self-Service Storage Insurance Act may act on behalf
5 and under the supervision of the self-service storage insurance
6 producer in matters relating to the conduct of business under
7 that producer's license.

8 C. An employee or authorized representative of a
9 self-service storage insurance producer may sell, solicit and
10 offer self-service storage insurance to occupants and shall not
11 be subject to licensure as an insurance producer."

12 SECTION 7. A new section of the New Mexico Insurance Code
13 is enacted to read:

14 "[NEW MATERIAL] COMMISSIONS.--A self-service storage
15 insurance producer shall not compensate an employee or
16 authorized representative based primarily on the number of
17 occupants that purchase self-service storage insurance from the
18 self-service storage insurance producer unless that
19 compensation is incidental to the employee's or authorized
20 representative's overall compensation."

21 SECTION 8. A new section of the New Mexico Insurance Code
22 is enacted to read:

23 "[NEW MATERIAL] REQUIRED TRAINING PROGRAMS.--

24 A. The supervising entity shall supervise the
25 administration of the self-service storage insurance program,

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1 including development of a training program approved by the
2 superintendent for employees and authorized representatives of
3 the self-service storage insurance producer.

4 B. The training program shall be provided to an
5 employee or authorized representative of a self-service storage
6 insurance producer prior to that person engaging in the
7 activity of selling, soliciting or offering self-service
8 storage insurance.

9 C. The training shall inform employees and
10 authorized representatives:

11 (1) that employees and authorized
12 representatives of an owner are prohibited from advertising,
13 representing or otherwise holding themselves out as insurance
14 producers;

15 (2) about ethical sales practices; and

16 (3) about the self-service storage insurance
17 offered to occupants and regarding the disclosures required
18 pursuant to the Self-Service Storage Insurance License Act.

19 D. The training materials used by or on behalf of
20 the self-service storage facility to train employees and
21 authorized representatives shall be submitted to the
22 superintendent at the time the owner applies for a self-service
23 storage insurance producer license and whenever modified. Any
24 changes to those training materials shall be submitted to the
25 superintendent prior to their use by the licensee and in a form

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1 prescribed by the superintendent.

2 E. Training materials and changes to those
3 materials that are submitted to the superintendent in
4 accordance with this section shall be deemed approved for use
5 by the supervising entity unless the superintendent notifies
6 the supervising entity otherwise.

7 F. Failure by a self-service storage facility to
8 submit training materials or changes for the superintendent's
9 review, or use of disapproved training materials, shall
10 constitute grounds for the denial of an application for
11 license, nonrenewal of a license or a suspension of a license."

12 SECTION 9. A new section of the New Mexico Insurance Code
13 is enacted to read:

14 "[NEW MATERIAL] COLLECTION OF FEES.--

15 A. Charges for self-service storage insurance
16 coverage may be billed and collected by a self-service storage
17 insurance producer.

18 B. A charge to an occupant for coverage that is not
19 included in the cost associated with the rental of storage
20 space shall be separately itemized on the occupant's bill.

21 C. If self-service storage insurance coverage is
22 included with the rental of storage space, the self-service
23 storage insurance producer shall clearly and conspicuously
24 disclose to the occupant in the rental invoice or otherwise
25 that the self-service storage insurance coverage is included

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1 with charges for the rental of storage space.

2 D. An occupant that purchases self-service storage
3 insurance may cancel the insurance at any time by notifying the
4 insurer or the supervising entity in writing and shall receive
5 a refund of any unearned premium within twenty days of
6 cancellation."

7 SECTION 10. A new section of the New Mexico Insurance
8 Code is enacted to read:

9 "[NEW MATERIAL] FIDUCIARY FUNDS.--

10 A. Self-service storage insurance producers billing
11 and collecting charges shall comply with the fiduciary
12 requirements set forth in Section 59A-12-22 NMSA 1978, except
13 that, pursuant to Paragraph (1) of Subsection B of Section
14 59A-12-22 NMSA 1978, the self-service storage insurance
15 producer may remit received premiums, less applicable
16 commissions, if any, and return premiums to the insurer or
17 supervising entity within a time established by contract with
18 the insurer or supervising entity, not to exceed sixty days
19 after such receipt.

20 B. All money received by a self-service storage
21 insurance producer or its employees or authorized
22 representatives from an occupant for the sale of self-service
23 storage insurance shall be held by the self-service storage
24 insurance producer in a fiduciary capacity for the benefit of
25 the insurer. A self-service storage insurance producer may

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1 receive compensation for billing and collection services, as
2 established by contract with the insurer or supervising
3 entity."

4 SECTION 11. A new section of the New Mexico Insurance
5 Code is enacted to read:

6 "[NEW MATERIAL] PENALTIES.--After notice and hearing by
7 the superintendent, the superintendent may impose by
8 administrative penalty upon a person who violates a provision
9 of the Self-Service Storage Insurance License Act the
10 following:

11 A. a fine not to exceed one thousand dollars
12 (\$1,000) per violation and not to exceed a total of ten
13 thousand dollars (\$10,000);

14 B. suspension of transacting self-service storage
15 insurance at specific locations where violations have occurred;

16 C. suspension or revocation of the rights of
17 individual employees or authorized representatives of a self-
18 service storage insurance producer to act under the license; or

19 D. suspension or revocation of the self-service
20 storage insurance producer's or supervising entity's license to
21 transact insurance in this state."

22 SECTION 12. Section 59A-12-16 NMSA 1978 (being Laws 1984,
23 Chapter 127, Section 217, as amended) is amended to read:

24 "59A-12-16. EXAMINATION FOR LICENSE.--

25 A. A resident individual applying for an insurance

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1 producer license shall, prior to issuance of license,
2 personally take and pass a written examination. The
3 examination shall test the knowledge of the individual
4 concerning the lines of authority for which application is
5 made, the duties and responsibilities of an insurance producer
6 and the insurance laws and rules of this state. Examinations
7 required by this section shall be developed and conducted under
8 rules prescribed by the superintendent.

9 B. The superintendent may contract with an outside
10 testing service for administering examinations and collecting
11 the nonrefundable fee set forth in Section 59A-6-1 NMSA 1978.

12 C. Each individual applying for an examination
13 shall remit a nonrefundable fee as prescribed by the
14 superintendent as set forth in Section 59A-6-1 NMSA 1978.

15 D. An individual who fails to appear for the
16 examination as scheduled or fails to pass the examination shall
17 reapply for an examination and remit all required fees and
18 forms before being rescheduled for another examination.

19 E. No examination shall be required:

20 (1) for renewal or continuance of an existing
21 license, except as provided in Subsection D of Section
22 59A-11-10 NMSA 1978;

23 (2) of an applicant for limited license as
24 provided in Section 59A-12-18 NMSA 1978;

25 (3) of applicants with respect to life and

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1 annuities or accident and health insurances who hold the
2 chartered life underwriter [~~(C.L.U.)~~] designation by the
3 American college of [~~life underwriters~~] financial services;

4 (4) of applicants with respect to property and
5 casualty insurance who hold the designation of chartered
6 property and casualty underwriter [~~(C.P.C.U.)~~] designation by
7 the American institute [~~of~~] for chartered property [~~and~~]
8 casualty underwriters;

9 (5) of applicants for temporary license as
10 provided for in Section 59A-12-19 NMSA 1978;

11 (6) of an applicant for a license covering the
12 same kind or kinds of insurance as to which licensed in this
13 state under a similar license within five years preceding date
14 of application for the new license, unless the previous license
15 was suspended, revoked or continuation thereof refused by the
16 superintendent; [~~or~~]

17 (7) of an applicant for insurance producer
18 license, if the applicant took and passed a similar examination
19 in a state in which already licensed, subject to Section
20 59A-5-33 NMSA 1978; or

21 (8) of an applicant for self-service storage
22 insurance producer license.

23 F. An individual who applies for an insurance
24 producer license in this state who was previously licensed for
25 the same lines of authority in another state shall not be

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1 required to take an examination. This exemption is only
2 available if the person is currently licensed in that state or
3 if the application is received within ninety days of the
4 cancellation of the applicant's previous license and if the
5 prior state issues a certification that, at the time of
6 cancellation, the applicant was in good standing in that state
7 or the state's insurance producer database records, maintained
8 by the national association of insurance commissioners, its
9 affiliates or subsidiaries, indicate that the insurance
10 producer is or was licensed in good standing for the line of
11 authority requested.

12 G. A person licensed as an insurance producer in
13 another state who moves to this state shall apply within ninety
14 days of establishing legal residence to become a resident
15 insurance producer. No examination shall be required of that
16 person to obtain any line of authority previously held in the
17 prior state except where the superintendent determines
18 otherwise by rule."

19 SECTION 13. Section 59A-12-26 NMSA 1978 (being Laws 1984,
20 Chapter 127, Section 227, as amended) is amended to read:

21 "59A-12-26. CONTINUING EDUCATION.--

22 A. The superintendent shall require as a condition
23 to continuation of an insurance producer license that during
24 the twenty-four months next preceding expiration of the current
25 license period the licensee has attended the minimum number of

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1 hours of formal class instruction, lectures or seminars
2 required and approved by the superintendent covering the kinds
3 of insurance for which licensed.

4 B. Instruction shall be designed to refresh the
5 licensee's understanding of basic principles and coverages
6 involved, recent and prospective changes, applicable laws and
7 rules of the superintendent, proper conduct of the licensee's
8 business and duties and responsibilities of the licensee.

9 C. The superintendent may permit licensees who
10 because of remoteness of residence or business cannot with
11 reasonable convenience attend formal instruction sessions to
12 successfully complete an equivalent course of study and
13 instruction online or by mail.

14 D. The superintendent may impose a penalty not to
15 exceed fifty dollars (\$50.00) for a licensee's failure to
16 timely report continuing education credits.

17 E. The superintendent shall charge, at the time of
18 certifying each licensee's continuing education credits as a
19 condition of continuation of license, a fee of one dollar
20 (\$1.00) per credit hour of continuing education; provided that
21 the superintendent may contract with an independent agency to
22 receive and review continuing education compliance reports and,
23 in such a case, the fee shall be a reasonable amount fixed by
24 the superintendent and payable to the contracting agency.

25 F. This section shall not apply to holders of:

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(1) limited license issued under Section
59A-12-18 NMSA 1978; and
(2) self-service storage insurance producer
license."

SECTION 14. EFFECTIVE DATE.--The effective date of the
provisions of this act is July 1, 2019.