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HOUSE BILL 357

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Thomas A. Garcia

AN ACT

RELATING TO INSURANCE; REPLACING THE ANNUAL TITLE INSURANCE HEARING WITH A BIENNIAL HEARING; PROHIBITING INDUCEMENTS FOR THE REFERRAL OF TITLE BUSINESS; PROVIDING FOR TITLE PREMIUM COMPARISON GUIDES; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 59A-16-17 NMSA 1978 (being Laws 1984, Chapter 127, Section 283) is amended to read:

"59A-16-17. UNFAIR DISCRIMINATION, REBATES PROHIBITED-- OTHER COVERAGES.--

A. No property, casualty, marine and transportation, surety, vehicle or title insurer, or nonprofit health care or prepaid dental plan or other insurance-type organization, or any employee or representative thereof, and no

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1 broker, agent, solicitor or other representative shall pay,
2 allow or give, or offer to pay, allow or give, directly or
3 indirectly, as an inducement to insurance or coverage, or after
4 insurance or coverage has been effected, any rebate, discount,
5 abatement, credit or reduction of the premium named in a
6 policy, or any special favor or advantage in the dividends or
7 other benefits to accrue thereon, or any valuable consideration
8 or inducement whatever, not specified or provided for in the
9 policy, except to the extent provided for in an applicable
10 filing with the superintendent as provided by law.

11 B. No title insurer or title insurance agent shall:

12 (1) pay, directly or indirectly, to the
13 insured or any person acting as agent, representative, attorney
14 or employee of the owner, lessee, mortgagee, existing or
15 prospective, of the real property, or interest therein, [~~which~~]
16 that is the subject matter of title insurance or as to which a
17 service is to be performed any commission or part of its fee or
18 charges or other consideration as inducement or compensation
19 for the placing of any order for a title insurance policy or
20 for performance of any escrow or other service by the insurer
21 with respect thereto; [~~or~~]

22 (2) issue any policy or perform any service in
23 connection with which it or any agent or other person has paid
24 or contemplates paying any commission, rebate or inducement in
25 violation of this section;

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1 (3) give or receive, directly or indirectly,
2 any consideration or thing of value for the referral of title
3 insurance business or escrow or other service provided by a
4 title insurer or title insurance agent; or

5 (4) enter into a reinsurance agreement with an
6 affiliate of a real estate developer, a real estate agency, a
7 mortgage lender or a referrer of title business without the
8 prior written approval of the superintendent.

9 C. No insured named in a policy or any employee
10 [~~or~~] of such insured shall knowingly receive or accept,
11 directly or indirectly, any such rebate, discount, abatement,
12 credit or reduction of premium, or any such special favor or
13 advantage or valuable consideration or inducement.

14 D. No such insurer or organization shall make or
15 permit any unfair discrimination between insureds or property
16 having like insuring or risk characteristics, in the premium or
17 rates charged for insurance or coverage, or in the dividends or
18 other benefits payable thereon or in any other of the terms and
19 conditions of the insurance or coverage.

20 E. Nothing in this section shall be construed as
21 prohibiting the payment of commissions or other compensation to
22 licensed agents, brokers, solicitors or other representatives;
23 or as prohibiting the extension of credit to an insured for the
24 payment of any premium and for which credit a reasonable rate
25 of interest is charged and collected; or as prohibiting any

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1 insurer from allowing or returning to its participating
2 policyholders, members or subscribers, dividends, savings or
3 unabsorbed premium deposits. As to title insurance, nothing in
4 this section shall prohibit bulk rates or special rates for
5 customers of prescribed classes if such bulk or special rates
6 are provided for in the currently effective schedule of fees
7 and charges of the title insurer as filed with the
8 superintendent.

9 F. This section does not apply to wet marine and
10 transportation insurance."

11 Section 2. Section 59A-17-11.1 NMSA 1978 (being Laws
12 2007, Chapter 367, Section 6) is amended to read:

13 "59A-17-11.1. CONSUMER INFORMATION.--

14 A. The superintendent shall use, develop or cause
15 to be developed a consumer information system that will provide
16 and disseminate price and other relevant information on a
17 readily available basis to purchasers of homeowners, private
18 passenger non-fleet automobile or property insurance for
19 personal, family or household needs as well as for title
20 insurance and for any other types of personal or commercial
21 insurance designated by the superintendent. To the extent
22 deemed necessary and appropriate by the superintendent,
23 insurers, advisory organizations and other persons or
24 organizations involved in conducting the business of insurance
25 in New Mexico, to which this section applies, shall cooperate

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1 in the development and utilization of a consumer information
2 system.

3 B. An insurer writing homeowners insurance or
4 private passenger non-fleet automobile insurance in New Mexico
5 shall, upon renewal or upon the transfer of a policy to another
6 insurer under the same ownership or management as the
7 transferring insurer, provide its policyholders with written
8 notification of their right to obtain from the insurer a
9 detailed written explanation of the reasons why their policy
10 premium has changed or is about to change."

11 Section 3. Section 59A-30-1 NMSA 1978 (being Laws 1985,
12 Chapter 28, Section 1) is amended to read:

13 "59A-30-1. SHORT TITLE.--~~[This article]~~ Chapter 59A,
14 Article 30 NMSA 1978 may be cited as the "New Mexico Title
15 Insurance Law"."

16 Section 4. Section 59A-30-3 NMSA 1978 (being Laws 1985,
17 Chapter 28, Section 3, as amended) is amended to read:

18 "59A-30-3. DEFINITIONS.--As used in the New Mexico Title
19 Insurance Law:

20 A. "agency agreement" means a document executed by
21 a title insurer and title insurance agent [~~which~~] that defines
22 the compensation of the title insurance agent and the scope of
23 the title insurance agent's authority;

24 B. "business of title insurance" means:

25 (1) issuing as title insurer or offering to

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1 issue as title insurer a title insurance policy; or

2 (2) transacting or proposing to transact by a
3 title insurer or title insurance agent any of the following
4 activities when conducted or performed in contemplation of the
5 issuance of a title insurance policy:

6 (a) soliciting or negotiating the
7 issuance of a title insurance policy;

8 (b) guaranteeing, warranting or
9 otherwise insuring the correctness of title searches;

10 (c) executing [øf] title insurance
11 policies;

12 (d) effecting contracts of reinsurance;

13 (e) abstracting, searching or examining
14 titles; or

15 (f) doing or proposing to do any
16 business in substance equivalent to the business of title
17 insurance in a manner designed to evade the provisions of the
18 New Mexico Title Insurance Law or other laws applicable to the
19 business of title insurance;

20 C. "charge" means any consideration, other than
21 premiums billed by a title insurance agent or title insurer or
22 both, for the performance of services, including but not
23 necessarily limited to consideration for the handling of
24 escrows, settlements, closings or preparation of abstracts,
25 consideration for services commenced but not completed and

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1 consideration for title searches conducted for a purpose other
2 than issuance of a title insurance policy, but not including
3 consideration collected by a title insurer or title insurance
4 agent when the consideration is limited to the amount billed
5 for services rendered by a third party;

6 D. "premium" means the consideration for issuing a
7 title insurance policy and includes the consideration for
8 searching and examining a title when conducted or performed for
9 the purpose of the issuance of a title insurance policy;

10 E. "available funds" means funds subject to immediate
11 withdrawal by cash or check in a depository account with a
12 financial institution, held in the name of and subject to the
13 control of a title insurance agent, title insurer or third
14 party fiduciary, not including a person or entity that is a
15 party to the transaction, cooperating in the closing of a
16 transaction with a title insurance agent or title insurer;

17 F. "title insurance agent" means a person licensed as
18 an agent under the Insurance Code and appointed by a title
19 insurer;

20 G. "title insurance policy" or "policy" means a
21 contract indemnifying against loss or damage arising from any
22 of the following [~~which~~] that exist on or before the effective
23 date of the policy:

- 24 (1) defects in the insured title;
25 (2) liens or encumbrances on the insured title;

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1 (3) unmarketability of the insured title; ~~[or]~~
2 (4) invalidity or unenforceability of liens or
3 encumbrances on the property ~~[which]~~ that is the subject of the
4 policy; or

5 (5) lack of legal right of access to the
6 property. "Title insurance policy" or "policy" does not
7 include an abstract; and

8 H. "title insurer" means any person authorized under
9 the laws of this state to transact as insurer the business of
10 title insurance."

11 Section 5. Section 59A-30-8 NMSA 1978 (being Laws 1985,
12 Chapter 28, Section 8, as amended) is amended to read:

13 "59A-30-8. HEARINGS--NOTICE.--

14 A. The superintendent shall ~~[hold an annual]~~ commence
15 a hearing during November of each odd-numbered calendar year to
16 consider promulgation of premium rates and any other matters
17 related to the regulation of the business of title insurance
18 deemed necessary by the superintendent.

19 B. The superintendent may, in ~~[his]~~ the
20 superintendent's discretion, hold a public hearing at any time
21 to consider promulgation of premium rates and such other
22 matters and subjects related to the regulation of the business
23 of title insurance as the superintendent shall determine
24 necessary or proper.

25 C. Notice of the public hearings provided for in

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1 Subsections A and B of this section shall be as provided in
2 Subsection A of Section 59A-4-16 NMSA 1978.

3 D. The superintendent may promulgate premium rates
4 and forms of title insurance policies only after a public
5 hearing as provided in Subsections A and B of this section.

6 E. The superintendent shall issue ~~[his]~~ a decision
7 within sixty days following the ~~[conclusion of a]~~
8 superintendent's closure of the administrative record for the
9 public hearing provided for in Subsections A and B of this
10 section. However, if the superintendent determines that the
11 data and information presented to the superintendent pursuant
12 to Section 59A-30-7 NMSA 1978 ~~[is]~~ are incomplete, inaccurate
13 or otherwise insufficient to determine whether ~~[the]~~ a change
14 in rates is warranted, the superintendent shall require the
15 ~~[title insurers or the title agents or both]~~ relevant person to
16 furnish the additional necessary data and information, and, in
17 such event, the period of time allowed for the superintendent
18 to issue ~~[his]~~ a decision shall commence from the date such
19 additional data and information ~~[is]~~ are furnished."

20 Section 6. Section 59A-30-9 NMSA 1978 (being Laws 1985,
21 Chapter 28, Section 9, as amended) is amended to read:

22 "59A-30-9. REVIEW--APPEALS.--A person aggrieved by an
23 order of the superintendent promulgating rates under the New
24 Mexico Title Insurance Law shall have the rights to review and
25 appeal provided for in Sections 59A-17-34 and 59A-17-35 NMSA

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1 1978. The request for review shall be filed no later than
2 thirty days after the issuance of the order of the
3 superintendent that promulgated the rates."

4 Section 7. Section 59A-30-12 NMSA 1978 (being Laws 1985,
5 Chapter 28, Section 12) is amended to read:

6 "59A-30-12. MAINTENANCE ASSESSMENT.--The superintendent
7 shall determine a rate of assessment and collect a maintenance
8 fee in an amount not to exceed one percent of the correctly
9 reported gross title insurance premiums on policies written in
10 New Mexico of all authorized title insurers. The fee required
11 by this section is in addition to all other taxes and fees now
12 imposed or that may be subsequently imposed and that are not in
13 conflict with this article. The superintendent, after taking
14 into account the unexpended funds produced by this fee, if any,
15 shall adjust the rate of assessment each year to produce the
16 amount of funds that ~~he~~ the superintendent estimates will be
17 necessary to pay all the expenses of regulating the business of
18 title insurance during the succeeding year. The superintendent
19 in promulgating premium rates shall take into account
20 assessments made under this section."

21 Section 8. REPEAL.--Section 59A-30-15 NMSA 1978 (being
22 Laws 1985, Chapter 28, Section 16) is repealed.

23 Section 9. SEVERABILITY.--If any part or application of
24 this act is held invalid, the remainder or its application to
25 other situations or persons shall not be affected.

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1 Section 10. EFFECTIVE DATE.--The effective date of the
2 provisions of this act is July 1, 2009.

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