

1 SENATE BILL 108

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

4 Stuart Ingle

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10 AN ACT

11 RELATING TO INSURANCE; CHANGING THE TERMS "INSURANCE AGENT",
12 "INSURANCE BROKER" AND "INSURANCE SOLICITOR" TO "INSURANCE
13 PRODUCER"; INTRODUCING INSURANCE PRODUCER LICENSE RENEWAL AND
14 FEE REQUIREMENTS; INTRODUCING LICENSING AND FEE REQUIREMENTS
15 FOR INDEPENDENT REVIEW ORGANIZATIONS; INTRODUCING FILING FEES
16 FOR CONTINUING EDUCATION PROVIDERS; INTRODUCING PENALTY FOR
17 LATE NOTIFICATION OF CHANGE OF NAME OR ADDRESS; REVISING FEES;
18 INCREASING CAPITAL, SURPLUS AND DEPOSIT REQUIREMENTS; CHANGING
19 DEFINITIONS AND CLASSIFICATIONS OF INSURANCE; CHANGING
20 INSURANCE LICENSING PROVISIONS; REQUIRING ADJUSTERS TO FULFILL
21 CONTINUING EDUCATION REQUIREMENTS; REQUIRING APPLICANTS FOR AN
22 ADJUSTER LICENSE TO PASS AN EXAMINATION; AMENDING, REPEALING
23 AND ENACTING CERTAIN SECTIONS OF THE NEW MEXICO INSURANCE CODE.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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1 SECTION 1. Section 59A-5-16 NMSA 1978 (being Laws 2007,
2 Chapter 282, Section 1) is amended to read:

3 "59A-5-16. CAPITAL FUNDS, DEPOSITS, REQUIRED FOR
4 CERTIFICATE OF AUTHORITY.--

5 A. To qualify for certificate of authority to
6 transact any one kind or combination of kinds of insurance in
7 this state, an insurer shall possess:

8 (1) if a stock insurer, paid-in capital stock
9 and, when first so authorized, surplus all as shown in Schedule
10 I of this section; or

11 (2) if a mutual, reciprocal or Lloyds insurer,
12 basic capital surplus, including guaranty funds, if any, and
13 additional unassigned surplus when first so authorized, as
14 required under Schedule I of this section.

15 B. Except that an insurer that on January 1, 1985,
16 having applied for a certificate on or before February 15,
17 1984, held a valid and subsisting certificate of authority to
18 transact insurance in this state may, if a domestic insurer,
19 continue to be so authorized until December 31, 1995, so long
20 as otherwise qualified therefor and possessing paid-in capital
21 stock, if a stock insurer, or basic capital surplus, if a
22 mutual, reciprocal or Lloyds insurer, not less than that
23 required of the insurer by the laws of this state in force on
24 January 1, 1986; and if a foreign insurer, may so continue to
25 be so authorized, if otherwise qualified therefor, while

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1 possessing such capital funds (paid-in capital stock and
2 surplus if a stock insurer, and surplus if a mutual or
3 reciprocal insurer) until December 31, 1990. At the expiration
4 of such period, as applicable, the insurer shall meet the basic
5 capital requirements of this section as set forth in Schedule I
6 of this section in order to maintain its certificate of
7 authority. Upon a change in the control of either a domestic
8 insurer or foreign insurer, the insurer shall, within one year
9 from effective date of such change of control, meet the capital
10 funds requirements of Schedule I of this section as though a
11 newly authorized insurer, but this sentence shall not act to
12 extend the otherwise applicable time period. For the purposes
13 of this subsection, "control" shall have the meaning ascribed
14 in Section 59A-37-2 NMSA 1978.

15 C. The capital funds required for authority to
16 transact insurance in this state shall be based upon all the
17 kinds of insurance the insurer transacts, wherever transacted
18 or to be transacted.

19 D. This section shall not apply as to domestic
20 Lloyds plan insurers as identified in Chapter 59A, Article 38
21 NMSA 1978 except as stated in that article.

22 E. The capital requirements of this section are set
23 forth in the following schedule:

24 Schedule I

25 NEW MEXICO

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Minimum Capital, Surplus and Deposit Requirements

Property/Casualty Insurer

Premium Volume:	Under \$5	\$5 to \$10	\$10 to \$25	Over \$25
	Million	Million	Million	Million

Number of Kinds of Insurance

	1	2	[3			
Basic Capital	500,000	600,000	700,000	800,000	900,000	1,000,000

~~Additional~~

Surplus	500,000	600,000	700,000	same as	same as	same as
				Under	Under	Under
				\$5 Million	\$5 Million	\$5 Million

General Deposit	100,000	200,000	300,000	400,000	400,000	400,000
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Special Deposit	100,000	200,000	300,000	same as	same as	same as
				Under	Under	Under
				\$5 Million	\$5 Million	\$5 Million

Life/Health Insurer

Premium Volume:	Under \$5	\$5 to \$10	\$10 to \$25	Over \$25
	Million	Million	Million	Million

Basic Capital	600,000	700,000	800,000	900,000
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Additional Surplus	400,000	400,000	400,000	400,000
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General Deposit	100,000	100,000	100,000	100,000
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Special Deposit	100,000	100,000	100,000	100,000
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<u>Basic Capital</u>	<u>500,000</u>	<u>600,000</u>	<u>800,000</u>	<u>900,000</u>	<u>1,000,000</u>
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Additional

<u>Surplus</u>	<u>500,000</u>	<u>600,000</u>	<u>same as</u>	<u>same as</u>	<u>same as</u>
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1			<u>Under</u>	<u>Under</u>	<u>Under</u>	
2			<u>\$5 Million</u>	<u>\$5 Million</u>	<u>\$5 Million</u>	
3	<u>General Deposit</u>	<u>200,000</u>	<u>300,000</u>	<u>500,000</u>	<u>500,000</u>	<u>500,000</u>
4	<u>Special Deposit</u>	<u>200,000</u>	<u>300,000</u>	<u>same as</u>	<u>same as</u>	<u>same as</u>
5			<u>Under</u>	<u>Under</u>	<u>Under</u>	
6			<u>\$5 Million</u>	<u>\$5 Million</u>	<u>\$5 Million</u>	
7	<u>Life/Health Insurer</u>					
8	<u>Premium Volume:</u>	<u>Under \$5</u>	<u>\$5 to \$10</u>	<u>\$10 to \$25</u>	<u>Over \$25</u>	
9		<u>Million</u>	<u>Million</u>	<u>Million</u>	<u>Million</u>	
10	<u>Basic Capital</u>	<u>600,000</u>	<u>700,000</u>	<u>800,000</u>	<u>900,000</u>	
11	<u>Additional Surplus</u>	<u>400,000</u>	<u>400,000</u>	<u>400,000</u>	<u>400,000</u>	
12	<u>General Deposit</u>	<u>200,000</u>	<u>200,000</u>	<u>200,000</u>	<u>200,000</u>	
13	<u>Special Deposit</u>	<u>200,000</u>	<u>200,000</u>	<u>200,000</u>	<u>200,000</u>	

14 Notes: Premium Volume means the insurer's worldwide direct premiums earned
15 (if Property/Casualty) or received (if Life/Health) during the
16 previous calendar year.

17 Kinds of insurance pertains to the general kinds of insurance that
18 property/casualty insurers are authorized to transact. The following
19 groups or single kinds of insurance shall be counted as one kind of
20 insurance when calculating the amount of required Basic Capital,
21 Additional Surplus, General Deposit and Special Deposit:
22 Casualty [~~and/or Surety~~];
23 Property [~~and/or Marine & Transportation~~;
24 ~~Vehicle~~]; and
25 Title.

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1 When determining Basic Capital and Additional Surplus amounts, the
2 kinds of Insurance shall be based on the insurer's actual or
3 requested transaction authority Worldwide.

4 When determining General Deposit and Special Deposit amounts, the
5 kinds of Insurance shall be based on the insurer's actual or
6 requested transaction authority in New Mexico.

7 "Basic Capital" means paid-in capital stock (if a stock insurer) or
8 basic capital surplus (if a mutual, reciprocal or Lloyds insurer).
9 General Deposit or Special Deposit funds are included within, and are
10 not additional to, required Basic Capital and Additional Surplus.
11 General Deposit amounts shown above are not applicable to alien
12 insurers."

13 **SECTION 2.** Section 59A-6-1 NMSA 1978 (being Laws 1984,
14 Chapter 127, Section 101, as amended) is amended to read:

15 "59A-6-1. FEE SCHEDULE.--The superintendent shall collect
16 the following fees:

- 17 A. insurer's certificate of authority -
 - 18 (1) filing application for certificate of
 - 19 authority, and issuance of certificate of authority, [~~if issued~~]
 - 20 including filing of all charter documents, financial statements,
 - 21 service of process, power of attorney, examination reports and
 - 22 other documents included with and part of the application
 - 23 \$1,000.00
 - 24 (2) annual continuation of certificate of
 - 25 authority, per kind of insurance 200.00

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- 1 (3) reinstatement of certificate of authority
- 2 (Section 59A-5-23 NMSA 1978) 150.00
- 3 (4) amendment to certificate of
- 4 authority 200.00
- 5 B. charter documents - filing amendment to any
- 6 charter document (as defined in Section 59A-5-3 NMSA 1978) 10.00
- 7 C. annual statement of insurer, filing . . . 200.00
- 8 D. service of process, acceptance by superintendent
- 9 and issuance of certificate of service [~~where issued~~] . . . 10.00
- 10 E. [~~agents~~] producer licenses and appointments -
- 11 (1) filing application for original [~~agent~~]
- 12 producer license and issuance of license [~~if issued~~] . . . 30.00
- 13 (2) biennial continuation of license . . 60.00
- 14 [~~(2)~~] (3) appointment of [~~agent~~] producer -
- 15 (a) filing appointment, per kind of
- 16 insurance, each insurer 20.00
- 17 (b) annual continuation of appointment,
- 18 per kind of insurance, each insurer 20.00
- 19 [~~(3) variable annuity agent's license -~~
- 20 ~~(a) filing application for license and~~
- 21 ~~issuance of license, if issued 30.00~~
- 22 ~~(b) annual continuation of appointment~~
- 23 ~~. 20.00]~~
- 24 (4) temporary license filing application 30.00
- 25 [~~(a) as to life and health insurance or~~

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1 both 30.00
2 (b) as to property insurance 30.00
3 (c) as to casualty/surety insurance 30.00
4 (d) as to vehicle insurance 30.00]

5 F. agency business entity license and affiliations-

6 (1) filing application for original agency
7 business entity license and issuance of license [~~if issued~~]
8 30.00

9 (2) biennial continuation of license . . 60.00

10 [~~(2)~~] (3) filing of individual affiliation [~~per~~
11 ~~kind of insurance~~] 20.00

12 [~~(3)~~] (4) annual continuation of individual
13 affiliation 20.00

14 [~~G. solicitor license -~~

15 (1) ~~filing application for original license and~~
16 ~~issuance of license, if issued~~ 30.00

17 (2) ~~annual continuation of appointment, per~~
18 ~~kind of insurance~~ 20.00

19 [~~H. broker license -~~

20 (1) ~~filing application for license and issuance~~
21 ~~of original license, if issued~~ 30.00

22 (2) ~~annual continuation of license~~
23 30.00

24 [~~I.~~] G. insurance vending machine license -

25 (1) filing application for original license and

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1 issuance of license, [~~if issued~~] each machine 25.00
2 (2) [~~annual~~] biennial continuation of license,
3 each machine [~~25.00~~] 50.00
4 [~~J.~~] H. examination for license, application for
5 examination conducted directly by the superintendent, each
6 grouping of kinds of insurance to be covered by the examination
7 as provided by the superintendent's rules, and payable as to each
8 instance of examination [~~50.00~~] 75.00
9 [~~K.~~] I. surplus lines insurer - filing application
10 for qualification as eligible surplus lines insurer . . . 1,000.00
11 [~~L.~~] J. surplus lines broker license -
12 (1) filing application for original license and
13 issuance of license [~~if issued~~] 100.00
14 (2) [~~annual~~] biennial continuation of license
15 [~~100.00~~] 200.00
16 [~~M.~~] K. surplus lines [~~broker~~] brokerage business
17 entity license and affiliations -
18 (1) filing application for original surplus
19 lines brokerage business entity license and issuance of license
20 [~~if issued~~] 100.00
21 (2) filing of individual affiliation [~~per kind~~
22 ~~of insurance~~] 20.00
23 (3) annual continuation of individual
24 affiliation 20.00
25 [~~N.~~] L. adjuster license -

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1 (1) filing application for original license and
2 issuance of license [~~if issued~~] 30.00

3 (2) [~~annual~~] biennial continuation of
4 license [~~30.00~~] 60.00

5 [~~Q.~~] M. insurance consultant license -

6 (1) filing application for original license and
7 issuance of license [~~if issued~~] 50.00

8 (2) application examination . . . [~~10.00~~] 75.00

9 (3) biennial continuation of license . 100.00

10 [~~P.~~] N. viatical settlements license -

11 (1) providers -

12 (a) filing application for original
13 license and issuance of license [~~if issued~~] 1,000.00

14 (b) [~~annual~~] biennial continuation of
15 license [~~200.00~~] 400.00

16 (2) brokers -

17 (a) filing application for original
18 license and issuance of license [~~if issued~~] 100.00

19 (b) [~~annual~~] biennial continuation of
20 license [~~100.00~~] 200.00

21 (3) brokerages -

22 (a) filing application for original
23 business entity license and issuance of license [~~if issued~~] . .

24 100.00

25 (b) [~~annual~~] biennial continuation of

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1	license	[20.00]	<u>200.00</u>
2	(c) filing of individual affiliation [per		
3	kind of insurance]		20.00
4	(d) annual continuation of individual		
5	affiliation		20.00
6	[Q. rating organization or rating] <u>Q.</u> advisory		
7	organization license -		
8	(1) filing application for license and issuance		
9	of license [if issued]		100.00
10	(2) annual continuation of		
11	license		100.00
12	[R.] <u>P.</u> nonprofit health care plans -		
13	(1) filing application for preliminary permit		
14	and issuance of permit [if issued]		100.00
15	(2) certificate of authority, application,		
16	issuance, continuation, reinstatement, charter documents - same		
17	as for insurers		
18	(3) annual statement, filing		200.00
19	[(4) agents and solicitors -		
20	(a) filing application for original		
21	license and issuance of license, if issued		30.00
22	(b) examination for license conducted		
23	directly by superintendent, each instance of examination		50.00
24	(c) annual continuation of appointment		
25		20.00

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- 1 ~~S.~~ Q. prepaid dental plans -
- 2 (1) certificate of authority, application,
- 3 issuance, continuation, reinstatement, charter documents - same
- 4 as for insurers
- 5 (2) annual report, filing 200.00
- 6 ~~[(3) agents and solicitors -~~
- 7 ~~(a) filing application for original~~
- 8 ~~license and issuance of license, if issued 30.00~~
- 9 ~~(b) examination for license conducted~~
- 10 ~~directly by superintendent, each instance of examination 50.00~~
- 11 ~~(c) annual continuation of license 20.00~~
- 12 ~~T.~~ R. prearranged funeral insurance - application
- 13 for certificate of authority, issuance, continuation,
- 14 reinstatement, charter documents, filing annual statement,
- 15 licensing of sales representatives - same as for insurers
- 16 ~~U.~~ S. premium finance companies -
- 17 (1) filing application for original license and
- 18 issuance of license [~~if issued~~] 100.00
- 19 (2) annual renewal of license 100.00
- 20 ~~V.~~ T. motor clubs -
- 21 (1) certificate of authority -
- 22 (a) filing application for original
- 23 certificate of authority and issuance of certificate of authority
- 24 [~~if issued~~] 200.00
- 25 (b) annual continuation of certificate of

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1 authority 100.00
2 (2) sales representatives -
3 (a) filing application for registration or
4 license and issuance of registration or license, [~~if issued~~] each
5 representative [~~20.00~~] 30.00
6 (b) [~~annual~~] biennial continuation of
7 registration or license, each representative . . . [~~20.00~~] 60.00
8 [~~W.~~] U. bail bondsmen -
9 (1) filing application for original license as
10 bail bondsman or solicitor, and issuance of license [~~if issued~~]
11 30.00
12 (2) examination for license, [~~conducted~~
13 ~~directly by superintendent~~] each instance of examination . 50.00
14 (3) [~~annual~~] biennial continuation of
15 [~~appointment~~] license [~~20.00~~] 60.00
16 [~~X. securities salesperson license -~~
17 (1) ~~filing application for license and issuance~~
18 ~~of license, if issued 25.00~~
19 (2) ~~annual renewal of license 25.00~~
20 Y.] V. required filing of forms or rates - by all
21 lines of business other than property or casualty -
22 (1) rates 50.00
23 (2) major form - each new policy and each
24 package submission, which can include multiple policy forms,
25 application forms, rider forms, endorsement forms or amendment

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1	forms	30.00
2	(3) incidental forms and rates - forms filed	
3	for informational purposes; riders, applications, endorsements	
4	and amendments filed individually; rate service organization	
5	reference filings; rates filed for informational purposes .	15.00
6	[Z.] <u>W.</u> health maintenance organizations -	
7	(1) filing an application for a certificate of	
8	authority	1,000.00
9	(2) annual continuation of certificate of	
10	authority	200.00
11	(3) filing each annual report	200.00
12	(4) filing an amendment to organizational	
13	documents requiring approval	200.00
14	(5) filing informational amendments	50.00
15	[(6) agents and solicitors -	
16	(a) filing application for original	
17	license and issuance of license, if issued	30.00
18	(b) examination for license, each instance	
19	of examination	50.00
20	(c) annual continuation of appointment	
21	20.00
22	AA.] <u>X.</u> purchasing groups and foreign risk retention	
23	groups -	
24	(1) original registration	500.00
25	(2) annual continuation of	

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1 registration 200.00
2 (3) [~~agent or broker~~] producer fees - same as
3 for authorized insurers
4 [~~BB-~~] Y. third party administrators -
5 (1) filing application for original
6 [~~individual~~] business entity insurance administrator license . .
7 [~~30.00~~] 100.00
8 [~~(2) filing application for original officer,~~
9 ~~manager or partner insurance administrator license 30.00~~
10 [~~(3) annual~~] (2) biennial continuation or
11 renewal of license [~~30.00~~] 200.00
12 [~~(4)~~] (3) examination for license [~~conducted~~
13 ~~directly by the superintendent~~], each examination 75.00
14 [~~(5)~~] (4) filing of annual report 50.00
15 [~~CC-~~] Z. miscellaneous fees -
16 (1) duplicate license 30.00
17 (2) name change 30.00
18 (3) for each signature and seal of
19 superintendent affixed to any instrument 10.00
20 [~~DD-~~] AA. pharmacy benefits managers -
21 (1) filing an application for a
22 license 1,000.00
23 (2) annual continuation of license, each year
24 continued 500.00
25 (3) filing each annual report 200.00

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- 1 (4) filing an amendment to organizational
- 2 documents requiring approval 200.00
- 3 (5) filing informational amendments . . 100.00
- 4 [~~(6) agents~~
- 5 ~~(a) filing application for original~~
- 6 ~~license and issuance of license, if issued 100.00~~
- 7 ~~(b) annual continuation of license~~
- 8 ~~. 100.00.]~~

BB. independent review organizations

- 10 (1) filing an application for a license 250.00
- 11 (2) biennial continuation of license . 100.00

CC. continuing education providers

- 13 (1) filing an application for a course of
- 14 instruction 80.00
- 15 (2) biennial continuation of course of
- 16 instruction 40.00.

An insurer shall be subject to additional fees or charges, termed retaliatory or reciprocal requirements, whenever form or rate-filing fees in excess of those imposed by state law are charged to insurers in New Mexico doing business in another state or whenever a condition precedent to the right to issue policies in another state is imposed by the laws of that state over and above the conditions imposed upon insurers by the laws of New Mexico; in those cases, the same form or rate-filing fees may be imposed upon an insurer from another state transacting or

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1 applying to transact business in New Mexico so long as the higher
2 fees remain in force in the other state. If an insurer does not
3 comply with the additional retaliatory or reciprocal requirement
4 charges imposed under this subsection, the superintendent may
5 refuse to grant or may withdraw approval of the tendered form or
6 rate filing.

7 All fees are earned when paid and are not refundable."

8 SECTION 3. Section 59A-6-6 NMSA 1978 (being Laws 1984,
9 Chapter 127, Section 106, as amended) is amended to read:

10 "59A-6-6. PREEMPTION AND IN LIEU PROVISION.--The state
11 government of New Mexico preempts the field of taxation of
12 insurers, nonprofit health care plans, health maintenance
13 organizations, prepaid dental plans, prearranged funeral plans
14 and insurance [~~agents and solicitors~~] producers as such, and
15 payment of the taxes, licenses and fees provided for in the
16 Insurance Code shall be in lieu of all other taxes, licenses and
17 fees of every kind now or hereafter imposed by this state or any
18 political subdivision thereof on any of the foregoing specified
19 entities, excepting the regular state, county and city taxes on
20 property located in New Mexico and excepting the income tax on
21 [~~agents and solicitors. As used in this section, "agent" does~~
22 ~~not include insurance adjusters~~] insurance producers. No
23 provision of law enacted after January 1, 1985 shall be deemed to
24 modify this provision except by express reference to this
25 section."

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1 SECTION 4. Section 59A-7-1 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 107) is amended to read:

3 "59A-7-1. DEFINITIONS NOT MUTUALLY EXCLUSIVE--INSURING
4 POWERS--CLASSIFICATION OF INSURERS.--

5 A. It is intended that certain insurance coverages
6 may come within more than one "kind" of insurance as defined in
7 [~~this article~~] Chapter 59A, Article 7 NMSA 1978, and inclusion of
8 such coverage within one definition shall not exclude it as to
9 any other kind of insurance within the definition of which the
10 coverage is likewise reasonably includable.

11 B. No insurer shall be authorized to transact any
12 kind or kinds of insurance other than those defined in [~~this~~
13 ~~article~~] Chapter 59A, Article 7 NMSA 1978. Insurers shall be
14 classified as to insuring powers according to kind or kinds of
15 insurance for which so authorized.

16 C. An insurer may apply to engage in insurance
17 activities in one or more of the following lines of insurance:

- 18 (1) life and annuities;
- 19 (2) accident and health;
- 20 (3) property;
- 21 (4) casualty; and
- 22 (5) variable life and annuity."

23 SECTION 5. Section 59A-7-2 NMSA 1978 (being Laws 1984,
24 Chapter 127, Section 108, as amended) is repealed and a new
25 Section 59A-7-2 NMSA 1978 is enacted to read:

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1 "59A-7-2. [NEW MATERIAL] LIFE AND ANNUITY.--Life and
2 annuity includes:
3 A. fixed annuity;
4 B. immediate annuity;
5 C. deferred annuity;
6 D. equity-indexed annuity;
7 E. endowment;
8 F. term life;
9 G. universal life;
10 H. whole life;
11 I. credit life; and
12 J. similar products relating to life and annuity
13 matters."

14 SECTION 6. Section 59A-7-3 NMSA 1978 (being Laws 1984,
15 Chapter 127, Section 109, as amended) is repealed and a new
16 Section 59A-7-3 NMSA 1978 is enacted to read:

17 "59A-7-3. [NEW MATERIAL] ACCIDENT AND HEALTH INSURANCE.--
18 Accident and health includes:
19 A. accident;
20 B. accidental death and dismemberment;
21 C. blanket accident and sickness;
22 D. credit health;
23 E. critical illness;
24 F. dental;
25 G. disability income;

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- 1 H. home health care;
- 2 I. hospital indemnity;
- 3 J. long-term care;
- 4 K. major medical;
- 5 L. medical expense;
- 6 M. medicare supplement;
- 7 N. prescription drug;
- 8 O. sickness;
- 9 P. specified disease;
- 10 Q. vision; and
- 11 R. similar products relating to accident and health
- 12 matters."

13 SECTION 7. Section 59A-7-4 NMSA 1978 (being Laws 1984,
14 Chapter 127, Section 110) is repealed and a new Section 59A-7-4
15 NMSA 1978 is enacted to read:

- 16 "59A-7-4. [NEW MATERIAL] PROPERTY.--Property includes:
- 17 A. aircraft cargo;
 - 18 B. aircraft hull;
 - 19 C. auto commercial physical damage;
 - 20 D. baggage;
 - 21 E. builders risk;
 - 22 F. business owners;
 - 23 G. cargo;
 - 24 H. commercial inland marine;
 - 25 I. commercial multi-peril;

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

- 1 J. commercial property;
- 2 K. crop;
- 3 L. crop hail;
- 4 M. difference in conditions;
- 5 N. dwelling;
- 6 O. earthquake;
- 7 P. event cancellation;
- 8 Q. extended coverages;
- 9 R. farm and ranch property;
- 10 S. fire and allied lines;
- 11 T. flood;
- 12 U. garage;
- 13 V. marine cargo;
- 14 W. marine hull;
- 15 X. ocean marine;
- 16 Y. personal inland marine;
- 17 Z. personal property;
- 18 AA. pet insurance;
- 19 BB. travel coverage; and
- 20 CC. similar products relating to property matters."

21 **SECTION 8.** Section 59A-7-6 NMSA 1978 (being Laws 1984,
22 Chapter 127, Section 112) is repealed and a new Section 59A-7-6
23 NMSA 1978 is enacted to read:

24 "59A-7-6. [NEW MATERIAL] CASUALTY.--Casualty includes:

- 25 A. aircraft liability;

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

- 1 B. auto commercial liability;
- 2 C. auto private passenger liability;
- 3 D. auto warranty contract;
- 4 E. boiler and machinery;
- 5 F. burglary and theft;
- 6 G. collateral protection;
- 7 H. commercial excess/umbrella liability;
- 8 I. commercial general liability;
- 9 J. congenital defects;
- 10 K. contractual liability;
- 11 L. credit;
- 12 M. credit property;
- 13 N. creditor-placed dual/single interest;
- 14 O. crime;
- 15 P. directors and officers liability;
- 16 Q. employers liability;
- 17 R. elevator;
- 18 S. entertainment;
- 19 T. errors and omissions;
- 20 U. failure to file instrument;
- 21 V. farm and ranch liability;
- 22 W. fidelity bonds;
- 23 X. fidelity insurance;
- 24 Y. financial guaranty;
- 25 Z. gap;

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

- 1 AA. garage liability;
- 2 BB. glass;
- 3 CC. involuntary unemployment;
- 4 DD. kidnap and ransom;
- 5 EE. leakage and fire-extinguishing equipment;
- 6 FF. legal liability;
- 7 GG. liquor liability;
- 8 HH. livestock;
- 9 II. mechanical breakdown;
- 10 JJ. medical malpractice;
- 11 KK. mobile homes under transport;
- 12 LL. money and securities;
- 13 MM. motor club service contracts;
- 14 NN. mortgage guaranty;
- 15 OO. personal excess/umbrella liability;
- 16 PP. personal effects;
- 17 QQ. personal liability;
- 18 RR. personal property floater;
- 19 SS. pollution liability;
- 20 TT. premises and operations;
- 21 UU. product liability;
- 22 VV. products and completed operations;
- 23 WW. professional liability;
- 24 XX. owners and contractors;
- 25 YY. stop loss liability;

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- 1 ZZ. surety;
- 2 AAA. title;
- 3 BBB. vandalism and malicious mischief;
- 4 CCC. workers' compensation; and
- 5 DDD. similar products relating to casualty matters."

6 **SECTION 9.** Section 59A-7-7 NMSA 1978 (being Laws 1984,
7 Chapter 127, Section 113) is repealed and a new Section 59A-7-7
8 NMSA 1978 is enacted to read:

9 "59A-7-7. [NEW MATERIAL] VARIABLE LIFE AND ANNUITY.--
10 Variable life and annuity includes:

- 11 A. variable deferred annuity;
- 12 B. variable immediate annuity;
- 13 C. variable life; and
- 14 D. similar products relating to variable life and
15 annuity matters."

16 **SECTION 10.** Section 59A-9-12 NMSA 1978 (being Laws 1984,
17 Chapter 127, Section 145, as amended) is amended to read:

18 "59A-9-12. INVESTMENTS IN SUBSIDIARIES.--

19 A. An insurer either by itself or in cooperation with
20 one or more other business entities, may organize or acquire one
21 or more subsidiaries engaged or to be engaged in any of the
22 following businesses:

- 23 (1) an insurance business authorized by the
24 jurisdiction in which the subsidiary is incorporated;
- 25 (2) acting as insurance ~~[broker or insurance~~

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1 ~~agent]~~ producer for its parent or for any of its parent's insurer
2 subsidiaries;

3 (3) investing, reinvesting or trading in
4 securities for its own account, that of its parent, any
5 subsidiary of its parent or any affiliate or subsidiary;

6 (4) management of any investment company
7 registered pursuant to the federal Investment Company Act of
8 1940, as amended, including related sales and services;

9 (5) acting as a broker-dealer registered
10 pursuant to the federal Securities Exchange Act of 1934, as
11 amended;

12 (6) rendering investment advice to governments,
13 government agencies, corporations or other organizations or
14 groups;

15 (7) rendering other services related to
16 operations of an insurance business;

17 (8) owning and managing assets that the parent
18 corporation could itself own or manage;

19 (9) acting as administrative agent for a
20 government instrumentality that is performing an insurance
21 function; or

22 (10) financing insurance premiums, agents and
23 other forms of consumer financing; and

24 (11) any other business activity determined by
25 the superintendent to be reasonably ancillary to an insurance

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1 business.

2 B. In addition to investments in common stock,
3 preferred stock, debt obligations and other securities permitted
4 under all other sections of Chapter 59A, Article 9 NMSA 1978 an
5 insurer may also:

6 (1) invest, in common stock, preferred stock,
7 debt obligations and other securities of one or more
8 subsidiaries, amounts which unless otherwise approved by the
9 superintendent do not exceed the lesser of ten percent of the
10 insurer's assets or fifty percent of the insurer's surplus as
11 regards policyholders, if, after the investments, the insurer's
12 surplus as regards policyholders will be reasonable in relation
13 to the insurer's outstanding liabilities and adequate to its
14 financial needs. In calculating the amount of the investments,
15 there shall be included:

16 (a) total net money or other consideration
17 expended and obligations assumed in the acquisition or formation
18 of a subsidiary, including all organizational expenses and
19 contributions to capital and surplus of the subsidiary, whether
20 or not represented by the purchase of capital stock or the
21 issuance of other securities; and

22 (b) all amounts expended in acquiring
23 additional common stock, preferred stock, debt obligations and
24 other securities and all contributions to the capital and surplus
25 of a subsidiary subsequent to its acquisition or formation;

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1 (2) if the insurer's total liabilities, as
2 calculated for annual statement purposes, are less than ten
3 percent of assets, invest any amount in common stock, preferred
4 stock, debt obligations and other securities of one or more
5 subsidiaries, if, after the investment, the insurer's surplus as
6 regards policyholders, considering the investment as if it were a
7 disallowed asset, will be reasonable in relation to the insurer's
8 outstanding liabilities and adequate to its financial needs;

9 (3) invest any amount in common stock,
10 preferred stock, debt obligations and other securities of one or
11 more subsidiaries, if each subsidiary agrees to limit its
12 investments in any asset so that the investments will not cause
13 the amount of the total investment of the insurer to exceed any
14 of the investment limitations specified in Paragraph (1) of this
15 subsection or in Chapter 59A, Article 9 NMSA 1978, applicable to
16 the insurer. For the purpose of this paragraph "the total
17 investment of the insurer" includes:

18 (a) any direct investment by the insurer
19 in an asset; and

20 (b) the insurer's proportionate share of
21 any investment in an asset by any subsidiary of the insurer,
22 which shall be calculated by multiplying the amount of the
23 subsidiary's investment by the percentage of the insurer's
24 ownership of the subsidiary;

25 (4) with the approval of the superintendent,

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1 invest any amount in common stock, preferred stock, debt
2 obligations or other securities of one or more subsidiaries, if,
3 after the investment, the insurer's surplus as regards
4 policyholders will be reasonable in relation to the insurer's
5 outstanding liabilities and adequate to its financial needs; and

6 (5) invest any amount in the common stock,
7 preferred stock, debt obligations or other securities of any
8 subsidiary exclusively engaged in holding title to, or holding
9 title to and managing or developing, real or personal property,
10 if, after considering as a disallowed asset so much of the
11 investment as is represented by subsidiary assets, which if held
12 directly by the insurer would be considered as a disallowed
13 asset, the insurer's surplus as regards policyholders will be
14 reasonable in relation to the insurer's outstanding liabilities
15 and adequate to its financial needs, and if, following such
16 investment, all voting securities of such subsidiary would be
17 owned by the insurer.

18 C. Investments in common stock, preferred stock, debt
19 obligations or other securities of subsidiaries made pursuant to
20 Subsection B of this section shall not be subject to any of the
21 otherwise applicable restrictions or prohibitions contained in
22 this article applicable to the investments of the insurer.

23 D. Whether any investment made pursuant to Subsection
24 B of this section meets the applicable requirements thereof is to
25 be determined immediately after the investment is made, taking

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1 into account the then outstanding balance on all previous
2 investments in debt obligations and the value of all previous
3 equity securities as of the date they were made.

4 E. If an insurer ceases to control a subsidiary, it
5 shall dispose of any investment made in it pursuant to this
6 section within three years from time of the cessation of control
7 or within such further time as the superintendent may prescribe,
8 unless at any time after the investment is made, the investments
9 meet the requirements for investment under any other section of
10 the Insurance Code, and the insurer has so notified the
11 superintendent."

12 SECTION 11. Section 59A-11-1 NMSA 1978 (being Laws 1984,
13 Chapter 127, Section 180) is amended to read:

14 "59A-11-1. SCOPE OF ARTICLE.--

15 A. [~~This article~~] Chapter 59A, Article 11 NMSA 1978
16 provides [~~as to~~] procedures [~~in~~] for licensing insurance [~~agents,~~
17 ~~solicitors, brokers~~] producers, surplus line brokers and
18 adjusters; agents of prepaid dental plans; agents [~~and~~
19 ~~solicitors~~] of nonprofit health care plans; bail bondsmen and
20 their solicitors; registration of motor club representatives;
21 licensing of insurance securities salespersons; and applications
22 for, qualifying examinations, and issuance of, duration,
23 continuation, and termination of all such licenses and
24 registrations. For the purposes of [~~this~~] that article, all such
25 licenses and registrations are referred to as "licenses".

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1 B. [~~This article~~] Chapter 59A, Article 11 NMSA 1978
2 shall also apply [~~as~~] to all additional categories of persons
3 operating in insurance fields and related fields as
4 administrators, consultants, appraisers, or in whatever similar
5 capacity, under laws now or hereafter enacted, the
6 licensing and supervision of whom is delegated [~~by such laws~~] to
7 the superintendent.

8 C. Definitions, requirement of licenses,
9 qualifications for license, and other requirements and provisions
10 as to [~~such agents, solicitors, brokers~~] insurance producers,
11 adjusters, bail bondsmen and their solicitors, motor club
12 representatives, and other categories referred to in Subsection B
13 [~~above~~] of this section, shall be as provided in subsequent
14 articles in the Insurance Code now or hereafter respectively
15 dealing with such categories; provided that "insurance producer"
16 means a person required to be licensed under the laws of this
17 state to sell, solicit or negotiate insurance."

18 SECTION 12. Section 59A-11-4 NMSA 1978 (being Laws 1984,
19 Chapter 127, Section 183) is amended to read:

20 "59A-11-4. TEMPORARY LICENSES.--

21 A. Where temporary license is otherwise provided for
22 in the Insurance Code as to a particular category of licensee,
23 application therefor shall be made in the same manner as applies
24 to permanent license under [~~this article~~] Chapter 59A, Article 11
25 NMSA 1978 with such modification therein as the superintendent

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1 may prescribe, and without payment of examination fee.

2 B. The superintendent may issue a temporary insurance
3 producer license for a period not to exceed one hundred eighty
4 days without requiring an examination if the superintendent deems
5 that the temporary license is necessary for the servicing of an
6 insurance business in accordance with the Insurance Code."

7 SECTION 13. Section 59A-11-6 NMSA 1978 (being Laws 1984,
8 Chapter 127, Section 185) is amended to read:

9 "59A-11-6. EXAMINATION OF APPLICANT.--Where [~~the~~] an
10 applicant for a license is required to take and pass an
11 examination prior to issuance of a license, [~~applied for such~~
12 ~~examinations~~] the examination shall be subject to the following
13 provisions:

14 A. the examination shall be made available to
15 applicants for particular licenses at least once each month at
16 [~~place or~~] places within New Mexico [~~of convenience~~] designated
17 by the superintendent;

18 [~~B. the examination shall be prepared by or under~~
19 ~~authorization of the superintendent and be of such scope as~~
20 ~~reasonably to test applicant's knowledge of business proposed to~~
21 ~~be transacted under the license applied for, of his~~
22 ~~responsibilities as a licensee and general competence;~~

23 ~~G.]~~ B. the examination shall require [~~written~~]
24 answers of the applicant to questions asked. If the applicant
25 [~~so~~] requests, the examination shall be administered in the

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1 Spanish language;

2 ~~[D.]~~ C. all examinations shall be ~~[given]~~ conducted
3 and graded in a fair and impartial manner and without unfair
4 discrimination as between individuals examined;

5 ~~[E. an applicant shall not be deemed to have passed~~
6 ~~the examination unless receiving]~~

7 D. a grade ~~[thereon]~~ of not less than seventy ~~[70]~~
8 is a passing grade;

9 ~~[F. any]~~ E. an individual who has failed to pass an
10 examination may take another ~~[such]~~ examination at any subsequent
11 scheduled examination date, except that an individual who has
12 taken and failed to pass ~~[two (2) such]~~ four of the same
13 examinations shall not be entitled to take another ~~[such]~~
14 examination ~~[within thirty (30) days]~~ until after six months
15 after the date of the last examination failed; ~~[and if thereafter~~
16 ~~the individual fails to pass two (2) more such examinations, the~~
17 ~~individual shall not be eligible to take any further such~~
18 ~~examination until after six (6) months from date of last~~
19 ~~examination failed;~~

20 ~~G.]~~ F. an examination application fee, in the amount
21 stated in Section ~~[101 (fee schedule) of the Insurance Code]~~
22 59A-6-1 NMSA 1978, or as provided for under ~~[Paragraph I below]~~
23 Subsection H of this section, shall be paid ~~[as to]~~ for each
24 ~~[instance of]~~ examination;

25 ~~[H.]~~ G. the superintendent may ~~[at discretion]~~ cause

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1 to be prepared and made available to applicants a manual showing
2 the general type and scope of the examination [~~as to~~] for any
3 license for which examination is required; [~~and~~

4 ~~I. in lieu of preparing, conducting and grading~~
5 ~~examinations through insurance department personnel]~~

6 H. the superintendent may [~~contract with an~~
7 ~~established independent agency experienced therein for~~
8 ~~preparation, conduct and grading of~~] make arrangements, including
9 contracting with an outside testing service, for administering
10 examinations and [in such case the examination fee shall be in
11 reasonable amount as fixed by the superintendent and payable to
12 the examination agency. The examination in such instance shall
13 be prepared, conducted and graded subject to the same
14 requirements and standards as would apply to examination by the
15 superintendent direct] collecting the nonrefundable fee set forth
16 in Section 59A-6-1 NMSA 1978;

17 I. examinations shall be developed and conducted
18 under rules promulgated by the superintendent;

19 J. each individual applying for an examination shall
20 submit a nonrefundable fee as prescribed by the superintendent as
21 set forth in Section 59A-6-1 NMSA 1978;

22 K. an individual who fails to appear for the
23 examination as scheduled or fails to pass the examination shall
24 reapply for an examination and remit all required fees and forms
25 before being rescheduled for another examination; and

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1 L. a resident individual applying for an insurance
2 producer license shall pass a written examination unless exempt
3 pursuant to Section 59A-12-16 NMSA 1978. The examination shall
4 test the knowledge of the individual concerning the lines of
5 authority for which application is made, the duties and
6 responsibilities of an insurance producer and the insurance laws
7 and rules of this state."

8 SECTION 14. Section 59A-11-8 NMSA 1978 (being Laws 1984,
9 Chapter 127, Section 187, as amended) is amended to read:

10 "59A-11-8. ISSUANCE ~~[REFUSAL OF]~~ OR REFUSAL TO ISSUE OR
11 RENEW LICENSE.--

12 A. If the superintendent finds that the application
13 is complete, that the applicant has passed all required
14 examinations and is otherwise qualified for the license applied
15 for, the superintendent shall promptly issue, or permit the
16 issuance of, the license. [~~Otherwise, the superintendent shall~~
17 ~~refuse to issue, or to permit the issuance of, the license and~~
18 ~~shall promptly notify the applicant and the appointing insurer,~~
19 ~~employer or principal, where applicable, of the refusal and state~~
20 ~~the grounds for refusal.]~~

21 B. If the superintendent denies an application for
22 initial issuance or renewal of a license, the superintendent
23 shall notify the applicant in writing and advise the applicant of
24 the reason for the denial.

25 C. Within thirty days of the date of issuance of the

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1 denial of an application for initial issuance or renewal of a
2 license, the applicant may request in writing a hearing on the
3 denial. The hearing shall be held within thirty days and shall
4 be held pursuant to the requirements of the Insurance Code.

5 D. The license of a business entity may be suspended,
6 revoked or refused if the superintendent finds after hearing that
7 an individual licensee's violation was known or should have been
8 known by one or more of the partners, officers or managers acting
9 on behalf of the partnership or corporation and the violation was
10 neither reported to the superintendent nor corrective action
11 taken."

12 SECTION 15. Section 59A-11-9 NMSA 1978 (being Laws 1984,
13 Chapter 127, Section 188) is amended to read:

14 "59A-11-9. LICENSE CONTENTS--NUMBER REQUIRED.--

15 A. The license issued by the superintendent under
16 [~~this article~~] Chapter 59A, Article 11 NMSA 1978 shall [state]
17 contain the licensee's name [of the licensee and residence],
18 business address [if an individual, or business address if a firm
19 or corporation or a place of business is otherwise required of
20 the licensee, the capacity in which the licensee is to act and
21 the kind of business covered], personal identification number,
22 date of issue [of license], lines of authority, expiration date
23 and [such] any other information [as] the superintendent [deems
24 pertinent and consistent with law] requires.

25 B. The license of an insurance [~~agent~~] producer shall

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1 not specify the name of any particular insurer or underwriter's
2 department by which the licensee is appointed, [~~except as to~~
3 ~~certain limited licenses~~] and the licensee may represent as agent
4 under the one license as many insurers or underwriter's
5 departments as may appoint [him] the licensee as agent under the
6 Insurance Code subject to Section [~~192 of this article~~] 59A-11-13
7 NMSA 1978 as to certain life or health insurance [~~agents~~
8 producers having unsettled debit balances with an insurer
9 previously represented.

10 ~~[C. The license of a solicitor shall show also the~~
11 ~~name and address of the employer to be represented.~~

12 ~~D.]~~ C. The license of a [~~firm or corporation~~
13 business entity] shall also [~~state, or~~] record [~~by endorsement~~
14 ~~attached thereto~~] the name of each individual authorized to
15 exercise the license powers. [~~At the superintendent's discretion~~
16 ~~the name of such an~~] The superintendent may require the names of
17 each individual [~~may~~] to be registered with the office of
18 superintendent of insurance. [~~department in lieu of shown or~~
19 ~~endorsed on the license.~~

20 ~~E. Each limited license issued under Section 219 of~~
21 ~~the Insurance Code shall show also the name of the insurer so~~
22 ~~represented, and a separate license shall be required as to each~~
23 ~~such insurer.]"~~

24 SECTION 16. Section 59A-11-10 NMSA 1978 (being Laws 1984,
25 Chapter 127, Section 189, as amended) is amended to read:

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1 "59A-11-10. CONTINUATION, EXPIRATION OF LICENSE.--

2 ~~[A. Each license, other than insurance agent, issued~~
3 ~~under this article shall continue in force until it is suspended,~~
4 ~~revoked or otherwise terminated, but except as may be provided~~
5 ~~pursuant to Section 59A-11-11 NMSA 1978, subject to payment to~~
6 ~~the superintendent annually on or before April 1, or December 31~~
7 ~~as to motor club representatives, of the applicable continuation~~
8 ~~fee specified in Section 59A-6-1 NMSA 1978 accompanied by request~~
9 ~~for such continuation:~~

10 ~~(1) for broker, surplus line broker,~~
11 ~~independent adjuster, bail bondsman license and similar other~~
12 ~~independent licensees, request shall be made and signed by the~~
13 ~~licensee;~~

14 ~~(2) for agent (other than insurance agent) or~~
15 ~~staff adjuster, or solicitor license, request shall be made and~~
16 ~~signed by the employer or other principal, as applicable; or~~

17 ~~(3) for vending machine, request shall be made~~
18 ~~and signed by the supervisory agent thereof.~~

19 ~~B. Subject to Section 59A-11-11 NMSA 1978, any~~
20 ~~license referred to in Subsection A of this section, not so~~
21 ~~continued shall be deemed to have terminated as of midnight on~~
22 ~~April 30, or December 31 as to motor club representatives, then~~
23 ~~current; except that the superintendent may effectuate a request~~
24 ~~for continuation received within thirty days thereafter if~~
25 ~~accompanied by annual continuation fee equal to one hundred fifty~~

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1 ~~percent of the continuation fee otherwise required.~~

2 ~~G. Within sixty days of obtaining an agent license,~~
3 ~~the licensee shall become appointed by an authorized insurer to~~
4 ~~act as its agent; otherwise the license shall expire. A person~~
5 ~~shall not act as an agent of an insurer unless the person becomes~~
6 ~~appointed as an agent of the insurer. Within fifteen days from~~
7 ~~the date an agency contract is executed or the first insurance~~
8 ~~application from the person is accepted by the insurer, the~~
9 ~~insurer shall file a notice of appointment on a form approved by~~
10 ~~the superintendent. The agent or the insurer may terminate an~~
11 ~~appointment by notifying the superintendent and the other party~~
12 ~~in writing of the termination. If at any time all of the~~
13 ~~licensee's appointments have been terminated for a period of~~
14 ~~sixty days, the agent's license shall expire.]~~

15 A. The term of the license shall be perpetual,
16 contingent upon payment of fees and completion of any continuing
17 education requirements.

18 B. Individual licenses shall renew and continue on a
19 biennial basis on the last day of the licensee's month of birth.
20 Business entity licenses shall renew and continue on a biennial
21 basis on March 1 of the biennial year; except for those types of
22 business entity licenses that, pursuant to Section 59A-6-1 NMSA
23 1978, renew and continue on an annual basis, in which case those
24 licenses shall renew and continue on March 1 of every year.
25 Business entity affiliations shall renew and continue on an

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1 annual basis on March 1 of every year.

2 C. Any license referred to in this section that is
3 not so continued shall be deemed to have terminated as of
4 midnight on the last day of the licensee's month of birth if an
5 individual license and as of midnight of March 1 if a business
6 entity license; except that the superintendent may effectuate a
7 request for continuation received within thirty days thereafter
8 if accompanied by a continuation fee equal to one hundred fifty
9 percent of the continuation fee otherwise required.

10 D. If the superintendent has reason to believe that
11 the competence of any licensee, or individual designated to
12 exercise license powers, is questionable, the superintendent may
13 require as condition ~~[to]~~ of continuation of the license or
14 license powers that the licensee or individual take and pass ~~[to~~
15 ~~the superintendent's satisfaction]~~ a written examination as
16 required under the Insurance Code of new individual applicants
17 for ~~[similar]~~ the same license.

18 E. This section shall not apply as to temporary
19 licenses, which shall be for such duration and subject to
20 extension as provided in the respective sections of the Insurance
21 Code by which such licenses are authorized.

22 F. All licenses and appointments ~~[as to]~~ of an
23 insurer or other principal ~~[which]~~ that ceases to be authorized
24 to transact business in this state shall automatically terminate
25 without notice as of date of such cessation.

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1 G. A license shall ~~[also]~~ terminate upon death of the
2 licensee, if an individual, or dissolution, if a corporation, or
3 change in ~~[partnership members]~~ partners, if a ~~[firm; subject, in~~
4 ~~case of a firm to continuation of]~~ partnership; provided that, in
5 the case of a partnership, the license may be continued for a
6 reasonable period while application for new license is being made
7 or pending, ~~[under reasonable conditions]~~ as provided ~~[in~~
8 ~~regulations of the superintendent]~~ by rule."

9 SECTION 17. Section 59A-11-12 NMSA 1978 (being Laws 1984,
10 Chapter 127, Section 191) is amended to read:

11 "59A-11-12. APPOINTMENT OF ~~[AGENTS]~~ INSURANCE PRODUCER--
12 CONTINUATION.--

13 ~~[A. Each insurer or other principal appointing an~~
14 ~~agent in this state shall file with the superintendent a written~~
15 ~~appointment specifying the name and address of the appointee and~~
16 ~~the kinds of insurance or business to be transacted by the agent~~
17 ~~and pay the appointment fee, or license fee, as the case may be,~~
18 ~~as specified in Section 101 (fee schedule) of the Insurance Code.~~

19 ~~B. Subject to continuation by the insurer or~~
20 ~~principal as provided in Section 189 of this article, each~~
21 ~~appointment shall remain in effect until the agent's license is~~
22 ~~revoked or otherwise terminated, or there is earlier termination~~
23 ~~of the appointment.~~

24 ~~C. Not later than thirty (30) days prior to date set~~
25 ~~under this article for continuation of appointments of agents,~~

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1 ~~the insurer or other principal shall file with the superintendent~~
2 ~~an alphabetical list of all its agents in this state whose~~
3 ~~appointments or licenses are continued as to kinds of insurance~~
4 ~~or business then covered by the appointments or licenses,~~
5 ~~together with payment of the applicable continuation fees~~
6 ~~specified in Section 101 (fee schedule) of the Insurance Code.~~
7 ~~At the same time the insurer or principal shall file with the~~
8 ~~superintendent an alphabetical list of all appointments or~~
9 ~~licenses not being continued, or to be modified as to kinds of~~
10 ~~insurance or business to be transacted, with payment of~~
11 ~~applicable continuation fees as to appointments or licenses being~~
12 ~~so modified. Any appointment or license not so continued and not~~
13 ~~otherwise expressly terminated shall be deemed to have expired at~~
14 ~~midnight on date specified therefor under Section 189 of this~~
15 ~~article, or pursuant to the superintendent's regulations as~~
16 ~~provided in Section 190 of this article.]~~

17 A. An insurance producer shall not act as an agent of
18 an insurer unless the insurance producer becomes an appointed
19 insurance producer of that insurer. An insurance producer who is
20 not acting as an agent of an insurer is not required to become
21 appointed.

22 B. To appoint an insurance producer as its agent, the
23 appointing insurer shall file in a format approved by the
24 superintendent a notice of appointment within fifteen days from
25 the date the agency contract is executed or the first insurance

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1 application is submitted. An insurer may also elect to appoint
2 an insurance producer to all or some insurers within the
3 insurer's holding company system or group by the filing of a
4 single appointment request.

5 C. Upon receipt of the notice of appointment, the
6 superintendent shall verify within a reasonable time not to
7 exceed thirty days that the insurance producer is eligible for
8 appointment. If the insurance producer is determined to be
9 ineligible for appointment, the superintendent shall notify the
10 insurer within five days of its determination.

11 D. An insurer shall pay a filing appointment fee in
12 the amount and method of payment set forth in Section 59A-6-1
13 NMSA 1978 for each insurance producer appointed by the insurer.

14 E. An insurer shall remit in a manner prescribed by
15 the superintendent a continuation of appointment fee in the
16 amount set forth in Section 59A-6-1 NMSA 1978.

17 F. Appointments shall be continuous subject to
18 payment of any applicable fees. Fees shall be calculated as of a
19 date certain."

20 **SECTION 18.** Section 59A-11-13 NMSA 1978 (being Laws 1984,
21 Chapter 127, Section 192, as amended) is amended to read:

22 "59A-11-13. [~~AGENTS'~~] INSURANCE PRODUCERS' RIGHTS--
23 CANCELLATION.--

24 A. No insurer shall terminate a contract appointing
25 [~~any person~~] an individual as an independent [~~agent~~] insurance

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1 producer without giving the [~~agent~~] insurance producer written
2 notice of the termination, including the specific reason for such
3 action, at least one hundred eighty days prior to the
4 termination.

5 B. Notwithstanding the provisions of Subsection A of
6 this section, no insurer may cancel a written agreement with an
7 [~~agent~~] insurance producer with respect to property or casualty
8 insurance because of an adverse loss-ratio experience on that
9 [~~agent's~~] insurance producer's book of business during any three
10 full consecutive calendar years if:

11 (1) the insurer required the [~~agent~~] insurance
12 producer to submit the application for underwriting approval, all
13 material information on the application was fully completed and
14 the [~~agent~~] insurance producer had not omitted or altered any
15 information provided by the applicant; or

16 (2) the insurer accepted without prior approval
17 policies issued by the [~~agent~~] insurance producer, if all
18 material information on the application or on the insurer's copy
19 of any policy issued by the [~~agent~~] insurance producer was fully
20 completed and the [~~agent~~] insurance producer had not omitted or
21 altered any information provided by the applicant.

22 C. The provisions of Subsection A or B of this
23 section shall not apply to termination of a contract for
24 insolvency, abandonment, gross or willful misconduct, failure to
25 pay over to the company money due to the company under existing

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1 agency or company contract after receipt of a written demand
2 therefor, fraud or intentional misrepresentation by the [~~agent~~]
3 insurance producer, either to the insurer or to an insured, or
4 after the [~~agent's~~] insurance producer's license is revoked or
5 otherwise terminated by the superintendent.

6 D. For one year following termination for any reason
7 other than those set forth in Subsection C of this section, the
8 [~~agent~~] insurance producer may renew, for a term of one year, any
9 policies of the insurer in force at termination if the insureds
10 meet current underwriting standards. The [~~agent~~] insurance
11 producer shall earn a commission for such renewals at a rate not
12 less than the rate in effect prior to termination.

13 E. For the purposes of this section:

14 (1) "independent [~~agent~~] insurance producer"
15 means an [~~agent~~] insurance producer that is not an employee of an
16 insurer and represents more than one insurer;

17 (2) "one insurer" includes any group of
18 insurance companies under substantially the same management and
19 control;

20 (3) "insurer" means any insurance company
21 authorized to transact property or casualty insurance business in
22 this state; and

23 (4) "policies" means all kinds of insurance,
24 except life, health, annuities and credit life and health.

25 F. [~~Any person~~] An individual who has suffered

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1 damages as a result of a violation of this section is granted a
2 right to bring an action in district court to recover damages,
3 including reasonable costs and [~~attorneys'~~] attorney fees, if
4 approved by the court.

5 G. An insurer or authorized representative of the
6 insurer that terminates the appointment, employment contract or
7 other insurance business relationship with an insurance producer
8 shall notify the superintendent within thirty days following the
9 effective date of the termination in the format prescribed by the
10 superintendent, if the reason for termination is one of the
11 reasons set forth in Section 59A-11-14 NMSA 1978 or the insurer
12 has knowledge that the insurance producer was found by a court,
13 government body or self-regulatory organization authorized by law
14 to have engaged in any of the activities in Section 59A-11-14
15 NMSA 1978. Upon the written request of the superintendent, the
16 insurer shall provide additional information, documents, records
17 or other data pertaining to the termination or activity of the
18 insurance producer.

19 H. An insurer or authorized representative of the
20 insurer that terminates the appointment, employment or contract
21 with an insurance producer for any reason not set forth in
22 Section 59A-11-14 NMSA 1978 shall notify the superintendent
23 within thirty days following the effective date of the
24 termination, in the format prescribed by the superintendent.
25 Upon written request of the superintendent, the insurer shall

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1 provide additional information, documents, records or other data
2 pertaining to the termination.

3 I. The insurer or the authorized representative of
4 the insurer shall promptly notify the superintendent in the
5 format prescribed by the superintendent if, upon further review
6 or investigation, the insurer discovers additional information
7 that would have been reportable to the superintendent in
8 accordance with Subsection G of this section had the insurer then
9 known of its existence.

10 J. The insurer shall provide a copy of the
11 notification of termination or cancellation to the insurance
12 producer.

13 (1) Within fifteen days after making the
14 notification required by Subsections G, H and I of this section,
15 the insurer shall mail a copy of the notification to the
16 insurance producer at the insurance producer's last known
17 address. If the insurance producer is terminated for any of the
18 reasons listed in Section 59A-11-14 NMSA 1978, the insurer shall
19 provide a copy of the notification to the insurance producer at
20 the insurance producer's last known address by certified mail,
21 return receipt requested, postage prepaid or by overnight
22 delivery using a nationally recognized carrier.

23 (2) Within thirty days after the insurance
24 producer has received the original or additional notification of
25 termination, the insurance producer may file written comments

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1 concerning the substance of the notification with the
2 superintendent. The insurance producer shall, by the same means,
3 simultaneously send a copy of the comments to the reporting
4 insurer, and the comments shall become a part of the
5 superintendent's file and accompany every copy of a report
6 distributed or disclosed for any reason about the insurance
7 producer subject to the conditions provided in Subsection K of
8 this section.

9 K. The documents and materials related to termination
10 or cancellation of an insurance producer's appointment shall be
11 deemed confidential as follows:

12 (1) any documents, materials or other
13 information in the control or possession of the office of
14 superintendent of insurance that is furnished by an insurer,
15 insurance producer or an employee or agent thereof acting on
16 behalf of the insurer or insurance producer, or obtained by the
17 superintendent in an investigation pursuant to this section,
18 shall be confidential and shall not be subject to the Inspection
19 of Public Records Act. Nothing in this section shall be
20 construed as a grant of privilege or confidentiality or a bar to
21 production of that information by an insurer or the insurance
22 producer in a civil suit, whether or not the superintendent is a
23 party; provided that the superintendent may use the documents,
24 materials or other information in a regulatory or legal action
25 brought in the course of the superintendent's official duties.

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1 The documents, materials or other information shall not be made
2 public by the superintendent or any other person, except to
3 insurance departments of other states, unless the superintendent
4 determines that the interests of the policyholders, shareholders
5 or public will be served by the publication of them, in which
6 case the superintendent may publish all or any part of them in
7 the manner the superintendent deems appropriate;

8 (2) in order to assist in the performance of
9 the superintendent's duties, the superintendent may:

10 (a) share documents, materials or other
11 information, including the confidential documents, materials or
12 information subject to this section, with other state, federal
13 and international regulatory agencies, with the national
14 association of insurance commissioners, its affiliates or
15 subsidiaries and with state, federal and international law
16 enforcement authorities; provided that the recipient agrees to
17 maintain the confidentiality of the documents, materials or other
18 information;

19 (b) receive documents, materials or
20 information, including otherwise confidential documents,
21 materials or information from the national association of
22 insurance commissioners, its affiliates or subsidiaries and from
23 regulatory and law enforcement officials of other foreign or
24 domestic jurisdictions, and shall maintain as confidential or
25 privileged any document, material or information received with

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1 notice or the understanding that it is confidential or privileged
2 under the laws of the jurisdiction that is the source of the
3 document, material or information; and

4 (c) enter into agreements governing
5 sharing and use of information consistent with this subsection.
6 The language in this subsection assumes the recipient has the
7 authority to protect the applicable confidentiality or privilege,
8 but does not address the verification of that authority that
9 would presumably occur in the context of a broader information-
10 sharing agreement;

11 (3) no waiver of any privilege or claim of
12 confidentiality in the documents, materials or information shall
13 occur as a result of disclosure to the superintendent under this
14 section or as a result of sharing as authorized in this section;
15 and

16 (4) nothing in this subsection shall prohibit
17 the superintendent from releasing final adjudicated actions,
18 including for-cause terminations that are open to public
19 inspection pursuant to the Inspection of Public Records Act, to a
20 database or other clearinghouse service maintained by the
21 national association of insurance commissioners, its affiliates
22 or subsidiaries of the national association of insurance
23 commissioners.

24 L. An insurer, the authorized representative of the
25 insurer or insurance producer that fails to report as required

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1 under the provisions of this section or that is found by a court
2 of competent jurisdiction to have reported with actual malice
3 may, after notice and hearing, have its license or certificate of
4 authority suspended or revoked and may be fined in accordance
5 with the Insurance Code."

6 SECTION 19. Section 59A-11-14 NMSA 1978 (being Laws 1984,
7 Chapter 127, Section 193, as amended) is amended to read:

8 "59A-11-14. SUSPENSION, REVOCATION, REFUSAL TO CONTINUE
9 LICENSE--GROUNDS.--

10 A. In addition to a reason [~~therefor~~] provided under
11 other provisions of the Insurance Code as to particular licenses,
12 the superintendent may place on probation, suspend, revoke or
13 refuse to [~~continue any~~] issue or renew a license issued under
14 Chapter 59A, Article 11 NMSA 1978 for any of the following
15 reasons [~~applicable as to licensee~~]:

16 (1) providing incorrect, misleading, incomplete
17 or materially untrue information in the license application;

18 (2) violating any insurance law or violating
19 any regulation, subpoena or order of the superintendent or of
20 another state's superintendent or commissioner of insurance;

21 (3) obtaining or attempting to obtain a license
22 through misrepresentation or fraud;

23 (4) improperly withholding, misappropriating or
24 converting any money or properties received in the course of
25 doing insurance business;

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1 (5) intentionally misrepresenting the terms of
2 an actual or proposed insurance contract or application for
3 insurance;

4 (6) having been convicted of a felony;

5 (7) having admitted or been found to have
6 committed any insurance unfair trade practice or fraud;

7 (8) using fraudulent, coercive or dishonest
8 practices, or demonstrating incompetence, untrustworthiness or
9 financial irresponsibility in the conduct of business in this
10 state or elsewhere;

11 (9) having an insurance producer license, or
12 its equivalent, denied, suspended or revoked in any other state,
13 province, district or territory;

14 (10) forging another's name to an application
15 for insurance or to any document related to an insurance
16 transaction;

17 (11) improperly using notes or any other
18 reference material to complete an examination for an insurance
19 license;

20 (12) knowingly accepting insurance business
21 from an individual who is not licensed;

22 (13) failing to comply with an administrative
23 or court order imposing a child support obligation;

24 (14) failing to pay state income tax or comply
25 with any administrative or court order directing payment of state

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1 income tax;

2 ~~[(1) for]~~ (15) any cause for which issuance of
3 the license could have been refused had it then existed and been
4 known to the superintendent;

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

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

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

12 ~~(5)]~~ (16) failure to pass [any] an examination
13 required by the superintendent, subsequent to issue of license,
14 under Subsection D of Section 59A-11-10 NMSA 1978;

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

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

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

24 ~~(9) conviction by final judgment of a felony~~
25 ~~involving dishonesty or breach of trust;~~

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1 ~~(10)~~ (17) aiding, abetting or assisting
2 another person to violate [~~any~~] a provision of the Insurance
3 Code; or

4 ~~[(11) if in conduct of affairs under the~~
5 ~~license, the licensee has used fraudulent, coercive or dishonest~~
6 ~~practices, or has shown himself to be incompetent, untrustworthy,~~
7 ~~financially irresponsible or a source of injury and loss to the~~
8 ~~public; or that]~~

9 (18) the interests of the insureds or the
10 public are not being properly served under the license.

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

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

24 **SECTION 20.** Section 59A-11-15 NMSA 1978 (being Laws 1984,
25 Chapter 127, Section 194) is repealed and a new Section 59A-11-15

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1 NMSA 1978 is enacted to read:

2 "59A-11-15. [NEW MATERIAL] PROCEDURE FOR SUSPENSION,
3 REVOCATION OR REFUSAL TO CONTINUE LICENSE.--

4 A. If the superintendent denies an initial or renewal
5 application for a license, the superintendent shall notify the
6 applicant in writing and advise the applicant of the reason for
7 the denial or non-renewal of the application. Within thirty days
8 of the date of issuance of the denial of application for initial
9 issuance or renewal of a license, the applicant may request in
10 writing a hearing on the denial. The hearing shall be held
11 within ninety days and shall be held otherwise pursuant to
12 Section 59A-4-15 NMSA 1978.

13 B. In addition to or in lieu of any applicable
14 denial, suspension or revocation of a license, a person may,
15 after hearing, be subject to an administrative fine according to
16 Section 59A-1-18 NMSA 1978.

17 C. The superintendent shall retain the authority to
18 enforce the provisions of and impose any penalty or remedy
19 authorized by this section against any person who is under
20 investigation for or charged with a violation of this section
21 even if the person's license or registration has been surrendered
22 or has lapsed by operation of law.

23 D. The state shall participate in the national
24 association of insurance commissioners attachment warehouse
25 personal information capture system alerts or another appropriate

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1 mechanism to monitor actions against existing licensees and take
2 necessary action, when warranted based on the information
3 obtained through such notifications."

4 SECTION 21. A new section of Chapter 59A, Article 11 NMSA
5 1978 is enacted to read:

6 "[NEW MATERIAL] DUTY TO REPORT.--

7 A. A licensee shall report to the superintendent any
8 administrative action taken against the licensee in another
9 jurisdiction or by another governmental agency in this state
10 within thirty days of the final disposition of the matter. The
11 report shall include a copy of the order, consent to order or
12 other relevant legal documents.

13 B. Within thirty days of the initial pretrial hearing
14 date, a licensee shall report to the superintendent any criminal
15 prosecution of the licensee taken in any jurisdiction. The
16 report shall include a copy of the initial complaint filed, the
17 order resulting from the hearing and any other relevant legal
18 documents."

19 SECTION 22. A new section of Chapter 59A, Article 11 NMSA
20 1978 is enacted to read:

21 "[NEW MATERIAL] RECIPROCITY.--

22 A. The superintendent shall waive any requirements
23 for a nonresident license applicant with a valid license from the
24 applicant's home state, except the requirements imposed by
25 Section 23 of this 2016 act, if the applicant's home state awards

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1 nonresident licenses to residents of this state on the same
2 basis.

3 B. A nonresident licensee's satisfaction of the
4 nonresident licensee's home state's continuing education
5 requirements shall constitute satisfaction of the continuing
6 education requirements if the nonresident licensee's home state
7 recognizes the satisfaction of its continuing education
8 requirements imposed upon licensees from New Mexico on the same
9 basis."

10 SECTION 23. A new section of Chapter 59A, Article 11 NMSA
11 1978 is enacted to read:

12 "[NEW MATERIAL] NONRESIDENT LICENSE--REQUIREMENTS.--

13 A. Unless denied a license pursuant to Section
14 59A-11-14 NMSA 1978, a nonresident person shall receive a
15 nonresident license if:

16 (1) the person is currently licensed as a
17 resident in good standing in the person's home state;

18 (2) the person has submitted the proper request
19 for licensure and has paid the fees required by Section 59A-6-1
20 NMSA 1978;

21 (3) the person has submitted or transmitted to
22 the superintendent the application for licensure that the person
23 submitted to the person's home state or a completed uniform
24 application; and

25 (4) the person's home state awards nonresident

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1 licenses to residents of this state on the same basis.

2 B. The superintendent may verify an applicant's
3 insurance producer licensing status through the insurance
4 producer database maintained by the national association of
5 insurance commissioners, its affiliates or subsidiaries.

6 C. A nonresident licensee who moves from one state to
7 another state or a resident licensee who moves from this state to
8 another state shall file a change of address and provide
9 certification from the new resident state within thirty days of
10 the change of legal residence.

11 D. Notwithstanding any other provision of this
12 section, a person licensed as a surplus lines producer in the
13 person's home state shall receive a nonresident surplus lines
14 producer license pursuant to Subsection A of this section.
15 Except as provided in Subsection A of this section, nothing in
16 this section otherwise amends or supersedes any provision of
17 Chapter 59A, Article 14 NMSA 1978.

18 E. Notwithstanding any other provision of this
19 section, a person licensed as a limited lines credit insurance or
20 other type of limited lines producer in the person's home state
21 shall receive a nonresident limited lines producer license,
22 pursuant to Subsection A of this section, granting the same scope
23 of authority as granted under the license issued by the
24 producer's home state. For the purposes of this subsection,
25 limited lines insurance is any authority granted by the home

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1 state that restricts the authority of the license to less than
2 the total authority prescribed in the associated major lines
3 pursuant to Subsection C of Section 59A-7-1 NMSA 1978."

4 SECTION 24. Section 59A-11A-7 NMSA 1978 (being Laws 1989,
5 Chapter 97, Section 7) is amended to read:

6 "59A-11A-7. PAYMENT FROM INSURERS OR ~~[AGENTS]~~ INSURANCE
7 PRODUCERS FOR SALE OF INSURANCE PROHIBITED--PENALTY.--

8 A. No insurance consultant serving any person, firm,
9 association, organization or corporation not engaged in the
10 insurance business, for compensation paid or to be paid by the
11 person served, shall directly or indirectly receive any part of
12 any commission or compensation paid by any insurer or ~~[agent]~~
13 insurance producer of any insurer in connection with the sale or
14 writing of any insurance ~~[which]~~ that is within the subject
15 matter of any such service.

16 B. Any person who violates any provision of
17 Subsection A of this section is guilty of a misdemeanor and upon
18 conviction shall be punished by a fine of not more than five
19 hundred dollars (\$500) or by imprisonment in the county jail for
20 a definite term of not less than thirty days or more than ninety
21 days or both."

22 SECTION 25. Section 59A-12-1 NMSA 1978 (being Laws 1984,
23 Chapter 127, Section 201) is amended to read:

24 "59A-12-1. PURPOSE AND SCOPE OF ARTICLE.-- ~~[This article~~
25 ~~applies only to agents, brokers and solicitors, as hereinafter~~

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1 ~~defined, as to transaction of one or more kinds of insurance or~~
2 ~~subdivisions thereof as defined in Article 7 of the Insurance~~
3 ~~Code.] Chapter 59A, Article 12 NMSA 1978, in conjunction with~~
4 Chapter 59A, Article 11 NMSA 1978, governs the qualifications and
5 procedures for the licensing of insurance producers. Chapter
6 59A, Article 12 NMSA 1978 does not apply to surplus lines brokers
7 that are licensed pursuant to Chapter 59A, Article 14 NMSA 1978
8 and that sell, solicit or negotiate insurance in this state
9 solely for placement with eligible surplus lines insurers, except
10 as provided in Sections 22 and 23 of this 2016 act."

11 SECTION 26. Section 59A-12-2 NMSA 1978 (being Laws 1984,
12 Chapter 127, Section 202) is repealed and a new Section 59A-12-2
13 NMSA 1978 is enacted to read:

14 "59A-12-2. [NEW MATERIAL] DEFINITIONS.--As used in Chapter
15 59A, Article 12 NMSA 1978:

16 A. "affiliate" means a person that controls, is
17 controlled by or is under common control with the insurance
18 producer;

19 B. "business entity" means a corporation,
20 association, partnership, limited liability company, limited
21 liability partnership or other legal entity;

22 C. "home state" means the District of Columbia and
23 any state or territory of the United States in which an insurance
24 producer maintains the insurance producer's principal place of
25 residence or principal place of business and is licensed to act

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1 as an insurance producer;

2 D. "insurance" means any of the lines of authority in
3 Chapter 59A, Article 7 NMSA 1978;

4 E. "insurance producer" means a person required to be
5 licensed under the laws of this state to sell, solicit or
6 negotiate insurance;

7 F. "insurer" means every person engaged as principal
8 and as indemnitor, surety or contractor in the business of
9 entering into contracts of insurance;

10 G. "license" means a document issued by the
11 superintendent authorizing a person to act as an insurance
12 producer for the lines of authority specified in the document.
13 The license itself does not create any authority, actual,
14 apparent or inherent, in the holder to represent or commit an
15 insurance carrier;

16 H. "limited line credit insurance" includes credit
17 life, credit disability, credit property, credit unemployment,
18 involuntary unemployment, mortgage life, mortgage guaranty,
19 mortgage disability, guaranteed automobile protection insurance
20 and any other form of insurance offered in connection with an
21 extension of credit that is limited to partially or wholly
22 extinguishing that credit obligation;

23 I. "limited line credit insurance producer" means a
24 person who sells, solicits or negotiates one or more forms of
25 limited line credit insurance coverage to individuals through a

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1 master, corporate, group or individual policy;

2 J. "limited lines insurance" means those lines of
3 insurance referred to in Section 59A-12-18 NMSA 1978 or any other
4 line of insurance that the superintendent deems necessary to
5 recognize for the purposes of complying with Subsection E of
6 Section 23 of this 2016 act;

7 K. "limited lines producer" means a person authorized
8 by the superintendent to sell, solicit or negotiate limited lines
9 insurance;

10 L. "negotiate" means the act of conferring directly
11 with or offering advice directly to a purchaser or prospective
12 purchaser of a particular contract of insurance concerning any of
13 the substantive benefits, terms or conditions of the contract;
14 provided that the person engaged in that act either sells
15 insurance or obtains insurance from insurers for purchasers;

16 M. "sell" means to exchange a contract of insurance
17 by any means, for money or its equivalent, on behalf of an
18 insurer;

19 N. "solicit" means attempting to sell insurance or
20 asking or urging a person to apply for a particular kind of
21 insurance from a particular insurer;

22 O. "terminate" means to cancel the relationship
23 between an insurance producer and the insurer or to terminate an
24 insurance producer's authority to transact insurance;

25 P. "uniform application" means the current version of

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1 the national association of insurance commissioners uniform
2 application for resident and nonresident insurance producer
3 licensing; and

4 Q. "uniform business entity application" means the
5 current version of the national association of insurance
6 commissioners uniform business entity application for resident
7 and nonresident business entities."

8 SECTION 27. Section 59A-12-3 NMSA 1978 (being Laws 1984,
9 Chapter 127, Section 203) is amended to read:

10 "59A-12-3. "BROKER" [~~"NONRESIDENT BROKER"~~] AND "SERVICE
11 REPRESENTATIVE" DEFINED.--For the purpose of the Insurance Code:

12 A. a "broker" is a [~~person generally~~] type of
13 insurance producer who, not being an agent of the insurer, as an
14 independent contractor and on behalf of the insured solicits,
15 negotiates or procures insurance or annuity contracts or renewal
16 or continuation thereof for insureds or prospective insureds
17 other than [~~himself~~] the broker.

18 [~~B. a "nonresident broker" is a broker residing or,~~
19 ~~if a corporation or firm, domiciled in a state other than New~~
20 ~~Mexico or residing or domiciled in a foreign country;~~

21 ~~G.] "Broker" does not include a surplus line broker,~~
22 ~~as defined in Chapter 59A, Article 14 [of the Insurance Code]~~
23 NMSA 1978; and

24 B. "service representative" means an individual,
25 regularly employed on salary by an insurer, group of insurers or

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1 managing general agent, who assists insurance producers in
2 soliciting, negotiating and effectuating insurance for such
3 insurer, group or managing general agent and, in conduct of their
4 business, receives no part of the commission on insurance
5 written. A service representative is not required to be
6 licensed, nor shall the service representative independently
7 solicit or negotiate insurance or annuity contracts."

8 SECTION 28. Section 59A-12-4 NMSA 1978 (being Laws 1984,
9 Chapter 127, Section 205, as amended by Laws 1999, Chapter 272,
10 Section 5 and also by Laws 1999, Chapter 289, Section 6) is
11 amended to read:

12 "59A-12-4. [~~"SOLICITOR" DEFINED~~] LICENSE REQUIRED.--~~[For~~
13 ~~the purposes of Chapter 59A, Article 12 NMSA 1978, a "solicitor"~~
14 ~~is an individual employed by a licensed agent to solicit~~
15 ~~insurance and perform such other duties in handling the agent's~~
16 ~~business as the agent may authorize]~~ A person shall not sell,
17 solicit or negotiate insurance in this state for any class or
18 classes of insurance unless the person is licensed for that line
19 of insurance in accordance with the Insurance Code."

20 SECTION 29. Section 59A-12-7 NMSA 1978 (being Laws 1984,
21 Chapter 127, Section 208) is repealed and a new Section 59A-12-7
22 NMSA 1978 is enacted to read:

23 "59A-12-7. [NEW MATERIAL] EXEMPTIONS FROM LICENSE
24 REQUIREMENTS.--

25 A. Nothing in Chapter 59A, Article 12 NMSA 1978 shall

1 be construed to require an insurer to obtain an insurance
2 producer license. In this section, the term "insurer" does not
3 include an insurer's officers, directors, employees, subsidiaries
4 or affiliates.

5 B. A license as an insurance producer shall not be
6 required of the following:

7 (1) an officer, director or employee of an
8 insurer or of an insurance producer; provided that the officer,
9 director or employee does not receive any commission on policies
10 written or sold to insure risks residing, located or to be
11 performed in this state and:

12 (a) the officer's, director's or
13 employee's activities are executive, administrative, managerial,
14 clerical or a combination of these, and are only indirectly
15 related to the sale, solicitation or negotiation of insurance;

16 (b) the officer's, director's or
17 employee's function relates to underwriting, loss control,
18 inspection or the processing, adjusting, investigating or
19 settling of a claim on a contract of insurance; or

20 (c) the officer, director or employee is
21 acting in the capacity of a special agent or agency supervisor
22 assisting insurance producers where the person's activities are
23 limited to providing technical advice and assistance to licensed
24 insurance producers and do not include the sale, solicitation or
25 negotiation of insurance;

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1 (2) a person who receives no commission and who
2 secures and furnishes information for the purpose of group life
3 insurance, group property and casualty insurance, group
4 annuities, group or blanket accident and health insurance, or
5 enrolls individuals, issues certificates or otherwise assists in
6 administering plans, or performs administrative services related
7 to mass marketed property and casualty insurance;

8 (3) an employer or association or its officers,
9 directors, employees or the trustees of an employee trust plan,
10 to the extent that the employers, officers, employees, director
11 or trustees are engaged in the administration or operation of a
12 program of employee benefits for the employer's or association's
13 own employees or the employees of its subsidiaries or affiliates,
14 which program involves the use of insurance issued by an insurer,
15 as long as the employers, associations, officers, directors,
16 employees or trustees are not in any manner compensated, directly
17 or indirectly, by the company issuing the contract;

18 (4) employees of insurers or organizations
19 employed by insurers who are engaging in the inspection, rating
20 or classification of risks, or in the supervision of the training
21 of insurance producers and who are not individually engaged in
22 the sale, solicitation or negotiation of insurance;

23 (5) a person whose activities in this state are
24 limited to advertising without the intent to solicit insurance in
25 this state through communications in printed publications or

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1 other forms of electronic mass media whose distribution is not
2 limited to residents of the state; provided that the person does
3 not sell, solicit or negotiate insurance that would insure risks
4 residing, located or to be performed in this state;

5 (6) person who is not a resident of this state
6 who sells, solicits or negotiates a contract of insurance for
7 commercial property and casualty risks to an insured with risks
8 located in more than one state insured under that contract;
9 provided that that person is otherwise licensed as an insurance
10 producer to sell, solicit or negotiate that insurance in the
11 state where the insured maintains its principal place of business
12 and the contract of insurance insures risks located in that
13 state; or

14 (7) a salaried full-time employee who counsels
15 or advises the employee's employer relative to the insurance
16 interests of the employer or of the subsidiaries or business
17 affiliates of the employer; provided that the employee does not
18 sell or solicit insurance or receive a commission."

19 **SECTION 30.** Section 59A-12-11 NMSA 1978 (being Laws 1984,
20 Chapter 127, Section 212) is amended to read:

21 "59A-12-11. NO LICENSE WHERE SHARES OR INTEREST USED AS
22 INDUCEMENT TO INSURANCE.--The superintendent shall not license as
23 [~~agent, broker or solicitor~~] an insurance producer, or permit any
24 such license to continue [~~in force~~], if the superintendent finds
25 that the licensee did, or that the applicant for license

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1 [probably will] intends to offer, give or sell stock or other
2 ownership or participating interest in the agency or brokerage as
3 inducement to or in connection with purchase of insurance."

4 SECTION 31. Section 59A-12-12 NMSA 1978 (being Laws 1984,
5 Chapter 127, Section 213, as amended by Laws 1999, Chapter 272,
6 Section 8 and also by Laws 1999, Chapter 289, Section 9) is
7 repealed and a new Section 59A-12-12 NMSA 1978 is enacted to
8 read:

9 "59A-12-12. [NEW MATERIAL] APPLICATION AND GENERAL
10 QUALIFICATIONS FOR INDIVIDUAL INSURANCE PRODUCER LICENSE.--

11 A. An individual applying for a resident insurance
12 producer license shall apply to the superintendent on the uniform
13 application and declare under penalty of refusal, suspension or
14 revocation of the license that the statements made in the
15 application are true, correct and complete to the best of the
16 applicant's knowledge and belief.

17 B. Before approving the application, the
18 superintendent shall:

19 (1) confirm that the applicant:

20 (a) is at least eighteen years of age;

21 (b) has not committed any act that is a
22 ground for denial, suspension or revocation under the Insurance
23 Code;

24 (c) has paid the fees set forth in Section
25 59A-6-1 NMSA 1978;

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1 (d) has successfully passed the
2 examinations for the lines of authority for which the application
3 is made, if such examination is required; and

4 (e) is in compliance with other applicable
5 qualifications and requirements of the Insurance Code;

6 (2) review the applicant's answers to the
7 standard background questions on the uniform application;

8 (3) obtain the applicant's fingerprints; and

9 (4) conduct state and federal criminal
10 background checks on the applicant.

11 C. The superintendent may require any documents
12 reasonably necessary to verify the information contained in an
13 application. The superintendent may obtain fingerprints from
14 licensed resident insurance producers from whom fingerprints were
15 not obtained at the time of application or when adding additional
16 lines of authority to their license.

17 D. Each insurer that sells, solicits or negotiates
18 any form of limited line credit insurance shall provide to each
19 individual whose duties will include selling, soliciting or
20 negotiating limited line credit insurance a program of
21 instruction approved by the superintendent."

22 SECTION 32. Section 59A-12-13 NMSA 1978 (being Laws 1984,
23 Chapter 127, Section 214) is amended to read:

24 "59A-12-13. SPECIAL REQUIREMENTS, TITLE INSURANCE [~~AGENTS~~]
25 PRODUCERS.--

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1 A. The superintendent shall not issue or permit to
2 ~~[remain in force an agent]~~ continue an insurance producer license
3 ~~[as to]~~ for title insurance except ~~[as to]~~ for an applicant or a
4 licensee who, in addition to other applicable qualifications and
5 requirements, owns, operates or controls an abstract plant
6 consisting of a set of records in which an entry has been made of
7 all documents or matters ~~[which]~~ that under law impart
8 constructive notice of matters affecting title to real property
9 or any interest therein or encumbrance thereon, which have been
10 filed or recorded in the county for which such title plant is
11 maintained for a period of not less than twenty ~~[+20]~~ years
12 immediately prior to date of application for license. Such
13 records shall consist of:

14 (1) an index or indices in which notations of
15 or references to any ~~[such]~~ documents that describe property
16 affected thereby are posted, entered or otherwise included,
17 according to the property described therein, or copies or briefs
18 of all ~~[such]~~ documents that describe the property affected
19 thereby ~~[which]~~ that are sorted and filed according to such
20 property; and

21 (2) an index or indices in which all other such
22 documents are posted, entered or otherwise included, according to
23 the name or names of the parties whose title to real property or
24 any interest therein or encumbrances thereon is affected.

25 ~~[B. Every applicant who, on January 1, 1965, was~~

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1 ~~licensed as an agent to issue title insurance shall be exempted~~
2 ~~from the requirement of having a twenty-year abstract plant, if~~
3 ~~an abstract plant is maintained on a current basis commencing~~
4 ~~July 1, 1965.~~

5 G.] B. A license [~~as agent~~] to issue title insurance
6 shall permit the licensee to issue policies only on property
7 located in the county or counties for which the licensee has the
8 necessary abstract plant."

9 SECTION 33. Section 59A-12-15 NMSA 1978 (being Laws 1984,
10 Chapter 127, Section 216, as amended by Laws 1999, Chapter 272,
11 Section 9 and also by Laws 1999, Chapter 289, Section 10) is
12 amended to read:

13 "59A-12-15. LICENSING [~~FIRMS, CORPORATIONS~~] BUSINESS
14 ENTITIES.--

15 ~~[A. The superintendent shall license a firm or~~
16 ~~corporation only as an agent or broker.~~

17 ~~B. For license as agent each general partner and each~~
18 ~~individual to act for the firm, or each individual to act for the~~
19 ~~corporation, shall be named in the license or registered with the~~
20 ~~superintendent, and shall qualify as though for license as an~~
21 ~~individual.]~~

22 A. A business entity acting as an insurance producer
23 is required to obtain an insurance producer license. Application
24 shall be made using the uniform business entity application.
25 Before approving the application, the superintendent shall

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1 confirm that:

2 (1) the business entity has paid the fees set
3 forth in Section 59A-6-1 NMSA 1978;

4 (2) the business entity has designated a
5 licensed insurance producer responsible for the business entity's
6 compliance with the insurance laws of this state; and

7 (3) a licensee who is to exercise license
8 powers shall be affiliated by submitting an application. The
9 application must be submitted with payment as required in Section
10 59A-6-1 NMSA 1978.

11 B. The application shall be signed on behalf of the
12 applicant by an authorized partner or corporate officer, and
13 under oath if required by the superintendent.

14 C. The application form may require the following
15 information about the applicant:

16 (1) if the applicant is a partnership, the
17 name, residence, proof of identity, business record and
18 reputation, business experience of each partner and any other
19 information required by the superintendent;

20 (2) if the applicant is a corporation, the
21 name, residence, proof of identity, business record and
22 reputation, business experience of each officer, member of the
23 board of directors, controlling stockholder and any other
24 information required by the superintendent;

25 (3) evidence satisfactory to the superintendent

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1 that transaction of business proposed to be transacted under the
2 license applied for is within the partnership agreement, if the
3 applicant is a partnership, or within the corporate powers, if
4 the applicant is a corporation; and

5 (4) such further information concerning the
6 applicant, appointment of the applicant, partners, corporate
7 officers, directors and stockholders, as the superintendent may
8 require.

9 D. If the applicant is a partnership, each individual
10 who is not a general partner and who is to exercise license
11 powers, and if the applicant is a corporation, each individual,
12 whether or not an officer, director, stockholder or in other
13 relationship to the corporation, who is to exercise the license
14 powers, shall file an application as though for an individual
15 license for the same kind of business as that applied for by the
16 partnership or corporation.

17 E. The application shall be accompanied by payment of
18 the application filing fee, fee for any examination required
19 under the Insurance Code to be taken and passed prior to
20 licensing and by any bond otherwise required for the license
21 applied for. A license application filing fee is required for
22 each individual who is to exercise the license powers of a
23 corporation, or license powers of a partnership if not a general
24 partner therein.

25 F. The business entity shall comply with all other

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1 licensing and registration requirements to do business in the
2 state."

3 SECTION 34. Section 59A-12-16 NMSA 1978 (being Laws 1984,
4 Chapter 127, Section 217, as amended) is amended to read:

5 "59A-12-16. EXAMINATION FOR LICENSE.--

6 A. ~~[Each applicant]~~ A resident individual applying
7 for an insurance producer license [as agent, solicitor or broker]
8 shall, prior to issuance of license, personally take and pass
9 [an] a written examination. [authorized by the superintendent to
10 establish the applicant's competence, knowledge and understanding
11 of attendant responsibility and duties as to the insurance
12 business to be transacted under the license applied for; except,
13 that no such] The examination shall test the knowledge of the
14 individual concerning the lines of authority for which
15 application is made, the duties and responsibilities of an
16 insurance producer and the insurance laws and rules of this
17 state. Examinations required by this section shall be developed
18 and conducted under rules prescribed by the superintendent.

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

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

25 D. An individual who fails to appear for the

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1 examination as scheduled or fails to pass the examination shall
2 reapply for an examination and remit all required fees and forms
3 before being rescheduled for another examination.

4 E. No examination shall be required:

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

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

10 (3) of applicants with respect to life and
11 annuities or accident and health [~~or life or health~~] insurances
12 who hold the chartered life underwriter (C.L.U.) designation by
13 the American college of life underwriters;

14 (4) of applicants with respect to property and
15 casualty [~~surety, marine and transportation, and vehicle~~
16 ~~insurances, or any of them~~] insurance who hold the designation of
17 chartered property and casualty underwriter (C.P.C.U.)
18 designation by the American institute of property and casualty
19 underwriters;

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

22 (6) of an applicant for a license covering the
23 same kind or kinds of insurance as to which licensed in this
24 state under a similar license within five years preceding date of
25 application for the new license, unless the previous license was

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1 suspended, revoked or continuation thereof refused by the
2 superintendent; or

3 ~~[(7) of an applicant for solicitor license who~~
4 ~~held license as agent in this state as to the same kind or kinds~~
5 ~~of insurance within five years preceding date of application for~~
6 ~~the new license, unless the previous license was suspended,~~
7 ~~revoked or continuation thereof refused by the superintendent; or~~

8 ~~(8)]~~ (7) of an applicant for [broker or agent]
9 insurance producer license, if [the superintendent is satisfied
10 that] the applicant took and passed a similar examination in a
11 state in which already licensed, subject to Section 59A-5-33 NMSA
12 1978.

13 ~~[B. The superintendent shall conduct examinations as~~
14 ~~provided for in Chapter 59A, Article 11 NMSA 1978.]~~

15 F. An individual who applies for an insurance
16 producer license in this state who was previously licensed for
17 the same lines of authority in another state shall not be
18 required to take an examination. This exemption is only
19 available if the person is currently licensed in that state or if
20 the application is received within ninety days of the
21 cancellation of the applicant's previous license and if the prior
22 state issues a certification that, at the time of cancellation,
23 the applicant was in good standing in that state or the state's
24 insurance producer database records, maintained by the national
25 association of insurance commissioners, its affiliates or

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1 subsidiaries, indicate that the insurance producer is or was
2 licensed in good standing for the line of authority requested.

3 G. A person licensed as an insurance producer in
4 another state who moves to this state shall apply within ninety
5 days of establishing legal residence to become a resident
6 insurance producer. No examination shall be required of that
7 person to obtain any line of authority previously held in the
8 prior state except where the superintendent determines otherwise
9 by rule."

10 SECTION 35. Section 59A-12-17 NMSA 1978 (being Laws 1984,
11 Chapter 127, Section 218, as amended) is amended to read:

12 "59A-12-17. SCOPE OF LICENSE.--

13 ~~[A. Except as to limited licenses identified in~~
14 ~~Section 59A-12-18 NMSA 1978 and Section 3 of this 2013 act, an~~
15 ~~agent's or broker's license shall cover the kind of insurance, or~~
16 ~~major subdivisions of life or health insurance, for which the~~
17 ~~applicant has applied and qualified, including the following:~~

18 ~~(1) life insurance, or any or all of the~~
19 ~~following subdivisions thereof:~~

20 ~~(a) industrial life insurance;~~

21 ~~(b) debit insurance;~~

22 ~~(c) credit life insurance; or~~

23 ~~(d) variable annuity contracts;~~

24 ~~(2) health insurance, credit health insurance~~
25 ~~or industrial health insurance, or other subdivisions thereof;~~

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- 1 ~~(3) property insurance;~~
- 2 ~~(4) casualty insurance;~~
- 3 ~~(5) surety insurance;~~
- 4 ~~(6) marine and transportation insurance;~~
- 5 ~~(7) vehicle insurance; or~~
- 6 ~~(8) title insurance.~~

7 ~~B. The scope of a solicitor's license is subject to~~
8 ~~Section 59A-12-14 NMSA 1978.~~

9 ~~C. License of a broker shall cover the kind or kinds~~
10 ~~of insurance applied and qualified for, within the~~
11 ~~classifications stated in Subsection A of this section.]~~

12 A. Unless denied licensure pursuant to Sections
13 59A-11-8 and 59A-11-14 NMSA 1978, a person who has met the
14 requirements of Sections 59A-12-12 and 59A-12-15 NMSA 1978 shall
15 be issued an insurance producer license. An insurance producer
16 may receive qualification for a license in one or more of the
17 following lines of authority:

18 (1) life insurance coverage on human lives,
19 including benefits of endowment and annuities, and may include
20 benefits in the event of death or dismemberment by accident and
21 benefits for disability income;

22 (2) accident and health or sickness insurance
23 coverage for sickness, bodily injury or accidental death and may
24 include benefits for disability income;

25 (3) property insurance coverage for the direct

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1 or consequential loss or damage to property of every kind;

2 (4) casualty insurance coverage against legal
3 liability, including that for death, injury or disability or
4 damage to real or personal property;

5 (5) variable life and variable annuity products
6 insurance coverage provided under variable life insurance
7 contracts and variable annuities;

8 (6) personal lines property and casualty
9 insurance coverage sold to individuals and families for primarily
10 noncommercial purposes;

11 (7) limited line credit insurance; and

12 (8) any other line of insurance permitted under
13 state laws.

14 ~~[D.]~~ B. A licensee as to variable annuities or
15 similar contracts deemed to constitute ~~[also]~~ securities shall
16 also possess license as a security salesman under other
17 applicable state laws.

18 C. An insurance producer license shall remain in
19 effect unless revoked or suspended as long as the fee set forth
20 in Section 59A-6-1 NMSA 1978 is paid and education requirements
21 for resident insurance producers are met by the due date.

22 D. An insurance producer who allows the insurance
23 producer's license to lapse may, within twelve months from the
24 due date of the renewal fee, reinstate the same license without
25 the necessity of passing a written examination. However, a

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1 penalty in the amount of double the unpaid renewal fee shall be
2 required for any renewal fee received after the due date.

3 E. A licensed insurance producer who is unable to
4 comply with license renewal procedures due to military service or
5 some other extenuating circumstance may request a waiver of those
6 procedures. The insurance producer may also request a waiver of
7 any examination requirement or any other fine or sanction imposed
8 for failure to comply with renewal procedures.

9 F. The license shall contain the licensee's name,
10 address and personal identification number, the date of issuance,
11 the lines of authority, the expiration date and any other
12 information the superintendent deems necessary.

13 G. Licensees shall inform the superintendent in the
14 format prescribed by the superintendent of a change of address
15 within thirty days of the change. Failure to timely inform the
16 superintendent of a change in legal name or address shall result
17 in a penalty of fifty dollars (\$50.00).

18 H. The superintendent may contract with non-
19 governmental entities, including the national association of
20 insurance commissioners or any affiliates or subsidiaries that
21 the national association of insurance commissioners oversees, to
22 perform any ministerial functions, including the collection of
23 fees, related to insurance producer licensing that the
24 superintendent and the nongovernmental entity may deem
25 appropriate."

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1 **SECTION 36.** Section 59A-12-18 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 219, as amended) is amended to read:

3 "59A-12-18. LIMITED [~~LICENSE~~] LINES.--

4 A. The superintendent may issue a limited [~~agent's~~]
5 insurance producer license to individual applicants employed full
6 time by a vendor of merchandise or other property, or by a
7 financial institution making consumer loans on terms with respect
8 to which credit life insurance, credit health insurance, credit
9 property insurance or credit involuntary unemployment insurance
10 under individual policies is customarily required of or offered
11 to the purchaser or borrower, covering only that credit life,
12 credit health, credit property or credit involuntary unemployment
13 insurance.

14 B. The superintendent may issue a limited [~~agent's~~]
15 insurance producer license to vendors in accordance with the
16 provisions of the Portable Electronics Insurance Act. The
17 application shall provide:

18 (1) the name, residence address and other
19 information required by the superintendent for an employee or
20 officer of the vendor that is designated by the applicant as the
21 [~~person~~] individual responsible for the vendor's compliance with
22 the requirements of the Portable Electronics Insurance Act.

23 [~~However, if~~] If the vendor derives more than fifty percent of
24 its revenue from the sale of portable electronics insurance, the
25 information noted above shall be provided for all officers,

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1 directors and shareholders of record having beneficial ownership
2 of ten percent or more of any class of securities registered
3 under the federal securities law; and

4 (2) the location of the applicant's home
5 office.

6 C. No holder of a limited license issued pursuant to
7 Subsection A of this section shall concurrently be otherwise
8 licensed under the Insurance Code."

9 SECTION 37. Section 59A-12-18.1 NMSA 1978 (being Laws
10 2013, Chapter 140, Section 3) is amended to read:

11 "59A-12-18.1. LIMITED LINES TRAVEL INSURANCE PRODUCER
12 LICENSE [~~TRAVEL INSURANCE~~].--

13 A. The superintendent may issue a limited [~~agent's~~]
14 lines travel insurance producer license to applicants who are
15 qualified to solicit or sell travel insurance.

16 B. A travel retailer may offer [~~and disseminate~~]
17 travel insurance under the license of a limited lines travel
18 insurance [~~agent~~] producer only if:

19 (1) the limited lines travel insurance [~~agent~~]
20 producer or travel retailer provides to purchasers of travel
21 insurance:

22 (a) a description of the material terms of
23 the insurance coverage;

24 (b) a description of the process for
25 filing a claim;

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1 (c) a description of the travel insurance
2 policy's cancellation process; and

3 (d) the identity and contact information
4 of the insurer and limited lines travel insurance [~~agent~~]
5 producer;

6 (2) the limited lines travel insurance [~~agent~~]
7 producer:

8 (a) establishes at the time of licensure
9 on a form prescribed by the superintendent a register of each
10 travel retailer that offers travel insurance on behalf of the
11 limited lines travel insurance [~~agent~~] producer;

12 (b) includes in the register each travel
13 retailer's federal tax identification number and the name,
14 address and contact information of each travel retailer and an
15 officer or person who directs or controls the travel retailer's
16 operations;

17 (c) maintains the register and updates it
18 at least once a year;

19 (d) submits the register to the
20 superintendent upon reasonable request; and

21 (e) certifies that each travel retailer on
22 the register complies with federal laws;

23 (3) the limited lines travel insurance [~~agent~~]
24 producer has selected a designated responsible agent who is one
25 of its licensed individual [~~agent~~] insurance producer employees

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1 and who is responsible for the limited lines travel insurance
2 [~~agent's~~] producer's compliance with the travel insurance laws
3 and rules of this state;

4 (4) the designated responsible agent,
5 president, secretary, treasurer and all other officers or persons
6 who direct or control the limited lines travel insurance
7 [~~agent's~~] producer's insurance operations comply with the
8 fingerprinting requirements for insurance [~~agents~~] producers of
9 the resident state of the limited lines travel insurance [~~agent~~]
10 producer;

11 (5) the limited lines travel insurance [~~agent~~]
12 producer has paid all applicable insurance [~~agent~~] producer
13 licensing fees pursuant to state law; and

14 (6) the limited lines travel insurance [~~agent~~]
15 producer requires each employee and authorized representative of
16 the travel retailer whose duties include offering and
17 disseminating travel insurance to receive a program of
18 instruction or training that the superintendent may review and
19 that, at a minimum, contains instructions on the types of
20 insurance offered, ethical sales practices and required
21 disclosures to prospective customers.

22 C. A travel retailer that offers and disseminates
23 travel insurance shall make available to prospective purchasers
24 brochures or other written materials that:

25 (1) identify and provide the contact

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1 information of the insurer and the limited lines travel insurance
2 [~~agent~~] producer;

3 (2) explain that the purchase of travel
4 insurance is not a prerequisite to the purchase of any other
5 product or service of the travel retailer; and

6 (3) explain that an unlicensed travel retailer
7 may provide general information about the insurance offered by
8 the travel retailer, including a description of the coverage and
9 price, but is not qualified or authorized to answer technical
10 questions about the terms and conditions of the insurance offered
11 by the travel retailer or to evaluate the adequacy of the
12 customer's existing insurance coverage.

13 D. A travel retailer's employee or authorized
14 representative who is not licensed as an insurance [~~agent~~]
15 producer shall not:

16 (1) evaluate or interpret the technical terms,
17 benefits or conditions of the travel insurance coverage offered;

18 (2) evaluate or provide advice concerning a
19 prospective purchaser's existing insurance coverage; or

20 (3) make representation as being a licensed
21 insurer, licensed [~~agent~~] insurance producer or insurance expert.

22 E. A travel retailer and its employees and authorized
23 representatives whose insurance-related activities are limited to
24 the offering and disseminating of travel insurance on behalf of
25 and under the direction of a limited lines travel insurance

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1 [agent] producer that complies with this section may conduct and
2 receive compensation for those activities.

3 F. A travel retailer may place insurance under an
4 individual policy or under a group or master policy.

5 G. As the insurer designee, a limited lines travel
6 insurance [agent] producer shall be responsible for the acts of
7 the travel retailer and shall use reasonable means to ensure that
8 the travel retailer complies with the provisions of this section.

9 H. As used in this section:

10 (1) "limited lines travel insurance [agent]
11 producer" means a licensed managing general agent or third-party
12 administrator or a licensed insurance [agent] producer;

13 (2) "offer and disseminate" means providing
14 general information, including a description of coverage and
15 price, processing applications, collecting premiums and
16 performing other nonlicensable activities permitted by this
17 state;

18 (3) "travel insurance" means insurance coverage
19 for personal risks incident to planned travel, including the
20 interruption or cancellation of a trip or event; the loss of
21 baggage or personal effects; damage to accommodations or rental
22 vehicles; or sickness, accident, disability or death during
23 travel. "Travel insurance" [excludes] does not include major
24 medical plans that provide comprehensive medical protection for
25 travelers on trips of six months or longer, such as for those

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1 working overseas as expatriates or deployed military personnel;
2 and

3 (4) "travel retailer" means a business entity
4 that makes, arranges or offers travel services."

5 SECTION 38. Section 59A-12-19 NMSA 1978 (being Laws 1984,
6 Chapter 127, Section 220) is repealed and a new Section 59A-12-19
7 NMSA 1978 is enacted to read:

8 "59A-12-19. [NEW MATERIAL] TEMPORARY LICENSES.--

9 A. The superintendent may issue a temporary insurance
10 producer license for a period not to exceed one hundred eighty
11 days without requiring an examination if the superintendent deems
12 that the temporary license is necessary for the servicing of an
13 insurance business in the following cases:

14 (1) to the surviving spouse or court- appointed
15 personal representative of a licensed insurance producer who dies
16 or becomes mentally or physically disabled to allow adequate time
17 for the sale of the insurance business owned by the insurance
18 producer or for the recovery or return of the insurance producer
19 to the business or to provide for the training and licensing of
20 new personnel to operate the insurance producer's business;

21 (2) to a member or employee of a business
22 entity licensed as an insurance producer, upon the death or
23 disability of an individual designated in the business entity
24 application or the license;

25 (3) to the designee of a licensed insurance

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1 producer entering active service in the armed forces of the
2 United States; or

3 (4) in any other circumstance where the
4 superintendent deems that the public interest will best be served
5 by the issuance of the license.

6 B. The superintendent may by order limit the
7 authority of any temporary licensee in any way deemed necessary
8 to protect insureds and the public. The superintendent may
9 require the temporary licensee to have a suitable sponsor who is
10 a licensed insurance producer or insurer and who assumes
11 responsibility for all acts of the temporary licensee and may
12 impose other similar requirements designed to protect insureds
13 and the public. The superintendent may by order revoke a
14 temporary license if the interest of insureds or the public is
15 endangered. A temporary license shall not continue after the
16 owner or the personal representative disposes of the business."

17 SECTION 39. Section 59A-12-20 NMSA 1978 (being Laws 1984,
18 Chapter 127, Section 221, as amended) is amended to read:

19 "59A-12-20. PLACE OF BUSINESS [~~DISPLAY OF LICENSE~~].--

20 [~~A. A general lines agent~~] An insurance producer
21 shall have and maintain a place of business accessible to the
22 public where the licensee conducts transactions under the
23 license. Nothing in this section shall prohibit maintenance of
24 the place of business in the licensee's residence.

25 [~~B. The licenses of the licensee and of solicitors~~

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1 ~~employed by the licensee shall be conspicuously displayed in the~~
2 ~~place of business in a part customarily open to the public.~~

3 ~~C. This section does not apply to life insurance,~~
4 ~~annuity contracts or health insurance.]"~~

5 SECTION 40. Section 59A-12-21 NMSA 1978 (being Laws 1984,
6 Chapter 127, Section 222) is amended to read:

7 "59A-12-21. RECORDS OF ~~[GENERAL LINES AGENT]~~ INSURANCE
8 PRODUCER.--

9 A. Every ~~[general lines agent]~~ insurance producer
10 shall keep in ~~[his]~~ the insurance producer's place of business
11 ~~[referred to in Section 221 of this article]~~ complete records of
12 transactions under ~~[his]~~ the license ~~[and those of his~~
13 ~~solicitors]~~. The record shall show the following information for
14 each insurance policy placed by or through the licensee ~~[not less~~
15 ~~than]~~:

16 (1) the names of the insurer and insured;
17 ~~[the number and expiration date of, and premium~~
18 ~~payable as to, the policy, the names of all other persons from~~
19 ~~whom business is accepted or to whom commissions are promised or~~
20 ~~paid, all premiums collected, and such additional information as~~
21 ~~the superintendent may reasonably require]~~

22 (2) the number and expiration date of each
23 policy;

24 (3) the premium payable for each policy;

25 (4) the names of all other persons from whom

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1 business is accepted or to whom commissions are promised or paid;

2 (5) all premiums collected; and

3 (6) any additional information the
4 superintendent may require.

5 B. The records shall be open to the superintendent's
6 examination, and the superintendent may at any reasonable time
7 require the licensee to furnish, in [~~such~~] the manner or form
8 [~~as~~] that the superintendent may require, any information kept or
9 required to be kept in such records.

10 C. Records as to a particular policy may be destroyed
11 on expiration of three [~~3~~] years after the policy's expiration.

12 [~~D. This section does not apply to life insurance,~~
13 ~~annuity contracts or health insurance.]"~~

14 SECTION 41. Section 59A-12-22 NMSA 1978 (being Laws 1984,
15 Chapter 127, Section 223, as amended) is amended to read:

16 "59A-12-22. FIDUCIARY FUNDS--~~[AGENTS, BROKERS, SOLICITORS]~~
17 INSURANCE PRODUCERS, SURPLUS LINE BROKERS, BAIL BONDSMEN, MOTOR
18 CLUB AGENTS AND OTHERS.--

19 A. All funds of others received by [~~any~~] a person
20 licensed or acting as an insurance [~~agent, broker, solicitor]~~
21 producer, surplus line broker, bail bondsman or their solicitor,
22 motor club agent or agent [~~or solicitor]~~ for a health care plan
23 or prepaid dental plan, or in [~~any~~] a similar capacity for which
24 licensing of [~~such~~] the person is required under the Insurance
25 Code, are received and held by [~~such~~] the person in a fiduciary

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1 capacity. Any [~~such~~] person who diverts or appropriates [~~such~~]
2 funds to [~~his~~] the person's own use, or takes or secretes with
3 intent to embezzle, all without consent of the person entitled to
4 [~~such~~] the funds, is guilty of larceny by embezzlement.

5 B. Subject to the terms of any agreement between
6 [~~such~~] a person or licensee and [~~his~~] the person's or licensee's
7 principal or obligee, each [~~such~~] person who does not make
8 immediate remittance of [~~such~~] funds to the insurer or other
9 person entitled thereto shall elect and follow as to funds
10 received for account of a particular insurer or person either of
11 the following methods:

12 (1) remit received premiums (less applicable
13 commissions, if any) and return premiums to the insurer or other
14 person entitled thereto within fifteen days after [~~such~~] receipt;
15 or

16 (2) establish and maintain in a commercial bank
17 or other established financial institution depository one or more
18 accounts, separate from accounts holding general personal, firm
19 or corporate funds, and forthwith deposit and retain therein
20 pending transmittal to the insurer or other person entitled
21 thereto all such premiums (net of applicable commissions, if any)
22 and return premiums. Funds belonging to more than one principal
23 may be as deposited and held in the same [~~such~~] account so long
24 as the amount held for each [~~such~~] principal is readily
25 ascertainable from the records of the depositor. The depositor

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1 may commingle with such fiduciary funds in a particular [~~such~~]
2 account such additional funds as the licensee deems prudent for
3 advancing premiums, reserves for payment of return commissions or
4 for other contingencies arising in the business of receiving and
5 transmitting premiums or return premiums.

6 C. [~~Such~~] The person may commingle with [~~his~~] the
7 person's own funds to an unlimited amount funds of a particular
8 principal who has in writing in advance expressly waived the
9 segregation requirements of Subsection B of this section.

10 D. Any commingling of funds with funds of any [~~such~~]
11 person permitted under this section shall not alter the fiduciary
12 capacity of [~~such~~] the person as to funds of others."

13 SECTION 42. Section 59A-12-23 NMSA 1978 (being Laws 1984,
14 Chapter 127, Section 224, as amended by Laws 1999, Chapter 272,
15 Section 13 and also by Laws 1999, Chapter 289, Section 14) is
16 amended to read:

17 "59A-12-23. INSURANCE VENDING MACHINES.--

18 A. A licensed [~~agent~~] insurance producer may solicit
19 for and issue personal travel accident insurance policies of an
20 authorized insurer by means of mechanical vending machines
21 supervised by the [~~agent~~] insurance producer and placed at
22 airports and other places of convenience to the traveling public,
23 if the superintendent finds that:

24 (1) the policy provides reasonable coverage and
25 benefits, is suitable for sale and issuance by vending machine

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1 and use of such a machine in a proposed location would be of
2 material convenience to the public;

3 (2) the type of machine proposed to be used is
4 reasonably suitable for the purpose;

5 (3) reasonable means are provided for informing
6 prospective purchasers of policy coverages and restrictions;

7 (4) reasonable means are provided for refund of
8 money inserted in defective machines and for which insurance so
9 paid for is not received; and

10 (5) the cost of maintaining such a machine at a
11 particular location is reasonable.

12 B. For each machine to be used the superintendent
13 shall issue to the applicant a special vending machine license.
14 The license shall state the name and address of the insurer and
15 [~~agent~~] insurance producer, name of the policy to be sold and
16 serial number and operating location of the machine. The license
17 shall be subject to [~~annual~~] biennial continuation, to
18 expiration, suspension or revocation coincidentally with that of
19 the [~~agent~~] insurance producer. The superintendent shall also
20 revoke the license as to any machine as to which [~~he~~] the
21 superintendent finds that license qualifications no longer exist.
22 Proof of existence of a subsisting license shall be displayed on
23 or about each machine in use in [~~such~~] the manner [~~as~~] that the
24 superintendent reasonably requires."

25 SECTION 43. Section 59A-12-25 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 226, as amended by Laws 1999, Chapter 272,
2 Section 15 and also by Laws 1999, Chapter 289, Section 16) is
3 amended to read:

4 "59A-12-25. NONRESIDENT [~~BROKERS, NONRESIDENT AGENTS AND~~
5 ~~NONRESIDENT SOLICITORS~~] INSURANCE PRODUCERS--RETALIATION.--

6 A. The superintendent may refuse to issue a license
7 as [~~a broker, agent or solicitor~~] an insurance producer to a
8 resident of another state or country, who is otherwise qualified
9 under [~~this article~~] Chapter 59A, Article 12 NMSA 1978 for
10 license as [~~a broker, agent or solicitor~~] an insurance producer
11 in New Mexico, if under the laws of the other state or country
12 licensed residents of this state are prohibited or prevented from
13 acting as [~~broker, agent or solicitor~~] an insurance producer
14 because of their residence.

15 B. As part of an application for a license, the
16 nonresident applicant shall appoint the superintendent, on a form
17 prescribed and furnished by the superintendent, as agent on whom
18 may be served all legal process issued by a court in this state
19 in any action against or involving the licensee as to
20 transactions under the license. The appointment shall be
21 irrevocable and continue for so long as an action could arise or
22 exist. Duplicate copies of process shall be served upon the
23 superintendent or other individual in apparent charge of the
24 office of superintendent of insurance [~~division~~] during the
25 superintendent's absence, accompanied by payment of the process

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1 service fee specified in Section 59A-6-1 NMSA 1978. Upon service
2 the superintendent shall promptly forward a copy by certified
3 mail, return receipt requested, to the licensee at [~~his~~] the
4 licensee's last address of record with the superintendent.

5 Process served and copy forwarded as so provided shall for all
6 purposes constitute personal service upon the licensee.

7 C. The licensee shall likewise file with the
8 superintendent written agreement to appear before the
9 superintendent pursuant to notice of hearing, show cause order or
10 subpoena issued by the superintendent and deposited, postage
11 paid, by certified mail in a letter depository of the United
12 States post office, addressed to the licensee at [~~his~~] the
13 licensee's last address of record with the superintendent, and
14 that upon failure of the licensee to appear the licensee thereby
15 consents to any subsequent suspension, revocation or refusal of
16 the superintendent to continue the license."

17 SECTION 44. Section 59A-12-26 NMSA 1978 (being Laws 1984,
18 Chapter 127, Section 227, as amended) is amended to read:

19 "59A-12-26. [~~CONTINUED~~] CONTINUING EDUCATION.--

20 A. [~~For protection of the public and to preserve and~~
21 ~~improve competence of licensees~~] The superintendent [~~may in his~~
22 ~~sole discretion~~] shall require as a condition to continuation of
23 an insurance producer license [~~as agent, solicitor or broker~~
24 ~~under this article~~] that during the [~~twelve~~] twenty-four months
25 next preceding expiration of the current license period the

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

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

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

15 D. The superintendent [~~shall promulgate rules for the~~
16 ~~purposes and requirements of this section and~~] may impose a
17 penalty not to exceed fifty dollars (\$50.00) for a licensee's
18 failure to timely report continuing education credits.

19 E. [~~For the purposes of this section~~] The
20 superintendent shall charge, at the time of certifying each
21 licensee's continuing education credits as a condition of
22 continuation of license, a fee of one dollar (\$1.00) per credit
23 hour of continuing education; provided that the superintendent
24 may contract with an [~~established and experienced~~] independent
25 agency to receive and review continuing education compliance

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1 reports and, in such a case, the fee shall be a reasonable amount
2 fixed by the superintendent and payable to the contracting
3 agency.

4 F. This section shall not apply to holders of limited
5 license issued under Section 59A-12-18 NMSA 1978."

6 SECTION 45. Section 59A-12-26.1 NMSA 1978 (being Laws
7 1988, Chapter 112, Section 1) is amended to read:

8 "59A-12-26.1. INSURANCE LICENSEE CONTINUING EDUCATION FUND
9 ~~[APPROPRIATION]~~.--There is created in the state treasury a fund
10 ~~[which]~~ that shall be known as the "insurance licensee continuing
11 education fund". All fees imposed by the provisions of Section
12 ~~[2 of this act]~~ 59A-12-26 NMSA 1978 shall be deposited in the
13 insurance licensee continuing education fund ~~[and are~~
14 ~~appropriated]~~ for the purpose of administering the continuing
15 education program ~~[pursuant to the provisions of Section~~
16 ~~59A-12-26 NMSA 1978 to be expended upon voucher by the~~
17 ~~superintendent of insurance]~~."

18 SECTION 46. A new section of Chapter 59A, Article 12 NMSA
19 1978 is enacted to read:

20 "[NEW MATERIAL] ASSUMED NAMES.--An insurance producer shall
21 not do business under any name other than the insurance
22 producer's legal name without prior written approval of the
23 superintendent."

24 SECTION 47. A new section of Chapter 59A, Article 12 NMSA
25 1978 is enacted to read:

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1 "[NEW MATERIAL] COMMISSIONS.--

2 A. An insurance company or insurance producer shall
3 not pay a commission, service fee, brokerage or other valuable
4 consideration to a person for selling, soliciting or negotiating
5 insurance in this state if that person is required to be licensed
6 under Chapter 59A, Article 12 NMSA 1978 and is not so licensed.

7 B. A person shall not accept a commission, service
8 fee, brokerage or other valuable consideration for selling,
9 soliciting or negotiating insurance in this state if that person
10 is required to be licensed under Chapter 59A, Article 12 NMSA
11 1978 and is not so licensed.

12 C. Renewal or other deferred commissions may be paid
13 to a person for selling, soliciting or negotiating insurance in
14 this state if the person was required to be licensed under
15 Chapter 59A, Article 12 NMSA 1978 at the time of the sale,
16 solicitation or negotiation and was so licensed at that time.

17 D. An insurer or insurance producer shall not pay or
18 assign commissions, service fees, brokerages or other valuable
19 consideration to an insurance agency or to persons who do not
20 sell, solicit or negotiate insurance in this state."

21 **SECTION 48.** A new section of Chapter 59A, Article 12 NMSA
22 1978 is enacted to read:

23 "[NEW MATERIAL] COMPENSATION DISCLOSURE.--

24 A. When any insurance producer or any affiliate of
25 the insurance producer receives any compensation from a customer

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1 for the placement of insurance or represents the customer with
2 respect to that placement, neither that insurance producer nor
3 the affiliate shall accept or receive any compensation from an
4 insurer or other third party for that placement of insurance
5 unless the insurance producer has, prior to the customer's
6 purchase of insurance:

7 (1) obtained the customer's documented
8 acknowledgment that such compensation will be received by the
9 insurance producer or affiliate; and

10 (2) disclosed the amount of compensation from
11 the insurer or other third party for that placement. If the
12 amount of compensation is not known at the time of disclosure,
13 the insurance producer shall disclose the specific method for
14 calculating the compensation and, if possible, a reasonable
15 estimate of the amount.

16 B. Subsection A of this section does not apply to an
17 insurance producer who:

18 (1) does not receive compensation from the
19 customer for the placement of insurance;

20 (2) represents an insurer that has appointed
21 the insurance producer in connection with that placement of
22 insurance; and

23 (3) discloses to the customer prior to the
24 purchase of insurance:

25 (a) that the insurance producer will

1 receive compensation from an insurer in connection with that
2 placement; or

3 (b) that, in connection with that
4 placement of insurance, the insurance producer represents the
5 insurer and that the insurance producer may provide services to
6 the customer for the insurer.

7 C. A person shall not be considered a customer for
8 purposes of this section if the person is merely:

9 (1) a participant or beneficiary of an employee
10 benefit plan; or

11 (2) covered by a group or blanket insurance
12 policy or group annuity contract sold, solicited or negotiated by
13 the insurance producer or affiliate.

14 D. This section does not apply to:

15 (1) a person licensed as an insurance producer
16 who acts only as an intermediary between an insurer and the
17 customer's insurance producer, for example, a managing general
18 agent, a sales manager or wholesale broker; or

19 (2) a reinsurance intermediary.

20 E. For purposes of this section:

21 (1) "compensation from an insurer or other
22 third party" means payments, commissions, fees, awards,
23 overrides, bonuses, contingent commissions, loans, stock options,
24 gifts, prizes or any other form of valuable consideration,
25 whether or not payable pursuant to a written agreement; and

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1 (2) "documented acknowledgment" means the
2 customer's written consent obtained prior to the customer's
3 purchase of insurance. In the case of a purchase over the
4 telephone or by electronic means for which written consent cannot
5 reasonably be obtained, consent documented by the producer shall
6 be acceptable."

7 **SECTION 49.** Section 59A-12A-2 NMSA 1978 (being Laws 1989,
8 Chapter 374, Section 2) is amended to read:

9 "59A-12A-2. DEFINITIONS.--As used in Chapter 59A, Article
10 12A NMSA 1978:

11 A. unless otherwise specified in that article, all
12 definitions of the Insurance Code apply;

13 B. "administrator" or "third party administrator" or
14 "TPA" means a ~~[person who]~~ business entity that receives any form
15 of administrative or service fee, consideration, payment,
16 premium, reimbursement or compensation for performing or
17 providing any service, function or duty, or activity respecting
18 insurance or alternatives to insurance in any administrative or
19 management capacity, including but not limited to claims or
20 expense review, underwriting, administration and management under
21 a contract or other agreement to be performed in this state or
22 with respect to risks located or partially located in this state
23 or on behalf of persons in this state for any:

- 24 (1) plan;
25 (2) insurance carrier; or

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1 (3) person that self insures;

2 C. "administrator" does not include:

3 (1) an employer on behalf of its employees or
4 the employees of one or more subsidiaries or affiliated
5 corporations of that employer as long as only the functions of a
6 group policyholder are performed;

7 (2) a union on behalf of its members as long as
8 only the functions of a group policyholder are performed;

9 (3) an insurance company or a corporation
10 [~~which~~] that owns more than fifty percent of an insurance company
11 licensed in this state or a health maintenance organization,
12 nonprofit health care plan or a dental plan that is licensed in
13 this state;

14 (4) an [~~agent~~] insurance producer licensed in
15 this state acting on behalf of an admitted insurance carrier by
16 whom [~~he~~] the insurance producer is appointed and only within the
17 scope of [~~his~~] the insurance producer's license as an [~~agent~~]
18 insurance producer as defined in the article of the Insurance
19 Code under which [~~he~~] the insurance producer is licensed;

20 (5) a creditor on behalf of its debtors with
21 respect to insurance covering its debtors as long as only the
22 functions of a group policyholder or creditor are performed;

23 (6) a trust and its trustees, agents and
24 employees acting under the trust, established in conformity with
25 29 U.S.C. Sec. 186;

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1 (7) a trust exempt from taxations under Section
2 501(a) of the Internal Revenue Code of 1986, and its trustees and
3 employees acting under the trust, or a custodian and its agents
4 and employees acting pursuant to a custodian account that meets
5 the requirements of Section 401(f) of the Internal Revenue Code
6 of 1986;

7 (8) a bank that is subject to supervision or
8 examination by federal or state regulatory authorities as long as
9 the bank is only performing the function for which it is
10 licensed;

11 (9) a company that advances and collects any
12 premium or charge from its credit card holders who have
13 authorized it to do so, provided the company does not adjust or
14 settle claims and acts only in its debtor-creditor relationship
15 with its credit card holders;

16 (10) a person who adjusts or settles claims in
17 the normal course of [~~his~~] practice or employment as an attorney
18 at law who does not collect any charge or premium in connection
19 with life or health coverage or annuities;

20 (11) an adjuster licensed by the
21 superintendent, when engaged in the performance of [~~his~~] duties
22 as an adjuster;

23 (12) any joint fund, risk management pool or
24 self-insurance pool composed of political subdivisions of this
25 state that participate in such funds or pools through interlocal

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1 agreements, and any administrative agency established under the
2 interlocal agreement to administer the fund or pool;

3 (13) ~~any~~ a person providing technical,
4 advisory or consulting services who does not make ~~any~~
5 management or discretionary decisions on behalf of an insurance
6 carrier, plan or person that self-insures;

7 (14) ~~any~~ a full-time salaried employee of an
8 insurance carrier to the extent that the functions performed are
9 only for that insurance carrier or any affiliated carrier;

10 (15) attorneys in fact for a Lloyd's or
11 reciprocal exchange as authorized respectively in Chapter 38 or
12 39 NMSA 1978, while acting as attorney in fact for such Lloyd's
13 or reciprocal exchange;

14 (16) a certified public accountant, attorney at
15 law or actuary when performing duties or undertaking
16 responsibilities within the authority and scope of that
17 particular profession;

18 (17) an association and any subsidiary,
19 affiliated or related corporations of that association. For the
20 purposes of this subsection, "association" means a bona fide
21 trade or professional association which has been in existence for
22 not less than five years and which enters into agreements to pool
23 its liabilities for workers compensation benefits, pursuant to
24 the Group Self-Insurance Act; or

25 (18) a home owner warranty corporation provided

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1 by a trade association that has been in business in New Mexico
2 for [~~a~~] at least five years;

3 D. "alternatives to insurance" means [~~any~~] an
4 agreement to indemnify against loss, risk, damage, liability or
5 other contingency relating to property or persons, whether or not
6 such agreement is deemed to be insurance under applicable law or
7 where persons self insure;

8 E. "bank" means a bank, savings and loan association,
9 credit union or other financial institution authorized by law to
10 accept and maintain deposits;

11 F. [~~"person" includes~~] "business entity" means a
12 corporation, organization, government or governmental subdivision
13 or agency, business trust, estate trust, partnership, association
14 or any other legal entity; and

15 G. "plan" means any employer-employee, multiple
16 employer-employee, group, member or other employee benefit or
17 welfare program, medical, accident, sickness, injury, indemnity,
18 death or health benefit program contracting to provide
19 indemnification or expense reimbursement in this state to persons
20 domiciled in this state or for risks located or partially located
21 in this state for any type of the following coverages, expenses
22 or benefits: medical, surgical, orthopedic, chiropractic,
23 physical therapy, speech pathology, audiology, professional
24 mental health, dental, hospital, workers' compensation or
25 optometric plan or programs, hospital care or benefit or benefits

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1 in the event of sickness, accident, disability, death or
2 unemployment, or prepaid legal services."

3 SECTION 50. Section 59A-12A-3 NMSA 1978 (being Laws 1989,
4 Chapter 374, Section 3) is amended to read:

5 "59A-12A-3. LICENSE REQUIRED--PENALTY.--

6 A. No administrator shall perform or provide any
7 service, function, duty or activity respecting any insurance,
8 plan, self-insurance or alternatives to insurance in [~~any~~] an
9 administrative or management capacity in this state or with
10 respect to risks located or partially located in this state or on
11 behalf of persons in this state unless licensed as an
12 administrator under the Insurance Code.

13 B. Licensing [~~and examination~~] procedures for
14 administrators shall be in accordance with Chapter 59A, Article
15 11 NMSA 1978. [~~except that the superintendent may, in his~~
16 ~~discretion, waive the examination requirements for administrators~~
17 ~~who are operating in New Mexico prior to the effective date of~~
18 ~~Chapter 59A, Article 12A NMSA 1978.~~

19 ~~C. Every corporation or partnership to be licensed~~
20 ~~under Chapter 59A, Article 12A NMSA 1978 shall have every officer~~
21 ~~and manager of that corporation and every partner of that~~
22 ~~partnership licensed as an administrator.~~

23 ~~D.]~~ C. In addition to any applicable denial,
24 suspension or revocation of a license, refusal to continue
25 license or administrative fine, violation of this section shall

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1 be a misdemeanor punishable by a fine not to exceed one thousand
2 dollars (\$1,000) and by forfeiture to the state of an amount
3 equal to all compensation for services as administrator received
4 or to be received by the violator by reason of the prohibited
5 transactions."

6 SECTION 51. Section 59A-12B-2 NMSA 1978 (being Laws 1993,
7 Chapter 320, Section 28) is amended to read:

8 "59A-12B-2. DEFINITIONS.--As used in the Managing General
9 Agents Law:

10 A. "actuary" means a person who is a member in good
11 standing of the American academy of actuaries;

12 B. "insurer" means any person, firm, association or
13 corporation duly authorized in this state pursuant to the
14 Insurance Code to transact the business of insurance;

15 C. "managing general agent" means any person, firm,
16 association or corporation who:

17 (1) manages all or part of the insurance
18 business of an insurer, including the management of a separate
19 division, department or underwriting office;

20 (2) acts as an ~~agent~~ insurance producer for
21 such insurer whether known as a managing general agent, manager
22 or other similar term, who, with or without the authority, either
23 separately or together with affiliates, produces, directly or
24 indirectly, and underwrites an amount of gross direct written
25 premium equal to or more than five percent of the policyholder

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1 surplus as reported in the last annual statement of the insurer
2 in any one quarter or year together with one or more of the
3 following activities related to the business produced:

4 (a) adjusts or pays claims in excess of an
5 amount determined by the superintendent; or

6 (b) negotiates reinsurance on behalf of
7 the insurer; and

8 (3) notwithstanding the above, the following
9 persons shall not be considered as managing general agents for
10 the purposes of the Managing General Agents Law:

11 (a) an employee of the insurer;

12 (b) a United States manager of the United
13 States branch of an alien insurer;

14 (c) an underwriting manager which,
15 pursuant to contract, manages all or part of the insurance
16 operations of the insurer, is under common control with the
17 insurer, subject to the Insurance Holding Company Law, and whose
18 compensation is not based on the volume of premiums written; and

19 (d) the attorney-in-fact authorized by and
20 acting for the subscribers of a reciprocal insurer or inter-
21 insurance exchange under powers of attorney; and

22 D. "underwrite" means the authority to accept or
23 reject risk on behalf of the insurer."

24 **SECTION 52.** Section 59A-12B-5 NMSA 1978 (being Laws 1993,
25 Chapter 320, Section 31) is amended to read:

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1 "59A-12B-5. DUTIES OF INSURERS.--

2 A. The insurer shall have on file an independent
3 financial examination, in a form acceptable to the
4 superintendent, of each managing general agent with which it has
5 done business.

6 B. If a managing general agent establishes loss
7 reserves, the insurer shall annually obtain the opinion of an
8 actuary attesting to the adequacy of loss reserves established
9 for losses incurred and outstanding on business produced by the
10 managing general agent. This is in addition to any other
11 required loss reserve certification.

12 C. The insurer shall periodically, at least
13 semiannually, conduct an on-site review of the underwriting and
14 claims processing operations of the managing general agent.

15 D. Binding authority for all reinsurance contracts or
16 participation in insurance or reinsurance syndicates shall rest
17 with an officer of the insurer, who shall not be affiliated with
18 the managing general agent.

19 E. Within thirty days of entering into or termination
20 of a contract with a managing general agent, the insurer shall
21 provide written notification of such appointment or termination
22 to the superintendent. Notices of appointment of a managing
23 general agent shall include a statement of duties which the
24 applicant is expected to perform on behalf of the insurer, the
25 lines of insurance for which the applicant is to be authorized to

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1 act, and any other information the superintendent may request.

2 F. An insurer shall review its books and records each
3 quarter to determine if any ~~[agent or broker]~~ insurance producer
4 has become a managing general agent. If the insurer determines
5 that an ~~[agent or broker]~~ insurance producer has become a
6 managing general agent, the insurer shall promptly notify the
7 ~~[agent or broker]~~ insurance producer and the superintendent of
8 such determination and the insurer and ~~[agent or broker]~~
9 insurance producer must fully comply with the provisions of the
10 Managing General Agents Law within thirty days.

11 G. An insurer shall not appoint to its board of
12 directors an officer, director, employee, ~~[subagent or broker]~~
13 insurance producer or controlling shareholder of its managing
14 general agents. This subsection shall not apply to relationships
15 governed by the Insurance Holding Company Law or, if applicable,
16 the Broker Controlled Insurer Law."

17 SECTION 53. Section 59A-12B-7 NMSA 1978 (being Laws 1993,
18 Chapter 320, Section 33) is amended to read:

19 "59A-12B-7. PENALTIES AND LIABILITIES.--

20 A. If the superintendent determines that the managing
21 general agent or any other person has not materially complied
22 with the provisions of Chapter 59A, Article 12B NMSA 1978, or any
23 ~~[regulation]~~ rule or order promulgated thereunder, after notice
24 and opportunity to be heard, the superintendent may order:

25 (1) for each separate violation, a penalty in

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1 an amount not exceeding ten thousand dollars (\$10,000);

2 (2) revocation or suspension of the managing
3 general agent's license; and

4 (3) if it was found that because of such
5 material noncompliance that the insurer has suffered any loss or
6 damage, the superintendent may maintain a civil action brought by
7 or on behalf of the insurer and its policyholders and creditors
8 for recovery of compensatory damages for the benefit of the
9 insurer and its policyholders and creditors or seek other
10 appropriate relief.

11 B. If an order of rehabilitation or liquidation of
12 the insurer has been entered pursuant to Chapter 59A, Article 41
13 NMSA 1978, and the receiver appointed under that order determines
14 that the managing general agent or any other person has not
15 materially complied with the provisions of Chapter 59A, Article
16 12B NMSA 1978, or any regulation or order promulgated thereunder,
17 and the insurer suffered any loss or damage, the receiver may
18 maintain a civil action for recovery of damages or other
19 appropriate sanctions for the benefit of the insurer.

20 C. Nothing contained in this section shall affect the
21 right of the superintendent to impose any other penalties
22 provided for in the Insurance Code.

23 D. Nothing contained in the Managing General Agents
24 Law is intended to or shall in any manner limit or restrict the
25 rights of policyholders, claimants or creditors."

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1 SECTION 54. Section 59A-13-4 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 232, as amended) is amended to read:

3 "59A-13-4. QUALIFICATIONS FOR LICENSE AS ADJUSTER.--

4 A. The superintendent shall license as an adjuster
5 only an individual who is otherwise in compliance with Chapter
6 59A, Articles 11 and 13 NMSA 1978 and who has furnished evidence
7 satisfactory to the superintendent that the applicant for
8 license:

9 (1) is not less than eighteen years of age;

10 (2) is a bona fide resident of this state, or
11 of a state or country that permits residents of this state to act
12 as adjusters therein, except that under circumstances of
13 necessity the superintendent may waive the requirement of
14 reciprocity;

15 (3) can demonstrate a good business reputation,
16 and intends to engage in a bona fide manner in the business of
17 adjusting insurance claims;

18 (4) except as to temporary license provided for
19 under Section 59A-13-6 NMSA 1978, has had at least one year's
20 experience or special education or training in handling of losses
21 or claims under insurance contracts, such experience, education
22 and training to be of such nature and extent as to demonstrate
23 the applicant's competence to fulfill the responsibilities of an
24 adjuster; ~~and~~

25 (5) has passed any examination required for

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1 licensing; and

2 [~~(5)~~] (6) has filed the bond required under
3 Section 59A-13-5 NMSA 1978.

4 B. Paragraphs (2) and [~~(5)~~] (6) of Subsection A of
5 this section shall not apply as to staff adjusters.

6 C. Individuals holding licenses as adjusters on the
7 effective date of the Insurance Code shall be deemed to meet the
8 qualifications for the license except as provided in Chapter 59A,
9 Articles 11 and 13 NMSA 1978.

10 D. A business entity applying for an independent
11 adjuster license for the purposes of portable electronics
12 insurance in New Mexico shall submit the names, addresses, social
13 security numbers, criminal and administrative histories,
14 background checks, biographical statements and fingerprints of
15 all executive officers and directors of the applicant and of all
16 executive officers and directors of entities owning and any
17 individuals owning, directly or indirectly, fifty-one percent or
18 more of the outstanding voting securities of the applicant. Any
19 nonresident business entity applicant whose resident state has
20 enacted into law provisions that are substantively duplicative of
21 the provisions of this subsection shall not be required to submit
22 criminal histories, background checks, biographical statements
23 and fingerprints for its executive officers, directors and owners
24 of outstanding voting securities."

25 SECTION 55. A new section of Chapter 59A, Article 13 NMSA

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1 1978 is enacted to read:

2 "[NEW MATERIAL] EXAMINATION FOR LICENSE.--

3 A. A resident individual applying for a license as an
4 adjuster shall, prior to issuance of a license, personally take
5 and pass a written examination. The examination shall test the
6 knowledge of the individual concerning the duties and
7 responsibilities of an adjuster and the insurance laws and rules
8 of this state. Examinations required by this section shall be
9 developed and conducted under rules prescribed by the
10 superintendent.

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

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

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

21 E. No examination shall be required:

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

25 (2) of applicants for a temporary license as

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1 provided in Section 59A-13-6 NMSA 1978; or

2 (3) if the applicant took and passed a similar
3 examination in a state in which the applicant is already
4 licensed, subject to Section 59A-5-33 NMSA 1978."

5 SECTION 56. A new section of Chapter 59A, Article 13 NMSA
6 1978 is enacted to read:

7 "[NEW MATERIAL] CONTINUING EDUCATION.--

8 A. The superintendent shall require as a condition to
9 continuation of an adjuster license that during the twenty-four
10 months next preceding expiration of the current license period,
11 the licensee has attended the minimum number of hours of formal
12 class instruction, lectures or seminars required and approved by
13 the superintendent.

14 B. Instruction shall be designed to refresh the
15 licensee's understanding of basic principles and coverages
16 involved, recent and prospective changes, applicable laws and
17 rules of the superintendent, proper conduct of the licensee's
18 business and duties and responsibilities of the licensee.

19 C. The superintendent may permit licensees who,
20 because of remoteness of residence or business, cannot with
21 reasonable convenience attend formal instruction sessions to
22 successfully complete an equivalent course of study and
23 instruction online or by mail.

24 D. The superintendent may impose a penalty not to
25 exceed fifty dollars (\$50.00) for a licensee's failure to timely

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1 report continuing education credits.

2 E. The superintendent shall charge, at the time of
3 certifying each licensee's continuing education credits as a
4 condition of continuation of license, a fee of one dollar (\$1.00)
5 per credit hour of continuing education; provided that the
6 superintendent may contract with an independent agency to receive
7 and review a continuing education compliance report, and in such
8 a case, the fee shall be a reasonable amount fixed by the
9 superintendent and payable to the contracting agency."

10 SECTION 57. Section 59A-14-9 NMSA 1978 (being Laws 1984,
11 Chapter 127, Section 247) is amended to read:

12 "59A-14-9. SURPLUS LINE BROKER MAY ACCEPT BUSINESS FROM
13 [AGENTS] INSURANCE PRODUCERS--COMPENSATION OF OTHERS
14 PROHIBITED.--

15 A. A surplus line broker may accept and export
16 surplus line business from and for any insurance [~~agent or~~
17 ~~broker~~] producer licensed by this state for the kind of insurance
18 involved, and may compensate the [~~agent or broker~~] insurance
19 producer therefor.

20 B. A surplus line broker shall not directly or
21 indirectly compensate any person other than [~~such~~] a licensed
22 [~~agent or broker as to~~] insurance producer for origination of
23 [~~such~~] business. This provision shall not be deemed to prohibit
24 payment of regular salaries to the surplus line broker's
25 employees or sharing of compensation with other persons entitled

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1 thereto under firm and corporate agreements and surplus line
2 broker licenses. Violation of this provision is a misdemeanor."

3 SECTION 58. Section 59A-16-14 NMSA 1978 (being Laws 1984,
4 Chapter 127, Section 280) is amended to read:

5 "59A-16-14. COERCION OF BUSINESS PROHIBITED--NOTICE
6 REQUIRED--CHARGES PROHIBITED.--

7 A. No person engaged in selling real or personal
8 property or in the business of financing the purchase of real or
9 personal property, or of lending money on the security of real or
10 personal property, and no trustee, director, officer, agent or
11 other employee of [~~any such~~] the person shall require, as a
12 condition precedent, concurrent or subsequent to the sale, or
13 financing the purchase of [~~such~~] property, or to lending money
14 upon the security of a mortgage [~~thereon~~] on the property, or as
15 a condition precedent, concurrent or subsequent, for the renewal
16 or extension of [~~any such~~] the loan or mortgage or for the
17 performance of any other act in connection therewith, that the
18 person purchasing [~~such~~] the property, or for whom [~~such~~] the
19 purchase is to be financed, or to whom the money is to be loaned,
20 or for whom [~~such extension~~] the extension, renewal or other act
21 is to be granted, or performed, negotiate [~~any~~] a policy of
22 insurance or renewal [~~thereof~~] covering [~~such~~] the property
23 through a particular insurer [~~agent, solicitor or broker~~] or
24 insurance producer. The lender is required to inform the buyer
25 of [~~his~~] the buyer's rights regarding the placing of insurance on

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1 a form prescribed by the superintendent. The buyer must signify
2 that ~~[he]~~ the buyer has been so informed. This section shall not
3 prevent the exercise by ~~[any]~~ a person of ~~[his]~~ the right to
4 designate the terms and provisions of the policy and the amount
5 of coverage with respect to insurance on property pledged or
6 mortgaged to ~~[such]~~ the person.

7 B. An insured shall have the option, in addition to
8 the rights granted ~~[him]~~ under the terms and conditions of ~~[his]~~
9 the insurance contract, at any time to substitute, replace,
10 change or extend the existent policy in force. For the purpose
11 of this section "anniversary date" means the yearly return of the
12 inception of the effective date of policy in force.

13 C. If the lender signifies that the proposed
14 insurance is acceptable, the buyer must supply ~~[him]~~ the lender
15 with the policy or binder prior to the closing of the loan.

16 D. If the policy is cancelled by the insurer, the
17 borrower must have a new policy in the hands of the lender
18 twenty-four [~~24~~] hours prior to the effective day of the
19 cancellation.

20 E. The borrower or ~~[his]~~ the borrower's insurance
21 ~~[agent]~~ producer must deliver a renewal policy or an annual
22 renewal certificate to the lender at least fifteen [~~15~~] days
23 prior to expiration or renewal of the policy in force if required
24 by the lender.

25 F. When the insured wants to change insurance

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1 [agents] producers, the [agent] insurance producer writing the
2 renewal business must file with the lender a current letter of
3 authority signed by the borrower. If a change of [agents]
4 insurance producers is involved in the renewal of the policy, the
5 lender shall notify the [agent] insurance producer renewing the
6 insurance and the borrower in writing within five [~~5~~] business
7 days after tender of renewal policy, if the renewal policy is not
8 acceptable to the lender.

9 G. No person engaged in selling real or personal
10 property or in the business of financing the purchase of real or
11 personal property or of lending money on the security of real or
12 personal property shall charge, either directly or indirectly to
13 [~~any~~] a borrower or debtor a consideration of any kind to
14 substitute the insurance policy of one insurer of [~~such~~] the
15 property for that of another, or make [~~any~~] a charge for [~~any~~] a
16 change in the kind, type or amount of [~~such~~] the insurance if the
17 change is made at the time the borrower or debtor first becomes a
18 party to the transaction for which the insurance is required, or
19 at [~~any~~] an annual renewal date of the policy.

20 H. No person engaged in the business of selling real
21 or personal property or financing purchase or lending money on
22 security of real or personal property shall share information
23 received in connection with an application for credit in [~~any~~
24 ~~such~~] the purchase or for [~~such~~] the loan with any parent
25 corporation, subsidiary or affiliate of [~~such~~] the person or with

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1 [any] an insurer, for the purpose of soliciting insurance, unless
2 [~~such~~] the person has written authorization to release [~~such~~] the
3 information executed by the purchaser or borrower subsequent to
4 extension of credit or making of the loan.

5 I. In addition to other penalties provided in Section
6 [~~18 (general penalty) of the Insurance Code, any~~] 59A-1-18 NMSA
7 1978, a lender who violates this section shall be liable in a
8 civil action brought by [any] a buyer, insured or insurance
9 [agent] producer injured by the violation, or each of them, for
10 an amount of liquidated damages equal to the amount of [~~his~~]
11 actual damages as a result of coercion prohibited by this
12 section."

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

15 "59A-16-17. UNFAIR DISCRIMINATION, REBATES PROHIBITED--
16 OTHER COVERAGES.--

17 A. No property, casualty [~~marine and transportation,~~
18 ~~surety, vehicle~~] or title insurer, or nonprofit health care or
19 prepaid dental plan or other insurance-type organization, or any
20 employee or representative thereof, and no [~~broker, agent,~~
21 ~~solicitor~~] insurance producer or other representative shall pay,
22 allow or give, or offer to pay, allow or give, directly or
23 indirectly, as an inducement to insurance or coverage, or after
24 insurance or coverage has been effected, any rebate, discount,
25 abatement, credit or reduction of the premium named in a policy,

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1 or any special favor or advantage in the dividends or other
2 benefits to accrue thereon, or any valuable consideration or
3 inducement whatever, not specified or provided for in the policy,
4 except to the extent provided for in an applicable filing with
5 the superintendent as provided by law.

6 B. No title insurer or title insurance [~~agent~~]
7 producer shall:

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

17 (2) issue any policy or perform any service in
18 connection with which it or any [~~agent~~] insurance producer or
19 other person has paid or contemplates paying any commission,
20 rebate or inducement in violation of this section;

21 (3) give or receive, directly or indirectly,
22 any consideration or thing of value for the referral of title
23 insurance business or escrow or other service provided by a title
24 insurer or title insurance [~~agent~~] producer unless otherwise
25 permitted by regulation of the superintendent; or

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

5 C. No insured named in a policy or any employee of
6 such insured shall knowingly receive or accept, directly or
7 indirectly, any such rebate, discount, abatement, credit or
8 reduction of premium, or any such special favor or advantage or
9 valuable consideration or inducement.

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

16 E. Nothing in this section shall be construed as
17 prohibiting the payment of commissions or other compensation to
18 licensed [~~agents, brokers, solicitors~~] insurance producers or
19 other representatives; or as prohibiting the extension of credit
20 to an insured for the payment of any premium and for which credit
21 a reasonable rate of interest is charged and collected; or as
22 prohibiting any insurer or [~~agent~~] insurance producer from
23 allowing or returning to its participating policyholders, members
24 or subscribers, dividends, savings or unabsorbed premium
25 deposits. As to title insurance, nothing in this section shall

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1 prohibit bulk rates or special rates for customers of prescribed
2 classes if such bulk or special rates are provided for in the
3 currently effective schedule of fees and charges of the title
4 insurer as filed with the superintendent.

5 ~~[F. This section does not apply to wet marine and~~
6 ~~transportation insurance.]"~~

7 SECTION 60. Section 59A-18-24 NMSA 1978 (being Laws 1984,
8 Chapter 127, Section 353) is amended to read:

9 "59A-18-24. ~~[AGENTS, BROKERS]~~ INSURANCE PRODUCERS--WHOM
10 THEY REPRESENT.--~~[Any]~~ A licensed [agent] insurance producer
11 appointed as ~~[agent]~~ insurance producer by an insurer shall, in
12 any controversy between the insured or ~~[his]~~ the insured's
13 beneficiary and the insurer, be held to be the agent of the
14 insurer ~~[which]~~ that issued the insurance solicited or applied
15 for, anything in the application or policy to the contrary
16 notwithstanding; and ~~[any]~~ a broker licensed to transact
17 insurance business in this state, in any controversy between
18 ~~[any]~~ the insured or [his] the insured's beneficiary and the
19 insurer issuing the insurance through its licensed ~~[agent]~~
20 insurance producer at request of the broker, shall be held to be
21 the agent of the insured, anything in the application or policy
22 to the contrary notwithstanding, unless under particular
23 circumstances it is found that the broker is representing the
24 insurer. This section shall not apply as to surplus line
25 brokers, nor as to acts of the ~~[agent]~~ insurance producer in

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1 fraud or attempted fraud of the insurer or acts of the broker in
2 fraud or attempted fraud of the insured."

3 SECTION 61. Section 59A-30-4 NMSA 1978 (being Laws 1985,
4 Chapter 28, Section 4, as amended) is amended to read:

5 "59A-30-4. CONTROL AND SUPERVISION BY SUPERINTENDENT.--

6 A. Title insurers and title insurance [~~agents~~]
7 producers shall operate in New Mexico under the control and
8 supervision of the superintendent. The superintendent shall
9 promulgate such rules and regulations as are necessary to carry
10 out the provisions of the New Mexico Title Insurance Law. The
11 superintendent may adopt uniform rules and regulations to address
12 underwriting standards and practices, including but not limited
13 to rules and regulations that prohibit title insurers from
14 insuring specified risks that the superintendent determines may
15 pose an unreasonable risk to the financial stability of title
16 insurers.

17 B. No title insurer or title insurance [~~agent~~]
18 producer shall collect any premium, issue any title insurance
19 policy or agency agreement, or reinsure any portion of the risk
20 assumed under any title insurance policy, other than in
21 conformance with the New Mexico Title Insurance Law and rules and
22 regulations adopted by the superintendent as authorized by the
23 New Mexico Title Insurance Law."

24 SECTION 62. Section 59A-30-6 NMSA 1978 (being Laws 1985,
25 Chapter 28, Section 6, as amended) is amended to read:

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1 "59A-30-6. PREMIUMS--AGENCY AGREEMENTS--DUTY TO PROMULGATE
2 REASONABLE RATES--EXCEPTION.--

3 A. The superintendent shall promulgate the premium
4 rates of title insurers and title insurance [~~agents~~] producers
5 for title insurance policies and the percentage of premium to be
6 retained by title insurers under agency agreements, except that
7 premium rates for reinsurance as between title insurers shall not
8 be promulgated by the superintendent. No premium that has not
9 been promulgated or approved by the superintendent shall be
10 charged for any title insurance policy. The superintendent shall
11 not promulgate charges of title insurers and title insurance
12 [~~agents~~] producers other than premium rates for title insurance
13 policies and the percentage of premium to be retained by title
14 insurers under agency agreements.

15 B. The superintendent shall promulgate additional
16 premium rates for searches or examinations of title conducted or
17 performed for the purpose of issuance of a title insurance policy
18 when the search or examination involves more than one chain of
19 title or other unusual complexity.

20 C. Premium rates promulgated by the superintendent
21 shall not be excessive, inadequate or unfairly discriminatory and
22 shall contain an allowance permitting a profit that is not
23 unreasonable in relation to the risks incurred in the business of
24 title insurance. Premium rates may include an allowance for
25 recoupment of assessments made pursuant to the Title Insurance

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1 Guaranty Act.

2 D. Title insurance [~~agents~~] producers shall retain
3 not less than eighty percent of the gross premiums collected on
4 commitments, policies and endorsements issued for one to four
5 family residential property transactions with a liability amount
6 of not more than two million dollars (\$2,000,000); provided,
7 however, that from July 1, 2009 until otherwise ordered by the
8 superintendent, title insurance [~~agents~~] producers shall retain
9 not less than eighty-one percent of the gross premiums collected
10 on commitments, policies and endorsements issued for one to four
11 family residential property transactions with a liability amount
12 of not more than two million dollars (\$2,000,000). The portion
13 of the premium to be retained by the title insurance [~~agent~~]
14 producers for policies with a liability amount greater than two
15 million dollars (\$2,000,000) shall be set by rule.

16 E. A title insurer may file with the superintendent
17 proposed title insurance rates for a specific county or counties
18 lower than the premium rate promulgated by the superintendent.
19 The superintendent shall provide notice of the filed title
20 insurance rates to all [~~agents~~] insurance producers and
21 underwriters doing business in that county or counties and may
22 conduct a hearing. In determining whether to approve filed title
23 insurance rates, the superintendent shall consider the interests
24 and protection of consumers and independent title insurance
25 [~~agents~~] producers and the potential impact on competition within

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1 the title insurance industry. Upon approval of the filed title
2 insurance rates, the title insurer and its [~~agents~~] insurance
3 producers shall use the filed and approved title insurance rates.

4 F. The superintendent shall adopt rules to establish
5 standards and procedures by which a title insurance rate lower
6 than the promulgated rate shall be filed and may be approved."

7 SECTION 63. Section 59A-32A-4 NMSA 1978 (being Laws 2001,
8 Chapter 94, Section 4) is amended to read:

9 "59A-32A-4. LICENSING RENTAL CAR COMPANIES AS RENTAL CAR
10 AGENTS.--A rental car company may apply to be licensed as a
11 rental car agent under the terms of the Rental Car Insurance
12 Limited Producer License Act if it satisfies all of the
13 requirements of that act and if it files the following documents
14 with the superintendent of insurance:

15 A. a written application for licensure, signed by the
16 applicant or by an officer of the applicant, in the form
17 prescribed by the superintendent of insurance that includes a
18 listing of all locations at which the rental car company intends
19 to offer, sell, bind, effect, solicit or negotiate rental car
20 insurance; and

21 B. a certificate filed by the insurer for the
22 applicant stating that the insurer has satisfied itself that the
23 applicant is trustworthy and competent to act as its insurance
24 [~~agent~~] producer limited to this purpose; that the insurer has
25 reviewed the employee training program required by Subsection D

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1 of Section [~~5 of the Rental Car Insurance Limited Producer~~
2 ~~License Act~~] 59A-32A-5 NMSA 1978 and believes that it satisfies
3 the statutory requirements; and that the insurer will appoint the
4 applicant to act as its [~~agent~~] insurance producer to transact
5 the kinds of insurance that are permitted by the Rental Car
6 Insurance Limited Producer License Act if the license for which
7 the applicant is applying is issued by the superintendent of
8 insurance. The certification shall be subscribed by an officer
9 or managing agent of the insurer on a form prescribed by the
10 superintendent of insurance."

11 **SECTION 64.** Section 59A-32A-7 NMSA 1978 (being Laws 2001,
12 Chapter 94, Section 7) is amended to read:

13 "59A-32A-7. RENTAL CAR AGENT AND ENDORSEE PROHIBITIONS.--A
14 rental car agent or endorsee shall not:

15 A. offer, sell, bind, effect, solicit or negotiate
16 the purchase of rental car insurance except in conjunction with
17 and incidental to rental agreements;

18 B. advertise, represent or otherwise portray itself
19 or any of its employees or agents as licensed insurers [~~insurance~~
20 ~~agents~~] or insurance [~~brokers~~] producers; or

21 C. pay any person, including a rental car endorsee,
22 any compensation, fee or commission that is dependent solely on
23 the placement of insurance under the license issued pursuant to
24 the Rental Car Insurance Limited Producer License Act. Nothing
25 in this section shall prohibit production payments or incentive

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1 payments to a person that are not dependent solely upon the sale
2 of insurance."

3 SECTION 65. Section 59A-38-11 NMSA 1978 (being Laws 1984,
4 Chapter 127, Section 654) is amended to read:

5 "59A-38-11. LLOYDS PLAN [~~AGENTS AND SOLICITORS~~] INSURANCE
6 PRODUCERS--LICENSING.--The provisions of the Insurance Code as to
7 qualifications, appointment, licensing and regulation of
8 insurance [~~agents and solicitors~~] producers apply neither to the
9 attorney-in-fact at Lloyds nor to [~~the~~] a salaried representative
10 of Lloyds who receives no commission, but do apply to any [~~agent~~
11 ~~or solicitor~~] insurance producer who receives any commission."

12 SECTION 66. Section 59A-46-17 NMSA 1978 (being Laws 1993,
13 Chapter 266, Section 17) is amended to read:

14 "59A-46-17. REGULATION OF HEALTH MAINTENANCE ORGANIZATION
15 [~~AGENTS~~] INSURANCE PRODUCERS.--

16 A. Requirements and procedures for licensing of
17 health maintenance organization [~~agents~~] insurance producers
18 shall be governed by the provisions of Chapter 59A, Articles 11
19 and 12 NMSA 1978 and any regulations adopted by the
20 superintendent pertaining [~~thereto~~] to those articles.

21 B. None of the following shall be required to hold a
22 health maintenance organization [~~agent~~] insurance producer
23 license:

24 (1) any regular salaried officer or employee of
25 a health maintenance organization who devotes substantially all

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1 of [~~his~~] that person's time to activities other than the taking
2 or transmitting of applications or membership fees or premiums
3 for health maintenance organization membership or who receives no
4 commission or other compensation directly dependent upon the
5 business obtained and who does not solicit or accept from the
6 public applications for health maintenance organization
7 membership;

8 (2) employers or their officers or employees or
9 the trustees of any employee benefit plan to the extent that such
10 employers, officers, employees or trustees are engaged in the
11 administration or operation of any program of employee benefits
12 involving the use of health maintenance organization memberships,
13 if those employers, officers, employees or trustees are not
14 compensated directly or indirectly by the health maintenance
15 organization issuing [~~such~~] the health maintenance organization
16 memberships;

17 (3) banks or their officers and employees to
18 the extent that such banks, officers and employees collect and
19 remit charges by charging same against accounts of depositors on
20 the orders of such depositors; or

21 (4) any person or the employee of any person
22 who has contracted to provide administrative, management or
23 health care services to a health maintenance organization and who
24 is compensated for those services by the payment of an amount
25 calculated as a percentage of the revenues, net income or profit

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1 of the health maintenance organization, if that method of
2 compensation is the sole basis for subjecting that person or the
3 employee of the person to the provisions of the Health
4 Maintenance Organization Law.

5 C. The superintendent may by rule exempt certain
6 classes of persons from the requirement of obtaining a license
7 if:

8 (1) the functions they perform do not require
9 special competence, trustworthiness or the regulatory
10 surveillance made possible by licensing; or

11 (2) other existing safeguards make regulation
12 unnecessary."

13 SECTION 67. Section 59A-47-30 NMSA 1978 (being Laws 1984,
14 Chapter 127, Section 879.29, as amended by Laws 1999, Chapter
15 272, Section 23 and also by Laws 1999, Chapter 289, Section 35)
16 is amended to read:

17 "59A-47-30. LICENSED [~~AGENTS OR SOLICITORS~~] INSURANCE
18 PRODUCERS REQUIRED--QUALIFICATIONS, LICENSING PROCEDURES AND
19 CONDITIONS.--

20 A. Solicitation of subscriberships for a health care
21 plan shall be made only by [~~agents~~] insurance producers of [~~such~~]
22 the plan [~~or solicitors of such agents~~] who are duly qualified,
23 appointed and licensed as such under the Insurance Code. This
24 provision shall not apply [~~as~~] to salaried officers or employees
25 of health care plans who are visiting or instructing their

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1 licensed [~~agents~~] insurance producers and who do not receive any
2 part of the commission for any business written by such [~~agents~~]
3 insurance producers with their assistance.

4 B. No person shall be appointed or licensed as a
5 health care plan [~~agent or solicitor~~] insurance producer unless
6 qualified [~~therefor~~] as follows:

7 (1) is an individual at least eighteen years of
8 age;

9 (2) has had, or will receive, reasonable
10 experience or instruction in the health care plan for which
11 license is applied;

12 (3) is [~~be~~] trustworthy and of good business
13 reputation;

14 (4) intends to engage in a bona fide way in the
15 business of the health care plan; and

16 (5) passes [~~to the superintendent's~~
17 ~~satisfaction~~] an examination for license [~~as~~] given by or under
18 authorization of the superintendent.

19 C. A health care plan [~~agent~~] insurance producer
20 shall be appointed by and at any one time represent only one
21 [~~such~~] health care plan.

22 D. Subject to the other provisions of this section,
23 procedures for appointment and licensing [~~such agents and~~
24 ~~solicitors~~] insurance producers, examination, issuance or denial
25 of license, continuation or expiration, suspension, revocation or

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1 refusal to continue license and other applicable matters relating
2 to [~~such~~] licensing and licenses shall be as provided as to
3 licenses of [~~agents and solicitors~~] insurance producers as to
4 health insurance under Chapter 59A, Article 11 NMSA 1978. Fee
5 for application for license and continuation of license shall be
6 as specified in Section 59A-6-1 NMSA 1978, and neither fee shall
7 be refundable."

8 SECTION 68. Section 59A-55-6 NMSA 1978 (being Laws 1988,
9 Chapter 125, Section 6) is amended to read:

10 "59A-55-6. TAXATION OF RISK RETENTION GROUPS.--

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

18 B. To the extent licensed [~~agents or brokers~~]
19 insurance producers are utilized pursuant to Section [~~24 of the~~
20 ~~Risk Retention and Purchasing Group Act~~] 59A-55-24 NMSA 1978,
21 they shall report to the superintendent the premiums for direct
22 business for risks resident or located within this state, which
23 [~~such licensees~~] the insurance producers have placed with or on
24 behalf of a risk retention group not licensed in this state.

25 C. To the extent that insurance [~~agents or brokers~~]

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1 producers are utilized pursuant to Section [~~24 of the Risk~~
2 ~~Retention and Purchasing Group Act, such agent or broker~~]
3 59A-55-24 NMSA 1978, the insurance producer shall keep a complete
4 and separate record of all policies procured from each such risk
5 retention group, which record shall be open to examination by the
6 superintendent and shall contain the information required by the
7 superintendent by [~~regulation~~] rule."

8 SECTION 69. Section 59A-55-24 NMSA 1978 (being Laws 1988,
9 Chapter 125, Section 24, as amended by Laws 1999, Chapter 272,
10 Section 27 and also by Laws 1999, Chapter 289, Section 41) is
11 amended to read:

12 "59A-55-24. DUTY OF [~~AGENTS OR BROKERS~~] INSURANCE
13 PRODUCERS TO OBTAIN LICENSE.--

14 A. No person, firm, association or corporation shall
15 act or aid in any manner in soliciting, negotiating or procuring
16 liability insurance in New Mexico from a risk retention group
17 unless such person, firm, association or corporation is licensed
18 as an insurance [~~agent or broker~~] producer pursuant to the
19 provisions of the New Mexico Insurance Code.

20 B. No person, firm, association or corporation shall
21 act or aid in any manner in soliciting, negotiating or procuring
22 liability insurance:

23 (1) in New Mexico for a purchasing group from
24 an authorized insurer or a risk retention group chartered in a
25 state, unless such person, firm, association or corporation is

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1 licensed as an insurance [~~agent or broker~~] producer pursuant to
2 the provisions of the New Mexico Insurance Code;

3 (2) in New Mexico for any members of a
4 purchasing group under a purchasing group's policy, unless such
5 person, firm, association or corporation is licensed as an
6 insurance [~~agent or broker~~] producer pursuant to the provisions
7 of the New Mexico Insurance Code; or

8 (3) from an insurer not authorized to do
9 business in New Mexico on behalf of a purchasing group located in
10 this state, unless such person, firm, association or corporation
11 is licensed as a surplus lines agent or excess line broker
12 pursuant to the provisions of the New Mexico Insurance Code.

13 C. Every person, firm, association or corporation
14 licensed pursuant to the provisions of the New Mexico Insurance
15 Code on business placed with risk retention groups or written
16 through a purchasing group shall inform each prospective insured
17 of the provisions of the notice required by Section 59A-55-10
18 NMSA 1978 in the case of a purchasing group."

19 SECTION 70. REPEAL.--Sections 59A-7-5, 59A-7-8, 59A-7-9,
20 59A-11-19, 59A-12-5, 59A-12-6, 59A-12-8 through 59A-12-10,
21 59A-12-14, 59A-12-20.1 and 59A-12B-3 NMSA 1978 (being Laws 1984,
22 Chapter 127, Sections 111, 114, 115, 198, 205, 206, 207, 209 and
23 210, Laws 1997, Chapter 48, Section 1, Laws 1984, Chapter 127,
24 Section 215, Laws 2003, Chapter 306, Section 5 and Laws 1993,
25 Chapter 320, Section 29, as amended) are repealed.

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