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SENATE BILL

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

Katy Duhigg

AN ACT

RELATING TO CONSUMER PROTECTION; ENACTING THE PATIENTS' DEBT  
COLLECTION PROTECTION ACT; PREVENTING COLLECTION FROM INDIGENT  
PATIENTS; REQUIRING HEALTH CARE FACILITIES TO SCREEN PATIENTS  
FOR ASSISTANCE ELIGIBILITY; REQUIRING HEALTH CARE FACILITIES TO  
PROVIDE PRICE AND PAYMENT INFORMATION; PROHIBITING  
DISCRIMINATORY PRICING; REQUIRING HEALTH CARE FACILITIES TO  
REPORT HOW INDIGENT CARE FUNDS ARE SPENT; LIMITING  
ENFORCEABILITY OF CERTAIN JUDGMENTS; MAKING VIOLATIONS OF THE  
PATIENTS' DEBT COLLECTION PROTECTION ACT AND THE COLLECTION  
AGENCY REGULATORY ACT UNFAIR OR DECEPTIVE TRADE PRACTICES;  
ADDING TO THE DEFINITION OF "COLLECTION AGENCY" IN THE  
COLLECTION AGENCY REGULATORY ACT; INCREASING SURETY BOND  
COVERAGE REQUIREMENTS; REMOVING ATTORNEY FEES AND COSTS FOR  
CERTAIN SUITS BY COLLECTION AGENCIES; AMENDING AND ENACTING  
SECTIONS OF THE NMSA 1978.

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

SECTION 1. A new section of Chapter 57 NMSA 1978 is enacted to read:

"[NEW MATERIAL] SHORT TITLE.--Sections 1 through 15 of this act may be cited as the "Patients' Debt Collection Protection Act"."

SECTION 2. A new section of Chapter 57 NMSA 1978 is enacted to read:

"[NEW MATERIAL] DEFINITIONS.--As used in the Patients' Debt Collection Protection Act:

A. "collection action" means any of the following:

- (1) selling a person's medical debt to another party, including a medical debt collector;
- (2) reporting adverse information about a patient to a consumer reporting agency; or
- (3) actions that require a legal or judicial process, including:
  - (a) placing a lien on a person's property;
  - (b) attaching or seizing a person's bank account or any other personal property;
  - (c) commencing a civil action against a person; or
  - (d) garnishing a person's wages;

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1           B. "consumer" means a natural person;

2           C. "consumer reporting agency" means a person,  
3 that, for monetary fees, dues or on a cooperative nonprofit  
4 basis, regularly engages in whole or in part in the practice of  
5 assembling or evaluating consumer credit information or other  
6 information on consumers for the purpose of furnishing consumer  
7 reports to third parties;

8           D. "department" means the human services  
9 department;

10          E. "gross charges" means a health care facility's  
11 full, established price for health care services that the  
12 facility charges uninsured patients before applying any  
13 contractual allowances, discounts or deductions;

14          F. "health care facility" means:

15               (1) a public hospital, profit or nonprofit  
16 private hospital, general or special hospital, outpatient  
17 facility, crisis triage center, freestanding birth center,  
18 ambulatory surgical center, adult daycare facility, nursing  
19 home, intermediate care facility, assisted living facility,  
20 boarding home not under the control of an institution of higher  
21 learning, child care center, shelter care home, diagnostic and  
22 treatment center, rehabilitation center, infirmary, community  
23 mental health center that serves both children and adults or  
24 adults only, residential treatment center that serves persons  
25 up to twenty-one years of age, community mental health center

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1 that serves only persons up to twenty-one years of age, day  
2 treatment center that serves persons up to twenty-one years of  
3 age or a health service organization operating as a  
4 freestanding hospice or a home health agency. "Health care  
5 facility" also includes those facilities that must be licensed  
6 by the state to obtain or maintain full or partial, permanent  
7 or temporary federal funding;

8 (2) a practice that provides medical,  
9 surgical, behavioral, optical, radiology, laboratory, dental or  
10 other health care services in New Mexico with revenues of at  
11 least two million dollars (\$2,000,000) annually; or

12 (3) a licensed health care professional who  
13 provides health care services in one or more of the settings  
14 listed in Paragraph (1) or (2) of this subsection, but bills  
15 patients independently;

16 G. "health care services" means services for the  
17 diagnosis, prevention, treatment, cure or relief of a physical,  
18 dental, behavioral or mental health condition, substance use  
19 disorder, illness, injury or disease, which services include  
20 procedures, products, devices or medications;

21 H. "household income" means income calculated by  
22 using the methods used to calculate medicaid eligibility;

23 I. "indigent patient" means a patient with a  
24 household income that does not exceed two hundred percent of  
25 the federal poverty level;

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1 J. "medical creditor" means a person that provides  
2 health care services and to whom the consumer owes money for  
3 those services, or the person that provided health care  
4 services and to whom the consumer previously owed money if the  
5 medical debt has been purchased by one or more debt buyers;

6 K. "medical debt" means a debt arising from the  
7 receipt of health care services;

8 L. "medical debt buyer" means a person that is  
9 engaged in the business of purchasing medical debts for  
10 collection purposes, whether it collects the debt itself or  
11 hires a third party for collection or an attorney for  
12 litigation in order to collect such debt;

13 M. "medical debt collector" means a person that  
14 regularly collects or attempts to collect, directly or  
15 indirectly, medical debts originally owed or due or asserted to  
16 be owed or due to another person. A medical debt buyer is  
17 considered to be a medical debt collector for all purposes; and

18 N. "patient" means the person who received health  
19 care services or a parent or legal guardian of a minor or an  
20 adult under guardianship."

21 SECTION 3. A new section of Chapter 57 NMSA 1978 is  
22 enacted to read:

23 "[NEW MATERIAL] REQUIREMENT TO PROVIDE SCREENING FOR  
24 INSURANCE AND PROGRAM ELIGIBILITY.--In addition to any other  
25 actions required by applicable state or federal law or local

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1 government ordinance, health care facilities shall take the  
2 following steps before seeking payment for an emergency or  
3 medically necessary care:

4 A. ask if the patient has health insurance;

5 B. if the patient is uninsured, offer information  
6 about and offer to screen the patient for all available public  
7 and private insurance, any other public programs that may  
8 assist with health care costs and any financial assistance  
9 offered by that facility; and

10 C. offer to provide assistance with the application  
11 process and, if requested, provide that assistance for programs  
12 identified during screening."

13 SECTION 4. A new section of Chapter 57 NMSA 1978 is  
14 enacted to read:

15 "[NEW MATERIAL] INDIGENT PATIENTS--PATIENTS' DEBT  
16 COLLECTION PROTECTIONS.--For indigent patients, charges for  
17 health care services and medical debt shall not be pursued  
18 through collection actions. Health care facilities and medical  
19 creditors shall not hire or otherwise engage third parties to  
20 perform collection actions against or otherwise recover debts  
21 from indigent patients."

22 SECTION 5. A new section of Chapter 57 NMSA 1978 is  
23 enacted to read:

24 "[NEW MATERIAL] DEPARTMENT GUIDANCE ON FUNDING SOURCES,  
25 BILLING AND SCREENING.--

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1           A. The department shall provide health care  
2 facilities with guidance on accessing available sources of  
3 funding for care that maximizes the use of funds in the  
4 following order of priority:

- 5                   (1) federal funds;  
6                   (2) state funds; and  
7                   (3) other available funds.

8           B. The department shall provide health care  
9 facilities with guidance on billing and screening best  
10 practices that include policies to prevent the disclosure of  
11 patients' personal information to third parties."

12           SECTION 6. A new section of Chapter 57 NMSA 1978 is  
13 enacted to read:

14           "[NEW MATERIAL] PRICE INFORMATION.--All health care  
15 facilities shall post price information on their websites. The  
16 information shall be accessible via a link from the website's  
17 homepage and, at a minimum, shall include:

- 18                   A. a list of gross charges for all health care  
19 services;  
20                   B. the amount that medicare would reimburse for the  
21 health care service, next to the relevant gross charge; and  
22                   C. plain-language titles or descriptions of health  
23 care services that can be understood by the average consumer."

24           SECTION 7. A new section of Chapter 57 NMSA 1978 is  
25 enacted to read:

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1 "[NEW MATERIAL] BILLING INFORMATION.--

2 A. All bills sent from a health care facility or  
3 medical creditor to a patient shall include a complete and  
4 plain-language description of the date, amount and nature of  
5 all charges and all efforts undertaken by the health care  
6 facility or medical creditor to bill insurance or public  
7 programs for the services provided. Prior to initiating a  
8 communication with a consumer or a collection action over  
9 medical debt, a medical debt collector shall have all required  
10 billing information.

11 B. In all communications with a consumer about  
12 medical debt, including communication related to collection  
13 actions, a health care facility, medical creditor or medical  
14 debt collector shall inform the consumer of the availability of  
15 the information required pursuant to Subsection A of this  
16 section and offer to provide that information to the consumer."

17 SECTION 8. A new section of Chapter 57 NMSA 1978 is  
18 enacted to read:

19 "[NEW MATERIAL] RECEIPTS FOR PAYMENTS.--

20 A. Within ten business days of receipt of a payment  
21 on a medical debt, the health care facility, medical creditor,  
22 medical debt collector or their agents receiving the payment  
23 shall furnish a receipt to the person who made the payment.

24 All receipts shall show:

25 (1) the amount paid;

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- 1 (2) the date payment was received;
- 2 (3) the account's balance before the most
- 3 recent payment;
- 4 (4) the new balance after application of the
- 5 payment;
- 6 (5) the interest rate and interest accrued
- 7 since the consumer's last payment;
- 8 (6) the consumer's account number;
- 9 (7) the name of the current owner of the debt
- 10 and, if different, the name of the medical creditor; and
- 11 (8) whether the payment is accepted as payment
- 12 in full of the debt.

13 B. All health care facilities, medical creditors  
14 and medical debt collectors shall apply payments as of the date  
15 payment was received and use that date when assessing penalties  
16 or interest accumulation."

17 SECTION 9. A new section of Chapter 57 NMSA 1978 is  
18 enacted to read:

19 "[NEW MATERIAL] PROHIBITION OF DISCRIMINATORY  
20 PRICING.--Health care facilities shall charge for services  
21 provided to uninsured patients an amount no greater than the  
22 applicable payment rate for those services under the federal  
23 medicare program."

24 SECTION 10. A new section of Chapter 57 NMSA 1978 is  
25 enacted to read:

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1 "[NEW MATERIAL] INDIGENT CARE REPORTING REQUIREMENTS.--

2 A. Health care facilities that receive indigent  
3 care funds pursuant to the Indigent Hospital and County Health  
4 Care Act or Section 4-48B-8 NMSA 1978 shall annually report to  
5 the department how the funds were used. A health care  
6 facility's report shall:

7 (1) list each health care service and how many  
8 patients the funds covered and demonstrate that each dollar  
9 received was spent on charity care; and

10 (2) specify the health care facility's  
11 estimated annual amount and percentage of the health care  
12 facility's bad debt expense attributable to patients eligible  
13 under the health care facility's financial assistance policy  
14 and explain the methodology used by the health care facility to  
15 estimate this amount and percentage.

16 B. A health care facility's report shall be  
17 available to the public via a link from the homepage of the  
18 health care facility's website."

19 SECTION 11. A new section of Chapter 57 NMSA 1978 is  
20 enacted to read:

21 "[NEW MATERIAL] LIABILITY FOR MEDICAL DEBT.--

22 A. Parents and legal guardians are jointly liable  
23 for any medical debts incurred by minors.

24 B. A spouse or other person shall not be liable for  
25 the medical debt or nursing home debt of another person

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1 eighteen years or older. A person may voluntarily consent to  
2 assume liability, but such consent shall:

3 (1) be on a separate, stand-alone document  
4 signed by the person;

5 (2) not be solicited in an emergency room or  
6 during an emergency situation; and

7 (3) not be required as a condition of  
8 providing emergency or non-emergency health care services.

9 C. A person who assumes liability for medical or  
10 nursing home debt for a spouse or other person pursuant to  
11 Subsection B of this section shall be considered the patient  
12 and shall receive all the same rights and protections provided  
13 to other patients under the provisions of the Patients' Debt  
14 Collection Protection Act."

15 SECTION 12. A new section of Chapter 57 NMSA 1978 is  
16 enacted to read:

17 "[NEW MATERIAL] PRIVATE REMEDY.--

18 A. A violation of the Patients' Debt Collection  
19 Protection Act constitutes an unfair or deceptive trade  
20 practice pursuant to the Unfair Practices Act.

21 B. A consumer may sue for injunctive or other  
22 appropriate equitable relief to enforce the provisions of the  
23 Patients' Debt Collection Protection Act.

24 C. The remedies provided in this section are not  
25 intended to be the exclusive remedies available to a consumer

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1 nor shall the consumer be required to exhaust any  
2 administrative remedies provided by the provisions of the  
3 Patients' Debt Collection Protection Act or other applicable  
4 law.

5 D. A financial assistance policy or agreement  
6 between a patient and a health care facility, medical creditor  
7 or medical debt collector shall not contain any provision that,  
8 prior to a dispute arising, waives or has the practical effect  
9 of waiving the rights of a patient to resolve that dispute by  
10 obtaining:

11 (1) injunctive, declaratory or other equitable  
12 relief;

13 (2) multiple or minimum damages as specified  
14 by statute;

15 (3) attorney fees and costs as specified by  
16 statute or as available at common law; or

17 (4) a hearing at which that party can present  
18 evidence in person.

19 E. A provision in a financial assistance policy or  
20 other written agreement that violates the provisions of  
21 Subsection D of this section is void and unenforceable. A  
22 court may refuse to enforce other provisions of the financial  
23 assistance policy or other written agreement as equity may  
24 require."

25 SECTION 13. A new section of Chapter 57 NMSA 1978 is

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1 enacted to read:

2 "[NEW MATERIAL] ENFORCEMENT.--

3 A. The attorney general may enforce the provisions  
4 of the Patients' Debt Collection Protection Act, and may adopt  
5 rules in accordance with that act to effectuate the purposes of  
6 that act to provide for the protection of patients and their  
7 families and to assist market participants in interpreting that  
8 act.

9 B. The attorney general shall establish a complaint  
10 process whereby an aggrieved patient or a member of the public  
11 may file a complaint against a health care facility, medical  
12 creditor or medical debt collector that violates a provision of  
13 the Patients' Debt Collection Protection Act. All complaints  
14 shall be considered public records pursuant to the Inspection  
15 of Public Records Act, with the exception of the complainant's  
16 name, address or other personal identifying information."

17 SECTION 14. A new section of Chapter 57 NMSA 1978 is  
18 enacted to read:

19 "[NEW MATERIAL] PROHIBITION OF WAIVER OF RIGHTS.--A waiver  
20 by a patient or other consumer of any protection provided by or  
21 any right of the patient or other consumer pursuant to the  
22 Patients' Debt Collection Protection Act is void and may not be  
23 enforced by any court or any other person."

24 SECTION 15. A new section of Chapter 57 NMSA 1978 is  
25 enacted to read:

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1            "[NEW MATERIAL] SEVERABILITY.--If any part or application  
2 of the Patients' Debt Collection Protection Act is held  
3 invalid, the remainder or its application to other situations  
4 or persons shall not be affected."

5            SECTION 16. Section 37-1-2 NMSA 1978 (being Laws 1891,  
6 Chapter 53, Section 2, as amended) is amended to read:

7            "37-1-2. JUDGMENTS.--Actions founded upon any judgment of  
8 any court of the state may be brought within fourteen years  
9 from the date of the judgment and not afterward. Actions  
10 founded upon any judgment of any court of record of any other  
11 state or territory of the United States, or of the federal  
12 courts, may be brought within the applicable period of  
13 limitation within that jurisdiction, not to exceed fourteen  
14 years from the date of the judgment, and not afterward. A  
15 judgment obtained through a common law action on a prior  
16 judgment or through any other means of revival of a prior  
17 judgment shall not be enforceable after fourteen years from the  
18 date of the original judgment upon which it is founded."

19            SECTION 17. Section 61-18A-2 NMSA 1978 (being Laws 1987,  
20 Chapter 252, Section 2, as amended) is amended to read:

21            "61-18A-2. DEFINITIONS.--As used in the Collection Agency  
22 Regulatory Act:

23            A. "division" means the financial institutions  
24 division of the regulation and licensing department;

25            B. "director" means the director of the division or

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1 a duly authorized agent designated by the director;

2 C. "collection agency" means a person engaging in  
3 business for the purpose of collecting or attempting to  
4 collect, directly or indirectly, debts owed or due or asserted  
5 to be owed or due another, where such person is so engaged by  
6 two or more creditors, or a person engaging in business the  
7 principal purpose of which is the collection of debts. The  
8 term also includes a creditor who, in the process of collecting  
9 the creditor's own debts, uses any name other than the  
10 creditor's own that would indicate that a third person is  
11 collecting or attempting to collect the debts. The term does  
12 not include:

13 (1) an officer or employee of a creditor  
14 while, in the name of the creditor, collecting debts for such  
15 creditor;

16 (2) a person while collecting debts for  
17 another person, both of whom are related by common ownership or  
18 affiliated by corporate control, if the person collects debts  
19 only for persons to whom it is so related or affiliated and if  
20 the principal business of such person is not the collection of  
21 debts;

22 (3) an officer or employee of the United  
23 States, a state or a political subdivision thereof to the  
24 extent that collecting or attempting to collect a debt is in  
25 the performance of official duties;

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1                   (4) a person while serving or attempting to  
2 serve legal process on any other person in connection with the  
3 judicial enforcement of a debt;

4                   (5) a nonprofit organization that, at the  
5 request of debtors, performs bona fide consumer credit  
6 counseling and assists debtors in the liquidation of their  
7 debts by receiving payments from such debtors and distributing  
8 such amounts to creditors;

9                   (6) an attorney-at-law collecting a debt as an  
10 attorney on behalf of and in the name of a client; or

11                   (7) a person collecting or attempting to  
12 collect a debt owed or due or asserted to be owed or due to  
13 another to the extent such activity:

14                               (a) is incidental to a bona fide  
15 fiduciary obligation or a bona fide escrow arrangement;

16                               (b) concerns a debt that was originated  
17 by such person;

18                               (c) concerns a debt that was not in  
19 default at the time it was obtained by such person; or

20                               (d) concerns a debt obtained by such  
21 person as a secured party in a commercial credit transaction  
22 involving the creditor;

23                   D. "communication" means the conveying of  
24 information regarding a debt directly or indirectly to a person  
25 through any medium;



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1           E. "creditor" means a person who offers or extends  
2 credit creating a debt or to whom a debt is owed, but the term  
3 does not include a person to the extent that the person  
4 receives an assignment or transfer of a debt in default solely  
5 for the purpose of facilitating collection of such debt for  
6 another;

7           F. "debt" means an obligation or alleged obligation  
8 of a debtor to pay money arising out of a transaction in which  
9 the money, property, insurance or services that are the subject  
10 of the transaction are primarily for personal, family or  
11 household purposes, whether or not such obligation has been  
12 reduced to judgment;

13           G. "debt collector" means a collection agency, a  
14 reposessor, a manager, a solicitor and an attorney-at-law  
15 collecting a debt as an attorney on behalf of and in the name  
16 of a client;

17           H. "debtor" means a natural person obligated or  
18 allegedly obligated to pay a debt;

19           I. "location information" means a debtor's place of  
20 abode and the telephone number at such place or the debtor's  
21 place of employment;

22           J. "manager" means a natural person who qualifies  
23 under the Collection Agency Regulatory Act to be in full-time  
24 charge of a licensed collection agency and to whom a manager's  
25 license has been issued by the director;

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1           K. "nationwide multistate licensing system and  
2 registry" means a licensing system developed and maintained by  
3 the conference of state bank supervisors and the American  
4 association of residential mortgage regulators pursuant to the  
5 federal Secure and Fair Enforcement for Mortgage Licensing Act  
6 of 2008 to manage mortgage licenses and other financial  
7 services licenses, or a successor registry;

8           L. "person" means an individual, corporation,  
9 partnership, association, joint-stock company, trust where the  
10 interests of the beneficiaries are evidenced by a security,  
11 unincorporated organization, government or political  
12 subdivision of a government;

13           M. "repossessor" means a person engaged solely in  
14 the business of repossessing personal property for others for a  
15 fee. The term does not include a duly licensed collection  
16 agency; and

17           N. "solicitor" means a natural person who, through  
18 lawful means, communicates with debtors or solicits the payment  
19 of debts for a collection agency licensee by the use of  
20 telephone, personal contact, letters or other methods of  
21 collection conducted from and within the licensee's office."

22           SECTION 18. Section 61-18A-6 NMSA 1978 (being Laws 1987,  
23 Chapter 252, Section 6) is amended to read:

24           "61-18A-6. PENALTY FOR VIOLATIONS.--

25           A. In addition to any other penalty, [~~any~~] a

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1 person, ~~[or any]~~ including an officer or director of ~~[any]~~ a  
2 partnership, corporation or association conducting business as  
3 a collection agency or reposessor, who without first having  
4 been licensed pursuant to the Collection Agency Regulatory Act  
5 or who carries on such business after the revocation or  
6 expiration of ~~[any]~~ a license ~~[which]~~ that the director has  
7 refused to renew is guilty of a fourth degree felony.

8 B. ~~[Any]~~ A person violating any other provision of  
9 ~~[that]~~ the Collection Agency Regulatory Act is guilty of a  
10 misdemeanor.

11 C. A violation of the Collection Agency Regulatory  
12 Act constitutes an unfair or deceptive trade practice pursuant  
13 to the Unfair Practices Act."

14 SECTION 19. Section 61-18A-15 NMSA 1978 (being Laws 1987,  
15 Chapter 252, Section 15) is amended to read:

16 "61-18A-15. SURETY BOND.--

17 A. Prior to the issuance of any collection agency  
18 or reposessor's license or renewal thereof, a surety bond in  
19 the penal sum of ~~[five thousand dollars (\$5,000)]~~ twenty  
20 thousand dollars (\$20,000), which may by regulation or order of  
21 the director be increased, shall be filed with the division.  
22 The bond shall run to the people of the state of New Mexico and  
23 shall be executed and acknowledged by the applicant as  
24 principal and by a corporation ~~[which]~~ that is licensed by the  
25 superintendent of insurance of this state to transact the

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1 business of fidelity and surety insurance as surety.

2 B. The surety bond shall provide for suit thereon  
3 by any person who has a cause of action under the Collection  
4 Agency Regulatory Act or rules [~~and regulations~~] established  
5 [~~thereunder~~] pursuant to that act.

6 C. No action shall be brought upon any bond after  
7 the expiration of three years from the date of the occurrence  
8 of the act upon which a claim is based.

9 D. The bond shall be continuous in form and remain  
10 in full force and effect concurrently with the license and any  
11 renewals thereof unless terminated or canceled by action of the  
12 surety as provided in the Collection Agency Regulatory Act.

13 E. Upon the filing of thirty days' written notice  
14 with the director by any surety company of its withdrawal as  
15 the surety of any licensee, the director shall [~~forthwith~~]  
16 immediately give notice to the licensee of the withdrawal,  
17 which notice shall be by certified mail with request for return  
18 receipt and shall be addressed to the licensee at its main  
19 office in New Mexico as shown by the records of the director.  
20 The license of any licensee shall be void upon the termination  
21 of the bond by the surety company unless, prior to termination,  
22 a new bond has been filed with the division.

23 F. Should the license of any company to transact  
24 fidelity and surety insurance business in this state be  
25 canceled, revoked or otherwise terminated, all collection

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1 agency bonds for which such surety company is surety are  
2 thereupon and thereby canceled. Upon such cancellation, the  
3 license of any licensee having such a bond posted is suspended  
4 and shall remain suspended until a new and valid bond is filed;  
5 provided, however, that failure of any such licensee to file a  
6 new bond within thirty days after being advised by the director  
7 in writing of the necessity of doing so shall ipso facto revoke  
8 the license."

9 SECTION 20. Section 61-18A-26 NMSA 1978 (being Laws 1987,  
10 Chapter 252, Section 26) is amended to read:

11 "61-18A-26. ASSIGNMENTS--RIGHT TO SUE.--Nothing in the  
12 Collection Agency Regulatory Act shall be construed to prevent  
13 collection agencies from taking assignments of claims in their  
14 own name as real parties in interest for the purpose of billing  
15 and collection and bringing suit in their own names thereon;  
16 provided that no suit authorized by this section may be  
17 instituted on behalf of a collection agency in any court unless  
18 the collection agency appears by a duly authorized and licensed  
19 attorney-at-law. [~~In such suit, the court may, in its~~  
20 ~~discretion, authorize payment of reasonable attorney fees and~~  
21 ~~costs to the prevailing party.]"~~