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SENATE BILL 280

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

JOSEPH A. FIDEL

AN ACT

RELATING TO INSURANCE; AMENDING SECTIONS OF THE INSURANCE
HOLDING COMPANY LAW TO INCLUDE HEALTH MAINTENANCE ORGANIZATIONS
IN AN INSURER'S PAYMENT OF DIVIDENDS OR DISTRIBUTIONS.

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

Section 1. Section 59A-37-2 NMSA 1978 (being Laws 1984,
Chapter 127, Section 617, as amended) is amended to read:

"59A-37-2. DEFINITIONS. -- As used in Chapter 59A, Article
37 NMSA 1978:

A. "acquire" means to come into possession or
control of, and "acquisition" means any agreement, arrangement
or activity the consummation of which results in a person
acquiring directly or indirectly the control of another person
and includes but is not limited to the acquisition of voting
securities or assets, bulk reinsurance and mergers;

Underscored material = new
[bracketed material] = delete

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1 B. "affiliate" means a person that directly or
2 indirectly is controlled by, is under common control with or
3 controls another person;

4 C. "control" means the possession of the power to
5 direct or cause the direction of the management and policies of
6 a person, whether directly or indirectly, through the ownership
7 of voting securities, by contract other than a commercial
8 contract for goods or nonmanagement services, or otherwise,
9 unless the power is the result of an official position with or
10 corporate office held by an individual. Control shall be
11 presumed to exist if any person, directly or indirectly, owns,
12 controls, holds with the power to vote or holds ten or more
13 percent of the voting securities of any other person. This
14 presumption may be rebutted by a showing, in the manner provided
15 by Section 59A-37-19 NMSA 1978, that control does not in fact
16 exist. The superintendent may determine, after furnishing all
17 persons in interest notice and an opportunity to be heard, that
18 control exists in fact, notwithstanding the absence of a
19 presumption to that effect, provided that the determination is
20 based on specific findings of fact in its support;

21 D. "insurance holding company" is a person which
22 controls an insurer; "insurance holding company system" means a
23 combination of two or more affiliated persons, at least one of
24 which is an insurer;

25 E. "insurer" means a person which undertakes, under

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1 contract, to indemnify a person against loss, damage or
2 liability arising from an unknown or contingent future event.

3 The term does not include agencies, authorities or
4 instrumentalities of the United States, its possessions or
5 territories, the commonwealth of Puerto Rico, the District of
6 Columbia, a state or any of its political subdivisions, a
7 fraternal benefit society or a nonprofit medical and hospital
8 service association;

9 F. "person" means an individual, corporation,
10 association, partnership, joint stock company, trust,
11 unincorporated organization or any similar entity or combination
12 of entities;

13 G. "securityholder" means the owner of any security
14 of a person, including common stock, preferred stock, debt
15 obligations and any other security convertible into or
16 evidencing the right to acquire any of the foregoing;

17 H. "subsidiary" means an affiliate of a person
18 controlled by the person either directly or indirectly through
19 one or more intermediaries; ~~and~~

20 I. "voting security" means a certificate evidencing
21 the ownership or indebtedness of a person, to which is attached
22 a right to vote on the management or policymaking of that person
23 and includes any security convertible into or evidencing a right
24 to acquire such a voting security; and

25 J. "health maintenance organization" means any

1 person which undertakes to provide or arrange for the delivery
2 of basic health care services to enrollees on a prepaid basis,
3 except for enrollee responsibility for co-payments or
4 deductibles. "

5 Section 2. Section 59A-37-22 NMSA 1978 (being Laws 1984,
6 Chapter 127, Section 637, as amended) is amended to read:

7 "59A-37-22. DIVIDENDS AND OTHER DISTRIBUTIONS. --

8 A. No domestic stock insurer shall declare or
9 distribute any dividend to shareholders, other than a pro rata
10 distribution of any class of the insurer's own securities,
11 except out of earned surplus. For purposes of this section,
12 "earned surplus" means the portion of the surplus that
13 represents the net earnings, gains or profits, after deduction
14 of all losses, that have not been distributed to the
15 shareholders as dividends or transferred to stated capital or
16 capital surplus or applied to other purposes permitted by law,
17 but does not include twenty-five percent of the unrealized
18 appreciation of assets.

19 B. No domestic insurer shall pay an extraordinary
20 dividend or make any other extraordinary distribution to its
21 shareholders until:

22 (1) thirty days after the superintendent has
23 received notice of the declaration thereof and has not within
24 such period disapproved such payment; or

25 (2) the superintendent shall have approved such

Underscored material = new
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1 payment within the thirty-day period.

2 C. For the purposes of Sections 59A-37-20 through
3 59A-37-22 NMSA 1978, an extraordinary dividend or distribution
4 includes any dividend or distribution of cash or other property,
5 whose fair market value together with that of other dividends or
6 distributions made within the preceding twelve months exceeds
7 the lesser of ten percent of the insurer's surplus as regards
8 policyholders as of December 31 next preceding or the net gain
9 from operations of the insurer, if the insurer is either a life
10 insurer or a health maintenance organization, or the net
11 investment income, if the insurer is not a life insurer or a
12 health maintenance organization, not including realized capital
13 gains, for the twelve-month period ending December 31 next
14 preceding, but shall not include pro rata distributions of any
15 class of the insurer's own securities.

16 D. In determining whether a dividend or distribution
17 is extraordinary:

18 (1) an insurer other than a life insurer or a
19 health maintenance organization may carry forward net income
20 from the previous three calendar years that has not already been
21 paid out as dividends, which carry-forward shall be computed by
22 taking the net income from the second, third and fourth
23 preceding calendar years, not including realized capital gains,
24 less dividends paid in the third, second and immediate preceding
25 calendar years; and

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1 (2) a life insurer or a health maintenance
2 organization may carry forward net gains from operations not
3 including realized capital gains from the previous two calendar
4 years that have not already been paid out as dividends, which
5 carry-forward shall be computed by taking the net gain from the
6 second and third preceding calendar years, not including
7 realized capital gains, less dividends paid in the second and
8 immediate preceding calendar years.

9 E. Notwithstanding any other provision of law, an
10 insurer may declare an extraordinary dividend or distribution
11 which is conditioned upon the superintendent's approval thereof,
12 and such a declaration shall confer no rights upon shareholders
13 until:

14 (1) the superintendent has approved the payment
15 of the dividend or distribution; or

16 (2) the superintendent has not disapproved the
17 payment within thirty days after he has received notice of the
18 declaration. "

1 FORTY-SECOND LEGISLATURE
2 SECOND SESSION, 1996
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6 JANUARY 31, 1996
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8 Mr. President:
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10 Your COMMITTEES' COMMITTEE, to whom has been referred
11

12 SENATE BILL 280
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14 has had it under consideration and finds same to be GERMANE, PURSUANT
15 TO SENATE EXECUTIVE MESSAGE NUMBER TWENTY, and thence referred to the
16 PUBLIC AFFAIRS COMMITTEE.
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19 Respectfully submitted,
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SENATOR MANNY M. ARAGON, Chairman

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(Chief Clerk)

(Chief Clerk)

Date _____

S0280CC1

1 FORTY-SECOND LEGISLATURE
2 SECOND SESSION, 1996
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6 February 5, 1996
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8 Mr. President:
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10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been referred
11

12 SENATE BILL 280
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14 has had it under consideration and reports same with recommendation that
15 it DO PASS, and thence referred to the CORPORATIONS &
16 TRANSPORTATION COMMITTEE.
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18 Respectfully submitted,
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24 Shannon Robinson, Chairman
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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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The roll call vote was 5 For 0 Against

Yes: 5

No: None

Excused: E. Jennings, Naranjo, Wiener

Absent: none

S0280PA1

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1 FORTY-SECOND LEGISLATURE

2 SECOND SESSION, 1996

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6 February 9, 1996

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8 Mr. President:

9
10 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom
11 has been referred

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13 SENATE BILL 280

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15 has had it under consideration and reports same with recommendation that
16 it DO PASS.

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19 Respectfully submitted,

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24 Roman M. Maes, III, Chairman
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Adopted _____ Not Adopted _____
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Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Kidd, Maloof, McKibben, Reagan

Absent: None

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State of New Mexico
House of Representatives

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FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

February 13, 1996

Mr. Speaker:

Your BUSINESS AND INDUSTRY COMMITTEE, to whom has been referred

SENATE BILL 280

has had it under consideration and reports same with recommendation that it DO PASS.

Respectfully submitted,

Fred Luna, Chairman

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FORTY- SECOND LEGISLATURE
SECOND SESSION, 1996

HBI C/SB 407

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Varela

Absent: Macko, J.G. Taylor

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