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SENATE BILL 160

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

RICHARD M. ROMERO

AN ACT

RELATING TO INSURANCE; ENACTING THE INSURANCE FRAUD ACT;
PROVIDING FOR THE INVESTIGATION AND PROSECUTION OF INSURANCE
FRAUD; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978;
MAKING AN APPROPRIATION.

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

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

"[NEW MATERIAL] SHORT TITLE. -- This act may be cited as
the "Insurance Fraud Act". "

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

"[NEW MATERIAL] FINDINGS-- PURPOSE. --

A. The legislature finds that insurance fraud is
pervasive and expensive, and has the potential for increasing

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1 premium rates, placing businesses at risk, reducing the
2 ability of consumers to raise their standard of living and
3 decreasing the economic vitality of the state. Therefore, the
4 legislature believes that the state must aggressively confront
5 the problem of insurance fraud.

6 B. The purpose of the Insurance Fraud Act is to
7 permit the full utilization of the expertise of the
8 superintendent of insurance to investigate and detect
9 insurance fraud more effectively, to halt insurance fraud and
10 to work with state, local and federal law enforcement and
11 regulatory agencies against the commission of insurance
12 fraud. "

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

15 "[NEW MATERIAL] DEFINITIONS. --As used in the Insurance
16 Fraud Act:

- 17 A. "fund" means the insurance fraud fund;
18 B. "insurance fraud" means any act or practice in
19 connection with an insurance transaction that constitutes a
20 crime under the Criminal Code or the Insurance Code;
21 C. "insurance transaction" means any act or
22 practice relating to insurance and includes complying with the
23 Insurance Code or any rule adopted under its authority; and
24 D. "superintendent" means the superintendent of
25 insurance. "

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

3 "[NEW MATERIAL] SUPERINTENDENT' S DUTIES. -- The
4 superintendent shall:

5 A. initiate inquiries and conduct investigations
6 when the superintendent has reason to believe that insurance
7 fraud may have been or is being committed;

8 B. respond to notifications or complaints of
9 suspected insurance fraud generated by state and local police
10 or other law enforcement authorities and governmental units,
11 including the federal government and any other person;

12 C. review notices and reports of insurance fraud
13 submitted by authorized insurers, their employees, agents or
14 producers and select those incidents of alleged fraud that, in
15 his judgment, require further investigation and conduct the
16 investigations;

17 D. conduct independent investigations and
18 examinations of insurance transactions and alleged insurance
19 fraud, conduct studies to determine the extent of insurance
20 fraud, deceit or intentional misrepresentation of any kind in
21 the insurance process and publish information and reports on
22 its examinations and studies;

23 E. report incidents of alleged insurance fraud
24 supported by investigations and examinations to the
25 appropriate district attorney and any other appropriate law

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1 enforcement, administrative, regulatory or licensing agency
2 and assemble evidence, prepare charges and otherwise assist
3 any prosecutorial authority having jurisdiction over insurance
4 fraud enforcement;

5 F. assist any official or agency of this state,
6 any other state or the federal government that requests
7 assistance in investigating insurance fraud;

8 G. maintain records and information in order to
9 produce an annual report of his activities undertaken in
10 connection with carrying out the provisions of the Insurance
11 Fraud Act; and

12 H. conduct, in cooperation with the attorney
13 general and the department of public safety, public outreach
14 and awareness programs on the costs of insurance fraud to the
15 public and how members of the public can assist themselves,
16 the superintendent and law enforcement officials in preventing
17 and prosecuting insurance fraud. "

18 Section 5. A new section of the New Mexico Insurance
19 Code is enacted to read:

20 "[NEW MATERIAL] SUPERINTENDENT' S AUTHORITY. -- The
21 superintendent is authorized to select and contract with
22 investigative personnel and prosecutors to discharge his
23 duties pursuant to the provisions of the Insurance Fraud Act. "

24 Section 6. A new section of the New Mexico Insurance
25 Code is enacted to read:

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1 " [NEW MATERIAL] NOTICE AND COOPERATION REQUIRED- - TOLLING
2 PERIOD. --

3 A. Every insurer or licensed insurance
4 professional that has a reasonable belief that an act of
5 insurance fraud will be, is being or has been committed shall
6 furnish and disclose knowledge and information about it to the
7 superintendent and shall cooperate fully with any
8 investigation conducted by the superintendent. Failure to
9 comply with this subsection shall constitute grounds for the
10 superintendent to impose an administrative penalty pursuant to
11 Section 59A-1-18 NMSA 1978 in addition to any applicable
12 suspension, revocation or denial of a license or certificate
13 of authority.

14 B. A person who has a reasonable belief that an
15 act of insurance fraud will be, is being or has been
16 committed, or any person who collects, reviews or analyzes
17 information concerning insurance fraud, may furnish and
18 disclose any information in his possession concerning the
19 insurance fraud to the superintendent or to an authorized
20 representative of an insurer that requests the information for
21 the purpose of detecting, prosecuting or preventing insurance
22 fraud.

23 C. If an insurer has a reasonable belief or
24 probable cause to believe that an insurance fraud has been
25 committed and has properly notified the superintendent of its

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1 suspicion, that notification shall toll any applicable time
2 period in any unfair claims proceeding based on the alleged
3 fraud until thirty days after determination by the
4 superintendent and notice to the insurer that the
5 superintendent will not recommend action on the claim.

6 D. The superintendent, in cooperation with
7 insurers or others, may establish a voluntary fund to reward
8 persons not connected with the insurance industry who provide
9 information or furnish evidence leading to the arrest and
10 conviction of persons responsible for insurance fraud."

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

13 "[NEW MATERIAL] IMMUNITY FROM CIVIL LIABILITY--PRIVATE
14 INSURANCE FRAUD REPORTS AND ENFORCEMENT ACTIONS.--

15 A. The provisions of Section 59A-4-21 NMSA 1978
16 regarding immunity from civil liability for enforcement
17 actions performed in good faith by the superintendent, his
18 authorized representatives and examiners shall apply to the
19 Insurance Fraud Act.

20 B. A person acting without malice, fraudulent
21 intent or bad faith shall not be subject to liability by
22 virtue of reporting or furnishing, orally or in writing,
23 information concerning suspected, anticipated or completed
24 insurance fraud acts when the report or information is
25 provided to:

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1 (1) the department of insurance, the
2 superintendent or law enforcement agencies, their officials,
3 agents or employees; or

4 (2) the national association of insurance
5 commissioners, a federal or state governmental agency or
6 office established to detect and prevent insurance fraud, any
7 other organization established for the same purpose and their
8 agents, employees or designees.

9 C. A person identified in Subsection B of this
10 section or any of the person's officers, employees or agents
11 when performing authorized activities, including the
12 publication or dissemination of any related bulletin or
13 reports, without malice, fraudulent intent or bad faith shall
14 not be subject to civil liability for libel, slander or any
15 other relevant tort and no civil cause of action of any nature
16 shall exist against such persons.

17 D. This section shall not abrogate or modify in
18 any way any privilege or immunity recognized by common law or
19 statute.

20 E. The court shall award attorney fees and costs
21 to any person identified in Subsection B of this section or
22 any of that person's officers, employees or agents who is a
23 prevailing party in a civil cause of action against him for
24 libel, slander or any other relevant tort arising out of
25 conduct pursuant to the Insurance Fraud Act if the party

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1 bringing the action was not substantially justified in
2 bringing such action. For the purposes of this subsection,
3 "substantially justified" means having a reasonable basis in
4 law or fact at the time a proceeding was initiated.

5 F. The relief provided in this section is in
6 addition to remedies otherwise available against the same
7 conduct under the common law or other laws of this state."

8 Section 8. A new section of the New Mexico Insurance
9 Code is enacted to read:

10 "[NEW MATERIAL] WARNING REQUIRED. -- Within six months of
11 the effective date of the Insurance Fraud Act all claim forms
12 and applications for insurance shall contain a statement
13 permanently affixed to the application or claim form which
14 states substantially as follows:

15 "ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT
16 CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS
17 FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF
18 A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL
19 PENALTIES. ".

20 The failure to include that statement shall not constitute a
21 defense against prosecution for commission of insurance
22 fraud. "

23 Section 9. A new section of the New Mexico Insurance
24 Code is enacted to read:

25 "[NEW MATERIAL] REPORT OF CONVICTION. -- If any person

Underscored material = new
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1 licensed by any agency of any state or the federal government
2 or holding credentials from any professional organization is
3 convicted of insurance fraud in this state, the superintendent
4 shall notify the appropriate licensing or credentialing
5 authority of the judgment for appropriate disciplinary
6 action. "

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

9 "[NEW MATERIAL] INSURER ANTI-FRAUD INITIATIVES--SPECIAL
10 INVESTIGATIVE UNITS.--

11 A. Within six months of the effective date of the
12 Insurance Fraud Act and by July 1 of each succeeding year,
13 every insurer who in the previous calendar year reported ten
14 million dollars (\$10,000,000) or more in direct written
15 premiums in New Mexico shall establish, prepare, implement and
16 submit to the superintendent an anti-fraud plan that is
17 reasonably calculated to detect, prosecute and prevent
18 insurance fraud. Any subsequent amendments to the plan shall
19 be submitted to the superintendent at the time they are
20 adopted.

21 B. Each insurer's anti-fraud plan shall outline,
22 at a minimum, specific procedures, appropriate to the type of
23 insurance the insurer writes, to:

24 (1) prevent, detect and investigate all forms
25 of insurance fraud;

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1 (2) educate appropriate employees on fraud
2 detection and the insurer's anti-fraud plan;

3 (3) provide for the hiring or contracting of
4 fraud investigators;

5 (4) report insurance fraud to appropriate law
6 enforcement and regulatory authorities; and

7 (5) pursue restitution, where appropriate,
8 for financial loss caused by insurance fraud.

9 C. The superintendent may review each insurer's
10 anti-fraud plan to determine if it adequately complies with
11 the requirements of this section. The superintendent may
12 examine the insurer to assure its compliance with anti-fraud
13 plans submitted to the superintendent. The superintendent may
14 require reasonable modifications to the insurer's anti-fraud
15 plan or may require other reasonable remedial action if the
16 review or examination reveals substantial noncompliance with
17 the plan.

18 D. The superintendent may require each insurer to
19 file a summary of the insurer's anti-fraud activities and
20 results. Anti-fraud plans and summaries submitted to the
21 superintendent shall be privileged and confidential, shall not
22 be a public record and shall not be subject to discovery or
23 subpoena in any civil or criminal action; provided, however,
24 that the superintendent may make summaries of aggregate data
25 available to the public.

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1 E. This section confers no private right of
2 action. "

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

5 "[NEW MATERIAL] INVESTIGATORS' POWERS. -- The
6 superintendent's investigators shall be peace officers
7 pursuant to the provisions of Chapter 29, Article 1 NMSA 1978,
8 except that they shall not be authorized to carry firearms. "

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

11 "[NEW MATERIAL] ATTORNEY GENERAL' S DUTIES. -- When so
12 requested by the superintendent, the attorney general shall
13 commission as a special assistant attorney general an attorney
14 selected by and contracted with by the superintendent and
15 approved by the attorney general to assist the superintendent
16 in carrying out his duties, including providing legal advice
17 and prosecuting offenders. The actual costs associated with
18 the assignment of assistant attorneys general to the
19 superintendent shall be paid out of the fund. "

20 Section 13. A new section of the New Mexico Insurance
21 Code is enacted to read:

22 "[NEW MATERIAL] INSURANCE FRAUD POLICY ADVISORY GROUP. --
23 The superintendent may create an insurance fraud policy
24 advisory group consisting of representatives of authorized
25 insurers, consumers of insurance products not otherwise

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1 connected with the insurance industry and other appropriate
2 persons. The superintendent shall appoint the members of the
3 advisory group and shall provide by rule for the creation,
4 governance, duties and termination of the advisory group. Any
5 advisory group so created shall advise the superintendent with
6 respect to the implementation of and other matters related to
7 the Insurance Fraud Act when so requested by the
8 superintendent. "

9 Section 14. A new section of the New Mexico Insurance
10 Code is enacted to read:

11 "[NEW MATERIAL] INSURANCE FRAUD FUND CREATED--
12 APPROPRIATION. --

13 A. There is hereby created an "insurance fraud
14 fund" in the state treasury. All fees collected under the
15 provisions of the Insurance Fraud Act shall be deposited in
16 the fund and are subject to appropriation for use in paying
17 the expenses incurred by the superintendent in carrying out
18 the provisions of the Insurance Fraud Act. Interest on the
19 fund shall be credited to the fund. The fund is a continuing,
20 nonreverting fund.

21 B. To implement the provisions of the Insurance
22 Fraud Act, upon the effective date of the Insurance Fraud Act,
23 the superintendent shall determine a rate of assessment and
24 collect a fee from authorized insurers in an amount not less
25 than two hundred dollars (\$200) and not exceeding one-tenth of

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1 one percent of the correctly reported gross direct written
2 premiums on policies written in New Mexico by the authorized
3 insurers. The superintendent, after taking into account
4 unexpended money produced by collection of the fee, shall
5 adjust the rate of assessment each year to produce the amount
6 of money that he estimates will be necessary to pay expenses
7 incurred by the superintendent in carrying out the provisions
8 of the Insurance Fraud Act.

9 C. In calculating the gross direct written
10 premiums for an insurer pursuant to the provisions of this
11 section, all gross direct written premiums for workers'
12 compensation insurance shall be excluded from the calculation.

13 D. The fees required by this section are in
14 addition to all other taxes and fees now imposed or that may
15 be subsequently imposed. "

16 Section 15. A new section of the New Mexico Insurance
17 Code is enacted to read:

18 "[NEW MATERIAL] APPLICATION OF ACT TO OTHER ACTS. --

19 A. No authority granted the superintendent under
20 the Insurance Fraud Act shall be construed to abrogate or
21 interfere with the authority of the safety and fraud division
22 of the workers' compensation administration under the Workers'
23 Compensation Act or of the medicaid fraud control unit under
24 the Medicaid Fraud Act.

25 B. Nothing in the Insurance Fraud Act shall:

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1 (1) preempt the authority of or relieve the
2 duty of any other law enforcement agencies to investigate and
3 prosecute alleged violations of law;

4 (2) prevent or prohibit a person from
5 voluntarily disclosing any information concerning insurance
6 fraud to any law enforcement agency;

7 (3) limit any of the powers granted elsewhere
8 by law to the superintendent to investigate alleged violations
9 of law and take appropriate action; or

10 (4) interfere with the duties and authority
11 of the workers' compensation administration. "

12 Section 16. A new section of the New Mexico Insurance
13 Code is enacted to read:

14 "[NEW MATERIAL] RULES. --The superintendent may promulgate
15 rules deemed necessary or appropriate by the superintendent
16 for the administration of the Insurance Fraud Act. "

17 Section 17. APPROPRIATION. --

18 A. Five hundred thousand dollars (\$500,000) is
19 appropriated from the insurance fraud fund to the
20 superintendent of insurance for expenditure in fiscal year
21 1999 for the purpose of carrying out the provisions of the
22 Insurance Fraud Act. Any unexpended or unencumbered balance
23 remaining at the end of fiscal year 1999 shall not revert to
24 the general fund.

25 B. The superintendent of insurance is authorized

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1 to employ three additional full-time employees to carry out
2 the provisions of the Insurance Fraud Act.

3 Section 18. REPEAL. -- Sections 59A-16A-1 through
4 59A-16A-4 NMSA 1978 (being Laws 1991, Chapter 86, Sections 1
5 through 4) are repealed.

6 Section 19. EFFECTIVE DATE. -- The effective date of the
7 provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3
4
5
6 January 30, 1998

7
8 Mr. President:

9
10 Your COMMITTEES' COMMITTEE, to whom has been referred

11
12 SENATE BILL 160

13
14 has had it under consideration and finds same to be GERMANE, in
15 accordance with constitutional provisions, and thence referred to the
16 CORPORATIONS & TRANSPORTATION COMMITTEE.

17
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19 Respectfully submitted,

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24 _____
25 Manny M. Aragon, Chairman

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Adopted _____ Not Adopted _____

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(Chief Clerk)

(Chief Clerk)

Date _____

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1 FORTY-THIRD LEGISLATURE

2 SECOND SESSION, 1998

3 SB 160/a

4
5
6 February 6, 1998

7 Mr. President:

8
9 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom
10 has been referred

11
12 SENATE BILL 160

13
14 has had it under consideration and reports same with recommendation
15 that it DO PASS, amended as follows:

16
17
18 1. On page 6, line 5, after the period insert "The
19 determination by the superintendent shall not be admissible in any
20 subsequent civil proceeding."

21
22 2. On page 6, lines 20 and 21, strike "A person acting without
23 malice, fraudulent intent or bad faith" and insert in lieu thereof
24 "Except when a person intentionally communicates false information he
25 actually believes to be false, a person".

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

SCORC/SB 160

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3. On page 7, line 3, after the semicolon strike "or".

4. On page 7, line 8, strike the period and insert in lieu thereof "; or".

5. On page 7, between lines 8 and 9, insert the following new paragraph:

"(3) the anti-fraud unit of an insurer."

6. On page 7, line 13, strike "without malice, fraudulent intent or bad faith".

7. On page 7, line 15, strike "and no" and insert in lieu thereof "or a".

8. On page 7, line 16, strike "shall exist against such persons" and insert in lieu thereof ", except if the person, officer, employee or agent intentionally communicates false information he actually believes to be false".

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FORTY-THIRD LEGISLATURE
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9. On page 9, line 22, strike "specific procedures," and insert in lieu thereof "guidelines".

10. On page 11, line 13, strike "an" and insert in lieu thereof "any".

11. On page 11, line 14, strike "selected by and contracted" and insert in lieu thereof "employed by the superintendent or contracted".,

and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

Roman M. Maes, III, Chairman

Adopted _____ Not Adopted _____

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Fidel, Howes, Robinson, Wilson

Absent: None

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

February 10, 1998

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

SENATE BILL 160, as amended

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

Respectfully submitted,

. 122037. 1

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

SCORC/SB 160

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Ben D. Altamirano, Chairman

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

Date _____

The roll call vote was 8 For 0 Against

Yes: 8

No: None

Excused: Aragon, Campos, McKibben

Absent: None

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FORTY-THIRD LEGISLATURE
SECOND SESSION, 1998

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