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SENATE BILL 561

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Joseph A. Fidel

AN ACT

RELATING TO INSURANCE; AMENDING CERTAIN SECTIONS OF THE NEW MEXICO INSURANCE CODE.

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

Section 1. Section 59A-5-21 NMSA 1978 (being Laws 1984, Chapter 127, Section 88) is amended to read:

"59A-5-21. APPLICATION FOR CERTIFICATE OF AUTHORITY. --

A. To apply for an original certificate of authority in this state the insurer shall file with the superintendent its written application therefor on forms as prescribed and furnished by the superintendent, accompanied by the applicable fees as specified or referred to in Section ~~[101 (fee schedule) of the Insurance Code]~~ 59A-6-1 NMSA 1978, stating under the oath of the president or vice president or other chief officer and the secretary of the insurer, or of

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1 the attorney-in-fact (if a reciprocal insurer or Lloyds  
2 insurer), the insurer's name, location of its home office, or  
3 principal office, in the United States (if an alien insurer),  
4 the kinds of insurance to be transacted, date of organization  
5 or incorporation, form of organization, state or country of  
6 domicile, and such additional or other information as the  
7 superintendent may reasonably require, together with the  
8 following documents:

9 (1) if a corporation, a copy of its charter  
10 or certificate or articles of incorporation, together with all  
11 amendments thereto, or as restated and amended under the laws  
12 of its state or country of domicile, currently certified by  
13 the public officer with whom the originals are on file in such  
14 state or country;

15 (2) if a domestic incorporated insurer of a  
16 mutual insurer, a copy of its bylaws, certified by its  
17 corporate secretary;

18 (3) if a reciprocal insurer or Lloyds  
19 insurer, a copy of the power of attorney of its attorney-in-  
20 fact, certified by the attorney-in-fact; and if a domestic  
21 reciprocal insurer or a Lloyds insurer, additional  
22 documentation showing that it has been properly formed and is  
23 lawfully existing under applicable laws;

24 (4) a complete copy of its financial  
25 statement as of not earlier than the December 31 next

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1 preceding, in form as customarily used in the United States by  
2 like insurers, sworn to by at least two [~~(2)~~] executive  
3 officers of the insurer or certified by the public insurance  
4 supervisory officer of the insurer's state of domicile, or of  
5 entry into the United States if an alien insurer;

6 (5) a copy of the report of last examination  
7 made of the insurer certified by the public insurance  
8 supervisory officer of its state of domicile, or of entry into  
9 the United States if an alien insurer;

10 (6) appointment of the superintendent  
11 pursuant to Section [~~98 of this article~~] 59A-5-31 NMSA 1978 as  
12 its attorney to receive service of legal process;

13 (7) if a foreign or alien insurer, a  
14 certificate of the public insurance supervisory officer of its  
15 state or country of domicile showing that it is authorized or  
16 qualified for authority to transact in such state or country  
17 the kinds of insurance proposed to be transacted in this  
18 state;

19 (8) if a foreign insurer, a certificate as to  
20 a deposit elsewhere if to be tendered pursuant to Section [~~85~~  
21 ~~(general deposit)~~ or ~~87 (general deposit of alien insurer)~~ of  
22 ~~this article~~;

23 ~~(9) if a life or health insurer, a copy of~~  
24 ~~the insurer's rate book and of each form of policy currently~~  
25 ~~proposed to be issued in this state, and of the form of~~

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1 ~~application therefor]~~ 59A-5-18 or 59A-5-20 NMSA 1978;

2 [~~(10)~~] (9) if an alien insurer, a copy of the  
3 appointment and authority of its United States manager,  
4 certified by its officer having custody of its records; and

5 [~~(11)~~] (10) designation by the insurer of its  
6 officer or representative authorized to appoint and remove its  
7 agents in this state.

8 B. If the superintendent so requests, the  
9 applicant insurer shall supplement the documents and  
10 information above required with true biographical information  
11 concerning the members of the insurer's board of directors or  
12 other governing body and its principal operating officers,  
13 together with proof of identity of each such individual. "

14 Section 2. Section 59A-6-5 NMSA 1978 (being Laws 1984,  
15 Chapter 127, Section 105, as amended) is amended to read:

16 "59A-6-5. DISTRIBUTION OF INSURANCE DEPARTMENT  
17 COLLECTIONS. --

18 A. All money received by the insurance department  
19 [~~or insurance board]~~ for fees, licenses, penalties and taxes  
20 shall be paid daily by the superintendent to the state  
21 treasurer and by him credited to the "insurance department  
22 suspense fund" [~~heretofore created and now existing~~] except as  
23 provided by:

- 24 (1) the Law Enforcement Protection Fund Act;  
25 and

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(2) Section 59A-6-1.1 NMSA 1978.

B. The superintendent [~~with approval of the corporation commission or insurance board, as the case may be related to the money involved~~] may authorize refund of money erroneously paid as fees, licenses, penalties or taxes from the insurance department suspense fund under request for refund made within three years after the erroneous payment.

C. At the end of every month, the treasurer shall transfer to the "fire protection fund" the balance remaining in the insurance department suspense fund after applicable refunds made [~~therefrom under~~] pursuant to Subsection B of this section, and derived from property and vehicle insurance business, and transfer to the general fund the balance remaining in the insurance department suspense fund derived from all other kinds of insurance business. "

Section 3. Section 59A-12-26 NMSA 1978 (being Laws 1984, Chapter 127, Section 227, as amended) is amended to read:

"59A-12-26. CONTINUED EDUCATION. --

A. For protection of the public and to preserve and improve competence of licensees, the superintendent may in his sole discretion require as a condition to continuation of license as agent, solicitor, nonresident agent or nonresident broker under this article that during the twelve months next preceding expiration of the current license period the licensee has enrolled in and attended not less than fifteen

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1 hours of formal class instruction, lectures or seminars  
2 approved by the superintendent covering the kinds of insurance  
3 for which licensed.

4 ~~[B. If the licensee is licensed to transact or~~  
5 ~~sells only one of the following lines of insurance:-~~  
6 (1) ~~credit life insurance;~~  
7 (2) ~~credit health insurance;~~  
8 (3) ~~vendors' single interest insurance;~~  
9 (4) ~~title insurance; or~~  
10 (5) ~~insurance incidental to the~~  
11 ~~transportation of persons or storage or transportation of~~  
12 ~~baggage; then the superintendent may waive the requirements of~~  
13 ~~Subsection A of this section or may require less than fifteen~~  
14 ~~hours of instruction, lectures or seminars.~~

15 ~~C.]~~ B. Such instruction shall be designed to  
16 refresh the licensee's understanding of basic principles and  
17 coverages involved, recent and prospective changes therein,  
18 applicable laws and rules and regulations of the  
19 superintendent, proper conduct of the licensee's business and  
20 duties and responsibilities of the licensee.

21 ~~[D.]~~ C. The superintendent may permit licensees  
22 who because of remoteness of residence or business cannot with  
23 reasonable convenience attend such formal instruction sessions  
24 to take and successfully complete an equivalent course of  
25 study and instruction by mail.

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1           ~~[E-]~~ D. The superintendent shall promulgate rules  
2 and regulations for effectuation of the purposes and  
3 requirements of this section.

4           ~~[F-]~~ E. For the purposes of this section, the  
5 superintendent shall charge, at the time of certifying each  
6 licensee's continuing education credits as a condition of  
7 continuation of license, a fee of five dollars (\$5.00).

8           ~~[G-]~~ F. This section shall not apply to holders of  
9 limited license issued under Section 59A-12-18 NMSA 1978."

10           Section 4. Section 59A-12A-14 NMSA 1978 (being Laws  
11 1989, Chapter 374, Section 14) is amended to read:

12           "59A-12A-14. CONFIDENTIALITY. --

13           A. An administrator shall provide for the  
14 confidentiality of personal data identifying an individual  
15 covered by a plan or insurance carrier or data concerning a  
16 person that self insures. An administrator shall not disclose  
17 records containing personal information that may be associated  
18 with an identifiable individual covered by a plan or insurance  
19 carrier or data relating to a person that self insures to a  
20 person other than the individual to whom the information  
21 pertains, except as necessary to comply with the  
22 superintendent's inquiry or a court order. Other than to  
23 comply with the ~~[insurance board's]~~ superintendent's inquiry  
24 or a court order, an administrator shall not disclose personal  
25 data without the prior consent of the covered individual or

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1 person that self insures.

2 B. Subsection A of this section does not apply to  
3 information disclosed for any of the following reasons or to  
4 an indicated entity:

- 5 (1) claims adjudication;
- 6 (2) claims verification;
- 7 (3) other proper plan or insurance carrier  
8 administration;

- 9 (4) an audit conducted pursuant to ERISA;
- 10 (5) an insurer or plan for the purchase of  
11 excess loss insurance and for claims under the excess loss  
12 insurance, provided, an insurer obtaining information under  
13 this paragraph shall be subject to the requirements of  
14 Subsection A of this section;

- 15 (6) the plan, insurance carrier, person that  
16 self insures or a fiduciary of the plan;

- 17 (7) the [~~insurance board~~] superintendent or  
18 [~~their~~] the superintendent's designees; provided the  
19 information obtained by the superintendent [~~or board~~] under  
20 this subsection is confidential, except that the  
21 superintendent [~~or insurance board~~] may use the information in  
22 any proceeding instituted against the administrator; or

- 23 (8) as required by law. "

24 Section 5. Section 59A-16-13.1 NMSA 1978 (being Laws  
25 1989, Chapter 304, Section 1) is amended to read:



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1           "59A-16-13.1. CRANIOMANDIBULAR AND TEMPOROMANDIBULAR  
2 JOINT DISORDERS. --No insurer or other provider of health care  
3 benefits regulated under Articles 22, 23, [ 24] 24A, 44, 46, 47  
4 or 54 of the Insurance Code shall, after July 1, 1989, issue,  
5 deliver or execute in this state any policy, plan, contract or  
6 certificate of health, medical, hospitalization, accident or  
7 sickness coverage unless the policy, plan, contract,  
8 certificate or other evidence of coverage provides for  
9 surgical and nonsurgical treatment of temporomandibular joint  
10 disorders and craniomandibular disorders, subject to the same  
11 conditions, limitations, prior review and referral procedures  
12 as are applicable to treatment of any other joint in the body  
13 and treatable by any practitioner of the healing arts as  
14 defined in Section 59A-22-32 NMSA 1978. The health care  
15 coverage for craniomandibular and temporomandibular joint  
16 disorders required by this section may be subject to  
17 reasonable copayments or coinsurance provisions and need not  
18 include coverage for orthodontic appliances and treatment,  
19 crowns, bridges and dentures unless the disorder is trauma  
20 related. "

21           Section 6. Section 59A-17-5 NMSA 1978 (being Laws 1984,  
22 Chapter 127, Section 301) is amended to read:

23           "59A-17-5. ADMINISTRATION OF INSURANCE RATE REGULATORY  
24 LAW. --The provisions of [ ~~this article are under the~~  
25 ~~jurisdiction of the insurance board, as defined in Section 6-~~

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1 ~~of the Insurance Code and]~~ Chapter 59A, Article 17 NMSA 1978  
2 shall be administered by the superintendent [ ~~in his capacity~~  
3 ~~of secretary of the insurance board.~~ ~~In such administration~~  
4 ~~the superintendent shall have the same general powers as to~~  
5 ~~rules and regulations, enforcement and otherwise as provided~~  
6 ~~under the Insurance Code as to the superintendent's~~  
7 ~~administration of the insurance department]. "~~

8 Section 7. Section 59A-17-25 NMSA 1978 (being Laws 1984,  
9 Chapter 127, Section 320) is amended to read:

10 "59A-17-25. JOINT UNDERWRITING OR JOINT REINSURANCE  
11 ORGANIZATIONS. --

12 A. Every group, association or other organization  
13 of insurers which engages in joint underwriting or joint  
14 reinsurance through such group, association or organization or  
15 by standing agreement among the members thereof, shall file  
16 with the superintendent:

17 (1) a copy of its constitution, its articles  
18 of incorporation, agreement or association, and of its bylaws,  
19 rules and regulations governing its activities, all duly  
20 certified by the custodian of the originals thereof;

21 (2) a list of its members; and

22 (3) the name and address of a resident of  
23 this state upon whom notices or orders of the superintendent  
24 or process affecting such group, association or organization  
25 may be served.

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1           B. Every such group, association or other  
2 organization shall notify the superintendent promptly in  
3 writing of every change in its constitution, its articles of  
4 incorporation, agreement or association, in its bylaws, rules  
5 and regulations governing conduct of its business, its list of  
6 members, or of the name and address of its process agent  
7 referred to in Paragraph (3) [~~above~~] of Subsection A of this  
8 section.

9           C. Every such group, association or organization  
10 shall be subject to regulation as herein provided, subject,  
11 however, as to joint underwriting to applicable provisions of  
12 [~~this article~~] Chapter 59A, Article 17 NMSA 1978, and as to  
13 joint reinsurance to Sections [~~309 (disapproval of rates other~~  
14 ~~than workmen's compensation - substituted rates), 310~~  
15 ~~(disapproval of filings, workmen's compensation), 327~~  
16 ~~(examination), 329 (review of superintendent's action) and 330~~  
17 ~~(appeals from insurance board) of this article~~] 59A-17-13,  
18 59A-17-14, 59A-17-32, 59A-17-34 and 59A-17-35 NMSA 1978.

19           D. No such group, association or organization  
20 shall engage in any unfair or unreasonable practice with  
21 respect to its activities. If, after a hearing, the  
22 superintendent finds that any activity or practice of any such  
23 group, association or organization is unfair or unreasonable  
24 or otherwise inconsistent with the provisions of [~~this~~  
25 ~~article~~] Chapter 59A, Article 17 NMSA 1978, he may issue his

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1 order specifying the respects in which the activity or  
2 practice is unfair or unreasonable or otherwise inconsistent  
3 with the provisions of [~~this~~] that article, and requiring  
4 discontinuance of such activity or practice. "

5 Section 8. Section 59A-17-34 NMSA 1978 (being Laws 1984,  
6 Chapter 127, Section 329, as amended) is amended to read:

7 "59A-17-34. HEARING AND REVIEW AS TO SUPERINTENDENT'S  
8 ACTIONS. --

9 A. Any person aggrieved by any action, threatened  
10 action, or failure to act of the superintendent or otherwise  
11 under Chapter 59A, Article 17 NMSA 1978 shall have the same  
12 right to a hearing before the superintendent with respect  
13 thereto as provided for in general under Section 59A-4-15 NMSA  
14 1978. Notice of hearing shall be given, the hearing  
15 conducted, rights and powers exercised and the  
16 superintendent's order on hearing made and given as provided  
17 as to hearings in general under the applicable provisions of  
18 Chapter 59A, Article 4 NMSA 1978.

19 B. Any person aggrieved by the superintendent's  
20 order on such hearing or by the superintendent's refusal to  
21 hold the hearing may request a review [~~thereof by the~~  
22 ~~insurance board~~] by the public regulation commission in the  
23 manner set forth by rule of the [~~insurance board~~] commission. "

24 Section 9. Section 59A-17-35 NMSA 1978 (being Laws 1984,  
25 Chapter 127, Section 330, as amended) is amended to read:

1 "59A-17-35. APPEALS FROM [~~INSURANCE BOARD~~] COMMISSION. --

2 Any order made by the [~~insurance board~~] public regulation  
3 commission pursuant to Section 59A-17-34 NMSA 1978 shall be  
4 subject to review by appeal to the district court pursuant to  
5 the provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. Upon  
6 institution of the appeal and for good cause shown upon motion  
7 and hearing, the court may, in the following cases, stay  
8 operation of the [~~insurance board's~~] commission's order:

9 A. where, pursuant to Chapter 59A, Article 17 NMSA  
10 1978, a rate service organization has been refused a license  
11 or an insurer has been refused a certificate of authority or  
12 had its license or certificate of authority suspended, it may,  
13 with leave of court, be allowed to continue to engage in  
14 business, subject to the provisions of that article, pending  
15 final disposition of its application for review; or

16 B. where any order of the [~~insurance board~~]  
17 commission shall provide for, or sustain the superintendent's  
18 order for, a change in any rate or rating system that results  
19 in an increase or decrease in rates, any insurer affected may,  
20 with leave of court pending final disposition of the  
21 proceedings in the district court, continue to charge rates  
22 that existed prior to such order, on condition that the  
23 difference in the rates be deposited in a special escrow or  
24 trust account with a reputable financial institution by the  
25 insurer affected, to be held in trust by such insurer and to

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1 be retained by the insurer or paid to the holders of policies  
2 issued after the order of the court, as the court may  
3 determine. "

4 Section 10. Section 10. Section 59A-30-14 NMSA 1978  
5 (being Laws 1985, Chapter 28, Section 14) is amended to read:

6 "59A-30-14. OTHER PROVISIONS APPLICABLE. --To the extent  
7 not in conflict with the New Mexico Title Insurance Law, the  
8 following articles and provisions of the Insurance Code shall  
9 also apply to title insurers, title insurance agents and the  
10 business of title insurance:

11 Article 1. Scope of Code; Initial Definitions; General  
12 Penalty.

13 Article 2. Department of Insurance.

14 [~~Article 3. State Insurance Board.~~]

15 Article 4. Examinations, Hearings and Appeals.

16 Article 5. Authorization of Insurers and General  
17 Requirements.

18 Article 6. Fees and Taxes.

19 Article 7. Kinds of Insurance; Limits of Risk;  
20 Reinsurance.

21 Article 8. Assets and Liabilities.

22 Article 9. Investments.

23 Article 10. Administration of Deposits; Trusteed Assets  
24 of Alien Insurer.

25 Article 11. Licensing Procedures, Agents, Solicitors,

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1 Brokers, Adjusters and Others.

2 Article 12. Insurance Agents, Brokers and Solicitors.

3 Article 15. Unauthorized Insurers.

4 Article 16. Trade Practices and Frauds. "

5 Section 11. Section 59A-35-12 NMSA 1978 (being Laws  
6 1984, Chapter 127, Section 601) is amended to read:

7 "59A-35-12. PERMIT AS INDUCEMENT. --

8 A. The granting of a securities permit is  
9 permissive only, and shall not constitute an endorsement or  
10 approval by the superintendent, [~~corporation commission, state~~  
11 ~~insurance board~~] public regulation commission or any other  
12 agency or department of the state of New Mexico of any person  
13 or thing related to the offering of securities, or constitute  
14 evidence of the completeness or accuracy of information  
15 presented in any prospectus or other sales publicity or  
16 literature, or a recommendation of purchase of any securities  
17 offered. The existence of the permit shall not be advertised  
18 or used as an inducement in any solicitation.

19 B. Each permit issued by the superintendent shall  
20 state conspicuously in boldface type the substance of [ ~~the~~  
21 ~~above~~] Subsection A of this section in terminology prescribed  
22 by the superintendent. "

23 Section 12. Section 59A-37-2 NMSA 1978 (being Laws 1984,  
24 Chapter 127, Section 617, as amended) is amended to read:

25 "59A-37-2. DEFINITIONS. -- As used in Chapter 59A, Article

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1 37 NMSA 1978:

2 A. "acquire" means to come into possession or  
3 control of, and "acquisition" means any agreement, arrangement  
4 or activity the consummation of which results in a person  
5 acquiring directly or indirectly the control of another person  
6 and includes the acquisition of voting securities or assets,  
7 bulk reinsurance and mergers;

8 B. "affiliate" means a person that directly or  
9 indirectly is controlled by, is under common control with or  
10 controls another person;

11 C. "control" means the possession of the power to  
12 direct or cause the direction of the management and policies  
13 of a person, whether directly or indirectly, through the  
14 ownership of voting securities, through licensing or franchise  
15 agreements, by contract other than a commercial contract for  
16 goods or nonmanagement services, or otherwise, unless the  
17 power is the result of an official position with or corporate  
18 office held by an individual. Control shall be presumed to  
19 exist if any person, directly or indirectly, owns, controls,  
20 holds with the power to vote or holds ten or more percent of  
21 the voting securities of any other person. This presumption  
22 may be rebutted by a showing, in the manner provided by  
23 Section 59A-37-19 NMSA 1978, that control does not in fact  
24 exist. The superintendent may determine, after furnishing all  
25 persons in interest notice and an opportunity to be heard,

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1 that control exists in fact, notwithstanding the absence of a  
2 presumption to that effect, provided [~~that~~] the determination  
3 is based on specific findings of fact in its support;

4 D. "insurance holding company" is a person that  
5 controls an insurer; "insurance holding company system" means  
6 a combination of two or more affiliated persons, at least one  
7 of which is an insurer;

8 E. "insurer" means a person that undertakes, under  
9 contract, to indemnify a person against loss, damage or  
10 liability arising from an unknown or contingent future event.  
11 The term does not include agencies, authorities or  
12 instrumentalities of the United States, its possessions or  
13 territories, the commonwealth of Puerto Rico, the District of  
14 Columbia, a state or any of its political subdivisions or a  
15 fraternal benefit society [~~or a nonprofit medical and hospital~~  
16 ~~service association~~];

17 F. "person" means an individual, corporation,  
18 association, partnership, joint stock company, trust,  
19 unincorporated organization or any similar entity or  
20 combination of entities;

21 G. "securityholder" means the owner of any  
22 security of a person, including common stock, preferred stock,  
23 debt obligations and any other security convertible into or  
24 evidencing the right to acquire any of the foregoing;

25 H. "subsidiary" means an affiliate of a person

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1 controlled by the person either directly or indirectly through  
2 one or more intermediaries;

3 I. "voting security" means a certificate  
4 evidencing the ownership or indebtedness of a person, to which  
5 is attached a right to vote on the management or policymaking  
6 of that person and includes any security convertible into or  
7 evidencing a right to acquire such a voting security; and

8 J. "health maintenance organization" means any  
9 person that undertakes to provide or arrange for the delivery  
10 of basic health care services to enrollees on a prepaid basis,  
11 except for enrollee responsibility for co-payments or  
12 deductibles. "

13 Section 13. Section 59A-44-41 NMSA 1978 (being Laws  
14 1989, Chapter 388, Section 41) is amended to read:

15 "59A-44-41. APPLICABILITY OF INSURANCE CODE. --To the  
16 extent not in conflict with the express provisions of Chapter  
17 59A, Article 44 NMSA 1978 and the reasonable implications  
18 thereof, the following provisions of the Insurance Code shall  
19 also apply as to fraternal benefit societies, and for such  
20 purpose a society may therein be referred to as an "insurer":

- 21 A. Chapter 59A, Article 1 NMSA 1978;
- 22 B. Chapter 59A, Article 2 NMSA 1978;
- 23 C. Chapter 59A, Article 4 NMSA 1978;
- 24 D. Sections 59A-8-1 and 59A-8-2 NMSA 1978;
- 25 E. Section 59A-12-22 NMSA 1978;

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- 1 F. Chapter 59A, Article 18 NMSA 1978;
- 2 G. Chapter 59A, Article 19 NMSA 1978;
- 3 H. Chapter 59A, Article [~~24~~] 24A NMSA 1978;
- 4 I. Chapter 59A, Articles 20 and 22 NMSA 1978; and
- 5 J. Chapter 59A, Article 41 NMSA 1978. "

6 Section 14. Section 59A-46-30 NMSA 1978 (being Laws  
7 1993, Chapter 266, Section 29, as amended) is amended to read:  
8 "59A-46-30. STATUTORY CONSTRUCTION AND RELATIONSHIP TO  
9 OTHER LAWS. --

10 A. The provisions of the Insurance Code other than  
11 Chapter 59A, Article 46 NMSA 1978 shall not apply to health  
12 maintenance organizations except as expressly provided in the  
13 Insurance Code and that article. To the extent reasonable and  
14 not inconsistent with the provisions of that article, the  
15 following articles and provisions of the Insurance Code shall  
16 also apply to health maintenance organizations and their  
17 promoters, sponsors, directors, officers, employees, agents,  
18 solicitors and other representatives. For the purposes of  
19 such applicability, a health maintenance organization may  
20 therein be referred to as an "insurer":

- 21 (1) Chapter 59A, Article 1 NMSA 1978;
- 22 (2) Chapter 59A, Article 2 NMSA 1978;
- 23 [~~(3) Chapter 59A, Article 3 NMSA 1978;~~
- 24 ~~(4)] (3) Chapter 59A, Article 4 NMSA 1978;~~
- 25 [~~(5)] (4) Subsection C of Section 59A-5-22~~

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1 NMSA 1978;  
2                    [~~(6)~~] (5) Sections 59A-6-2 through 59A-6-4  
3 and 59A-6-6 NMSA 1978;  
4                    [~~(7)~~] (6) Chapter 59A, Article 8 NMSA 1978;  
5                    [~~(8)~~] (7) Chapter 59A, Article 10 NMSA 1978;  
6                    [~~(9)~~] (8) Section 59A-12-22 NMSA 1978;  
7                    [~~(10)~~] (9) Chapter 59A, Article 16 NMSA 1978;  
8                    [~~(11)~~] (10) Chapter 59A, Article 18 NMSA  
9 1978;  
10                    [~~(12)~~] (11) Chapter 59A, Article 19 NMSA  
11 1978;  
12                    [~~(13)~~] (12) Section 59A-22-14 NMSA 1978;  
13                    [~~(14)~~] (13) Chapter 59A, Article 23B NMSA  
14 1978;  
15                    [~~(15)~~] (14) Sections [~~59A-34-9~~] 59A-34-2,  
16 59A-34-3, 59A-34-7 through 59A-34-13, 59A-34-17, 59A-34-23,  
17 59A-34-33, 59A-34-36, [and] 59A-34-37, 59A-34-40 through  
18 59A-34-42 and 59A-34-44 through 59A-34-46 NMSA 1978;  
19                    [~~(16)~~] (15) Chapter 59A, Article 37 NMSA  
20 1978; and  
21                    [~~(17)~~] (16) the Patient Protection Act.

22                    B. Solicitation of enrollees by a health  
23 maintenance organization granted a certificate of authority,  
24 or its representatives, shall not be construed as violating  
25 any provision of law relating to solicitation or advertising

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1 by health professionals, but health professionals shall be  
2 individually subject to the laws, rules, regulations and  
3 ethical provisions governing their individual professions.

4 C. Any health maintenance organization authorized  
5 under the provisions of the Health Maintenance Organization  
6 Law shall not be deemed to be practicing medicine and shall be  
7 exempt from the provisions of laws relating to the practice of  
8 medicine. "

9 Section 15. Section 59A-47-33 NMSA 1978 (being Laws  
10 1984, Chapter 127, Section 879.32, as amended) is amended to  
11 read:

12 "59A-47-33. OTHER PROVISIONS APPLICABLE. -- The provisions  
13 of the Insurance Code other than Chapter 59A, Article 47 NMSA  
14 1978 shall not apply to health care plans except as expressly  
15 provided in the Insurance Code and that article. To the  
16 extent reasonable and not inconsistent with the provisions of  
17 that article, the following articles and provisions of the  
18 Insurance Code shall also apply to health care plans, their  
19 promoters, sponsors, directors, officers, employees, agents,  
20 solicitors and other representatives; and, for the purposes of  
21 such applicability, a health care plan may therein be referred  
22 to as an "insurer":

- 23 A. Chapter 59A, Article 1 NMSA 1978;
- 24 B. Chapter 59A, Article 2 NMSA 1978;
- 25 C. Chapter 59A, Article 4 NMSA 1978;

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- 1                   D.   Subsection C of Section 59A-5-22 NMSA 1978;
- 2                   E.   Sections 59A-6-2 through 59A-6-4 and
- 3 59A-6-6 NMSA 1978;
- 4                   F.   Section 59A-7-11 NMSA 1978;
- 5                   G.   Chapter 59A, Article 8 NMSA 1978;
- 6                   H.   Chapter 59A, Article 10 NMSA 1978;
- 7                   I.   Section 59A-12-22 NMSA 1978;
- 8                   J.   Chapter 59A, Article 16 NMSA 1978;
- 9                   K.   Chapter 59A, Article 18 NMSA 1978;
- 10                  L.   Chapter 59A, Article 19 NMSA 1978;
- 11                  M.   Subsections B through E of Section
- 12 59A-22-5 NMSA 1978;
- 13                  N.   Section 59A-22-14 NMSA 1978;
- 14                  O.   Section 59A-22-34.1 NMSA 1978;
- 15                  P.   Section 59A-22-39 NMSA 1978;
- 16                  Q.   Section 59A-22-40 NMSA 1978;
- 17                  R.   Section 59A-22-41 NMSA 1978;
- 18                  S.   Sections [~~59A-34-9~~] 59A-34-3, 59A-34-7 through
- 19 59A-34-13, [and] 59A-34-17, 59A-34-23, 59A-34-33, 59A-34-40
- 20 through 59A-34-42 and 59A-34-44 through 59A-34-46 NMSA 1978;
- 21                  T.   Chapter 59A, Article 37 NMSA 1978, except
- 22 Section 59A-37-7 NMSA 1978;
- 23                  U.   Section 59A-46-15 NMSA 1978; and
- 24                  V.   the Patient Protection Act. "
- 25                  Section 16.   Section 59A-55-20 NMSA 1978 (being Laws

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1 1988, Chapter 125, Section 20) is amended to read:

2 "59A-55-20. RESTRICTIONS ON INSURANCE PURCHASED BY  
3 PURCHASING GROUPS. --

4 A. A purchasing group may not purchase insurance  
5 from a risk retention group that is not chartered in a state  
6 or from an insurer not admitted in the state in which the  
7 purchasing group is located, unless the purchase is effected  
8 through a licensed agent or broker acting pursuant to the  
9 surplus lines laws and regulations of the state.

10 B. A purchasing group may purchase insurance for  
11 its members in this state or covering its members' risks  
12 resident or located in this state only from insurers admitted  
13 in this state, from insurers that are eligible surplus lines  
14 insurers in this state or from risk retention groups that have  
15 registered in this state.

16 [~~B.~~] C. A purchasing group which obtains liability  
17 insurance from an insurer not admitted in this state or a risk  
18 retention group shall inform each of the members of such group  
19 that have a risk resident or located in this state that such  
20 risk is not protected by an insurance insolvency guaranty fund  
21 in this state and that such risk retention group or such  
22 insurer may not be subject to all insurance laws and  
23 regulations of this state.

24 [~~C.~~] D. No purchasing group may purchase insurance  
25 providing for a deductible or self-insured retention unless

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1 the deductible or self-insured retention is the sole  
2 responsibility of each individual member of the purchasing  
3 group. "

4 Section 17. Section 59A-56-11 NMSA 1978 (being Laws  
5 1994, Chapter 75, Section 11, as amended) is amended to read:

6 "59A-56-11. ASSESSMENTS. --

7 A. After the completion of each calendar year, the  
8 alliance shall assess all its members for the net reinsurance  
9 loss in the previous calendar year and for the net  
10 administrative loss that occurred in the previous calendar  
11 year, taking into account investment income for the period and  
12 other appropriate gains and losses using the following  
13 definitions:

14 (1) net reinsurance losses shall be the  
15 amount determined for the previous calendar year in accordance  
16 with Subsection A of Section 59A-56-9 NMSA 1978 for all  
17 members offering an approved health plan reduced by  
18 reinsurance premiums charged by the alliance in the previous  
19 calendar year. Net reinsurance losses shall be calculated  
20 separately for group and individual coverage. If the  
21 reinsurance premiums for either category of coverage exceed  
22 the amount calculated in accordance with Subsection A of  
23 Section 59A-56-9 NMSA 1978, the premiums shall be applied  
24 first to offset the net reinsurance losses incurred in the  
25 other category of coverage and second to offset administrative



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1 losses; and

2 (2) net administrative losses shall be the  
3 administrative expenses incurred by the alliance in the  
4 previous calendar year and projected for the current calendar  
5 year less the sum of administrative allowances received by the  
6 alliance, but in the event of an administrative gain, net  
7 administrative losses for the purpose of assessments shall be  
8 considered zero and the gain shall be carried forward to the  
9 administrative fund for the next calendar year as an  
10 additional allowance.

11 B. The assessment for each member shall be  
12 determined by multiplying the total losses of the alliance's  
13 operation, as defined in Subsection A of this section, by a  
14 fraction, the numerator of which is an amount equal to that  
15 member's total premiums, or the equivalent, exclusive of  
16 premiums received by the member for an approved health plan  
17 for health insurance written in the state during the preceding  
18 calendar year and the denominator of which equals the total  
19 premiums of all health insurance written in the state during  
20 the preceding calendar year exclusive of premiums for approved  
21 health plans; provided that total premiums shall not include  
22 payments by the secretary of human services pursuant to a  
23 contract issued under Section 1876 of the federal Social  
24 Security Act, total premiums exempted by the federal Employee  
25 Retirement Income Security Act of 1974 or federal government

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1 programs.

2 C. If assessments exceed actual reinsurance losses  
3 and administrative losses of the alliance, the excess shall be  
4 held at interest by the board to offset future losses.

5 D. To enable the board to properly determine the  
6 net reinsurance amount and its responsibility for reinsurance  
7 to each member:

8 (1) by April 15 of each year, each member  
9 offering an approved health plan shall submit a listing of all  
10 incurred claims for the previous year; and

11 (2) by April 15 of each year, each member  
12 shall submit a report that includes the total earned premiums  
13 received during the prior year less the total earned premiums  
14 exempted by federal government programs.

15 E. The alliance shall notify each member of the  
16 amount of its assessment due by May 15 of each year. The  
17 assessment shall be paid by the member by June 15 of each  
18 year.

19 F. The proportion of participation of each member  
20 in the alliance shall be determined annually by the board,  
21 based on annual statements filed by each member and other  
22 reports deemed necessary by the board. Any deficit incurred  
23 by the alliance shall be recouped by assessments apportioned  
24 among the members pursuant to the formula provided in  
25 Subsection B of this section; provided that thirty percent of

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1 the assessment paid for any member shall be allowed as a  
2 credit on the ~~[future]~~ following annual premium tax return for  
3 that member ~~[with the credit limited to fifty percent of the~~  
4 ~~premium tax due the first year the assessment is imposed,~~  
5 ~~forty percent the second year and thirty percent the third and~~  
6 ~~all subsequent years]~~.

7 G. The board may defer, in whole or in part, the  
8 payment of an assessment of a member if, in the opinion of the  
9 board, after approval of the superintendent, payment of the  
10 assessment would endanger the ability of the member to fulfill  
11 its contractual obligations. In the event payment of an  
12 assessment against a member is deferred, the amount deferred  
13 may be assessed against the other members in a manner  
14 consistent with the basis for assessments set forth in  
15 Subsection A of this section. The member receiving the  
16 deferment shall pay the assessment in full plus interest at  
17 the prevailing rate as determined by regulation of the  
18 superintendent within four years from the date payment is  
19 deferred. After four years but within five years of the date  
20 of the deferment, the board may sue to recover the amount of  
21 the deferred payment plus interest and costs. Board actions  
22 to recover deferred payments brought after five years of the  
23 date of deferment are barred. Any amount received shall be  
24 deducted from future assessments or reimbursed pro rata to the  
25 members paying the deferred assessment. "

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3  
4  
5 February 23, 1999

6  
7  
8 Mr. President:

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

12  
13 SENATE BILL 561

14  
15 has had it under consideration and reports same with  
16 recommendation that it DO NOT PASS, but that

17  
18 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE

19 SUBSTITUTE FOR SENATE BILL 561

20  
21 DO PASS.

22 Respectfully submitted,

\_\_\_\_\_  
Roman M. Maes, Chairman

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Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_  
(Chief Clerk) (Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Kidd, Kysar, Macias, Rawson

Absent: None

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SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE  
FOR SENATE BILL 561

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

AN ACT

RELATING TO INSURANCE; AMENDING CERTAIN SECTIONS OF THE NEW  
MEXICO INSURANCE CODE.

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

Section 1. Section 59A-5-21 NMSA 1978 (being Laws 1984,  
Chapter 127, Section 88) is amended to read:

"59A-5-21. APPLICATION FOR CERTIFICATE OF AUTHORITY. --

A. To apply for an original certificate of authority  
in this state the insurer shall file with the superintendent  
its written application therefor on forms as prescribed and  
furnished by the superintendent, accompanied by the applicable  
fees as specified or referred to in Section [ ~~101~~ (fee  
schedule) of the Insurance Code] 59A-6-1 NMSA 1978, stating  
under the oath of the president or vice president or other  
chief officer and the secretary of the insurer, or of the

. 127887. 2

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1 attorney-in-fact (if a reciprocal insurer or Lloyds insurer),  
2 the insurer's name, location of its home office, or principal  
3 office, in the United States (if an alien insurer), the kinds  
4 of insurance to be transacted, date of organization or  
5 incorporation, form of organization, state or country of  
6 domicile, and such additional or other information as the  
7 superintendent may reasonably require, together with the  
8 following documents:

9 (1) if a corporation, a copy of its charter or  
10 certificate or articles of incorporation, together with all  
11 amendments thereto, or as restated and amended under the laws  
12 of its state or country of domicile, currently certified by  
13 the public officer with whom the originals are on file in such  
14 state or country;

15 (2) if a domestic incorporated insurer of a  
16 mutual insurer, a copy of its bylaws, certified by its  
17 corporate secretary;

18 (3) if a reciprocal insurer or Lloyds insurer,  
19 a copy of the power of attorney of its attorney-in-fact,  
20 certified by the attorney-in-fact; and if a domestic  
21 reciprocal insurer or a Lloyds insurer, additional  
22 documentation showing that it has been properly formed and is  
23 lawfully existing under applicable laws;

24 (4) a complete copy of its financial statement  
25 as of not earlier than the December 31 next preceding, in form  
as customarily used in the United States by like insurers,  
sworn to by at least two [~~(2)~~] executive officers of the  
insurer or certified by the public insurance supervisory

1 officer of the insurer's state of domicile, or of entry into  
2 the United States if an alien insurer;

3 (5) a copy of the report of last examination  
4 made of the insurer certified by the public insurance  
5 supervisory officer of its state of domicile, or of entry into  
6 the United States if an alien insurer;

7 (6) appointment of the superintendent pursuant  
8 to Section [~~98 of this article~~] 59A-5-31 NMSA 1978 as its  
9 attorney to receive service of legal process;

10 (7) if a foreign or alien insurer, a  
11 certificate of the public insurance supervisory officer of its  
12 state or country of domicile showing that it is authorized or  
13 qualified for authority to transact in such state or country  
14 the kinds of insurance proposed to be transacted in this  
15 state;

16 (8) if a foreign insurer, a certificate as to a  
17 deposit elsewhere if to be tendered pursuant to Section [ 85  
18 ~~(general deposit) or 87 (general deposit of alien insurer) of~~  
19 ~~this article~~;

20 ~~(9) if a life or health insurer, a copy of the~~  
21 ~~insurer's rate book and of each form of policy currently~~  
22 ~~proposed to be issued in this state, and of the form of~~  
23 ~~application therefor] 59A-5-18 or 59A-5-20 NMSA 1978;~~

24 [~~10~~] (9) if an alien insurer, a copy of the  
25 appointment and authority of its United States manager,



1 certified by its officer having custody of its records; and  
2 [~~(11)~~] (10) designation by the insurer of its  
3 officer or representative authorized to appoint and remove its  
4 agents in this state.

5 B. If the superintendent so requests, the applicant  
6 insurer shall supplement the documents and information above  
7 required with true biographical information concerning the  
8 members of the insurer's board of directors or other governing  
9 body and its principal operating officers, together with proof  
10 of identity of each such individual. "

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

13 "59A-6-1. FEE SCHEDULE. --The superintendent shall  
14 collect and receipt for, and persons so served shall pay to  
15 the superintendent, fees, licenses and miscellaneous charges  
16 as follows:

17 A. insurer's certificate of authority -

18 (1) filing application for certificate of  
19 authority, and issuance of certificate of authority, if  
20 issued, including filing of all charter documents, financial  
21 statements, service of process, power of attorney, examination  
22 reports and other documents included with and part of the  
23 application . . . . . \$1,000.00

24 (2) annual continuation of certificate of  
25 authority, per kind of insurance, each year continued . 200.00

. 127887. 2

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SCORC/SB 561

1 (3) reinstatement of certificate of authority  
2 (Section 59A-5-23 NMSA 1978) . . . . . 150.00

3 (4) amendment to certificate of authority  
4 . . . . . 200.00

5 B. charter documents - filing amendment to any  
6 charter document (as defined in Section 59A-5-3 NMSA  
7 1978) . . . . . 10.00

8 C. annual statement of insurer, filing . . . 200.00

9 D. service of process, acceptance by superintendent  
10 and issuance of certificate of service, where issued . 10.00

11 E. agents' licenses and appointments -

12 (1) filing application for original [~~resident~~]  
13 agent license and issuance of license, if  
14 issued . . . . . 30.00

15 (2) appointment of agent -

16 (a) filing appointment, per kind of  
17 insurance, each insurer . . . . . 20.00

18 (b) continuation of appointment, each  
19 insurer, each year continued . . . . . 20.00

20 (3) variable annuity agent's license -

21 (a) filing application for license and  
22 issuance of license, if issued . . . . . [~~25.00~~] 30.00

23 (b) continuation of appointment  
24 each year . . . . . [~~25.00~~] 20.00

25 [~~(4) nonresident agent license - same as for~~

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1 ~~resident agent~~

2                   ~~(5)]~~ (4) temporary license as to life and

3 health insurance or both . . . . . 30.00

4                   (a) as to property insurance . . . . . 30.00

5                   (b) as to casualty/surety insurance

6 . . . . . 30.00

7                   (c) as to vehicle insurance . . . . . 30.00

8                   F. solicitor license -

9                   (1) filing application for original license and

10 issuance of license, if issued . . . . . 30.00

11                   (2) continuation of appointment, per kind of

12 insurance, each year . . . . . 20.00

13                   G. [~~nonresident~~] broker license -

14                   (1) filing application for license and issuance

15 of original license, if issued . . . . . 30.00

16                   (2) annual continuation of license . . . . . 30.00

17                   H. insurance vending machine license -

18                   (1) filing application for original license and

19 issuance of license, if issued, each machine . . . . . 25.00

20                   (2) annual continuation of license, each

21 machine . . . . . 25.00

22                   I. examination for license, application for

23 examination conducted directly by superintendent, each

24 grouping of kinds of insurance to be covered by the

25 examination as provided by the superintendent's rules and

underscored material = new  
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SCORC/SB 561

1 regulations, and payable as to each instance of  
2 examination . . . . . 50.00

3 J. surplus line broker license -

4 (1) filing application for original license and  
5 issuance of license, if issued . . . . . 100.00

6 (2) annual continuation of license . . . . . 100.00

7 K. adjuster license -

8 (1) filing application for original license and  
9 issuance of license, if issued . . . . . 30.00

10 (2) annual continuation of license . . . . . 30.00

11 L. rating organization or rating advisory  
12 organization license -

13 (1) filing application for license and issuance  
14 of license, if issued . . . . . 100.00

15 (2) annual continuation of license . . . . . 100.00

16 M nonprofit health care plans -

17 (1) filing application for preliminary permit  
18 and issuance of permit, if issued . . . . . 100.00

19 (2) certificate of authority, application,  
20 issuance, continuation, reinstatement, charter documents -  
21 same as for insurers

22 (3) annual statement, filing . . . . . 200.00

23 (4) agents and solicitors -

24 (a) filing application for original license  
25 and issuance of license, if issued . . . . . 30.00

. 127887. 2

underscored material = new  
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1 (b) examination for license conducted  
2 directly by superintendent, each instance of examination  
3 . . . . . 50.00

4 (c) annual continuation of appointment  
5 . . . . . 20.00

6 N. prepaid dental plans -

7 (1) certificate of authority, application,  
8 issuance, continuation, reinstatement, charter documents -  
9 same as for insurers

10 (2) annual report, filing . . . . . 200.00

11 (3) agents and solicitors -

12 (a) filing application for original license  
13 and issuance of license, if issued . . . . . 30.00

14 (b) examination for license conducted  
15 directly by superintendent, each instance of examination  
16 . . . . . 50.00

17 (c) continuation of license,  
18 each year . . . . . [~~30.00~~] 20.00

19 0. prearranged funeral insurance - application for  
20 certificate of authority, issuance, continuation,  
21 reinstatement, charter documents, filing annual statement,  
22 licensing of sales representatives - same as for insurers

23 P. premium finance companies -

24 (1) filing application for original license and  
25 issuance of license, if issued . . . . . 100.00

. 127887. 2

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SCORC/SB 561

1 (2) annual renewal of license  
2 . . . . . 100.00

3 Q. motor clubs -

4 (1) certificate of authority -

5 (a) filing application for original  
6 certificate of authority and issuance of certificate of  
7 authority, if issued . . . . . 200.00

8 (b) annual continuation of certificate of  
9 authority . . . . . 100.00

10 (2) sales representatives -

11 (a) filing application for registration or  
12 license and issuance of registration or license, if issued,  
13 each representative . . . . . 20.00

14 (b) annual continuation of registration or  
15 license, each representative . . . . . 20.00

16 R. bail bondsmen -

17 (1) filing application for original license as  
18 bail bondsman or solicitor, and issuance of license, if  
19 issued . . . . . 30.00

20 (2) examination for license conducted directly  
21 by superintendent, each instance of examination . . . . . 50.00

22 (3) continuation of appointment, each year  
23 . . . . . 20.00

24 S. securities salesperson license -

25 (1) filing application for license and issuance

. 127887. 2

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1	of license, if issued . . . . .	25.00
2	(2) renewal of license, each year . . .	25.00
3	T. for each signature and seal of the superintendent	
4	affixed to any instrument . . . . .	10.00
5	U. required filing of forms or rates -	
6	(1) rates . . . . .	50.00
7	(2) major form - each new policy and each	
8	package submission which can include multiple policy forms,	
9	application forms, rider forms, endorsement forms or amendment	
10	forms . . . . .	30.00
11	(3) incidental forms and rates - forms filed	
12	for informational purposes; riders, applications, endorsements	
13	and amendments filed individually; rate service organization	
14	reference filings; rates filed for informational purposes	15.00
15	V. health maintenance organizations -	
16	(1) filing an application for a certificate of	
17	authority . . . . .	1,000.00
18	(2) annual continuation of certificate of	
19	authority, each year continued . . . . .	200.00
20	(3) filing each annual report . . . . .	200.00
21	(4) filing an amendment to organizational	
22	documents requiring approval . . . . .	200.00
23	(5) filing informational amendments . .	50.00
24	(6) agents and solicitors -	
25	(a) filing application for original license	

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SCORC/SB 561

1 and issuance of license, if issued . . . . . 30.00

2 (b) examination for license, each instance  
3 of examination . . . . . 50.00

4 (c) annual continuation of appointment  
5 . . . . . 20.00

6 W. purchasing groups and foreign risk retention  
7 groups -

8 (1) original registration . . . . . 500.00

9 (2) annual continuation of registration  
10 . . . . . 200.00

11 (3) agent or broker fees same as for authorized  
12 insurers.

13 Notwithstanding the fees required in this subsection, an  
14 insurer shall be subject to additional fees or charges, termed  
15 retaliatory or reciprocal requirements, or both, whenever any  
16 form or rate-filing fees in excess of those imposed by the  
17 laws of this state are charged to insurers in New Mexico doing  
18 business in another state or whenever any condition precedent  
19 to the right to issue policies in another state is imposed by  
20 the laws of that state over and above the conditions imposed  
21 upon insurers by the laws of New Mexico; in those cases, the  
22 same form or rate-filing fees shall be imposed upon every  
23 insurer from every other state transacting or applying to  
24 transact business in New Mexico so long as the higher fees  
25 remain in force in the other state. If an insurer fails to

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1 comply with the additional retaliatory or reciprocal  
 2 requirement charges imposed under this subsection, the  
 3 superintendent shall refuse to grant or shall withdraw  
 4 approval of the tendered form or rate filing.

5 Except as to certain appointment fees as specified in  
 6 Section 59A-11-8 NMSA 1978, all fees are deemed earned when  
 7 paid and are not refundable. "

8 Section 3. Section 59A-6-5 NMSA 1978 (being Laws 1984,  
 9 Chapter 127, Section 105, as amended) is amended to read:

10 "59A-6-5. DISTRIBUTION OF INSURANCE DEPARTMENT  
 11 COLLECTIONS. --

12 A. All money received by the insurance department  
 13 [~~or insurance board~~] for fees, licenses, penalties and taxes  
 14 shall be paid daily by the superintendent to the state  
 15 treasurer and by him credited to the "insurance department  
 16 suspense fund" [~~heretofore created and now existing~~] except as  
 17 provided by:

18 (1) the Law Enforcement Protection Fund Act;

19 and

20 (2) Section 59A-6-1.1 NMSA 1978.

21 B. The superintendent [~~with approval of the~~  
 22 ~~corporation commission or insurance board, as the case may be~~  
 23 ~~related to the money involved~~] may authorize refund of money  
 24 erroneously paid as fees, licenses, penalties or taxes from  
 25 the insurance department suspense fund under request for

. 127887. 2

1 refund made within three years after the erroneous payment.

2 C. At the end of every month, the treasurer shall  
3 transfer to the "fire protection fund" the balance remaining  
4 in the insurance department suspense fund after applicable  
5 refunds made [~~therefrom under~~] pursuant to Subsection B of  
6 this section, and derived from property and vehicle insurance  
7 business, and transfer to the general fund the balance  
8 remaining in the insurance department suspense fund derived  
9 from all other kinds of insurance business. "

10 Section 4. Section 59A-11-2 NMSA 1978 (being Laws 1984,  
11 Chapter 127, Section 181) is amended to read:

12 "59A-11-2. APPLICATION FOR LICENSE--INDIVIDUAL. --

13 A. Where a license is [~~now or hereafter~~] required  
14 under the Insurance Code [~~as to~~] for categories referred to in  
15 Section [~~180 of this article~~] 59A-11-1 NMSA 1978, application  
16 [~~therefor~~] by an individual shall be filed with, and on a form  
17 prescribed and furnished by, the superintendent. The  
18 application shall be signed by the applicant, under oath if  
19 required by the form, and by or on behalf of the proposed  
20 principal where expressly required in the form.

21 B. The application form may require information  
22 about applicant as to:

23 (1) name, date of birth, social security  
24 number, residence and business address if applicable [~~and~~  
25 ~~length of time a resident of New Mexico, if applicable~~];

1 (2) personal history, business experience in  
 2 general;

3 (3) experience or special training or education  
 4 in the kind of business to be transacted under the license  
 5 applied for;

6 (4) previous licensing;

7 (5) type of license applied for and kinds of  
 8 insurance or transactions to be covered thereby;

9 (6) proof of applicant's identity; and

10 (7) such other pertinent information and  
 11 matters as the superintendent may reasonably require.

12 C. Application for license as insurance agent shall  
 13 be accompanied by appointment of the applicant as agent by at  
 14 least one insurer, conditioned upon issuance of the license.  
 15 Application for license as insurance solicitor or as agent or  
 16 solicitor as to dental and health care plan, motor club, bail  
 17 bondsman, and other principals shall be accompanied by  
 18 appointment of the applicant by the proposed principal as  
 19 solicitor or agent, as the case may be, subject to issuance of  
 20 the license applied for.

21 D. In all such appointments the principal or  
 22 principal's representative if so required by the  
 23 superintendent shall certify in writing as to his knowledge of  
 24 the applicant, as to applicant's residence, experience had or  
 25 special training received or to be given as to business to be

. 127887. 2

underscored material = new  
 [bracketed material] = delete

1 transacted under the license, applicant's business and  
2 personal reputation, whether applicant is trustworthy and  
3 worthy of licensing, and whether satisfied that applicant  
4 intends in good faith to engage in the business to be covered  
5 by the license, and appointment of applicant is not to enable  
6 applicant to evade the intent or spirit of any controlled  
7 business, anti-rebate or anti-discrimination law or other law.

8 E. The application form shall also require  
9 information as to additional matters expressly required to be  
10 included therein in articles of the Insurance Code relating to  
11 particular licenses.

12 F. The application shall be accompanied by the  
13 applicable license application filing fee specified in Section  
14 [~~101 (fee schedule) of the Insurance Code~~] 59A-6-1 NMSA 1978,  
15 by bond where expressly required under other provisions of the  
16 Insurance Code, and by the fee specified in such fee schedule  
17 for any examination required under the Insurance Code to be  
18 taken and passed by the applicant prior to licensing."

19 Section 5. Section 59A-11-10 NMSA 1978 (being Laws 1984,  
20 Chapter 127, Section 189) is amended to read:

21 "59A-11-10. CONTINUATION, EXPIRATION OF LICENSE. --

22 A. Each license, other than insurance agent, issued  
23 under this article shall continue in force until it is  
24 suspended, revoked or otherwise terminated, but except as may  
25 be provided pursuant to Section [~~190 of this article~~]

1 59A-11-11 NMSA 1978, subject to payment to the superintendent  
 2 annually on or before April [~~1st~~] 1, or December [~~31st~~] 31 as  
 3 to motor club representatives, of the applicable continuation  
 4 fee specified in Section [~~101 (fee schedule) of the Insurance~~  
 5 ~~Code~~] 59A-6-1 NMSA 1978 accompanied by request for such  
 6 continuation:

7 (1) for [~~nonresident~~] broker, surplus line  
 8 broker, independent adjuster, bail bondsman license and  
 9 similar other independent licensees, request shall be made and  
 10 signed by the licensee;

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

15 (3) for vending machine, request shall be made  
 16 and signed by the supervisory agent thereof.

17 B. Subject to Section [~~190 of this article~~]  
 18 59A-11-11 NMSA 1978, any license referred to in Subsection A  
 19 [~~above~~] of this section, not so continued shall be deemed to  
 20 have terminated as of midnight on April [~~30th~~] 30, or December  
 21 [~~31st~~] 31 as to motor club representatives, then current;  
 22 except that the superintendent may effectuate a request for  
 23 continuation received within thirty [~~(30)~~] days thereafter if  
 24 accompanied by annual continuation fee equal to one hundred  
 25 fifty percent of the continuation fee otherwise required.

. 127887. 2

1           C. An insurance agent's license shall continue in  
2 force while there is in effect as to the licensee as shown by  
3 the superintendent's records an appointment or appointments as  
4 agent of authorized insurers covering collectively all of the  
5 kinds of insurance included in the agent's license. Upon  
6 termination of all the licensee's [~~agency~~] agent appointments  
7 as to a particular kind of insurance and failure to replace  
8 such appointment within sixty [~~(60)~~] days thereafter, the  
9 license shall expire and terminate as to such kind of  
10 insurance; and the licensee shall promptly deliver the license  
11 to the superintendent for reissuance, without fee or charge,  
12 as to the kinds of insurance covered by the licensee's  
13 remaining [~~agency~~] agent appointments. Upon termination of  
14 all of the licensee's [~~agency~~] agent appointments under the  
15 license, the license shall forthwith terminate.

16           D. If the superintendent has reason to believe that  
17 the competence of any licensee, or individual designated to  
18 exercise license powers, is questionable, the superintendent  
19 may require as condition to continuation of the license or  
20 license powers that the licensee or individual take and pass  
21 to the superintendent's satisfaction a written examination as  
22 required under the Insurance Code of new individual applicants  
23 for similar license.

24           E. This section shall not apply as to temporary  
25 licenses, which shall be for such duration and subject to

1 extension as provided in the respective sections of the  
2 Insurance Code by which such licenses are authorized.

3 F. All licenses and appointments as to an insurer or  
4 other principal which ceases to be authorized to transact  
5 business in this state shall automatically terminate without  
6 notice as of date of such cessation.

7 G. A license shall also terminate upon death of the  
8 licensee, if an individual, or dissolution if a corporation,  
9 or change in partnership members if a firm; subject, in case  
10 of a firm, to continuation of the license for a reasonable  
11 period while application for new license is being made or  
12 pending, under reasonable conditions provided in regulations  
13 of the superintendent. "

14 Section 6. Section 59A-12-4 NMSA 1978 (being Laws 1984,  
15 Chapter 127, Section 205) is amended to read:

16 "59A-12-4. "SOLICITOR" DEFINED. --For the purposes of  
17 [~~this article~~] Chapter 59A, Article 12 NMSA 1978 a "solicitor"  
18 is an individual employed by a licensed [~~resident~~] agent to  
19 solicit insurance and perform such other duties in handling  
20 the agent's business as the agent may authorize. "

21 Section 7. Section 59A-12-8 NMSA 1978 (being Laws 1984,  
22 Chapter 127, Section 209) is amended to read:

23 "59A-12-8. CONTROLLED BUSINESS. --

24 A. The superintendent shall not issue or permit to  
25 remain in force [~~any~~] a license as agent, solicitor, or

. 127887. 2

1 [nonresident] broker or [nonresident-agent] if the  
2 superintendent finds or has cause to believe that the license  
3 has been or probably will be used chiefly for the purpose of  
4 writing insurance on the lives, property or risks of the  
5 licensee or proposed licensee, or of his family members,  
6 employees, employer, business associates, or directors,  
7 officers, employees or principal stockholders of a corporation  
8 by which he is employed or retained, or of which he is an  
9 officer, director or principal stockholder, or members or  
10 employees of any firm or other business entity with which he  
11 is associated or by which he is employed or retained.

12 B. A license shall be deemed used or to be used for  
13 writing of such controlled business if the superintendent  
14 finds that in any calendar year commissions or other  
15 compensation earned with respect to such business exceeded, or  
16 probably would exceed, fifty percent of all commissions and  
17 compensation earned, or probably to be earned, in such  
18 calendar year as to all business written or likely to be  
19 written under the license during the same such year. "

20 Section 8. Section 59A-12-10 NMSA 1978 (being Laws 1997,  
21 Chapter 48, Section 1) is amended to read:

22 "59A-12-10. LICENSING OF LENDING INSTITUTION--  
23 DEFINITIONS AND EXCEPTIONS. --

24 A. As used in this section:

25 (1) "lending institution" means an institution,



1 including its holding company, subsidiary or insurance agent,  
 2 solicitor or broker affiliate, whose business includes  
 3 accepting deposits or lending money in New Mexico, including  
 4 banks, savings and loan associations and credit unions;  
 5 "lending institution" does not include insurance companies;

6 (2) "holding company", "subsidiary" and  
 7 "affiliate" mean those terms as defined in regulations adopted  
 8 by the superintendent, except "bank holding company" means  
 9 that term as defined in Section 2 of the federal Bank Holding  
 10 Company Act of 1956;

11 (3) "public utility" means a private employer  
 12 subject to the jurisdiction of the [~~New Mexico public utility~~  
 13 ~~commission or the state corporation~~] commission [~~or a~~  
 14 ~~successor entity~~] that is engaged in the business of providing  
 15 telecommunications, electric, gas, water or stream heat  
 16 services to the public;

17 (4) "sell" means to engage in the solicitation,  
 18 sale and placement of insurance and such other related  
 19 activities conducted by an agent, solicitor or broker pursuant  
 20 to the Insurance Code;

21 (5) "service contract" means a contract issued  
 22 on consumer products pursuant to which the vendor or  
 23 manufacturer bears the cost of the repair or replacement of  
 24 the consumer product;

25 (6) "insurance premium finance agreement" means

1 an agreement by which an insured or a prospective insured  
2 promises to pay to any person engaged in the business of  
3 premium financing, the amount advanced or to be advanced under  
4 the agreement to an insurer or to an insurance agent or broker  
5 in payment of premiums on an insurance contract; and

6 (7) "loan transaction" and any other reference  
7 to lending or extension of credit does not include loans made  
8 by broker-dealers registered in accordance with applicable  
9 state and federal securities laws that are wholly  
10 collateralized by securities.

11 B. A lending institution may be licensed to sell:

12 (1) any insurance except title insurance in  
13 accordance with the Insurance Code and to the extent  
14 authorized by federal and state lending institution  
15 regulators; and

16 (2) annuities to the extent authorized by law  
17 and federal and state lending institution regulators, but  
18 nothing in this paragraph shall affect the rights and  
19 obligations of nationally chartered lending institutions.

20 C. A public utility or its holding company,  
21 subsidiary or affiliate shall not be licensed to sell  
22 insurance or act as a broker for insurance in New Mexico.

23 D. As used in Subsections E through Y of this  
24 section, "insurance" means all products defined or regulated  
25 as insurance under the Insurance Code except:

1                   (1) credit life, credit accident and health,  
2 credit involuntary unemployment, credit casualty and credit  
3 property insurance, and when providing insurance coverage to a  
4 borrower or co-borrower or both, the following insurance  
5 products: accidental death and dismemberment, accidental  
6 disability and any other accidental casualty insurance  
7 product;

8                   (2) insurance placed by a lending institution  
9 on the collateral pledged as security for a loan when the  
10 debtor breaches the contractual obligation to provide that  
11 insurance;

12                   (3) private mortgage insurance and financial  
13 guarantee insurance;

14                   (4) annuities;

15                   (5) service contracts;

16                   (6) insurance premium finance agreements; and

17                   (7) travel accident or baggage insurance.

18                   E. A lending institution shall not require as a  
19 condition precedent to the extension of credit, or any  
20 subsequent renewal thereof, or the procurement of other bank  
21 services that the customer purchase insurance through a  
22 particular insurer, agent, solicitor or broker.

23                   F. A lending institution shall not extend credit,  
24 lease or sell property or furnish any other service or fix or  
25 vary the consideration for any of the foregoing on the

. 127887. 2

1 condition or requirement that the customer obtain insurance  
2 from that lending institution or from a particular insurer,  
3 agent, solicitor or broker.

4 G. A lending institution shall not impose a  
5 requirement on an insurance agent, solicitor or broker who is  
6 not associated with the lending institution that is not  
7 imposed on an insurance agent, solicitor or broker who is  
8 associated with that institution or, unless otherwise  
9 authorized by applicable federal or state law, require a  
10 debtor, insurer, agent, solicitor or broker to pay a separate  
11 charge in connection with the handling of insurance that is  
12 required under a contract.

13 H. A lending institution, except an institution that  
14 does not accept deposits that are federally insured, that  
15 sells insurance on its premises shall:

16 (1) conspicuously post a notice that is clearly  
17 visible to anyone who may purchase insurance that insurance is  
18 not a deposit account insured by a federal deposit insuring  
19 agency;

20 (2) orally inform a prospective purchaser of  
21 insurance that insurance is not a deposit account insured by a  
22 federal deposit insuring agency; and

23 (3) provide a written disclosure to the  
24 customer containing the following statements before the sale  
25 of insurance is complete:

1 (a) insurance is not a lending institution  
2 deposit account and is not insured by its federal deposit  
3 insuring agency;

4 (b) insurance is not an obligation of or  
5 guaranteed by the lending institution;

6 (c) the customer is not required to obtain  
7 insurance from a particular lending institution, agent,  
8 solicitor or broker; and

9 (d) where applicable, insurance involves  
10 investment risk, including potential loss of principal.

11 I. The sale of insurance by a lending institution,  
12 except an institution that does not accept deposits that are  
13 federally insured, shall be effectuated in such a manner so as  
14 to avoid confusion between federally insured deposit products  
15 offered by a lending institution and the nonfederally insured  
16 insurance sold. Insurance advertisements and other sales  
17 material shall be accurate and not misleading or deceptive.  
18 Insurance advertising and other sales materials regarding  
19 insurance shall include disclosures that contain language that  
20 is the same or substantially similar to the following:

21 (1) insurance is not a lending institution  
22 deposit and is not insured by its federal deposit insuring  
23 agency;

24 (2) insurance is not an obligation of or  
25 guaranteed by the lending institution; and

. 127887. 2

1 (3) where applicable, insurance involves  
2 investment risk, including potential loss of principal.

3 J. Insurance operations may be conducted by the  
4 lending institution, its holding company, an affiliate or  
5 subsidiary of either or through a separate corporate entity or  
6 partnership.

7 K. A lending institution shall not provide nonpublic  
8 customer information to a third party for the purpose of  
9 another's sale of insurance without written authorization from  
10 the customer. As used in this subsection, "nonpublic customer  
11 information" means information regarding a person that has  
12 been derived from a record of a financial institution.

13 "Nonpublic customer information" does not include customer  
14 names and addresses and telephone numbers or information about  
15 an individual that could be obtained from an unaffiliated  
16 credit bureau that is subject to the federal Fair Credit  
17 Reporting Act by a third party that is not entering into a  
18 credit relationship with the individual but has a legitimate  
19 need for the information in connection with a business  
20 transaction with the individual, except that "nonpublic  
21 customer information" includes information concerning  
22 insurance premiums, the terms and conditions of insurance  
23 coverage, insurance expirations, insurance claims and  
24 insurance history of an individual. Notwithstanding any  
25 provision in this section to the contrary, compliance with

1 Section 603 of the federal Fair Credit Reporting Act by a  
2 lending institution shall be deemed to be full compliance with  
3 this subsection. "Nonpublic customer information" does not  
4 include material excluded from the definition of "consumer  
5 report" by Section 603(d)(2)(A) of the federal Fair Credit  
6 Reporting Act.

7 L. Records relating to the insurance sales of a  
8 lending institution, including files relating to and  
9 reflecting customer complaints, shall be kept separate and  
10 apart from all records relating to the banking transactions of  
11 the lending institution. Records pertaining to insurance  
12 activities of the lending institution or copies of those  
13 records [~~shall be kept in the principal in-state office in the~~  
14 ~~state of the financial institution or with the institution's~~  
15 ~~resident agent, solicitor or broker and~~] shall be subject to  
16 the inspection and audit by the insurance [~~department~~  
17 division]. If the [~~department~~] division determines to inspect  
18 and audit the records relating to the insurance activities of  
19 a lending institution, that institution shall make available  
20 to the [~~department~~] division, at a location [~~of the lending~~  
21 ~~institution~~] in [~~the state~~] New Mexico [~~or in the office of~~  
22 ~~the institution's resident agent, solicitor or broker~~] the  
23 lending institution's records and knowledgeable personnel to  
24 assist in the interpretation of the lending institution's  
25 records.

. 127887. 2

1 M A lending institution, or officer, director or  
2 employee acting on behalf of the institution, who qualifies  
3 for issuance of an agent's, solicitor's or broker's license  
4 pursuant to the Insurance Code may be issued an agent or  
5 broker license authorizing the sale of insurance.

6 N. A lending institution shall not pay a commission  
7 or other valuable consideration to a person for services of an  
8 insurance agent, solicitor or broker unless the person  
9 performing the service holds a valid insurance license for the  
10 class of insurance for which the service is rendered or  
11 performed at the time the service is performed. No person,  
12 other than a person properly licensed in accordance with the  
13 Insurance Code, shall accept any commission or valuable  
14 consideration for those services.

15 O. A lending institution shall not offer an  
16 inducement to a customer to purchase insurance from the  
17 institution other than as plainly expressed in the insurance  
18 policy. Investment programs, memberships or other programs  
19 designed or represented to waive, reduce, pay, produce or  
20 provide funds to pay all or part of the cost on insurance are  
21 an illegal inducement.

22 P. A lending institution may not in the same  
23 transaction solicit the purchase of insurance from a customer  
24 who has applied for a loan from the institution before the  
25 time the customer has received a written commitment from the



1 lending institution with respect to that loan, or, in the  
2 event that no written commitment has been or will be issued in  
3 connection with the loan, a lending institution shall not  
4 solicit the purchase of insurance before the time the customer  
5 receives notification of approval of the loan by the lending  
6 institution and the institution creates a written record of  
7 the loan approval. This subsection shall not apply when a  
8 lending institution contacts a customer in the course of  
9 direct or mass marketing to a group of persons in a manner  
10 that bears no relation to the customer's loan application or  
11 credit decision.

12 Q. The sale of insurance by a lending institution,  
13 credit union, sales finance company, insurance company,  
14 insurance agent, an institution that grants or arranges  
15 consumer credit or an institution that solicits or makes loans  
16 in New Mexico may be conducted by a person whose  
17 responsibilities include loan transactions or other  
18 transactions involving the extension of credit so long as the  
19 person who is primarily responsible for making the specific  
20 loan or extension of credit is not the same person engaged in  
21 the sale of insurance for that same transaction; provided,  
22 however, that the provisions of this subsection shall not  
23 apply to:

24 (1) a broker or dealer registered under the  
25 federal Securities Exchange Act of 1934; or

. 127887. 2

1                   (2) a lending institution location that has  
2 three or fewer persons with lending authority.

3                   R. If insurance is required as a condition of  
4 obtaining a loan, the credit and insurance transactions shall  
5 be completed independently and through separate documents.

6                   S. A loan for premiums on required insurance shall  
7 not be included in the primary credit without the written  
8 consent of the customer, which may be evidenced by compliance  
9 with the federal Truth in Lending Act.

10                  T. A person who engages in loan transactions at any  
11 office of, or on behalf of, a lending institution or any other  
12 agent, employee, director or officer of the lending  
13 institution may refer a customer who seeks to purchase, or  
14 seeks an opinion or advice on any insurance product, to a  
15 person, or may give the phone number of a person, who sells or  
16 provides opinions or advice on such products only if the  
17 customer expressly requests the referral; the person who  
18 engages in loan transactions does not solicit the customer  
19 request; and the person who engages in the loan transaction  
20 does not receive any compensation for the referral.

21                  U. The location for the sale of insurance on the  
22 premises of a lending institution, except an institution that  
23 does not accept deposits that are federally insured, to the  
24 extent practicable shall be:

25                   (1) physically located to be distinct from the

1 lending activities of the institution; and

2 (2) clearly and conspicuously signed to be  
3 easily distinguishable by the public as separate and distinct  
4 from the lending activities of the institution.

5 V. Signs and other informational material concerning  
6 the availability of insurance products from the lending  
7 institution or third party soliciting the purchase of or  
8 selling insurance on the premises of the lending institution  
9 shall not be displayed to the extent practicable in an area  
10 where application for loans or other extensions of credit are  
11 being taken or closed.

12 W. Nothing in this section grants a lending  
13 institution, including its holding company, subsidiary or  
14 affiliate, except those enumerated in this section, the power  
15 to sell insurance that was not allowed prior to July 1, 1997.

16 X. Nothing in this section precludes the  
17 superintendent from adopting reasonable rules and regulations  
18 for the purposes of the administration of the provisions of  
19 this section, including rules and regulations for written  
20 disclosures.

21 Y. If any of the provisions of this section are  
22 preempted by federal law, then those preempted provisions  
23 shall not apply to any person or lending institution subject  
24 to the provisions of this section. "

25 Section 9. Section 59A-12-12 NMSA 1978 (being Laws 1984,

. 127887. 2

1 Chapter 127, Section 213) is amended to read:

2 "59A-12-12. GENERAL QUALIFICATIONS FOR INDIVIDUAL AGENT,  
3 BROKER OR SOLICITOR LICENSE. --For the protection of the public  
4 in New Mexico, the superintendent shall not issue, continue or  
5 permit to exist [~~any~~] a license to an individual as agent,  
6 [~~nonresident~~] broker or solicitor except as to an individual  
7 qualified [~~therefor~~] as follows:

8 A. must be eighteen [~~(18)~~] years of age or older;

9 [~~B. except as to nonresident broker or nonresident~~  
10 ~~agent, must reside within this state, and must have been such~~  
11 ~~a resident for at least thirty (30) days immediately preceding~~  
12 ~~application for license; except, that the thirty (30) day~~  
13 ~~residence requirement shall not apply as to an agent brought~~  
14 ~~into this state by an insurer to replace an agent of the~~  
15 ~~insurer who has become disabled, deceased, or terminated;~~

16 ~~C.]~~ B. must have passed any examination required for  
17 licensing;

18 [~~D.]~~ C. must be competent, trustworthy and  
19 financially responsible;

20 [~~E.]~~ D. if for license as an agent, must be  
21 appointed as an agent by an authorized insurer, subject to  
22 issuance of a license;

23 [~~F.]~~ E. if for license as a solicitor, must be  
24 employed as a solicitor by a licensed [~~resident~~] agent,  
25 subject to issuance of the license; and

1           ~~[G.]~~ F. must be in compliance with other applicable  
2 qualifications and requirements of the Insurance Code. "

3           Section 10. Section 59A-12-15 NMSA 1978 (being Laws  
4 1984, Chapter 127, Section 216) is amended to read:

5           "59A-12-15. LICENSING FIRMS, CORPORATIONS. --

6           A. The superintendent shall license a firm or  
7 corporation only as ~~[a resident]~~ an agent or ~~[nonresident]~~  
8 broker.

9           B. For license as agent each general partner and  
10 each individual to act for the firm, or each individual to act  
11 for the corporation, shall be named in the license or  
12 registered with the superintendent, and shall qualify as  
13 though for license as an individual.

14           ~~[C.—The superintendent shall not issue or permit to  
15 exist license as a resident agent to a firm or corporation  
16 unless it maintains a principal place of business in this  
17 state, and, if a corporation, it must be domiciled in this  
18 state.]"~~

19           Section 11. Section 59A-12-16 NMSA 1978 (being Laws  
20 1984, Chapter 127, Section 217) is amended to read:

21           "59A-12-16. EXAMINATION FOR LICENSE. --

22           A. Each applicant for license as agent, solicitor  
23 ~~[nonresident]~~ or broker or ~~[nonresident agent]~~ shall, prior to  
24 issuance of license, personally take and pass an examination  
25 authorized by the superintendent to establish the applicant's

1 competence, knowledge and understanding of attendant  
2 responsibility and duties as to the insurance business to be  
3 transacted under the license applied for; except, that no such  
4 examination shall be required:

5 (1) for renewal or continuance of an existing  
6 license, except as provided in Subsection D of Section [ ~~189 of~~  
7 ~~this article~~] 59A-11-10 NMSA 1978;

8 (2) of an applicant for limited license as  
9 provided in Section [ ~~219 of this article~~] 59A-12-18 NMSA 1978;

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

14 (4) of applicants with respect to property,  
15 casualty, surety, marine and transportation, and vehicle  
16 insurances, or any of them, 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 [ ~~220 of this article~~] 59A-12-19 NMSA  
22 1978;

23 (6) of an applicant for a license covering the  
24 same kind or kinds of insurance as to which licensed in this  
25 state under a similar license within five [ ~~(5)~~] years

1 preceding date of application for the new license, unless the  
 2 previous license was suspended, revoked or continuation  
 3 thereof refused by the superintendent;

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

10 (8) of an applicant for [~~nonresident~~] broker or  
 11 [~~nonresident~~] agent license, if the superintendent is  
 12 satisfied that the applicant took and passed a similar  
 13 examination in [~~the~~] a state in which already licensed,  
 14 subject to Section [~~100 (reciprocity provision) of the~~  
 15 ~~Insurance Code~~] 59A-5-33 NMSA 1978; or

16 (9) of applicant for license only as title  
 17 insurance agent.

18 B. The superintendent shall conduct examinations as  
 19 provided for in Chapter 59A, Article 11 [~~(licensing~~  
 20 ~~procedures) of the Insurance Code~~] NMSA 1978. "

21 Section 12. Section 59A-12-17 NMSA 1978 (being Laws  
 22 1984, Chapter 127, Section 218) is amended to read:

23 "59A-12-17. SCOPE OF LICENSE. --

24 A. Except as to limited licenses identified in  
 25 Section [~~219 of this article~~] 59A-12-18 NMSA 1978, an agent's

. 127887. 2

1 or broker's license shall cover the kind [~~or kinds~~] of  
2 insurance, or major subdivisions of life or health insurance,  
3 for which the applicant has applied and qualified, including  
4 [~~any or all~~] of the following:

- 5 (1) life insurance, or any or all of the  
6 following subdivisions thereof:
- 7 (a) industrial life insurance;
  - 8 (b) debit insurance;
  - 9 (c) credit life insurance; or
  - 10 (d) variable annuity contracts;
- 11 (2) health insurance, credit health insurance,  
12 or industrial health insurance, or other subdivisions thereof;
- 13 (3) property insurance;
  - 14 (4) casualty insurance;
  - 15 (5) surety insurance;
  - 16 (6) marine and transportation insurance;
  - 17 (7) vehicle insurance; or
  - 18 (8) title insurance.

19 B. The scope of a solicitor's license is subject to  
20 Section [~~215 of this article~~] 59A-12-14 NMSA 1978.

21 C. License of a [~~nonresident~~] broker [~~or nonresident~~  
22 ~~agent~~] shall cover the kind or kinds of insurance applied and  
23 qualified for, within the classifications stated in Subsection  
24 A [~~above~~] of this section.

25 D. A licensee as to variable annuities or similar



1 contracts deemed to constitute also securities, shall also  
 2 possess license as a security salesman under other applicable  
 3 state laws. "

4 Section 13. Section 59A-12-20 NMSA 1978 (being Laws  
 5 1984, Chapter 127, Section 221) is amended to read:

6 "59A-12-20. PLACE OF BUSINESS--DISPLAY OF LICENSE. --

7 A. Every general lines agent shall have and maintain  
 8 [~~in this state~~] a place of business accessible to the public,  
 9 wherein the licensee [~~principally~~] conducts transactions under  
 10 the license. The address of [~~such place~~] the place of  
 11 business shall appear upon the application for license when  
 12 issued, and the licensee shall promptly notify the  
 13 superintendent in writing of any change [~~thereof~~] of address.  
 14 Nothing in this section shall prohibit maintenance of [~~such~~]  
 15 the place of business in the licensee's residence [~~in this~~  
 16 ~~state~~].

17 B. The licenses of the licensee and those of  
 18 solicitors employed by him shall be conspicuously displayed in  
 19 [~~such~~] the place of business in a part [~~thereof~~] customarily  
 20 open to the public.

21 C. This section does not apply [~~as~~] to life  
 22 insurance, annuity contracts or health insurance. "

23 Section 14. Section 59A-12-23 NMSA 1978 (being Laws  
 24 1984, Chapter 127, Section 224) is amended to read:

25 "59A-12-23. INSURANCE VENDING MACHINES. --

. 127887. 2

1           A. A licensed [~~resident~~] agent may solicit for and  
2 issue personal travel accident insurance policies of an  
3 authorized insurer by means of mechanical vending machines  
4 supervised by the agent and placed at airports and other  
5 places of convenience to the [~~travelling~~] traveling public, if  
6 the superintendent finds that:

7                   (1) the policy provides reasonable coverage and  
8 benefits, is suitable for sale and issuance by vending machine  
9 and use of such a machine in a proposed location would be of  
10 material convenience to the public;

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

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

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

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

20           B. For each machine to be used the superintendent  
21 shall issue to the applicant a special vending machine  
22 license. The license shall state the name and address of the  
23 insurer and agent, name of the policy to be sold and serial  
24 number and operating location of the machine. The license  
25 shall be subject to annual continuation, to expiration,

1 suspension or revocation coincidentally with that of the  
 2 agent. The superintendent shall also revoke the license as to  
 3 any machine as to which he finds that license qualifications  
 4 no longer exist. Proof of existence of a subsisting license  
 5 shall be displayed on or about each machine in use in such  
 6 manner as the superintendent reasonably requires."

7 Section 15. Section 59A-12-24 NMSA 1978 (being Laws  
 8 1984, Chapter 127, Section 225) is amended to read:

9 "59A-12-24. SHARING OF [~~COMMISSIONS~~] COMMISSIONS. --

10 A. An agent or [~~nonresident~~] broker [~~or nonresident~~  
 11 ~~agent~~] shall share a [~~commission~~] commission or compensation  
 12 for or on account of the solicitation or negotiation in this  
 13 state of insurance on individuals or property or risks in this  
 14 state only with the agent's duly licensed solicitor, or duly  
 15 licensed [~~resident~~] agent of the insurer with which the  
 16 insurance was placed, or duly licensed [~~nonresident~~] broker  
 17 [~~or nonresident agent~~].

18 B. No such licensee shall share in commission or  
 19 compensation as to a kind of insurance for which not licensed.

20 C. Such sharing in commissions and compensation  
 21 between the same such licensees shall be infrequently only,  
 22 and shall not unduly obviate the general necessity of  
 23 appointment of the agent by the insurer with which the  
 24 insurance is placed.

25 D. Nothing in the Insurance Code shall be deemed to

. 127887. 2

1 prohibit payment, to or for the account of a former owner of  
2 an insurance agency or brokerage, of commissions or part  
3 thereof currently accruing on business of the agency or  
4 brokerage, as part of the purchase price of the agency or  
5 brokerage, whether or not such former owner is currently  
6 licensed as agent, solicitor or broker. "

7 Section 16. Section 59A-12-25 NMSA 1978 (being Laws  
8 1984, Chapter 127, Section 226) is amended to read:

9 "59A-12-25. NONRESIDENT BROKERS, [ AND] NONRESIDENT  
10 AGENTS AND NONRESIDENT SOLICITORS--RETALIATION. --

11 A. The superintendent may [ ~~at discretion~~] refuse to  
12 issue a license as a [ ~~nonresident~~] broker, [ ~~or nonresident~~]  
13 agent [ ~~as to life and health insurance only~~] or solicitor to a  
14 [ ~~licensed resident agent or licensed resident broker of~~]  
15 resident of another state or country, who is otherwise  
16 qualified under this article for license as [ ~~an~~] a broker,  
17 agent or solicitor in New Mexico [ ~~except as to residence and~~  
18 ~~as otherwise expressly provided~~], if under the laws of [ ~~such~~]  
19 the other state or country licensed residents of this state  
20 are [ ~~not~~] prohibited or prevented from acting as [ ~~nonresident~~  
21 ~~agent or nonresident broker therein.~~ A nonresident agent  
22 ~~license shall be so issued only to an individual.~~

23 B. ~~The nonresident broker or nonresident agent shall~~  
24 ~~place insurance of persons resident or risks located or to be~~  
25 ~~performed in this state only with insurers authorized in this~~

1 ~~state and through a duly licensed and appointed resident agent~~  
 2 ~~of the insurer in this state, and may share with such agent in~~  
 3 ~~commission payable thereon.~~

4 C. ~~Both the nonresident licensee and the placing~~  
 5 ~~resident agent must be so licensed as to all the kinds of~~  
 6 ~~insurance so placed] broker, agent or solicitor because of~~  
 7 ~~their residence.~~

8 ~~[D.]~~ B. As part of an application for a license, the  
 9 nonresident applicant shall appoint the superintendent, on a  
 10 form prescribed and furnished by the superintendent, as  
 11 ~~[attorney]~~ agent on whom may be served all legal process  
 12 issued by ~~[any]~~ a court in this state in any action against or  
 13 involving the licensee as to transactions under the license.  
 14 The appointment shall be irrevocable and continue for so long  
 15 as ~~[any such]~~ an action could arise or exist. Duplicate  
 16 copies of process shall be served upon the superintendent or  
 17 other individual in apparent charge of the insurance  
 18 ~~[department]~~ division during the superintendent's absence,  
 19 accompanied by payment of the process service fee specified in  
 20 Section ~~[101 (fee schedule) of the Insurance Code]~~ 59A-6-1  
 21 NMSA 1978. Upon ~~[such]~~ service the superintendent shall  
 22 promptly forward a copy ~~[thereof]~~ by certified mail, return  
 23 receipt requested, to the licensee at his ~~[address]~~ last  
 24 address of record with the superintendent. Process served and  
 25 copy forwarded as so provided shall for all purposes

. 127887. 2

1 constitute personal service [~~thereof~~] upon the licensee.

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

12           Section 17. Section 59A-12-26 NMSA 1978 (being Laws  
13 1984, Chapter 127, Section 227, as amended) is amended to  
14 read:

15           "59A-12-26. CONTINUED EDUCATION. --

16           A. For protection of the public and to preserve and  
17 improve competence of licensees, the superintendent may in his  
18 sole discretion require as a condition to continuation of  
19 license as agent, solicitor [~~nonresident agent or nonresident~~  
20 ~~broker~~] or broker under this article that during the twelve  
21 months next preceding expiration of the current license period  
22 the licensee has [~~enrolled in and attended not less than~~  
23 ~~fifteen~~] attended the minimum number of hours of formal class  
24 instruction, lectures or seminars required and approved by the  
25 superintendent covering the kinds of insurance for which

1 licensed.

2 ~~[B. If the licensee is licensed to transact or sells~~  
 3 ~~only one of the following lines of insurance:-~~

4 (1) ~~credit life insurance;-~~

5 (2) ~~credit health insurance;-~~

6 (3) ~~vendors' single interest insurance;-~~

7 (4) ~~title insurance; or~~

8 (5) ~~insurance incidental to the transportation~~  
 9 ~~of persons or storage or transportation of baggage;-~~  
 10 ~~then the superintendent may waive the requirements of~~  
 11 ~~Subsection A of this section or may require less than fifteen~~  
 12 ~~hours of instruction, lectures or seminars.-~~

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

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

24 ~~[E.]~~ D. The superintendent shall promulgate rules  
 25 and regulations for effectuation of the purposes and

1 requirements of this section and may impose a penalty not to  
2 exceed fifty dollars (\$50.00) for a licensee's failure to  
3 timely report continuing education credits.

4 [F.] E. For the purposes of this section, the  
5 superintendent shall charge, at the time of certifying each  
6 licensee's continuing education credits as a condition of  
7 continuation of license, a fee of five dollars (\$5.00).

8 [G.] F. This section shall not apply to holders of  
9 limited license issued under Section 59A-12-18 NMSA 1978. "

10 Section 18. Section 59A-12A-14 NMSA 1978 (being Laws  
11 1989, Chapter 374, Section 14) is amended to read:

12 "59A-12A-14. CONFIDENTIALITY. --

13 A. An administrator shall provide for the  
14 confidentiality of personal data identifying an individual  
15 covered by a plan or insurance carrier or data concerning a  
16 person that self insures. An administrator shall not disclose  
17 records containing personal information that may be associated  
18 with an identifiable individual covered by a plan or insurance  
19 carrier or data relating to a person that self insures to a  
20 person other than the individual to whom the information  
21 pertains, except as necessary to comply with the  
22 superintendent's inquiry or a court order. Other than to  
23 comply with the [~~insurance board's~~] superintendent's inquiry  
24 or a court order, an administrator shall not disclose personal  
25 data without the prior consent of the covered individual or



1 person that self insures.

2 B. Subsection A of this section does not apply to  
 3 information disclosed for any of the following reasons or to  
 4 an indicated entity:

5 (1) claims adjudication;

6 (2) claims verification;

7 (3) other proper plan or insurance carrier  
 8 administration;

9 (4) an audit conducted pursuant to ERISA;

10 (5) an insurer or plan for the purchase of  
 11 excess loss insurance and for claims under the excess loss  
 12 insurance, provided, an insurer obtaining information under  
 13 this paragraph shall be subject to the requirements of  
 14 Subsection A of this section;

15 (6) the plan, insurance carrier, person that  
 16 self insures or a fiduciary of the plan;

17 (7) the ~~[insurance board]~~ superintendent or  
 18 ~~[their]~~ the superintendent's designees; provided the  
 19 information obtained by the superintendent ~~[or board]~~ under  
 20 this subsection is confidential, except that the  
 21 superintendent ~~[or insurance board]~~ may use the information in  
 22 any proceeding instituted against the administrator; or

23 (8) as required by law. "

24 Section 19. Section 59A-12B-3 NMSA 1978 (being Laws  
 25 1993, Chapter 320, Section 29) is amended to read:

. 127887. 2

underscored material = new  
 [bracketed material] = delete

1 "59A- 12B- 3. LICENSURE. --

2 A. No person, firm, association or corporation shall  
3 act in the capacity of a managing general agent with respect  
4 to risks located in this state for an insurer authorized in  
5 this state unless such person is a licensed agent or broker in  
6 this state.

7 B. No person, firm, association or corporation shall  
8 act in the capacity of a managing general agent representing  
9 an insurer domiciled in this state with respect to risks  
10 located outside this state unless such person is licensed as  
11 an agent or broker in this state pursuant to the provisions of  
12 the Managing General Agents Law. [~~Such license may be a~~  
13 ~~nonresident license.~~]

14 C. The superintendent may require a bond in an  
15 amount acceptable to him for the protection of the insurer.

16 D. The superintendent may require the managing  
17 general agent to maintain an errors and omissions policy."

18 Section 20. Section 59A- 12D- 3 NMSA 1978 (being Laws  
19 1993, Chapter 320, Section 44) is amended to read:

20 "59A- 12D- 3. LICENSURE. --

21 A. No person, firm, association or corporation shall  
22 act as a reinsurance intermediary-broker in this state if it  
23 maintains an office either directly or as a member or employee  
24 of a firm or association, or an officer, director or employee  
25 of a corporation:

1 (1) in this state, unless such reinsurance  
 2 intermediary-broker is a licensed producer in this state; or

3 (2) in another state, unless such reinsurance  
 4 intermediary-broker is a licensed producer in this state or  
 5 another state having a law substantially similar to this law  
 6 or such reinsurance intermediary-broker is licensed in this  
 7 state as a [~~nonresident~~] reinsurance intermediary.

8 B. No person, firm, association or corporation shall  
 9 act as a reinsurance intermediary-manager:

10 (1) for a reinsurer domiciled in this state,  
 11 unless such reinsurance intermediary-manager is a licensed  
 12 producer in this state;

13 (2) in this state, if the reinsurance  
 14 intermediary-manager maintains an office either directly or as  
 15 a member or employee of a firm or association, or an officer,  
 16 director or employee of a corporation in this state, unless  
 17 such reinsurance intermediary-manager is a licensed producer  
 18 in this state;

19 (3) in another state for a nondomestic insurer,  
 20 unless such reinsurance intermediary-manager is a licensed  
 21 producer in this state or another state having a law  
 22 substantially similar to this law or such person is licensed  
 23 in this state as a [~~nonresident~~] reinsurance intermediary.

24 C. The superintendent may require a reinsurance  
 25 intermediary-manager subject to the provisions of Subsection B

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 [bracketed material] = delete

1 to:

2 (1) file a bond in an amount from an insurer  
3 acceptable to the superintendent for the protection of the  
4 reinsurer; and

5 (2) maintain an errors and omissions policy in  
6 an amount acceptable to the superintendent.

7 D.

8 (1) The superintendent may issue a reinsurance  
9 intermediary license to any person, firm, association or  
10 corporation who has complied with the requirements of the  
11 Reinsurance Intermediary Law. Any such license issued to a  
12 firm or association will authorize all the members of such  
13 firm or association and any designated employees to act as  
14 reinsurance intermediaries under the license, and all such  
15 persons shall be named in the application and any supplements  
16 thereto. Any such license issued to a corporation shall  
17 authorize all of the officers and any designated employees and  
18 directors thereof to act as reinsurance intermediaries on  
19 behalf of such corporation, and all such persons shall be  
20 named in the application and any supplements thereto.

21 (2) If the applicant for a reinsurance  
22 intermediary license is a nonresident, such applicant, as a  
23 condition precedent to receiving or holding a license, shall  
24 designate the superintendent as agent for service of process  
25 in the manner, and with the same legal effect, provided for by

1 the Reinsurance Intermediary Law for designation of service of  
2 process upon unauthorized insurers; and also shall furnish the  
3 superintendent with the name and address of a resident of this  
4 state upon whom notices or orders of the superintendent or  
5 process affecting such nonresident reinsurance intermediary  
6 may be served. Such licensee shall promptly notify the  
7 superintendent in writing of every change in its designated  
8 agent for service of process and such change shall not become  
9 effective until acknowledged by the superintendent.

10 E. The superintendent may refuse to issue a  
11 reinsurance intermediary license if, in his judgment, the  
12 applicant, anyone named on the application, or any member,  
13 principal, officer or director of the applicant, is not  
14 trustworthy, or that any controlling person of such applicant  
15 is not trustworthy to act as a reinsurance intermediary, or  
16 that any of the foregoing has given cause for revocation or  
17 suspension of such license or has failed to comply with any  
18 prerequisite for the issuance of such license. Upon written  
19 request by the applicant, the superintendent will furnish a  
20 summary of the basis for refusal to issue a license, which  
21 document shall be subject to the provisions of Section  
22 59A-11-20 NMSA 1978.

23 F. Licensed attorneys at law of this state when  
24 acting in their professional capacity as such shall be exempt  
25 from this section. "

. 127887. 2

1 Section 21. Section 59A-14-7 NMSA 1978 (being Laws 1984,  
2 Chapter 127, Section 245) is amended to read:

3 "59A-14-7. SURPLUS LINE BROKER LICENSE REQUIRED--  
4 QUALIFICATIONS FOR LICENSE. --

5 A. No person shall in New Mexico be, act as or hold  
6 out to be, a surplus line broker, or place insurance of risks  
7 resident, located or to be performed in New Mexico in any  
8 unauthorized insurer on behalf of others and for compensation  
9 as an independent contractor in any form, unless licensed as a  
10 surplus line broker under [~~this article~~] Chapter 59A, Article  
11 14 NMSA 1978.

12 B. The superintendent shall, upon due application  
13 [~~therefor~~] and payment of the license fee, issue a license as  
14 surplus line broker to [~~any~~] a person qualified [~~therefor~~] as  
15 follows:

16 [~~(1) must, if an individual, be a resident of~~  
17 ~~New Mexico;~~

18 ~~(2)]~~ (1) must be currently licensed as [~~a~~  
19 ~~resident~~] an insurance agent in this state as to the kinds of  
20 insurance to be exported under the surplus line broker license  
21 applied for, and have had experience or special training or  
22 education sufficient in duration and character as such an  
23 agent as to render the applicant, in the opinion of the  
24 superintendent, reasonably competent to engage in business as  
25 a surplus line broker;

1                    [~~(3)~~] (2) if applicant is a firm or  
 2 corporation, all individuals to represent it in this state  
 3 must be [~~residents of New Mexico and~~] licensed agents  
 4 [~~operating an insurance business in this state~~]. Each such  
 5 individual shall be qualified as for an individual license as  
 6 surplus line broker, and an additional license fee shall be  
 7 paid as to each individual, in excess of one, who is to  
 8 exercise the surplus line broker license powers; and

9                    [~~(4)~~] (3) must file with the application the  
 10 bond provided for in Section [~~246 of this article~~] 59A-14-8  
 11 NMSA 1978.

12                    C. Licensing procedure, duration and related matters  
 13 are as provided in Chapter 59A, Article 11 [~~of the Insurance~~  
 14 ~~Code~~] NMSA 1978, and license fee is as specified in Section  
 15 [~~101 (fee schedule), of the Insurance Code~~] 59A-6-1 NMSA  
 16 1978. "

17  
 18                    Section 22. Section 59A-16-13.1 NMSA 1978 (being Laws  
 19 1989, Chapter 304, Section 1) is amended to read:

20                    "59A-16-13.1. CRANIOMANDIBULAR AND TEMPOROMANDIBULAR  
 21 JOINT DISORDERS. --No insurer or other provider of health care  
 22 benefits regulated under Articles 22, 23, [~~24~~] 24A, 44, 46, 47  
 23 or 54 of the Insurance Code shall, after July 1, 1989, issue,  
 24 deliver or execute in this state any policy, plan, contract or  
 25 certificate of health, medical, hospitalization, accident or

. 127887. 2

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 [bracketed material] = delete

1 sickness coverage unless the policy, plan, contract,  
2 certificate or other evidence of coverage provides for  
3 surgical and nonsurgical treatment of temporomandibular joint  
4 disorders and craniomandibular disorders, subject to the same  
5 conditions, limitations, prior review and referral procedures  
6 as are applicable to treatment of any other joint in the body  
7 and treatable by any practitioner of the healing arts as  
8 defined in Section 59A-22-32 NMSA 1978. The health care  
9 coverage for craniomandibular and temporomandibular joint  
10 disorders required by this section may be subject to  
11 reasonable copayments or coinsurance provisions and need not  
12 include coverage for orthodontic appliances and treatment,  
13 crowns, bridges and dentures unless the disorder is trauma  
14 related. "

15 Section 23. Section 59A-17-5 NMSA 1978 (being Laws 1984,  
16 Chapter 127, Section 301) is amended to read:

17 "59A-17-5. ADMINISTRATION OF INSURANCE RATE REGULATORY  
18 LAW. --The provisions of [~~this article are under the~~  
19 ~~jurisdiction of the insurance board, as defined in Section 6~~  
20 ~~of the Insurance Code and~~] Chapter 59A, Article 17 NMSA 1978  
21 shall be administered by the superintendent [~~in his capacity~~  
22 ~~of secretary of the insurance board. In such administration~~  
23 ~~the superintendent shall have the same general powers as to~~  
24 ~~rules and regulations, enforcement and otherwise as provided~~  
25 ~~under the Insurance Code as to the superintendent's~~



1 ~~administration of the insurance department]~~. "

2 Section 24. Section 59A-17-25 NMSA 1978 (being Laws  
3 1984, Chapter 127, Section 320) is amended to read:

4 "59A-17-25. JOINT UNDERWRITING OR JOINT REINSURANCE  
5 ORGANIZATIONS. --

6 A. Every group, association or other organization of  
7 insurers which engages in joint underwriting or joint  
8 reinsurance through such group, association or organization or  
9 by standing agreement among the members thereof, shall file  
10 with the superintendent:

11 (1) a copy of its constitution, its articles of  
12 incorporation, agreement or association, and of its bylaws,  
13 rules and regulations governing its activities, all duly  
14 certified by the custodian of the originals thereof;

15 (2) a list of its members; and

16 (3) the name and address of a resident of this  
17 state upon whom notices or orders of the superintendent or  
18 process affecting such group, association or organization may  
19 be served.

20 B. Every such group, association or other  
21 organization shall notify the superintendent promptly in  
22 writing of every change in its constitution, its articles of  
23 incorporation, agreement or association, in its bylaws, rules  
24 and regulations governing conduct of its business, its list of  
25 members, or of the name and address of its process agent

. 127887. 2

1 referred to in Paragraph (3) [~~above~~] of Subsection A of this  
2 section.

3 C. Every such group, association or organization  
4 shall be subject to regulation as herein provided, subject,  
5 however, as to joint underwriting to applicable provisions of  
6 [~~this article~~] Chapter 59A, Article 17 NMSA 1978, and as to  
7 joint reinsurance to Sections [~~309 (disapproval of rates other~~  
8 ~~than workmen's compensation - substituted rates), 310-~~  
9 ~~(disapproval of filings, workmen's compensation), 327-~~  
10 ~~(examination), 329 (review of superintendent's action) and 330-~~  
11 ~~(appeals from insurance board) of this article~~] 59A-17-13,  
12 59A-17-14, 59A-17-32, 59A-17-34 and 59A-17-35 NMSA 1978.

13 D. No such group, association or organization shall  
14 engage in any unfair or unreasonable practice with respect to  
15 its activities. If, after a hearing, the superintendent finds  
16 that any activity or practice of any such group, association  
17 or organization is unfair or unreasonable or otherwise  
18 inconsistent with the provisions of [~~this article~~] Chapter  
19 59A, Article 17 NMSA 1978, he may issue his order specifying  
20 the respects in which the activity or practice is unfair or  
21 unreasonable or otherwise inconsistent with the provisions of  
22 [~~this~~] that article, and requiring discontinuance of such  
23 activity or practice. "

24 Section 25. Section 59A-17-34 NMSA 1978 (being Laws  
25 1984, Chapter 127, Section 329, as amended) is amended to

. 127887. 2

1 read:

2 "59A-17-34. HEARING AND REVIEW AS TO SUPERINTENDENT'S  
3 ACTIONS. --

4 A. Any person aggrieved by any action, threatened  
5 action, or failure to act of the superintendent or otherwise  
6 under Chapter 59A, Article 17 NMSA 1978 shall have the same  
7 right to a hearing before the superintendent with respect  
8 thereto as provided for in general under Section 59A-4-15 NMSA  
9 1978. Notice of hearing shall be given, the hearing  
10 conducted, rights and powers exercised and the  
11 superintendent's order on hearing made and given as provided  
12 as to hearings in general under the applicable provisions of  
13 Chapter 59A, Article 4 NMSA 1978.

14 B. Any person aggrieved by the superintendent's  
15 order on such hearing or by the superintendent's refusal to  
16 hold the hearing may request a review [ ~~thereof by the~~  
17 ~~insurance board~~] by the public regulation commission in the  
18 manner set forth by rule of the [ ~~insurance board~~] commission. "

19 Section 26. Section 59A-17-35 NMSA 1978 (being Laws  
20 1984, Chapter 127, Section 330, as amended) is amended to  
21 read:

22 "59A-17-35. APPEALS FROM [ ~~INSURANCE BOARD~~] COMMISSION. --  
23 Any order made by the [ ~~insurance board~~] public regulation  
24 commission pursuant to Section 59A-17-34 NMSA 1978 shall be  
25 subject to review by appeal to the district court pursuant to

. 127887. 2

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[bracketed material] = delete

1 the provisions of Section [~~12-8A-1~~] 39-3-1.1 NMSA 1978. Upon  
2 institution of the appeal and for good cause shown upon motion  
3 and hearing, the court may, in the following cases, stay  
4 operation of the [~~insurance board's~~] commission's order:

5 A. where, pursuant to Chapter 59A, Article 17 NMSA  
6 1978, a rate service organization has been refused a license  
7 or an insurer has been refused a certificate of authority or  
8 had its license or certificate of authority suspended, it may,  
9 with leave of court, be allowed to continue to engage in  
10 business, subject to the provisions of that article, pending  
11 final disposition of its application for review; or

12 B. where any order of the [~~insurance board~~]  
13 commission shall provide for, or sustain the superintendent's  
14 order for, a change in any rate or rating system that results  
15 in an increase or decrease in rates, any insurer affected may,  
16 with leave of court pending final disposition of the  
17 proceedings in the district court, continue to charge rates  
18 that existed prior to such order, on condition that the  
19 difference in the rates be deposited in a special escrow or  
20 trust account with a reputable financial institution by the  
21 insurer affected, to be held in trust by such insurer and to  
22 be retained by the insurer or paid to the holders of policies  
23 issued after the order of the court, as the court may  
24 determine. "

25 Section 27. Section 10. Section 59A-30-14 NMSA 1978

1 (being Laws 1985, Chapter 28, Section 14) is amended to read:

2 "59A-30-14. OTHER PROVISIONS APPLICABLE. --To the extent  
3 not in conflict with the New Mexico Title Insurance Law, the  
4 following articles and provisions of the Insurance Code shall  
5 also apply to title insurers, title insurance agents and the  
6 business of title insurance:

7 Article 1. Scope of Code; Initial Definitions; General  
8 Penalty.

9 Article 2. Department of Insurance.

10 [~~Article 3. State Insurance Board.~~]

11 Article 4. Examinations, Hearings and Appeals.

12 Article 5. Authorization of Insurers and General  
13 Requirements.

14 Article 6. Fees and Taxes.

15 Article 7. Kinds of Insurance; Limits of Risk;  
16 Reinsurance.

17 Article 8. Assets and Liabilities.

18 Article 9. Investments.

19 Article 10. Administration of Deposits; Trusteed Assets  
20 of Alien Insurer.

21 Article 11. Licensing Procedures, Agents, Solicitors,  
22 Brokers, Adjusters and Others.

23 Article 12. Insurance Agents, Brokers and Solicitors.

24 Article 15. Unauthorized Insurers.

25 Article 16. Trade Practices and Frauds. "

. 127887. 2

1 Section 28. Section 59A-35-12 NMSA 1978 (being Laws  
2 1984, Chapter 127, Section 601) is amended to read:

3 "59A-35-12. PERMIT AS INDUCEMENT. --

4 A. The granting of a securities permit is permissive  
5 only, and shall not constitute an endorsement or approval by  
6 the superintendent, [~~corporation commission, state insurance~~  
7 ~~board~~] public regulation commission or any other agency or  
8 department of the state of New Mexico of any person or thing  
9 related to the offering of securities, or constitute evidence  
10 of the completeness or accuracy of information presented in  
11 any prospectus or other sales publicity or literature, or a  
12 recommendation of purchase of any securities offered. The  
13 existence of the permit shall not be advertised or used as an  
14 inducement in any solicitation.

15 B. Each permit issued by the superintendent shall  
16 state conspicuously in boldface type the substance of [~~the~~  
17 ~~above~~] Subsection A of this section in terminology prescribed  
18 by the superintendent. "

19 Section 29. Section 59A-35-17 NMSA 1978 (being Laws  
20 1984, Chapter 127, Section 606, as amended) is amended to  
21 read:

22 "59A-35-17. QUALIFICATIONS, PROCEDURE FOR SECURITY  
23 SALESPERSON LICENSE. --

24 A. Applicants for license as securities salesperson  
25 [~~must~~] shall be qualified [~~therefor~~] as follows:

1                   (1) [~~must~~] be an individual [~~resident in this~~  
2 ~~state and~~] not less than twenty-one years of age;

3                   (2) [~~must~~] be honest and trustworthy, of good  
4 personal and business reputation and financially responsible;

5                   (3) [~~must~~] take and pass an examination as  
6 given by the superintendent, reasonably testing the knowledge  
7 of the applicant of the securities to be sold, the  
8 responsibilities of a salesperson relative thereto and  
9 competence of the applicant to act as a [~~securites~~] securities  
10 salesperson; and

11                   (4) [~~must~~] file with the superintendent along  
12 with application for license and thereafter maintain in force  
13 while so licensed, a surety bond issued by an authorized  
14 surety insurer or deposit of cash or cash-equivalent in lieu  
15 of the bond, in reasonable penal sum fixed by the  
16 superintendent but not less than ten thousand dollars  
17 (\$10,000), for protection of the registrant, persons  
18 purchasing securities through the salesperson and the state of  
19 New Mexico and to assure compliance with law and the  
20 applicable regulations of the superintendent.

21                   B. Procedure for application for license,  
22 examination of applicant, issuance, terms, duration and  
23 suspension or revocation of license and related matters shall  
24 be as provided by applicable provisions of Chapter 59A,  
25 Article 11 NMSA 1978. Fee for license and examination shall

. 127887. 2

1 be as fixed in Section 59A-6-1 NMSA 1978.

2 C. This section shall not apply as to securities  
3 broker-dealers registered as such under the Securities  
4 Exchange Act of 1934, as amended, or as to securities the sale  
5 of which is underwritten (other than on a best efforts basis)  
6 by such a broker-dealer. "

7 Section 30. Section 59A-37-2 NMSA 1978 (being Laws 1984,  
8 Chapter 127, Section 617, as amended) is amended to read:

9 "59A-37-2. DEFINITIONS. -- As used in Chapter 59A, Article  
10 37 NMSA 1978:

11 A. "acquire" means to come into possession or  
12 control of, and "acquisition" means any agreement, arrangement  
13 or activity the consummation of which results in a person  
14 acquiring directly or indirectly the control of another person  
15 and includes the acquisition of voting securities or assets,  
16 bulk reinsurance and mergers;

17 B. "affiliate" means a person that directly or  
18 indirectly is controlled by, is under common control with or  
19 controls another person;

20 C. "control" means the possession of the power to  
21 direct or cause the direction of the management and policies  
22 of a person, whether directly or indirectly, through the  
23 ownership of voting securities, through licensing or franchise  
24 agreements, by contract other than a commercial contract for  
25 goods or nonmanagement services, or otherwise, unless the



1 power is the result of an official position with or corporate  
 2 office held by an individual. Control shall be presumed to  
 3 exist if any person, directly or indirectly, owns, controls,  
 4 holds with the power to vote or holds ten or more percent of  
 5 the voting securities of any other person. This presumption  
 6 may be rebutted by a showing, in the manner provided by  
 7 Section 59A-37-19 NMSA 1978, that control does not in fact  
 8 exist. The superintendent may determine, after furnishing all  
 9 persons in interest notice and an opportunity to be heard,  
 10 that control exists in fact, notwithstanding the absence of a  
 11 presumption to that effect, provided [~~that~~] the determination  
 12 is based on specific findings of fact in its support;

13 D. "insurance holding company" is a person that  
 14 controls an insurer; "insurance holding company system" means  
 15 a combination of two or more affiliated persons, at least one  
 16 of which is an insurer;

17 E. "insurer" means a person that undertakes, under  
 18 contract, to indemnify a person against loss, damage or  
 19 liability arising from an unknown or contingent future event.  
 20 The term does not include agencies, authorities or  
 21 instrumentalities of the United States, its possessions or  
 22 territories, the commonwealth of Puerto Rico, the District of  
 23 Columbia, a state or any of its political subdivisions or a  
 24 fraternal benefit society [~~or a nonprofit medical and hospital~~  
 25 ~~service association~~];

1 F. "person" means an individual, corporation,  
2 association, partnership, joint stock company, trust,  
3 unincorporated organization or any similar entity or  
4 combination of entities;

5 G. "securityholder" means the owner of any security  
6 of a person, including common stock, preferred stock, debt  
7 obligations and any other security convertible into or  
8 evidencing the right to acquire any of the foregoing;

9 H. "subsidiary" means an affiliate of a person  
10 controlled by the person either directly or indirectly through  
11 one or more intermediaries;

12 I. "voting security" means a certificate evidencing  
13 the ownership or indebtedness of a person, to which is  
14 attached a right to vote on the management or policymaking of  
15 that person and includes any security convertible into or  
16 evidencing a right to acquire such a voting security; and

17 J. "health maintenance organization" means any  
18 person that undertakes to provide or arrange for the delivery  
19 of basic health care services to enrollees on a prepaid basis,  
20 except for enrollee responsibility for co-payments or  
21 deductibles. "

22 Section 31. Section 59A-40-9 NMSA 1978 (being Laws 1984,  
23 Chapter 127, Section 692) is amended to read:

24 "59A-40-9. LICENSED AGENTS REQUIRED. --The insurer shall  
25 write business in New Mexico only through its resident [ New

1 ~~Mexico~~ United States agents [~~thereunto~~] duly appointed by it  
 2 in writing and duly licensed by the superintendent under  
 3 provisions of the Insurance Code applicable to insurance  
 4 agents of authorized insurers. The appointment of [~~such~~]  
 5 agents shall specifically authorize the licensee to write for  
 6 the Mexican insurer the insurance coverages as specified in  
 7 [~~this article~~] Chapter 59A, Article 40 NMSA 1978."

8 Section 32. Section 59A-44-33 NMSA 1978 (being Laws  
 9 1989, Chapter 388, Section 33, as amended) is amended to read:

10 "59A-44-33. LICENSING OF AGENTS. --

11 A. Agents of societies shall be licensed in  
 12 accordance with the applicable provisions of Chapter 59A,  
 13 Articles 11 and 12 NMSA 1978 regulating the licensing,  
 14 revocation, suspension or termination of license of [~~resident~~  
 15 ~~and nonresident~~] agents, but shall not be subject to the  
 16 provisions of Section 59A-12-26 NMSA 1978.

17 B. No examination or license shall be required of  
 18 any regular salaried officer, employee or member of a licensed  
 19 society who devotes or intends to devote fifty percent or more  
 20 of his services to activities other than the solicitation of  
 21 fraternal insurance contracts from the public and who receives  
 22 for the solicitation of such contracts no commission or other  
 23 compensation directly dependent upon the amount of business  
 24 obtained.

25 C. Any person who in the preceding calendar year has

. 127887. 2

1 solicited and procured life insurance contracts on behalf of  
2 any society in an amount of insurance in excess of fifty  
3 thousand dollars (\$50,000) or, in the case of any other kind  
4 [~~or kinds~~] of insurance that the society might write, on the  
5 persons of more than twenty-five individuals and who has  
6 received or will receive a commission or other compensation  
7 therefor shall be presumed to be devoting or intending to  
8 devote fifty percent of his time to the solicitation or  
9 procurement of insurance contracts for such society. "

10 Section 33. Section 59A-44-41 NMSA 1978 (being Laws  
11 1989, Chapter 388, Section 41) is amended to read:

12 "59A-44-41. APPLICABILITY OF INSURANCE CODE. --To the  
13 extent not in conflict with the express provisions of Chapter  
14 59A, Article 44 NMSA 1978 and the reasonable implications  
15 thereof, the following provisions of the Insurance Code shall  
16 also apply as to fraternal benefit societies, and for such  
17 purpose a society may therein be referred to as an "insurer":

- 18 A. Chapter 59A, Article 1 NMSA 1978;
- 19 B. Chapter 59A, Article 2 NMSA 1978;
- 20 C. Chapter 59A, Article 4 NMSA 1978;
- 21 D. Sections 59A-8-1 and 59A-8-2 NMSA 1978;
- 22 E. Section 59A-12-22 NMSA 1978;
- 23 F. Chapter 59A, Article 18 NMSA 1978;
- 24 G. Chapter 59A, Article 19 NMSA 1978;
- 25 H. Chapter 59A, Article [~~24~~] 24A NMSA 1978;

- I. Chapter 59A, Articles 20 and 22 NMSA 1978; and
- J. Chapter 59A, Article 41 NMSA 1978. "

Section 34. Section 59A-46-30 NMSA 1978 (being Laws 1993, Chapter 266, Section 29, as amended) is amended to read:

"59A-46-30. STATUTORY CONSTRUCTION AND RELATIONSHIP TO OTHER LAWS. --

A. The provisions of the Insurance Code other than Chapter 59A, Article 46 NMSA 1978 shall not apply to health maintenance organizations except as expressly provided in the Insurance Code and that article. To the extent reasonable and not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health maintenance organizations and their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives. For the purposes of such applicability, a health maintenance organization may therein be referred to as an "insurer":

- (1) Chapter 59A, Article 1 NMSA 1978;
- (2) Chapter 59A, Article 2 NMSA 1978;
- ~~[(3) Chapter 59A, Article 3 NMSA 1978;]~~
- ~~(4)~~ (3) Chapter 59A, Article 4 NMSA 1978;
- ~~[(5)]~~ (4) Subsection C of Section 59A-5-22 NMSA 1978;
- ~~[(6)]~~ (5) Sections 59A-6-2 through 59A-6-4 and 59A-6-6 NMSA 1978;

. 127887. 2

underscored material = new  
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- 1                    [~~(7)~~] (6) Chapter 59A, Article 8 NMSA 1978;
- 2                    [~~(8)~~] (7) Chapter 59A, Article 10 NMSA 1978;
- 3                    [~~(9)~~] (8) Section 59A-12-22 NMSA 1978;
- 4                    [~~(10)~~] (9) Chapter 59A, Article 16 NMSA 1978;
- 5                    [~~(11)~~] (10) Chapter 59A, Article 18 NMSA 1978;
- 6                    [~~(12)~~] (11) Chapter 59A, Article 19 NMSA 1978;
- 7                    [~~(13)~~] (12) Section 59A-22-14 NMSA 1978;
- 8                    [~~(14)~~] (13) Chapter 59A, Article 23B NMSA 1978;
- 9                    [~~(15)~~] (14) Sections [~~59A-34-9~~] 59A-34-2,

10 59A-34-7 through 59A-34-13, 59A-34-17, 59A-34-23, 59A-34-33,  
11 59A-34-36, [~~and~~] 59A-34-37, 59A-34-40 through 59A-34-42 and  
12 59A-34-44 through 59A-34-46 NMSA 1978;

- 13                    [~~(16)~~] (15) Chapter 59A, Article 37 NMSA 1978;

14 and

- 15                    [~~(17)~~] (16) the Patient Protection Act.

16                    B. Solicitation of enrollees by a health maintenance  
17 organization granted a certificate of authority, or its  
18 representatives, shall not be construed as violating any  
19 provision of law relating to solicitation or advertising by  
20 health professionals, but health professionals shall be  
21 individually subject to the laws, rules, regulations and  
22 ethical provisions governing their individual professions.

23                    C. Any health maintenance organization authorized  
24 under the provisions of the Health Maintenance Organization  
25 Law shall not be deemed to be practicing medicine and shall be

underscored material = new  
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1 exempt from the provisions of laws relating to the practice of  
2 medicine. "

3 Section 35. Section 59A-47-30 NMSA 1978 (being Laws  
4 1984, Chapter 127, Section 879.29) is amended to read:

5 "59A-47-30. LICENSED AGENTS OR SOLICITORS REQUIRED--  
6 QUALIFICATIONS, LICENSING PROCEDURES AND CONDITIONS. --

7 A. Solicitation of subscriberships for a health care  
8 plan shall be made only by agents of such plan or solicitors  
9 of such agents, who are duly qualified, appointed and licensed  
10 as such under the Insurance Code. This provision shall not  
11 apply as to salaried officers or employees of health care  
12 plans who are visiting or instructing their licensed agents,  
13 and who do not receive any part of the commission for any  
14 business written by such agents with their assistance.

15 B. No person shall be appointed or licensed as a  
16 health care plan agent or solicitor unless qualified therefor  
17 as follows:

18 (1) [~~must be~~] is an individual at least  
19 eighteen [~~(18)~~] years of age;

20 [~~(2) must be a resident of New Mexico;~~

21 [~~(3) must have~~] (2) has had, or will receive,  
22 reasonable experience or instruction in the health care plan  
23 for which license is applied;

24 [~~(4) must be~~] (3) is be trustworthy and of good  
25 business reputation;

. 127887. 2

1                    [~~(5) must intend~~] (4) intends to engage in a  
2 bona fide way in the business of the health care plan; and  
3                    [~~(6) must pass~~] (5) passes to the  
4 superintendent's satisfaction an examination for license as  
5 given by or under authorization of the superintendent.

6                    C. A health care plan agent shall be appointed by  
7 and at any one time represent only one such plan.

8                    D. Subject to the other provisions of this section,  
9 procedures for appointment and licensing such agents and  
10 solicitors, examination, issuance or denial of license,  
11 continuation or expiration, suspension, revocation or refusal  
12 to continue license and other applicable matters relating to  
13 such licensing and licenses shall be as provided as to  
14 licenses of agents and solicitors as to health insurance under  
15 Chapter 59A, Article 11 [~~(licensing procedures) of the~~  
16 ~~Insurance Code~~] NMSA 1978. Fee for application for license  
17 and continuation of license shall be as specified in Section  
18 [~~101 (fee schedule) of the Insurance Code~~] 59A-6-1 NMSA 1978,  
19 and neither fee shall be refundable. "

20                    Section 36. Section 59A-47-33 NMSA 1978 (being Laws  
21 1984, Chapter 127, Section 879.32, as amended) is amended to  
22 read:

23                    "59A-47-33. OTHER PROVISIONS APPLICABLE. -- The provisions  
24 of the Insurance Code other than Chapter 59A, Article 47 NMSA  
25 1978 shall not apply to health care plans except as expressly



1 provided in the Insurance Code and that article. To the  
 2 extent reasonable and not inconsistent with the provisions of  
 3 that article, the following articles and provisions of the  
 4 Insurance Code shall also apply to health care plans, their  
 5 promoters, sponsors, directors, officers, employees, agents,  
 6 solicitors and other representatives; and, for the purposes of  
 7 such applicability, a health care plan may therein be referred  
 8 to as an "insurer":

- 9 A. Chapter 59A, Article 1 NMSA 1978;
- 10 B. Chapter 59A, Article 2 NMSA 1978;
- 11 C. Chapter 59A, Article 4 NMSA 1978;
- 12 D. Subsection C of Section 59A-5-22 NMSA 1978;
- 13 E. Sections 59A-6-2 through 59A-6-4 and  
 14 59A-6-6 NMSA 1978;
- 15 F. Section 59A-7-11 NMSA 1978;
- 16 G. Chapter 59A, Article 8 NMSA 1978;
- 17 H. Chapter 59A, Article 10 NMSA 1978;
- 18 I. Section 59A-12-22 NMSA 1978;
- 19 J. Chapter 59A, Article 16 NMSA 1978;
- 20 K. Chapter 59A, Article 18 NMSA 1978;
- 21 L. Chapter 59A, Article 19 NMSA 1978;
- 22 M. Subsections B through E of Section  
 23 59A-22-5 NMSA 1978;
- 24 N. Section 59A-22-14 NMSA 1978;
- 25 O. Section 59A-22-34.1 NMSA 1978;

. 127887. 2

- 1 P. Section 59A-22-39 NMSA 1978;
- 2 Q. Section 59A-22-40 NMSA 1978;
- 3 R. Section 59A-22-41 NMSA 1978;
- 4 S. Sections [~~59A-34-9~~] 59A-34-7 through 59A-34-13,
- 5 [~~and~~] 59A-34-17, 59A-34-23, 59A-34-33, 59A-34-40 through
- 6 59A-34-42 and 59A-34-44 through 59A-34-46 NMSA 1978;
- 7 T. Chapter 59A, Article 37 NMSA 1978, except Section
- 8 59A-37-7 NMSA 1978;
- 9 U. Section 59A-46-15 NMSA 1978; and
- 10 V. the Patient Protection Act. "

11 Section 37. Section 59A-50-13 NMSA 1978 (being Laws  
12 1984, Chapter 127, Section 919) is amended to read:

13 "59A-50-13. REGISTERED REPRESENTATIVES REQUIRED--  
14 QUALIFICATIONS FOR REGISTRATION. --

15 A. No person shall be, act as or purport to be a  
16 representative of a motor club in this state unless then  
17 registered as such with the superintendent by the motor club.

18 B. To qualify for [~~such~~] registration the applicant  
19 shall:

20 (1) be an individual not less than eighteen  
21 [~~(18)~~] years of age;

22 [~~(2) be a resident of New Mexico;~~  
23 ~~(3)~~ (2) be of good personal and business  
24 reputation;

25 [~~(4)~~] (3) not previously have been refused

1 registration or had registration revoked;

2 [~~(5)~~] (4) be suitable and competent to act as  
3 such representative; and

4 [(6)] (5) intend in good faith to act and hold  
5 himself out as such a representative.

6 C. As part of an application for registration, a  
7 nonresident applicant shall appoint the superintendent, on a  
8 form prescribed and furnished by the superintendent, as agent  
9 on whom may be served all legal process issued by a court in  
10 this state in any action involving the nonresident registrant.  
11 The appointment is irrevocable and continues for so long as an  
12 action involving the nonresident registrant could arise.  
13 Duplicate copies of process shall be served upon the  
14 superintendent or other person in apparent charge of the  
15 insurance division during the superintendent's absence,  
16 accompanied by payment of the process service fee specified in  
17 Section 59A-6-1 NMSA 1978. Upon service the superintendent  
18 shall promptly forward a copy by certified mail, return  
19 receipt requested, to the nonresident registrant at his last  
20 address of record with the superintendent. Process served and  
21 copy forwarded as so provided constitutes personal service  
22 upon the nonresident registrant.

23 D. A nonresident registrant shall also file with the  
24 superintendent a written agreement to appear before the  
25 superintendent pursuant to a notice of hearing, show cause

. 127887. 2

1 order or subpoena issued by the superintendent and deposited,  
2 postage paid, by certified mail in a letter depository of the  
3 United States post office, addressed to the nonresident  
4 registrant at his last address of record with the  
5 superintendent, and that upon failure of the nonresident  
6 registrant to appear, the nonresident registrant consents to  
7 subsequent suspension, revocation or refusal of the  
8 superintendent to continue the license. "

9 Section 38. Section 59A-51-4 NMSA 1978 (being Laws 1984,  
10 Chapter 127, Section 931) is amended to read:

11 "59A-51-4. QUALIFICATIONS FOR LICENSE. -- Applicants for  
12 license as bail bondsman or solicitor [~~under this article~~]  
13 pursuant to the provisions of Chapter 59A, Article 51 NMSA  
14 1978 must not be law enforcement, adjudication or prosecution  
15 officials or their employees, attorneys-at-law, officials  
16 authorized to admit to bail, or state or county officers, and  
17 must be qualified [~~therefor~~] as follows:

18 A. [~~must be~~] is an individual not less than eighteen  
19 [~~(18)~~] years of age;

20 B. [~~must be~~] is a citizen of the United States [~~and~~  
21 ~~if for license as a bondsman must have been a bona fide~~  
22 ~~resident of New Mexico for one year last past and actually~~  
23 ~~reside in this state at least six (6) months out of each year;~~  
24 ~~or if for license as solicitor, must have been a bona fide~~  
25 ~~resident of this state for more than six (6) months last~~

1 ~~past~~];

2 C. if for license as bondsman ~~must~~ take and pass to  
 3 the superintendent's satisfaction a written examination  
 4 testing his knowledge and competence to engage in the bail  
 5 bondsman business;

6 D. [~~must be~~] is of good personal and business  
 7 reputation;

8 E. if to act as a property bondsman, ~~must~~ be  
 9 financially responsible and provide the surety bond or deposit  
 10 in lieu thereof as required [~~under Section 935 of this~~  
 11 ~~article~~] in accordance with Section 59A-51-8 NMSA 1978;

12 F. if to act as a limited surety agent, ~~must~~ be  
 13 appointed [~~as such~~] by an authorized surety insurer, subject  
 14 to issuance of a license, and meet all applicable  
 15 qualifications as for licensing as an agent of [~~such~~] an  
 16 insurer as stated in Section [~~213 of the Insurance Code~~]  
 17 59A-12-12 NMSA 1978; and

18 G. if for license as a solicitor, ~~must~~ have been so  
 19 appointed by a licensed bail bondsman subject to issuance of  
 20 the solicitor license."

21 Section 39. Section 59A-51-5 NMSA 1978 (being Laws 1984,  
 22 Chapter 127, Section 932) is amended to read:

23 "59A-51-5. APPLICATION FOR LICENSE. --

24 A. An individual desiring to be licensed as bail  
 25 bondsman or solicitor under [~~this article~~] Chapter 59A,

. 127887. 2

underscored material = new  
 [bracketed material] = delete

1 Article 51 NMSA 1978 shall file with the superintendent  
2 written application [~~therefor~~] on a form as prescribed and  
3 furnished by the superintendent, together with application for  
4 qualifying examination if for bail bondsman license.

5 B. With application for license to act as property  
6 bondsman the applicant shall file with the superintendent his  
7 detailed financial statement under oath and a schedule of  
8 charges and the rating plan proposed to be used in writing  
9 bail bonds. The schedule shall conform to rules and  
10 regulations promulgated by the superintendent.

11 C. Application for a solicitor's license must be  
12 endorsed by the appointing bail bondsman, who shall therein  
13 obligate himself to supervise the solicitor's activities in  
14 the bondsman's behalf.

15 D. The application shall be accompanied by a recent  
16 credential-sized full-face photograph of the applicant  
17 together with such additional proof of identity as the  
18 superintendent may reasonably require.

19 E. As part of an application for a license, a  
20 nonresident applicant shall appoint the superintendent, on a  
21 form prescribed and furnished by the superintendent, as agent  
22 on whom may be served all legal process issued by a court in  
23 this state in any action involving the nonresident licensee.  
24 The appointment is irrevocable and continues for so long as an  
25 action involving the nonresident licensee could arise.

1 Duplicate copies of process shall be served upon the  
 2 superintendent or other person in apparent charge of the  
 3 insurance division during the superintendent's absence,  
 4 accompanied by payment of the process service fee specified in  
 5 Section 59A-6-1 NMSA 1978. Upon service the superintendent  
 6 shall promptly forward a copy by certified mail, return  
 7 receipt requested, to the nonresident licensee at his last  
 8 address of record with the superintendent. Process served and  
 9 copy forward as so provided constitutes personal service upon  
 10 the nonresident licensee.

11 F. A nonresident licensee shall also file with the  
 12 superintendent a written agreement to appear before the  
 13 superintendent pursuant to a notice of hearing, show cause  
 14 order or subpoena issued by the superintendent and deposited,  
 15 postage paid, by certified mail in a letter depository of the  
 16 United States post office, addressed to the nonresident  
 17 licensee at his last address of record with the  
 18 superintendent, and that upon failure of the nonresident  
 19 licensee to appear, the nonresident licensee consents to  
 20 subsequent suspension, revocation or refusal of the  
 21 superintendent to continue the license. "

22 Section 40. Section 59A-55-20 NMSA 1978 (being Laws  
 23 1988, Chapter 125, Section 20) is amended to read:

24 "59A-55-20. RESTRICTIONS ON INSURANCE PURCHASED BY  
 25 PURCHASING GROUPS. --

. 127887. 2

1           A. A purchasing group may not purchase insurance  
2 from a risk retention group that is not chartered in a state  
3 or from an insurer not admitted in the state in which the  
4 purchasing group is located, unless the purchase is effected  
5 through a licensed agent or broker acting pursuant to the  
6 surplus lines laws and regulations of the state.

7           B. A purchasing group may purchase insurance for its  
8 members in this state or covering its members' risks resident  
9 or located in this state only from insurers admitted in this  
10 state, from insurers that are eligible surplus lines insurers  
11 in this state or from risk retention groups that have  
12 registered in this state.

13           ~~[B.]~~ C. A purchasing group which obtains liability  
14 insurance from an insurer not admitted in this state or a risk  
15 retention group shall inform each of the members of such group  
16 that have a risk resident or located in this state that such  
17 risk is not protected by an insurance insolvency guaranty fund  
18 in this state and that such risk retention group or such  
19 insurer may not be subject to all insurance laws and  
20 regulations of this state.

21           ~~[C.]~~ D. No purchasing group may purchase insurance  
22 providing for a deductible or self-insured retention unless  
23 the deductible or self-insured retention is the sole  
24 responsibility of each individual member of the purchasing  
25 group. "



1           Section 41. Section 59A-55-24 NMSA 1978 (being Laws  
2 1988, Chapter 125, Section 24) is amended to read:

3           "59A-55-24. DUTY OF AGENTS OR BROKERS TO OBTAIN  
4 LICENSE. --

5           A. No person, firm, association or corporation shall  
6 act or aid in any manner in soliciting, negotiating or  
7 procuring liability insurance in New Mexico from a risk  
8 retention group unless such person, firm, association or  
9 corporation is licensed as an insurance agent or broker  
10 pursuant to the provisions of the New Mexico Insurance Code.

11           B. No person, firm, association or corporation shall  
12 act or aid in any manner in soliciting, negotiating or  
13 procuring liability insurance:

14                   (1) in New Mexico for a purchasing group from  
15 an authorized insurer or a risk retention group chartered in a  
16 state, unless such person, firm, association or corporation is  
17 licensed as an insurance agent or broker pursuant to the  
18 provisions of the New Mexico Insurance Code;

19                   (2) in New Mexico for any members of a  
20 purchasing group under a purchasing group's policy, unless  
21 such person, firm, association or corporation is licensed as  
22 an insurance agent or broker pursuant to the provisions of the  
23 New Mexico Insurance Code; or

24                   (3) from an insurer not authorized to do  
25 business in New Mexico on behalf of a purchasing group located

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1 in this state, unless such person, firm, association or  
2 corporation is licensed as a surplus lines agent or excess  
3 line broker pursuant to the provisions of the New Mexico  
4 Insurance Code.

5 ~~[C. For purposes of acting as an agent or broker for~~  
6 ~~a risk retention group or purchasing group pursuant to~~  
7 ~~Subsections A and B of this section, any requirement of~~  
8 ~~residence in this state shall not apply.]~~

9 ~~D.]~~ C. Every person, firm, association or  
10 corporation licensed pursuant to the provisions of the New  
11 Mexico Insurance Code on business placed with risk retention  
12 groups or written through a purchasing group shall inform each  
13 prospective insured of the provisions of the notice required  
14 by Section ~~[10 of the Risk Retention and Purchasing Group Act]~~  
15 59A-55-10 NMSA 1978 in the case of a purchasing group. "

16 Section 42. Section 59A-56-11 NMSA 1978 (being Laws  
17 1994, Chapter 75, Section 11, as amended) is amended to read:

18 "59A-56-11. ASSESSMENTS. --

19 A. After the completion of each calendar year, the  
20 alliance shall assess all its members for the net reinsurance  
21 loss in the previous calendar year and for the net  
22 administrative loss that occurred in the previous calendar  
23 year, taking into account investment income for the period and  
24 other appropriate gains and losses using the following  
25 definitions:

. 127887. 2

1                   (1) net reinsurance losses shall be the amount  
2 determined for the previous calendar year in accordance with  
3 Subsection A of Section 59A-56-9 NMSA 1978 for all members  
4 offering an approved health plan reduced by reinsurance  
5 premiums charged by the alliance in the previous calendar  
6 year. Net reinsurance losses shall be calculated separately  
7 for group and individual coverage. If the reinsurance  
8 premiums for either category of coverage exceed the amount  
9 calculated in accordance with Subsection A of Section 59A-56-9  
10 NMSA 1978, the premiums shall be applied first to offset the  
11 net reinsurance losses incurred in the other category of  
12 coverage and second to offset administrative losses; and

13                   (2) net administrative losses shall be the  
14 administrative expenses incurred by the alliance in the  
15 previous calendar year and projected for the current calendar  
16 year less the sum of administrative allowances received by the  
17 alliance, but in the event of an administrative gain, net  
18 administrative losses for the purpose of assessments shall be  
19 considered zero and the gain shall be carried forward to the  
20 administrative fund for the next calendar year as an  
21 additional allowance.

22                   B. The assessment for each member shall be  
23 determined by multiplying the total losses of the alliance's  
24 operation, as defined in Subsection A of this section, by a  
25 fraction, the numerator of which is an amount equal to that

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1 member's total premiums, or the equivalent, exclusive of  
2 premiums received by the member for an approved health plan  
3 for health insurance written in the state during the preceding  
4 calendar year and the denominator of which equals the total  
5 premiums of all health insurance written in the state during  
6 the preceding calendar year exclusive of premiums for approved  
7 health plans; provided that total premiums shall not include  
8 payments by the secretary of human services pursuant to a  
9 contract issued under Section 1876 of the federal Social  
10 Security Act, total premiums exempted by the federal Employee  
11 Retirement Income Security Act of 1974 or federal government  
12 programs.

13 C. If assessments exceed actual reinsurance losses  
14 and administrative losses of the alliance, the excess shall be  
15 held at interest by the board to offset future losses.

16 D. To enable the board to properly determine the net  
17 reinsurance amount and its responsibility for reinsurance to  
18 each member:

19 (1) by April 15 of each year, each member  
20 offering an approved health plan shall submit a listing of all  
21 incurred claims for the previous year; and

22 (2) by April 15 of each year, each member shall  
23 submit a report that includes the total earned premiums  
24 received during the prior year less the total earned premiums  
25 exempted by federal government programs.

1           E. The alliance shall notify each member of the  
2 amount of its assessment due by May 15 of each year. The  
3 assessment shall be paid by the member by June 15 of each  
4 year.

5           F. The proportion of participation of each member in  
6 the alliance shall be determined annually by the board, based  
7 on annual statements filed by each member and other reports  
8 deemed necessary by the board. Any deficit incurred by the  
9 alliance shall be recouped by assessments apportioned among  
10 the members pursuant to the formula provided in Subsection B  
11 of this section; provided that thirty percent of the  
12 assessment paid for any member shall be allowed as a credit on  
13 the [future] following annual premium tax return for that  
14 member [with the credit limited to fifty percent of the  
15 premium tax due the first year the assessment is imposed,  
16 forty percent the second year and thirty percent the third and  
17 all subsequent years].

18           G. The board may defer, in whole or in part, the  
19 payment of an assessment of a member if, in the opinion of the  
20 board, after approval of the superintendent, payment of the  
21 assessment would endanger the ability of the member to fulfill  
22 its contractual obligations. In the event payment of an  
23 assessment against a member is deferred, the amount deferred  
24 may be assessed against the other members in a manner  
25 consistent with the basis for assessments set forth in

1 Subsection A of this section. The member receiving the  
2 deferment shall pay the assessment in full plus interest at  
3 the prevailing rate as determined by regulation of the  
4 superintendent within four years from the date payment is  
5 deferred. After four years but within five years of the date  
6 of the deferment, the board may sue to recover the amount of  
7 the deferred payment plus interest and costs. Board actions  
8 to recover deferred payments brought after five years of the  
9 date of deferment are barred. Any amount received shall be  
10 deducted from future assessments or reimbursed pro rata to the  
11 members paying the deferred assessment. "

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3  
4  
5  
6 March 11, 1999

7  
8 Mr. Speaker:

9  
10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has  
11 been referred

12  
13 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE  
14 SUBSTITUTE FOR SENATE BILL 561

15  
16 has had it under consideration and reports same with  
17 recommendation that it DO PASS, and thence referred to the  
18 JUDICIARY COMMITTEE.

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SCORC/SB 561

HBIC/SB 561

Page 112

Respectfully submitted,

\_\_\_\_\_  
Debbie A. Rodella, Vice Chairwoman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

The roll call vote was 9 For 0 Against

Yes: 9

Excused: Lutz, Mohorovic, J. G. Taylor

Absent: None

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1 FORTY- FOURTH LEGISLATURE  
2 FIRST SESSION, 1999

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4 March 15, 1999

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7 Mr. Speaker:

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9 Your JUDICIARY COMMITTEE, to whom has been referred  
10 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE  
11 SUBSTITUTE FOR SENATE BILL 561  
12

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

- 15
- 16 1. On page 65, between lines 16 and 17, insert ~~(M)~~ "Section 59A-22-2.1 NMSA 1978;"
  - 17 2. Renumber the succeeding paragraphs accordingly.
  - 18 3. On page 69, between lines 6 and 7, insert "M Section  
19 59A-22-2.1 NMSA 1978;"  
20
  - 21 4. Reletter the succeeding subsections accordingly.  
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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

SCORC/SB 561

HJC/CS/SB561a

Page 114

Respectfully submitted,

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R. David Pederson, Chairman

Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

(Chief Clerk)

(Chief Clerk)

Date \_\_\_\_\_

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FORTY-FOURTH LEGISLATURE  
FIRST SESSION, 1999

HJC/CS/SB561a

Page 115

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The roll call vote was 9 For 0 Against

Yes: 9

Excused: Garcia, Luna, Sanchez

Absent: None

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