

1 AN ACT

2 RELATING TO INSURANCE; AMENDING SECTIONS OF THE NEW MEXICO
3 INSURANCE CODE; AMENDING REQUIREMENTS RELATED TO EXAMINATION
4 REPORTS AND INVESTIGATORY HEARINGS; CHANGING ANNUAL FINANCIAL
5 STATEMENT FILING PENALTIES; REMOVING STOP-LOSS INSURANCE FROM
6 THE LIST OF ACCIDENT AND HEALTH INSURANCE PRODUCTS; ALLOWING
7 ACCIDENT AND HEALTH INSURERS TO WRITE STOP-LOSS INSURANCE;
8 ALLOWING CASUALTY INSURERS TO CONTINUE TO WRITE ACCIDENT AND
9 HEALTH INSURANCE; REVISING VARIOUS REQUIREMENTS RELATED TO
10 SURPLUS LINES INSURANCE; ALLOWING INSURERS TO PAY CLAIMS BY
11 ELECTRONIC FUND TRANSFER; AMENDING THE INSURANCE FRAUD ACT TO
12 ESTABLISH A FEE PAYMENT DEADLINE AND LATE PAYMENT PENALTY;
13 INCLUDING STUDENT HEALTH POLICIES WITHIN PROVISIONS RELATING
14 TO INDIVIDUAL HEALTH INSURANCE; REMOVING STUDENT HEALTH PLANS
15 FROM THE LIST OF BLANKET HEALTH INSURANCE PRODUCTS AND FROM
16 THE LIST OF PRODUCTS THAT ARE NOT MANAGED HEALTH CARE PLANS;
17 EXTENDING THE SUPERINTENDENT OF INSURANCE'S REVIEW PERIOD FOR
18 MARKETING MATERIALS AND FOR CREDIT LIFE AND CREDIT HEALTH
19 PRODUCT FILINGS; REPEALING THE SURPLUS LINES INSURANCE
20 MULTISTATE COMPLIANCE COMPACT.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

23 SECTION 1. Section 59A-4-9 NMSA 1978 (being Laws 1984,
24 Chapter 127, Section 53, as amended) is amended to read:

25 "59A-4-9. EXAMINATION REPORT--CONTENTS.--No later than

1 sixty days following completion of an examination, the
2 examiner in charge shall file with the office of
3 superintendent of insurance a verified, written examination
4 report. The examination report shall comprise only facts
5 appearing upon the books, records or other documents of the
6 person examined, or from information provided to the examiner
7 during the course of the examination by the examinee's
8 officers or agents and other individuals examined concerning
9 its affairs, together with the conclusions and
10 recommendations of the examiners as may reasonably be
11 warranted from the facts. The examination report shall be
12 verified by the oath of the examiner in charge of the
13 examination."

14 SECTION 2. Section 59A-4-10 NMSA 1978 (being Laws 1984,
15 Chapter 127, Section 54, as amended) is amended to read:

16 "59A-4-10. EXAMINATION REPORT--CONFERENCE--ADOPTION
17 ORDERS--INVESTIGATORY HEARINGS.--

18 A. Upon completion of the examination and receipt
19 of the examination report, the superintendent shall transmit
20 the report to the person examined and shall allow the person
21 a reasonable period, but not to exceed twenty days, within
22 which to review the report and to file with the
23 superintendent in writing requested corrections or
24 modifications, with the reasons therefor. For good reason
25 shown, the superintendent may grant reasonable extension of

1 the review period.

2 B. Within twenty days after the superintendent's
3 receipt of the request, the person examined shall confer with
4 the superintendent and examiner relative to requested
5 corrections and modification.

6 C. Within thirty days of the end of the period
7 allowed for the receipt of written submissions or rebuttals,
8 the superintendent shall fully consider and review the
9 examination report, together with any written submission or
10 rebuttal, any conference and any relevant portion of the
11 examiner's work papers and shall enter an order. An order
12 entered pursuant to this subsection shall be accompanied by
13 findings of fact and conclusions of law resulting from the
14 superintendent's consideration and review of the examination
15 report, any written submission or rebuttal, any conferences
16 and any relevant portion of the examiner's work papers. An
17 order shall be considered a final administrative decision
18 that may be appealed pursuant to Section 59A-4-20 NMSA 1978.
19 An order shall be served on all parties by certified mail,
20 together with a copy of the adopted examination report. An
21 order issued pursuant to this subsection shall:

22 (1) adopt the examination report as filed or
23 with modification or corrections. If the examination report
24 reveals that the person is operating in violation of statute,
25 rule or prior order of the superintendent, the superintendent

1 may order the person to take any action that the
2 superintendent considers necessary and appropriate to cure
3 the violation;

4 (2) reject the examination report with
5 directions to the examiners to reopen the examination for
6 purposes of obtaining additional data, documentation or
7 information and refiling pursuant to Section 59A-4-9 NMSA
8 1978; or

9 (3) call for an investigatory hearing with
10 no less than twenty days' notice to the person for purposes
11 of obtaining additional documentation, data, information or
12 testimony.

13 D. An investigatory hearing held pursuant to
14 Paragraph (3) of Subsection C of this section:

15 (1) may be conducted by the superintendent
16 or the superintendent may authorize a representative to
17 conduct the hearing; provided that the superintendent shall
18 not authorize an examiner to conduct the hearing;

19 (2) shall be conducted for the resolution of
20 any inconsistency, discrepancy or disputed issue apparent
21 upon the face of the examination report or raised by or as a
22 result of the superintendent's review of work papers and
23 conferences or by the written submission or rebuttal of the
24 person;

25 (3) shall proceed expeditiously with

1 discovery by the person limited to those work papers of the
2 examiner that tend to substantiate any assertions set forth
3 in any written submission or rebuttal; and

4 (4) shall be confidential, unless
5 confidentiality is waived by the person being examined.

6 E. Relating to an investigatory hearing held
7 pursuant to Paragraph (3) of Subsection C of this section,
8 the superintendent or the superintendent's representative may
9 issue a subpoena to compel the attendance of any witness or
10 the production of any document that the superintendent or the
11 superintendent's representative deems relevant to the
12 investigation, whether the document is under the control of
13 the office of superintendent of insurance, the person being
14 examined or any other person. Documents produced shall be
15 included in the record and testimony taken by the
16 superintendent or the superintendent's representative and
17 shall be made under oath and preserved for the record. The
18 person being examined and the office of superintendent of
19 insurance shall be permitted to make closing statements and
20 may be represented by counsel. Nothing in this section shall
21 be construed to require the office of superintendent of
22 insurance to disclose any information or record that would
23 indicate or demonstrate the existence or content of any
24 investigation or activity of a criminal justice agency.

25 F. Within twenty days of the conclusion of an

1 investigatory hearing pursuant to Paragraph (3) of
2 Subsection C of this section, the superintendent shall enter
3 an order in accordance with Paragraph (1) of Subsection C of
4 this section."

5 SECTION 3. Section 59A-4-12 NMSA 1978 (being Laws 1984,
6 Chapter 127, Section 56) is amended to read:

7 "59A-4-12. EXAMINATION REPORT--INFORMATION TO
8 MANAGEMENT OF DOMESTIC ENTITIES.--If the examination is of a
9 domestic insurer or other person domiciled in New Mexico,
10 when the examination report has been filed for public
11 inspection, the chief executive officer of the insurer or
12 person shall cause to be delivered to each member of the
13 examinee's board of directors, or other similar governing
14 body, a copy of the report, or summary thereof, and of its
15 recommendations approved by the superintendent. Within
16 ninety days of the issuance of the adopted report or within
17 fifteen days after the first board meeting after the issuance
18 of the adopted report, whichever occurs first, the insurer
19 shall file affidavits executed by each of its directors
20 stating under oath that they have received a copy of the
21 adopted report and related orders."

22 SECTION 4. Section 59A-5-30 NMSA 1978 (being Laws 1984,
23 Chapter 127, Section 97) is amended to read:

24 "59A-5-30. PENALTIES FOR LATE, FALSE ANNUAL
25 STATEMENTS.--

1 A. Any insurer failing, without just cause
2 reasonably beyond control of the insurer, to file its annual
3 statement as required in Section 59A-5-29 NMSA 1978 shall be
4 required to pay a penalty of one hundred dollars (\$100) for
5 each day's delay, but not to exceed five thousand dollars
6 (\$5,000) in aggregate amount. This penalty may be in
7 addition to any refusal to continue, or suspension or
8 revocation of, the insurer's certificate of authority for
9 such failure.

10 B. Any director, officer, agent or employee of any
11 insurer who subscribes to, makes or concurs in making or
12 publishing any annual or other statement of the insurer
13 required by law, knowing the same to contain any material
14 statement that is false, shall upon conviction thereof be
15 guilty of a misdemeanor and upon conviction shall be
16 sentenced to a fine of not more than one thousand dollars
17 (\$1,000), unless by its extent and nature the offense is
18 punishable under other statutes as a felony."

19 SECTION 5. Section 59A-7-3 NMSA 1978 (being Laws 2016,
20 Chapter 89, Section 6) is amended to read:

21 "59A-7-3. ACCIDENT AND HEALTH INSURANCE.--

22 A. Accident and health includes:

- 23 (1) accident;
- 24 (2) accidental death and dismemberment;
- 25 (3) blanket accident and sickness;

- 1 (4) credit disability;
- 2 (5) critical illness;
- 3 (6) dental;
- 4 (7) disability income;
- 5 (8) home health care;
- 6 (9) hospital indemnity;
- 7 (10) long-term care;
- 8 (11) major medical;
- 9 (12) medical expense;
- 10 (13) medicare supplement;
- 11 (14) prescription drug;
- 12 (15) sickness;
- 13 (16) specified disease;
- 14 (17) vision; and
- 15 (18) similar products relating to accident
- 16 and health matters.

17 B. An insurer or a health maintenance organization
18 authorized to transact accident and health insurance may
19 write stop-loss liability insurance as listed in
20 Paragraph (51) of Subsection A of Section 59A-7-6 NMSA 1978."

21 SECTION 6. Section 59A-7-6 NMSA 1978 (being Laws 2016,
22 Chapter 89, Section 8) is amended to read:

23 "59A-7-6. CASUALTY.--

24 A. Casualty includes:

- 25 (1) aircraft liability;

- 1 (2) auto commercial liability;
- 2 (3) auto private passenger liability;
- 3 (4) auto warranty contract;
- 4 (5) boiler and machinery;
- 5 (6) burglary and theft;
- 6 (7) collateral protection;
- 7 (8) commercial excess/umbrella
- 8 liability;
- 9 (9) commercial general liability;
- 10 (10) congenital defects;
- 11 (11) contractual liability;
- 12 (12) credit;
- 13 (13) credit property;
- 14 (14) creditor-placed dual/single
- 15 interest;
- 16 (15) crime;
- 17 (16) directors and officers liability;
- 18 (17) employers liability;
- 19 (18) elevator;
- 20 (19) entertainment;
- 21 (20) errors and omissions;
- 22 (21) failure to file instrument;
- 23 (22) farm and ranch liability;
- 24 (23) fidelity bonds;
- 25 (24) fidelity insurance;

- 1 (25) financial guaranty;
2 (26) gap;
3 (27) garage liability;
4 (28) glass;
5 (29) involuntary unemployment;
6 (30) kidnap and ransom;
7 (31) leakage and fire-extinguishing
8 equipment;
9 (32) legal liability;
10 (33) liquor liability;
11 (34) livestock;
12 (35) mechanical breakdown;
13 (36) medical malpractice;
14 (37) mobile homes under transport;
15 (38) money and securities;
16 (39) motor club service contracts;
17 (40) mortgage guaranty;
18 (41) personal excess/umbrella
19 liability;
20 (42) personal effects;
21 (43) personal liability;
22 (44) personal property floater;
23 (45) pollution liability;
24 (46) premises and operations;
25 (47) product liability;

1 (48) products and completed
2 operations;
3 (49) professional liability;
4 (50) owners and contractors;
5 (51) stop loss liability;
6 (52) surety;
7 (53) title;
8 (54) vandalism and malicious
9 mischief;
10 (55) workers' compensation; and
11 (56) similar products relating to
12 casualty matters.

13 B. An insurer authorized to transact casualty
14 insurance may write accident and health insurance as those
15 terms are defined in Section 59A-7-3 NMSA 1978."

16 SECTION 7. Section 59A-14-2 NMSA 1978 (being Laws 1991,
17 Chapter 125, Section 12, as amended) is amended to read:

18 "59A-14-2. DEFINITIONS.--As used in Chapter 59A,
19 Article 14 NMSA 1978:

20 A. "affiliate" means, with respect to an insured,
21 any entity that controls, is controlled by or is under common
22 control with the insured;

23 B. "affiliated group" means any group of entities
24 that are all affiliated;

25 C. "association" means the national association of SB 367
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1 insurance commissioners or any successor entity;

2 D. "authorized insurer" means, with respect to
3 New Mexico, an insurer holding a valid and subsisting
4 certificate of authority, issued by the superintendent, to
5 transact insurance in New Mexico;

6 E. "control" means that an entity:

7 (1) directly or indirectly or acting through
8 one or more other persons owns, controls or has the power to
9 vote twenty-five percent or more of any class of voting
10 securities of another entity; or

11 (2) controls in any manner the election of a
12 majority of the directors or trustees of another entity;

13 F. "eligible surplus lines insurer" means a
14 qualified nonadmitted insurer with which a surplus lines
15 broker may place surplus lines insurance pursuant to
16 Section 59A-14-4 NMSA 1978;

17 G. "exempt commercial purchaser" means any person
18 purchasing commercial insurance that, at the time of
19 placement, meets the following requirements:

20 (1) the person employs or retains a
21 qualified risk manager to negotiate insurance coverage;

22 (2) the person has paid aggregate nationwide
23 commercial property and casualty insurance premiums in excess
24 of one hundred thousand dollars (\$100,000) in the immediately
25 preceding twelve months; and

1 (3) the person:

2 (a) possesses a net worth in excess of
3 twenty million dollars (\$20,000,000), provided that this
4 amount shall be adjusted every five years by rule of the
5 superintendent to account for the percentage change in the
6 consumer price index;

7 (b) generates annual revenues in excess
8 of fifty million dollars (\$50,000,000), provided that this
9 amount shall be adjusted every five years by rule of the
10 superintendent to account for the percentage change in the
11 consumer price index;

12 (c) employs more than five hundred
13 full-time or full-time-equivalent employees per insured
14 entity or is a member of an affiliated group employing more
15 than one thousand employees in the aggregate;

16 (d) is a not-for-profit organization or
17 public entity generating annual budgeted expenditures of at
18 least thirty million dollars (\$30,000,000), provided that
19 this amount shall be adjusted every five years by rule of the
20 superintendent to account for the percentage change in the
21 consumer price index; or

22 (e) is a municipality with a population
23 in excess of fifty thousand persons;

24 H. "export" means to place insurance with a
25 nonadmitted insurer;

1 I. "home state" means, with respect to an insured:

2 (1) the state:

3 (a) in which an insured maintains its
4 principal place of business or, in the case of an individual,
5 the individual's principal residence; or

6 (b) to which the greatest percentage of
7 the insured's taxable premium for that insurance contract is
8 allocated, if one hundred percent of the insured risk is
9 located out of the state referred to in Subparagraph (a) of
10 this paragraph; or

11 (2) if more than one insured from an
12 affiliated group are named insureds on a single nonadmitted
13 insurance contract, "home state" means the home state, as
14 determined pursuant to Paragraph (1) of this subsection, of
15 the member of the affiliated group that has the largest
16 percentage of premium attributed to it under the insurance
17 contract;

18 J. "independently procured insurance" means
19 insurance procured directly by an insured from a nonadmitted
20 insurer;

21 K. "nonadmitted insurance" means any property and
22 casualty insurance permitted to be placed through a surplus
23 lines broker with an eligible surplus lines insurer;

24 L. "nonadmitted insurer" means an insurer not
25 licensed to engage in the business of insurance in New Mexico

1 but does not include a risk retention group, as "risk
2 retention group" is defined in the federal Liability Risk
3 Retention Act of 1986;

4 M. "premium tax" means, with respect to surplus
5 lines, any tax, fee, assessment or other charge imposed by a
6 government entity directly or indirectly based on any payment
7 made as consideration for an insurance contract for such
8 insurance, including premium deposits, assessments,
9 registration fees and any other compensation given in
10 consideration for a contract of insurance;

11 N. "principal place of business" means, with
12 respect to determining the home state of the insured, the
13 state where the insured maintains its headquarters and where
14 the insured's high-level officers direct, control and
15 coordinate the business activities of the insured;

16 O. "producing broker" means the broker or agent
17 dealing directly with the person seeking insurance if the
18 home state of the person seeking insurance is New Mexico;

19 P. "professional designation" means:

20 (1) a designation as a chartered property
21 and casualty underwriter issued by the American institute for
22 chartered property and casualty underwriters;

23 (2) a designation as an associate in risk
24 management issued by the insurance institute of America;

25 (3) a designation as a certified risk

1 manager issued by the national alliance for insurance
2 education and research;

3 (4) a designation as a RIMS fellow issued by
4 the global risk management institute; or

5 (5) any other designation, certification or
6 license determined by the superintendent to demonstrate
7 minimum competency in risk management;

8 Q. "qualified risk manager" means, with respect to
9 an exempt commercial purchaser, a person who:

10 (1) is an employee of, or a third-party
11 consultant retained by, the exempt commercial purchaser;

12 (2) provides skilled services in loss
13 prevention, loss reduction, risk and insurance coverage
14 analysis and purchase of insurance; and

15 (3) has:

16 (a) a bachelor's degree or higher from
17 an accredited college or university in risk management,
18 business administration, finance, economics or any other
19 field determined by the superintendent to demonstrate minimum
20 competence in risk management and either: 1) three years of
21 experience in risk financing, claims administration, loss
22 prevention, risk and insurance coverage analysis or purchase
23 of commercial lines of insurance; or 2) a professional
24 designation;

25 (b) a professional designation and at

1 least seven years of experience in risk financing, claims
2 administration, loss prevention, risk and insurance coverage
3 analysis or purchase of commercial lines of insurance;

4 (c) at least ten years of experience in
5 risk financing, claims administration, loss prevention, risk
6 and insurance coverage analysis or purchase of commercial
7 lines of insurance; or

8 (d) a graduate degree from an
9 accredited college or university in risk management, business
10 administration, finance, economics or any other field
11 determined by the superintendent to demonstrate minimum
12 competence in risk management;

13 R. "reinsurance" means the assumption by an
14 insurer of all or part of a risk undertaken originally by
15 another insurer;

16 S. "surplus lines broker" means an individual,
17 firm or corporation licensed under Chapter 59A, Article 14
18 NMSA 1978 to place insurance with eligible surplus lines
19 insurers;

20 T. "surplus lines insurance" means any insurance
21 permitted to be exported through a surplus lines broker in
22 accordance with the provisions of Chapter 59A, Article 14
23 NMSA 1978;

24 U. "type of insurance" means one of the types of
25 insurance required to be reported in the annual statement

1 that must be filed with the superintendent by authorized
2 insurers; and

3 V. "unauthorized insurer" means a nonadmitted
4 insurer."

5 SECTION 8. Section 59A-14-4 NMSA 1978 (being Laws 1991,
6 Chapter 125, Section 14, as amended) is amended to read:

7 "59A-14-4. ELIGIBLE SURPLUS LINES INSURERS REQUIRED.--

8 A. No person shall export insurance on behalf of
9 an insured whose home state is New Mexico except as
10 authorized by and in accordance with Chapter 59A, Article 14
11 NMSA 1978.

12 B. No surplus lines broker shall transact surplus
13 lines insurance with an insurer other than an eligible
14 surplus lines insurer.

15 C. To qualify as an eligible surplus lines
16 insurer, a nonadmitted insurer shall file information
17 demonstrating to the superintendent's satisfaction that:

18 (1) the insurer is authorized to write the
19 particular line of business in the state in which it is
20 domiciled and:

21 (a) the insurer has capital and surplus
22 or their equivalent that equals the greater of: 1) fifteen
23 million dollars (\$15,000,000); or 2) the minimum capital and
24 surplus required in this state for that particular line of
25 business; or

1 (b) the insurer has capital and surplus
2 less than the amounts required in Subparagraph (a) of this
3 paragraph but the superintendent affirmatively finds that the
4 insurer is acceptable as an eligible surplus lines insurer.
5 The finding shall be based upon such factors as quality of
6 management, capital and surplus of any parent company,
7 company underwriting profit and investment income trends and
8 company record and reputation within the industry. In no
9 event shall the superintendent make an affirmative finding of
10 acceptability when the surplus lines insurer's capital and
11 surplus is less than four million five hundred thousand
12 dollars (\$4,500,000);

13 (2) the insurer is a member of an "insurance
14 exchange", which is an association of syndicates or insurers
15 created by the laws of individual states, and shall maintain
16 capital and surplus, or the equivalent thereof, of not less
17 than fifty million dollars (\$50,000,000) in the aggregate.
18 For insurance exchanges that maintain funds for the
19 protection of all insurance exchange policyholders, each
20 individual syndicate shall maintain minimum capital and
21 surplus, or the equivalent thereof, of not less than five
22 million dollars (\$5,000,000). In the event the insurance
23 exchange does not maintain funds for the protection of all
24 insurance exchange policyholders, each individual syndicate
25 shall meet the minimum capital and surplus requirements of

1 Subparagraph (a) of Paragraph (1) of this subsection;

2 (3) if the insurer is an alien insurer, the
3 insurer is listed on the quarterly listing of alien insurers
4 maintained by the international insurers department of the
5 association; or

6 (4) if, pursuant to law, New Mexico has
7 joined a compact or multistate agreement for the regulation
8 of surplus lines insurance and the state, through the compact
9 commission, has adopted nationwide uniform eligibility
10 requirements, the insurer is in compliance with those
11 requirements.

12 D. The superintendent shall maintain a list of
13 eligible surplus line insurers from those qualified
14 nonadmitted insurers that file information to satisfy the
15 criteria established under Subsection C of this section. In
16 addition to the requirements of Subsection C of this section,
17 in order to appear on the list of eligible surplus lines
18 insurers, a nonadmitted insurer shall provide annually to the
19 superintendent a copy of the insurer's most current annual
20 statement certified and sworn to by the insurer, unless the
21 annual statement is available to the superintendent through
22 the national association of insurance commissioners or from
23 public sources. The statement shall be provided or made
24 available at the same time it is provided to the insurer's
25 domicile, but in no event more than nine months after the

1 close of the period reported upon, and shall be either:

2 (1) filed with and approved by the
3 regulatory authority in the insurer's domicile; or

4 (2) certified as correct and in accordance
5 with applicable accounting principles by a public accounting
6 firm licensed in the insurer's domicile.

7 In the case of an insurance exchange, the statement may
8 be an aggregate combined statement of all underwriting
9 syndicates operating during the period reported.

10 E. The listing described by Subsection D of this
11 section shall not be deemed to constitute or evidence the
12 superintendent's guaranty as to the financial condition or
13 business practices of the insurer, and no insurer or other
14 person shall allege orally or in writing that any such
15 listing constitutes or implies the superintendent's approval.

16 F. The superintendent may adopt rules fixing
17 reasonable conditions to be met by insurers for the listing.
18 For good cause shown, the superintendent may in writing waive
19 the requirements of this section to permit insurance to be
20 placed as to a particular risk and insurer if the insurance
21 is not otherwise reasonably obtainable."

22 SECTION 9. Section 59A-14-4.1 NMSA 1978 (being
23 Laws 1991, Chapter 125, Section 15) is amended to read:

24 "59A-14-4.1. WITHDRAWAL OF ELIGIBILITY FROM A SURPLUS
25 LINES INSURER.--The superintendent may at any time declare an

1 eligible surplus lines insurer to be ineligible if the
2 superintendent has reason to believe that the insurer:

3 A. is in unsound financial condition;

4 B. is subject to delinquency proceedings in this
5 state or any other jurisdiction;

6 C. is no longer eligible under Section 59A-14-4
7 NMSA 1978;

8 D. has violated the laws of this state, including
9 any violation of the Insurance Code or the superintendent's
10 orders;

11 E. does not make reasonably prompt payment of loss
12 claims or other obligations in this state or elsewhere;

13 F. has failed within sixty days to satisfy a final
14 judgment rendered against it or against an insured for which
15 it is legally liable under the terms of a contract of surplus
16 lines insurance; or

17 G. has failed to satisfy the superintendent that
18 it is fit to be allowed to continue to do business in this
19 state.

20 The superintendent shall promptly mail notice of all
21 such declarations to the insurer and to every surplus lines
22 broker. Notice sent pursuant to this subsection to a
23 licensed surplus lines broker may, at the option of the
24 surplus lines broker, be sent by the superintendent via
25 electronic mail."

1 SECTION 10. Section 59A-14-11 NMSA 1978 (being
2 Laws 1991, Chapter 125, Section 17, as amended) is amended to
3 read:

4 "59A-14-11. DUTY TO FILE REPORTS AND AFFIDAVITS.--

5 A. The producing broker shall complete, execute
6 and provide to the surplus lines broker a signed statement in
7 substantially the form required by the superintendent, as to
8 the diligent efforts to place the coverage with authorized
9 insurers and the results thereof. The statement shall affirm
10 that the insured was expressly advised prior to placement of
11 the insurance and in the insurance policy that:

12 (1) the surplus lines insurer with which the
13 insurance was to be placed is not an authorized insurer in
14 this state and is not subject to the superintendent's
15 supervision; and

16 (2) in the event the surplus lines insurer
17 becomes insolvent, claims will not be paid nor will unearned
18 premiums be returned by any New Mexico insurance guaranty
19 fund.

20 B. The surplus lines broker shall preserve the
21 original producing broker statements in compliance with
22 Section 59A-14-11 NMSA 1978. The declaration pages shall be
23 confidential and shall not be subject to public inspection.
24 The superintendent's copy of the statements shall be open to
25 public inspection. If the producing broker has failed to

1 provide the producing broker statement, the surplus lines
2 broker shall at the time of quarterly filing notify the
3 superintendent of the producing broker's failure to comply.

4 C. Each surplus lines broker shall, within sixty
5 days after expiration of each calendar quarter, file with the
6 superintendent a statement under the surplus lines broker's
7 oath of all surplus lines insurance business transacted
8 during such calendar quarter. The statement shall be on
9 forms as prescribed and furnished by the superintendent and
10 shall contain such information relative to the surplus lines
11 insurance transaction as the superintendent may reasonably
12 require for the purposes of Chapter 59A, Article 14 NMSA
13 1978."

14 SECTION 11. Section 59A-14-12 NMSA 1978 (being
15 Laws 1984, Chapter 127, Section 250, as amended) is amended
16 to read:

17 "59A-14-12. PREMIUM TAX ON SURPLUS LINES INSURANCE.--

18 A. Within sixty days after expiration of a
19 calendar quarter, the surplus lines broker shall pay to the
20 superintendent for the use of the state a tax on gross
21 premiums received, less returned premiums, on surplus lines
22 business where New Mexico is the home state of the insured
23 transacted under the surplus lines broker's license during
24 such calendar quarter as shown by the quarterly statement
25 filed with the superintendent pursuant to Section 59A-14-11

1 NMSA 1978. The tax shall be at the same rate as is
2 applicable to premiums of authorized insurers under Section
3 59A-6-2 NMSA 1978.

4 B. For purposes of this section, "premiums" shall
5 include any additional amount charged the insured, including
6 policy fees, risk purchasing group fees and inspection fees;
7 but "premiums" shall not include any additional amount
8 charged the insured for local, state or federal tax;
9 regulatory authority fee; or examination fee, if any.

10 C. The superintendent may require surplus lines
11 brokers to file tax allocation reports annually detailing the
12 portion of the nonadmitted insurance policy premiums
13 attributable to properties, risks or exposures located in
14 each state.

15 D. A penalty of ten percent of the amount of tax
16 originally due, plus one percent of such tax amount for each
17 month or fraction thereof of delinquency after the first
18 thirty days of delinquency, shall be paid by the surplus
19 lines broker for failure to pay the tax in full within sixty
20 days after expiration of the calendar quarter as provided in
21 Subsection A of this section; except that the superintendent
22 may waive or remit the penalty if the superintendent finds
23 that the failure or delay in payment arose from excusable
24 mistake or excusable inadvertence.

25 E. For a surplus lines policy issued to an insured SB 367
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1 whose home state is New Mexico and where only a portion of
2 the risk is located in New Mexico, the entire premium tax
3 shall be paid to the superintendent in accordance with this
4 section. If the superintendent finds that it would increase
5 the efficiency of the surplus lines insurance marketplace as
6 well as the regulation of the surplus lines market, the
7 superintendent may enter into a compact or multistate surplus
8 lines agreement relating to eligibility for placement of
9 surplus lines insurance and the payment, reporting,
10 collection and apportionment of surplus lines premium taxes.
11 If a surplus lines policy covers risks or exposures only
12 partially in New Mexico and the superintendent has entered
13 into an agreement with other states for the apportionment of
14 premium taxes for multistate risks, the tax payable pursuant
15 to this section shall be computed and paid upon the
16 proportion of the premium that is properly allocable to the
17 risks or exposures located in New Mexico in accordance with
18 the terms of any such agreement."

19 SECTION 12. Section 59A-16-21 NMSA 1978 (being
20 Laws 1984, Chapter 127, Section 287, as amended) is amended
21 to read:

22 "59A-16-21. PAYMENT OF CLAIM BY CHECK, DRAFT OR
23 ELECTRONIC TRANSFER--FAILURE TO PAY--INTEREST.--

24 A. An insurer shall pay claims arising under its
25 policies with checks or drafts, or, if a claimant requests,

1 may pay by electronic transfer of funds, that are promptly
2 paid. Without amending other statutes dealing with checks,
3 drafts or electronic transfer of funds, a resident of New
4 Mexico is granted a cause of action for ten percent of the
5 amount of any check, draft or electronic transfer of funds
6 that is not paid or lawfully rejected within ten days of
7 forwarding by a New Mexico financial institution, but in no
8 case to be less than five hundred dollars (\$500) plus costs
9 of suit and attorney fees. The insurer shall not be required
10 to pay such civil damages for delay if it proves that the
11 delay in processing and payment was caused by a financial
12 institution or postal or delivery service and the check,
13 draft or electronic transfer of funds was paid or lawfully
14 rejected within forty-eight hours of actual receipt of the
15 draft, check or electronic transfer of funds by the person on
16 whom drawn.

17 B. Notwithstanding any provision of the Insurance
18 Code, any insurer issuing any policy, certificate or contract
19 of insurance, surety, guaranty or indemnity of any kind or
20 nature that fails for a period of forty-five days, after
21 required proof of loss has been furnished, to pay to the
22 person entitled the amount justly due shall be liable for the
23 amount due and unpaid with interest on that amount at the
24 rate of one and one-half times the prime lending rate, as
25 determined by the superintendent, for New Mexico banks per

1 year during the period the claim is unpaid.

2 C. Subsection B of this section shall not apply to
3 any claims in arbitration or litigation."

4 SECTION 13. Section 59A-16C-14 NMSA 1978 (being Laws
5 1998, Chapter 115, Section 14, as amended) is amended to
6 read:

7 "59A-16C-14. INSURANCE FRAUD FUND CREATED--
8 APPROPRIATION.--

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

17 B. To implement the provisions of the Insurance
18 Fraud Act, the superintendent shall determine a rate of
19 assessment and collect a fee from authorized insurers in an
20 amount not less than two hundred dollars (\$200) and not
21 exceeding one-tenth of one percent of the correctly reported
22 direct written premiums on policies written in New Mexico by
23 the authorized insurers. The fee shall be due annually
24 pursuant to rules promulgated by the superintendent. The
25 failure of an insurer to pay this fee when due shall subject

1 the insurer to a penalty of one thousand dollars (\$1,000) per
2 month or part thereof in which the fee remains unpaid. The
3 superintendent, after taking into account unexpended money
4 produced by collection of the fee, shall adjust the rate of
5 assessment each year to produce the amount of money that the
6 superintendent estimates will be necessary to pay expenses
7 incurred by the superintendent in carrying out the provisions
8 of the Insurance Fraud Act.

9 C. In calculating the direct written premiums for
10 an insurer pursuant to the provisions of this section, all
11 direct written premiums for workers' compensation insurance
12 and for all types of insurance that are exempted by federal
13 law shall be excluded from the calculation.

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

17 SECTION 14. Section 59A-22-1 NMSA 1978 (being Laws 1984,
18 Chapter 127, Section 422) is amended to read:

19 "59A-22-1. SCOPE OF ARTICLE.--Chapter 59A, Article 22
20 NMSA 1978 applies generally to policies of individual health
21 insurance, including student health plan policies. Nothing
22 in that article shall apply to or affect:

23 A. any policy of workers' compensation insurance or
24 any policy of liability insurance with or without
25 supplementary expense coverage therein;

1 B. life insurance, endowment or annuity contracts
2 or contracts supplemental thereto that contain only such
3 provisions relating to health insurance as:

4 (1) provide additional benefits in case of
5 death by accident; and

6 (2) operate to safeguard such contracts against
7 lapse or to give a special surrender value or special benefit
8 or annuity in event the insured or annuitant becomes totally
9 and permanently disabled, as defined by the contract or
10 supplemental contract;

11 C. group or blanket health insurance, except as
12 stated in Chapter 59A, Article 23 NMSA 1978; or

13 D. reinsurance."

14 SECTION 15. Section 59A-23-2 NMSA 1978 (being Laws 1984,
15 Chapter 127, Section 461) is amended to read:

16 "59A-23-2. BLANKET HEALTH INSURANCE.--

17 A. Blanket health insurance is declared to be that
18 form of health insurance covering special groups of not fewer
19 than ten persons as enumerated in one of the following
20 paragraphs:

21 (1) under a policy or contract issued to a
22 common carrier, which shall be deemed the policyholder,
23 covering a group defined as all persons who may become
24 passengers on the common carrier;

25 (2) under a policy or contract issued to an

1 employer that shall be deemed the policyholder, covering a
2 group of employees defined by reference to exceptional
3 hazards incident to employment;

4 (3) under a policy or contract issued to a
5 college, school or other institution of learning or to the
6 head or principal thereof, who or which shall be deemed the
7 policyholder, covering students and teachers;

8 (4) under a policy or contract issued in the
9 name of a volunteer fire department or first aid or other
10 such volunteer group, which shall be deemed the policyholder,
11 covering all of the members of the department or group; or

12 (5) under a policy or contract issued to any
13 other substantially similar group that, in the discretion of
14 the superintendent, may be subject to the issuance of a
15 blanket health policy or contract.

16 B. An individual application shall not be required
17 from a person covered under a blanket sickness or accident
18 policy or contract.

19 C. All benefits under any blanket sickness and
20 accident policy shall be payable to the person insured or the
21 person's agent, or to the person's designated beneficiary or
22 beneficiaries, or to the person's estate, except that if the
23 person insured is a minor, such benefits may be made payable
24 to the minor's parent, guardian or other person actually
25 supporting the minor.

1 D. A blanket sickness or accident policy or
2 contract issued to a college, school or other institution of
3 learning or to the head or principal thereof shall not be
4 identified or sold as a student health plan."

5 SECTION 16. Section 59A-23B-5 NMSA 1978 (being
6 Laws 1991, Chapter 111, Section 5) is amended to read:

7 "59A-23B-5. POLICY OR PLAN DISCLOSURE REQUIREMENTS.--

8 A. Upon offering coverage under a policy or plan
9 for any individual, family or group member, an insurer,
10 fraternal benefit society, health maintenance organization or
11 nonprofit healthcare plan shall provide the individual,
12 family or group member with a written disclosure statement
13 containing at least the following:

14 (1) a general explanation of those mandated
15 benefits and providers not covered by the policy or plan;

16 (2) an explanation of the managed care and cost
17 control features of the policy or plan, along with all
18 appropriate mailing addresses and telephone numbers to be
19 utilized by the insured or enrollees seeking information or
20 authorization; and

21 (3) an explanation of the primary and
22 preventive care features of the policy or plan.

23 B. Any disclosure statement provided pursuant to
24 Subsection A of this section shall be written in a clear and
25 understandable form and format and shall be separate from the

1 insurance policy or certificate or other evidence of coverage
2 provided to the individual, family and group member.

3 C. Before any insurer, fraternal benefit society,
4 health maintenance organization or nonprofit healthcare plan
5 issues a policy or plan contract, the insurer, fraternal
6 benefit society, health maintenance organization or nonprofit
7 healthcare plan shall obtain from the prospective
8 policyholder, contract holder or member a signed written
9 statement in which the prospective policyholder, contract
10 holder or member:

11 (1) certifies as to the eligibility of the
12 individual, family or group for coverage under the policy or
13 plan;

14 (2) acknowledges the limited nature of the
15 coverage, including the managed care and cost control
16 features of the policy or plan;

17 (3) acknowledges that if misrepresentations are
18 made regarding eligibility for coverage under a policy or
19 plan, the person making such misrepresentations shall forfeit
20 coverage provided by the policy or plan if the insurer,
21 fraternal benefit society, health maintenance organization or
22 nonprofit healthcare plan relied upon the misrepresentation
23 to its detriment; and

24 (4) acknowledges that the prospective
25 policyholder, contract holder or member had, at the time of

1 application for the policy or plan, been offered the
2 opportunity to purchase coverage that included all applicable
3 mandated benefits and the prospective policyholder, contract
4 holder or member rejected such coverage.

5 D. A copy of the written statement required by
6 Subsection C of this section shall be provided to the
7 prospective policyholder, contract holder or member no later
8 than at the time of delivery of the policy or plan and the
9 original signed written statement shall be retained in the
10 files of the insurer, fraternal benefit society, health
11 maintenance organization or nonprofit healthcare plan while
12 the policy or plan remains in effect or for three years,
13 whichever is less.

14 E. Any material statement made by an applicant for
15 coverage under a policy or plan that falsely certifies to the
16 applicant's eligibility for coverage shall serve as the basis
17 for termination of coverage under the policy or plan if the
18 insurer, fraternal benefit society, health maintenance
19 organization or nonprofit healthcare plan detrimentally
20 relied upon the misrepresentation.

21 F. All printed, radio or television communication
22 intended to be used for marketing a policy or plan in the
23 state and the disclosures required by Subsection A of this
24 section shall be submitted for review and approval by the
25 superintendent prior to use. The superintendent shall

1 complete the review within sixty days or else the materials
2 submitted shall be deemed approved for use."

3 SECTION 17. Section 59A-25-8 NMSA 1978 (being Laws 1984,
4 Chapter 127, Section 479) is amended to read:

5 "59A-25-8. FILING, APPROVAL AND WITHDRAWAL OF FORMS.--

6 A. All policies, certificates of insurance, notice
7 of proposed insurance, applications for insurance,
8 endorsements and riders delivered or issued for delivery in
9 this state and the schedules of premium rates pertaining to
10 them shall be filed by the insurer with the superintendent.

11 B. The superintendent shall, within sixty days
12 after the filing of any such policies, certificates of
13 insurance, notice of proposed insurance, applications for
14 insurance, endorsements and riders, disapprove any form if
15 the benefits provided therein are not reasonable in relation
16 to the premium charge or if it contains provisions that are
17 unjust, unfair, inequitable, misleading, deceptive or
18 encourage misrepresentation of the coverage or that are
19 contrary to a provision of the Insurance Code or of a rule or
20 regulation promulgated thereunder.

21 C. If the superintendent notifies the insurer that
22 the form is disapproved, it is unlawful thereafter for the
23 insurer to issue or use the form. In the notice, the
24 superintendent shall specify the reason for disapproval and
25 state that a hearing will be granted within twenty days after

1 request in writing by the insurer. No such policy,
2 certificate of insurance, notice of proposed insurance, nor
3 any application, endorsement or rider, shall be issued or
4 used until the expiration of thirty days after it has been
5 filed, unless the superintendent gives prior written approval
6 thereto.

7 D. The superintendent may, at any time after a
8 hearing held not less than twenty days after written notice
9 to the insurer, withdraw approval of a form on any ground set
10 forth in Subsection B of this section. The written notice of
11 hearing shall state the reason for the proposed withdrawal.

12 E. The insurer shall not issue the forms or use
13 them after the effective date of withdrawal.

14 F. If a group policy of credit life insurance or
15 credit health insurance has been or is delivered in another
16 state, the insurer shall be required to file only the group
17 certificate and notice of proposed insurance delivered or
18 issued for delivery in this state as specified in
19 Subsections B and D of Section 59A-25-7 NMSA 1978, and the
20 forms shall be approved by the superintendent if they conform
21 with the requirements specified in such subsections and if
22 the schedules of premium rates applicable to the insurance
23 evidenced by the certificate or notice are not in excess of
24 the insurer's schedules of premium rates filed with the
25 superintendent."

1 SECTION 18. Section 59A-57-3 NMSA 1978 (being Laws 1998,
2 Chapter 107, Section 3) is amended to read:

3 "59A-57-3. DEFINITIONS.--As used in the Patient
4 Protection Act:

5 A. "continuous quality improvement" means an
6 ongoing and systematic effort to measure, evaluate and
7 improve a managed health care plan's process in order to
8 improve continually the quality of health care services
9 provided to enrollees;

10 B. "covered person", "enrollee", "patient" or
11 "consumer" means an individual who is entitled to receive
12 health care benefits provided by a managed health care plan;

13 C. "department" means the office of superintendent
14 of insurance;

15 D. "emergency care" means health care procedures,
16 treatments or services delivered to a covered person after
17 the sudden onset of what reasonably appears to be a medical
18 condition that manifests itself by symptoms of sufficient
19 severity, including severe pain, that the absence of
20 immediate medical attention could be reasonably expected by a
21 reasonable layperson to result in jeopardy to a person's
22 health, serious impairment of bodily functions, serious
23 dysfunction of a bodily organ or part or disfigurement to a
24 person;

25 E. "health care facility" means an institution

1 providing health care services, including a hospital or other
2 licensed inpatient center; an ambulatory surgical or
3 treatment center; a skilled nursing center; a residential
4 treatment center; a home health agency; a diagnostic,
5 laboratory or imaging center; and a rehabilitation or other
6 therapeutic health setting;

7 F. "health care insurer" means a person that has a
8 valid certificate of authority in good standing under the
9 Insurance Code to act as an insurer, health maintenance
10 organization, nonprofit health care plan or prepaid dental
11 plan;

12 G. "health care professional" means a physician or
13 other health care practitioner, including a pharmacist, who
14 is licensed, certified or otherwise authorized by the state
15 to provide health care services consistent with state law;

16 H. "health care provider" or "provider" means a
17 person that is licensed or otherwise authorized by the state
18 to furnish health care services and includes health care
19 professionals and health care facilities;

20 I. "health care services" includes, to the extent
21 offered by the plan, physical health or community-based
22 mental health or developmental disability services, including
23 services for developmental delay;

24 J. "managed health care plan" or "plan" means a
25 health care insurer or a provider service network when

1 offering a benefit that either requires a covered person to
2 use, or creates incentives, including financial incentives,
3 for a covered person to use, health care providers managed,
4 owned, under contract with or employed by the health care
5 insurer or provider service network. "Managed health care
6 plan" or "plan" does not include a health care insurer or
7 provider service network offering a traditional
8 fee-for-service indemnity benefit or a benefit that covers
9 only short-term travel, accident-only, limited benefit or
10 specified disease policies;

11 K. "person" means an individual or other legal
12 entity;

13 L. "point-of-service plan" or "open plan" means a
14 managed health care plan that allows enrollees to use health
15 care providers other than providers under direct contract
16 with or employed by the plan, even if the plan provides
17 incentives, including financial incentives, for covered
18 persons to use the plan's designated participating providers;

19 M. "provider service network" means two or more
20 health care providers affiliated for the purpose of providing
21 health care services to covered persons on a capitated or
22 similar prepaid flat-rate basis that hold a certificate of
23 authority pursuant to the Provider Service Network Act;

24 N. "superintendent" means the superintendent of
25 insurance; and

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O. "utilization review" means a system for reviewing the appropriate and efficient allocation of health care services given or proposed to be given to a patient or group of patients."

SECTION 19. REPEAL.--Sections 59A-14A-1 and 59A-14A-2 NMSA 1978 (being Laws 2011, Chapter 156, Sections 1 and 2) are repealed.

SECTION 20. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2017. _____