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AN ACT
RELATING TO INSURANCE; TRANSFERRING THE DUTY TO COLLECT
INSURANCE PREMIUM TAXES TO THE TAXATION AND REVENUE
DEPARTMENT; CREATING THE INSURANCE PREMIUM TAX ACT;
TRANSFERRING FUNCTIONS, PERSONNEL, APPROPRIATIONS, MONEY AND
PROPERTY; AMENDING, REPEALING AND ENACTING SECTIONS OF THE
NMSA 1978.

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

SECTION 1. SHORT TITLE.--Sections 1 through 10 of this
act may be cited as the "Insurance Premium Tax Act".

SECTION 2. DEFINITIONS.--As used in the Insurance
Premium Tax Act:

A. "authorized insurer" means an insurer holding a
valid and subsisting certificate of authority to transact
insurance in this state;

B. "certificate of authority" means the
certificate of authority required to transact insurance in
this state pursuant to Section 59A-5-10 NMSA 1978;

C. "department" means the taxation and revenue
department;

D. "health maintenance organization" means "health
maintenance organization" as that term is used in Chapter
59A, Article 46 NMSA 1978;

E. "home state" means "home state" as that term is

1 used in Chapter 59A, Article 14 NMSA 1978;

2 F. "insurance" means a contract whereby a person
3 undertakes to pay or indemnify another as to loss from
4 certain specified contingencies or perils, or to pay or grant
5 a specified amount or determinable benefit in connection with
6 ascertainable risk contingencies, or to act as surety;

7 G. "insurer" includes every person engaged as
8 principal and as indemnitor, surety or contractor in the
9 business of entering into contracts of insurance;

10 H. "nonprofit health care plan" means "health care
11 plan" as that term is used in Chapter 59A, Article 47 NMSA
12 1978;

13 I. "secretary" means the secretary of taxation and
14 revenue or the secretary's authorized designee;

15 J. "state" means, when used in context indicating
16 a jurisdiction other than New Mexico, any state, district,
17 commonwealth, territory or possession of the United States of
18 America;

19 K. "superintendent" means the superintendent of
20 insurance or the superintendent's duly authorized
21 representative acting in official capacity;

22 L. "surplus lines broker" means "surplus lines
23 broker" as that term is used in Section 59A, Article 14 NMSA
24 1978;

25 M. "taxpayer" means:

1 (1) an authorized insurer;

2 (2) an insurer formerly authorized to
3 transact insurance in New Mexico and receiving premiums on
4 policies remaining in force in New Mexico, except an insurer
5 that withdrew from New Mexico prior to March 26, 1955;

6 (3) a plan operating under provisions of
7 Chapter 59A, Articles 46 through 49 NMSA 1978;

8 (4) a property bondsman, as that person is
9 defined in Section 59A-51-2 NMSA 1978;

10 (5) an unauthorized insurer that has assumed
11 a contract or policy of insurance directly or indirectly from
12 an authorized or formerly authorized insurer and is receiving
13 premiums on such policies remaining in force in New Mexico;
14 provided that the ceding insurer does not continue to pay the
15 taxes imposed pursuant to the Insurance Premium Tax Act as to
16 such policy or contract; or

17 (6) an insured who in this state procures,
18 continues or renews insurance with a nonadmitted insurer
19 pursuant to Section 59A-15-4 NMSA 1978; and

20 N. "transact insurance" with respect to an
21 insurance contract or a business of insurance includes any of
22 the following, by mail or otherwise or whether or not for
23 profit:

24 (1) solicitation or inducement;

25 (2) negotiation;

1 (3) effectuation of an insurance contract;

2 (4) transaction of matters subsequent to
3 effectuation and arising out of such a contract;

4 (5) maintenance in this state of an office
5 or personnel performing any function in furtherance of an
6 insurer's business of insurance; or

7 (6) maintenance by an insurer of assets in
8 trust in this state for the benefit, security or protection
9 of its policyholders or its policyholders and creditors.

10 SECTION 3. IMPOSITION AND RATE OF TAX-- DENOMINATION OF
11 "PREMIUM TAX" AND "HEALTH INSURANCE PREMIUM SURTAX".--

12 A. A tax is imposed at a rate of three and three-
13 thousandths percent of the gross premiums and membership and
14 policy fees received or written by a taxpayer, as reported by
15 March 1 of each year to the department in the appropriate
16 schedule, as determined by the department, of the taxpayer's
17 annual financial statement on insurance or contracts covering
18 risks within the state during the preceding calendar year.

19 The tax shall not be imposed on return premiums, dividends
20 paid or credited to policyholders or contract holders and
21 premiums received for reinsurance on New Mexico risks. The
22 tax imposed pursuant to this section may be referred to as
23 the "premium tax".

24 B. For a taxpayer that is an insurer lawfully
25 organized pursuant to the laws of the Republic of Mexico, the

1 premium tax shall apply solely to the taxpayer's gross
2 premium receipts from insurance policies issued by the
3 taxpayer in New Mexico that cover residents of New Mexico or
4 property or risks principally domiciled or located in New
5 Mexico.

6 C. With respect to a taxpayer that is a property
7 bondsman, "gross premiums" shall be considered any
8 consideration received as security or surety for a bail bond
9 in connection with a judicial proceeding.

10 D. The premium tax provided in Subsection A of
11 this section is imposed on the gross premiums received of a
12 surplus lines broker, less return premiums, on surplus lines
13 insurance where New Mexico is the home state of the insured
14 transacted under the surplus lines broker's license, as
15 reported by the surplus lines broker to the department on
16 forms and in the manner prescribed by the department. For
17 purposes of this subsection, "gross premiums" shall include
18 any additional amount charged the insured, including policy
19 fees, risk purchasing group fees and inspection fees; but
20 "premiums" shall not include any additional amount charged
21 the insured for local, state or federal taxes; regulatory
22 authority fees; or examination fees, if any. For a surplus
23 lines policy issued to an insured whose home state is New
24 Mexico and where only a portion of the risk is located in New
25 Mexico, the entire premium tax shall be paid in accordance

1 with this section.

2 E. In addition to the premium tax, a health
3 insurance premium surtax is imposed at a rate of one percent
4 of the gross health insurance premiums and membership and
5 policy fees received by the taxpayer on hospital and medical
6 expense incurred insurance or contracts; nonprofit health
7 care plan contracts, excluding dental or vision only
8 contracts; and health maintenance organization subscriber
9 contracts covering health risks within this state during the
10 preceding calendar year. The tax shall not apply to return
11 health insurance premiums, dividends paid or credited to
12 policyholders or contract holders and health insurance
13 premiums received for reinsurance on New Mexico risks. The
14 surtax imposed pursuant to this section may be referred to as
15 the "health insurance premium surtax".

16 **SECTION 4. RECIPROCITY PROVISION.--**

17 A. When by or pursuant to the laws of any other
18 state or foreign country or province, any taxes, in the
19 aggregate, are or would be imposed upon New Mexico insurers
20 doing business or that might seek to do business in such
21 state, country or province, or upon the agents or
22 representatives of such insurers or upon brokers or
23 adjusters, which are in excess of such taxes, in the
24 aggregate, directly imposed upon similar insurers, or upon
25 the agents or representatives of such insurers, or upon

1 brokers, or upon adjusters, of such other state, country or
2 province under the statutes of this state, so long as such
3 laws of such other state, country or province continue in
4 force or are so applied, the same taxes, in the aggregate,
5 may be imposed by the secretary upon the insurers, or upon
6 the agents or representatives of such insurers, or upon
7 brokers of such other state, country or province, doing
8 business or seeking to do business in New Mexico. Any tax
9 imposed by any city, county or other political subdivision or
10 agency of such other state, country or province on New Mexico
11 insurers or their agents, representatives, brokers or
12 adjusters shall be deemed to be imposed by such state,
13 country or province within the meaning of this section.

14 B. This section does not apply as to:

- 15 (1) personal income taxes;
- 16 (2) ad valorem taxes on real or personal
17 property; or
- 18 (3) special purpose obligations or
19 assessments, or assessments under insurance guaranty fund
20 laws, imposed by another state in connection with particular
21 kinds of insurance, except that assessment of insurers for
22 financing of public safety, health and protection purposes is
23 not exempt under this subsection. Except that deductions
24 from premium taxes or other taxes otherwise payable, allowed
25 on account of real or personal property taxes paid shall be

1 taken into consideration by the secretary in determining
2 propriety and extent of reciprocity action under this
3 section.

4 C. For purposes of this section, domicile of an
5 alien insurer, other than Canadian insurer, shall be that
6 state designated by the insurer in writing filed with the
7 secretary at time of authorization in this state or within
8 six months after the effective date of the New Mexico
9 Insurance Code, whichever date is the later, and may be any
10 one of the following states:

11 (1) that in which the insurer was first
12 authorized to transact insurance;

13 (2) that in which is located the insurer's
14 principal place of business in the United States; or

15 (3) that in which is held the largest
16 deposit of trusteed assets of the insurer for protection of
17 its policyholders in the United States.

18 D. If the insurer makes no such designation, its
19 domicile shall be deemed to be that state in which is located
20 its principal place of business in the United States.

21 E. The domicile of a Canadian insurer shall be
22 Canada and the province of Canada in which its head office is
23 located.

24 **SECTION 5. EXEMPTIONS.**--Exempted from the taxes imposed
25 pursuant to the Insurance Premium Tax Act are:

1 A. premiums attributable to insurance or contracts
2 purchased by the state or a political subdivision for the
3 state's or political subdivision's active or retired
4 employees;

5 B. payments received by a health maintenance
6 organization from the federal secretary of health and human
7 services pursuant to a risk-sharing contract issued under the
8 provisions of 42 U.S.C. Section 1395mm(g);

9 C. any business transacted pursuant to the
10 provisions of the Service Contract Regulation Act;

11 D. the premiums from each policy or plan issued or
12 offered pursuant to the Minimum Healthcare Protection Act
13 during the first three years of the issuance of the master
14 policy or individual policy; and

15 E. the money collected and placed in trust
16 pursuant to Section 59A-49-6 NMSA 1978.

17 **SECTION 6. CREDIT--MEDICAL INSURANCE POOL**

18 ASSESSMENTS.--The assessment for any New Mexico medical
19 insurance pool member pursuant to Section 59A-54-10 NMSA 1978
20 shall be allowed as a fifty percent credit on the tax return
21 for that member and a seventy-five percent credit on the tax
22 return for that member for the assessments attributable to
23 pool policyholders that receive premiums, in whole or in
24 part, through the federal Ryan White CARE Act, the Ted R.
25 Montoya hemophilia program at the university of New Mexico

1 health sciences center, the children's medical services
2 bureau of the public health division of the department of
3 health or other program receiving state funding or
4 assistance.

5 **SECTION 7. DATE PAYMENT DUE.--**

6 A. Except as provided in Subsection B of this
7 section, for each calendar quarter, an estimated payment of
8 the premium tax and the health insurance premium surtax shall
9 be made on April 15, July 15, October 15 and the following
10 January 15. The estimated payments shall be equal to at
11 least one-fourth of the payment made during the previous
12 calendar year or one-fifth of the actual payment due for the
13 current calendar year, whichever is greater. The final
14 adjustment for payments due for the prior year shall be made
15 with the return filed on April 15, at which time all taxes
16 for that year are due.

17 B. Within sixty days after expiration of a
18 calendar quarter, a surplus lines broker shall pay the
19 premium tax due on surplus lines insurance where New Mexico
20 is the home state of the insured transacted under the surplus
21 lines broker's license during such calendar quarter, as
22 reported to the department.

23 **SECTION 8. PENALTY FOR FAILURE TO PAY TAX--SERVING**
24 **PROCESS--APPOINTMENT OF SECRETARY AS PROCESS AGENT.--**

25 A. Every taxpayer and surplus lines broker subject HTRC/HB 223
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1 to the provisions of the Insurance Premium Tax Act that fail
2 to file when due any report for taxation, regardless of
3 whether tax is due, or to pay when due any tax as required by
4 the Insurance Premium Tax Act shall be liable to the state
5 for the amount thereof and for penalty of one thousand
6 dollars (\$1,000) for each month or part thereof the taxpayer
7 or surplus lines broker has failed to file the report or pay
8 the tax after demand therefor. Services of process in any
9 action against a person to recover the tax, fee or penalty
10 may be made upon the secretary as attorney for service of
11 process as provided in Subsection B of this section.

12 B. Service of process against a taxpayer or
13 surplus lines broker for whom the secretary is attorney shall
14 be made by delivering to and leaving with the secretary two
15 copies of the process.

16 C. Upon such service, the secretary shall
17 forthwith forward by prepaid registered or certified mail,
18 return receipt requested, one of the copies of such process
19 showing date and time of service on the secretary to the
20 person currently designated by the taxpayer or surplus lines
21 broker to receive the copy as provided in Subsections F
22 through H of this section. Service of process on the
23 taxpayer or surplus lines broker shall be complete upon
24 receipt or, in the event of refusal to accept, the date of
25 such refusal.

1 D. Process served as provided in this section
2 shall for all purposes constitute valid and binding personal
3 service within this state upon the taxpayer or surplus lines
4 broker. If summons is served under this section, the time
5 within which the taxpayer or surplus lines broker is required
6 to appear shall be extended an additional ten days beyond
7 that otherwise allowed by New Mexico rules of civil
8 procedure.

9 E. The secretary shall keep a record of the day
10 and time of service of legal process under this section.

11 F. Before the superintendent of insurance
12 authorizes a taxpayer or surplus lines broker to transact
13 insurance in this state, each taxpayer and surplus lines
14 broker shall appoint the secretary as the taxpayer's or
15 surplus lines broker's attorney to receive service of legal
16 process issued against the taxpayer and surplus lines broker
17 in this state. The appointment shall be on a form as
18 designated and furnished by the department, accompanied by a
19 copy of resolution of the board of directors or like
20 governing body of the taxpayer and surplus lines broker, if
21 applicable, or other appropriate instrument acceptable to the
22 secretary, showing that those who executed the appointment
23 were duly authorized to do so on behalf of the taxpayer and
24 surplus lines broker.

25 G. The appointment shall be irrevocable, shall

1 bind the taxpayer and surplus lines broker and any successor
2 in interest to the assets or liabilities of the taxpayer or
3 surplus lines broker, as applicable, and shall remain in
4 effect as long as there exists any contract of the taxpayer
5 or surplus lines broker in this state or any obligation of
6 the taxpayer and surplus lines broker arising out of the
7 taxpayer's or surplus lines broker's transactions in this
8 state.

9 H. The taxpayer or surplus lines broker shall file
10 the appointment with the secretary as part of the taxpayer's
11 or surplus lines broker's application for certificate of
12 authority, together with a designation of the person to whom
13 the secretary shall forward process against the taxpayer or
14 surplus lines broker served upon the secretary. The taxpayer
15 or surplus lines broker may change such designation by a new
16 filing.

17 **SECTION 9. DISTRIBUTION OF PREMIUM TAX--REFUNDS.--**

18 A. All money received by the department for
19 premium taxes shall be paid daily by the secretary to the
20 state treasurer and credited to the insurance department
21 suspense fund.

22 B. The department may authorize the refund of
23 money erroneously paid as taxes from the insurance department
24 suspense fund under request for refund made within three
25 years after the erroneous payment. In the case of premium

1 taxes erroneously paid or overpaid in accordance with law,
2 refund may also be requested as a credit against premium
3 taxes due in any annual or quarterly premium tax return filed
4 within three years of the erroneous or excess payment.

5 C. At the end of every month, after applicable
6 refunds are made pursuant to Subsection B of this section,
7 the state treasurer shall make the following transfers from
8 the balance remaining in the insurance department suspense
9 fund:

10 (1) to the fire protection fund, that part
11 of the balance derived from property and vehicle insurance
12 business; and

13 (2) to the general fund, the balance
14 remaining in the insurance department suspense fund.

15 SECTION 10. DEPARTMENT SHALL PROMULGATE RULES.--The
16 department shall promulgate rules to carry out the provisions
17 of the Insurance Premium Tax Act.

18 SECTION 11. Section 7-1-8.8 NMSA 1978 (being Laws 2009,
19 Chapter 243, Section 10, as amended) is amended to read:

20 "7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER
21 STATE AGENCIES.--An employee of the department may reveal to:

22 A. a committee of the legislature for a valid
23 legislative purpose, return information concerning any tax or
24 fee imposed pursuant to the Cigarette Tax Act;

25 B. the attorney general, return information

1 acquired pursuant to the Cigarette Tax Act for purposes of
2 Section 6-4-13 NMSA 1978 and the master settlement agreement
3 defined in Section 6-4-12 NMSA 1978;

4 C. the commissioner of public lands, return
5 information for use in auditing that pertains to rentals,
6 royalties, fees and other payments due the state under land
7 sale, land lease or other land use contracts;

8 D. the secretary of human services or the
9 secretary's delegate under a written agreement with the
10 department, the last known address with date of all names
11 certified to the department as being absent parents of
12 children receiving public financial assistance, but only for
13 the purpose of enforcing the support liability of the absent
14 parents by the child support enforcement division or any
15 successor organizational unit;

16 E. the department of information technology, by
17 electronic media, a database updated quarterly that contains
18 the names, addresses, county of address and taxpayer
19 identification numbers of New Mexico personal income tax
20 filers, but only for the purpose of producing the random jury
21 list for the selection of petit or grand jurors for the state
22 courts pursuant to Section 38-5-3 NMSA 1978;

23 F. the state courts, the random jury lists
24 produced by the department of information technology under
25 Subsection E of this section;

1 G. the director of the New Mexico department of
2 agriculture or the director's authorized representative, upon
3 request of the director or representative, the names and
4 addresses of all gasoline or special fuel distributors,
5 wholesalers and retailers;

6 H. the public regulation commission, return
7 information with respect to the Corporate Income and
8 Franchise Tax Act required to enable the commission to carry
9 out its duties;

10 I. the state racing commission, return information
11 with respect to the state, municipal and county gross
12 receipts taxes paid by racetracks;

13 J. the gaming control board, tax returns of
14 license applicants and their affiliates as provided in
15 Subsection E of Section 60-2E-14 NMSA 1978;

16 K. the director of the workers' compensation
17 administration or to the director's representatives
18 authorized for this purpose, return information to facilitate
19 the identification of taxpayers that are delinquent or
20 noncompliant in payment of fees required by Section 52-1-9.1
21 or 52-5-19 NMSA 1978;

22 L. the secretary of workforce solutions or the
23 secretary's delegate, return information for use in
24 enforcement of unemployment insurance collections pursuant to
25 the terms of a written reciprocal agreement entered into by

1 the department with the secretary of workforce solutions for
2 exchange of information;

3 M. the New Mexico finance authority, information
4 with respect to the amount of municipal and county gross
5 receipts taxes collected by municipalities and counties
6 pursuant to any local option municipal or county gross
7 receipts taxes imposed, and information with respect to the
8 amount of governmental gross receipts taxes paid by every
9 agency, institution, instrumentality or political subdivision
10 of the state pursuant to Section 7-9-4.3 NMSA 1978;

11 N. the secretary of human services or the
12 secretary's delegate; provided that a person who receives the
13 confidential return information on behalf of the human
14 services department shall not reveal the information and
15 shall be subject to the penalties in Section 7-1-76 NMSA 1978
16 if the person fails to maintain the confidentiality required:

17 (1) that return information needed for
18 reports required to be made to the federal government
19 concerning the use of federal funds for low-income working
20 families; and

21 (2) the names and addresses of low-income
22 taxpayers for the limited purpose of outreach to those
23 taxpayers; provided that the human services department shall
24 pay the department for expenses incurred by the department to
25 derive the information requested by the human services

1 department if the information requested is not readily
2 available in reports for which the department's information
3 systems are programmed; and

4 O. the superintendent of insurance, return
5 information with respect to the premium tax and the health
6 insurance premium surtax."

7 **SECTION 12.** Section 29-13-3 NMSA 1978 (being Laws 1983,
8 Chapter 289, Section 3, as amended) is amended to read:

9 "29-13-3. DISTRIBUTION OF CERTAIN INSURANCE
10 COLLECTIONS--LAW ENFORCEMENT PROTECTION FUND CREATED.--There
11 is created in the state treasury the "law enforcement
12 protection fund". Ten percent of all money received for
13 fees, licenses and penalties from life, general casualty and
14 title insurance business pursuant to the New Mexico Insurance
15 Code shall be paid monthly to the state treasurer and
16 credited to the fund. On or before June 30 of each year, the
17 state treasurer shall transfer to the general fund any
18 balance in the law enforcement protection fund in excess of
19 one hundred thousand dollars (\$100,000) that is not obligated
20 for expenses in that current fiscal year."

21 **SECTION 13.** Section 59A-5-33 NMSA 1978 (being Laws
22 1984, Chapter 127, Section 100) is amended to read:

23 "59A-5-33. RECIPROCITY PROVISION.--

24 A. When by or pursuant to the laws of any other
25 state or foreign country or province, any licenses and other

1 fees, in the aggregate, and any fines, penalties, deposit
2 requirements or other material requirements, obligations,
3 prohibitions or restrictions are or would be imposed upon New
4 Mexico insurers doing business or that might seek to do
5 business in such state, country or province, or upon the
6 agents or representatives of such insurers or upon brokers or
7 adjusters, which are in excess of such licenses and other
8 fees, in the aggregate, or which are in excess of the fines,
9 penalties, deposit or other requirements, obligations,
10 prohibitions or restrictions directly imposed upon similar
11 insurers, or upon the agents or representatives of such
12 insurers, or upon brokers, or upon adjusters, of such other
13 state, country, or province under the statutes of this state,
14 so long as such laws of such other state, country or province
15 continue in force or are so applied, the same licenses and
16 other fees, in the aggregate, or fines, penalties or deposit
17 requirements or other material requirements, obligations,
18 prohibitions or restrictions of whatever kind may be imposed
19 by the superintendent upon the insurers, or upon the agents
20 or representatives of such insurers, or upon brokers of such
21 other state, country or province, doing business or seeking
22 to do business in New Mexico. Any license or other fee or
23 obligation imposed by any city, county or other political
24 subdivision or agency of such other state, country or
25 province on New Mexico insurers or their agents,

1 representatives, brokers or adjusters shall be deemed to be
2 imposed by such state, country or province within the meaning
3 of this section.

4 B. This section does not apply to special purpose
5 obligations or assessments, or assessments under insurance
6 guaranty fund laws, imposed by another state in connection
7 with particular kinds of insurance, except that assessment of
8 insurers for financing of public safety, health, and
9 protection purposes is not exempt under this subsection.

10 C. For purposes of this section, domicile of an
11 alien insurer, other than Canadian insurer, shall be the
12 state designated by the insurer in writing and filed with the
13 superintendent at the time of authorization in this state or
14 within six months after the effective date of the Insurance
15 Code, whichever date is the later, and may be any one of the
16 following states:

17 (1) that in which the insurer was first
18 authorized to transact insurance;

19 (2) that in which is located the insurer's
20 principal place of business in the United States; or

21 (3) that in which is held the largest
22 deposit of trusteed assets of the insurer for protection of
23 its policyholders in the United States.

24 D. If the insurer makes no designation pursuant to
25 Subsection C of this section, the insurer's domicile shall be

1 deemed to be that state in which is located its principal
2 place of business in the United States.

3 E. The domicile of a Canadian insurer shall be
4 Canada and the province of Canada in which its head office is
5 located."

6 SECTION 14. Section 59A-6-3 NMSA 1978 (being Laws 1984,
7 Chapter 127, Section 103) is amended to read:

8 "59A-6-3. INSURER MUST PAY TAX ON WITHDRAWAL FROM
9 STATE.--Any insurer holding certificate of authority to
10 transact insurance in New Mexico that ceases to do business
11 in the state shall thereupon file with the secretary of
12 taxation and revenue a report of its premiums collected to
13 date of such cessation of business that are subject to the
14 premium tax or the health insurance premium surtax and not
15 theretofore reported, and forthwith pay to the secretary the
16 tax thereon and surrender its certificate of authority to the
17 superintendent. Upon receipt, the secretary shall submit a
18 copy of the report to the superintendent and shall certify
19 that all tax obligations have been satisfied by the
20 withdrawing insurer."

21 SECTION 15. Section 59A-6-4 NMSA 1978 (being Laws 1984,
22 Chapter 127, Section 104, as amended) is amended to read:

23 "59A-6-4. PENALTY FOR FAILURE TO PAY FEES.--Every
24 insurer, nonprofit health care plan, health maintenance
25 organization, prepaid dental plan or prearranged funeral plan

1 transacting business in New Mexico that fails to pay when due
2 any fees as required in Chapter 59A, Article 6 NMSA 1978 may
3 be liable to the state for the amount thereof and for penalty
4 of up to one thousand dollars (\$1,000) for each month or part
5 thereof it has failed to pay the fees when due. Services of
6 process in any action against a person to recover the fee or
7 penalty may be made upon the superintendent as attorney for
8 service of process as provided in Section 59A-5-32 NMSA
9 1978."

10 SECTION 16. Section 59A-6-5 NMSA 1978 (being Laws 1984,
11 Chapter 127, Section 105, as amended) is amended to read:

12 "59A-6-5. DISTRIBUTION OF OFFICE COLLECTIONS.--

13 A. All money received by the office of
14 superintendent of insurance for fees, licenses and penalties
15 shall be paid daily by the superintendent to the state
16 treasurer and credited to the "insurance department suspense
17 fund" except as provided by the Law Enforcement Protection
18 Fund Act.

19 B. The superintendent may authorize the refund of
20 money erroneously paid as fees, licenses or penalties from
21 the insurance department suspense fund upon request for
22 refund, if the request is made within one year after the
23 erroneous payment.

24 C. The "insurance operations fund" is created in
25 the state treasury. The fund shall consist of the

1 distributions made to it pursuant to Subsection D of this
2 section. The legislature shall annually appropriate from the
3 fund to the division those amounts necessary for the division
4 to carry out its responsibilities pursuant to the Insurance
5 Code and other laws. Any balance in the fund at the end of a
6 fiscal year shall revert to the general fund.

7 D. At the end of every month, after applicable
8 refunds are made pursuant to Subsection B of this section,
9 the state treasurer shall make the following transfers from
10 the balance remaining in the insurance department suspense
11 fund:

12 (1) to the "fire protection fund", that part
13 of the balance derived from property and vehicle insurance
14 business;

15 (2) to the insurance operations fund, that
16 part of the balance derived from the fees imposed pursuant to
17 Subsections A and E of Section 59A-6-1 NMSA 1978 other than
18 fees derived from property and vehicle insurance business;
19 and

20 (3) to the general fund, the balance
21 remaining in the insurance department suspense fund derived
22 from all other kinds of insurance business."

23 SECTION 17. Section 59A-6-6 NMSA 1978 (being Laws 1984,
24 Chapter 127, Section 106, as amended) is amended to read:

25 "59A-6-6. PREEMPTION AND IN LIEU PROVISION.--The state

1 government of New Mexico preempts the field of taxation of
2 insurers, nonprofit health care plans, health maintenance
3 organizations, prepaid dental plans, prearranged funeral
4 plans and insurance producers as such. The payment of the
5 taxes, licenses and fees provided for in the Insurance
6 Premium Tax Act and the Insurance Code shall be in lieu of
7 all other taxes, licenses and fees of every kind now or
8 hereafter imposed by this state or any political subdivision
9 thereof on any of the foregoing specified entities, excepting
10 the regular state, county and city taxes on property located
11 in New Mexico and excepting the income tax on insurance
12 producers. The provisions of this section shall not apply to
13 revenues or receipts that are not directly attributable to
14 persons, entities and activities subject to the provisions of
15 the Insurance Code."

16 SECTION 18. Section 59A-15-4 NMSA 1978 (being Laws
17 1984, Chapter 127, Section 259.1) is amended to read:

18 "59A-15-4. INSURANCE INDEPENDENTLY PROCURED--DUTY TO
19 REPORT.--

20 A. Each insured who in this state procures or
21 continues or renews insurance with a nonadmitted insurer on a
22 risk located or to be performed in whole or in part in this
23 state, other than insurance procured through a surplus lines
24 licensee pursuant to Chapter 59A, Article 14 NMSA 1978 shall,
25 within ninety days after the date such insurance was so

1 procured, continued or renewed, file a written report of the
2 same with the superintendent, upon forms prescribed by the
3 superintendent, showing the name and address of the insured
4 or insureds, name and address of the insurer, the subject of
5 the insurance, a general description of the coverage, the
6 amount of premium currently charged therefor and such
7 additional pertinent information as is reasonably requested
8 by the superintendent.

9 B. If an independently procured policy covers
10 risks or exposures only partially located or to be performed
11 in this state, the taxes, fees and penalties imposed pursuant
12 to the Insurance Code and the Insurance Premium Tax Act shall
13 be computed on the portion of the premium properly
14 attributable to the risks or exposures located or to be
15 performed in this state and reported to the secretary of
16 taxation and revenue. In no event, however, shall a tax be
17 payable solely because the risk in question, or any portion
18 thereof, is located or to be performed in this state.

19 C. This section does not abrogate or modify, and
20 shall not be construed or deemed to abrogate or modify, any
21 provision of the Insurance Code.

22 D. This section does not apply to life insurance,
23 health insurance or annuities."

24 SECTION 19. Section 59A-20-33 NMSA 1978 (being Laws
25 1984, Chapter 127, Section 398, as amended) is amended to

1 read:

2 "59A-20-33. STANDARD NONFORFEITURE LAW--INDIVIDUAL
3 DEFERRED ANNUITIES.--

4 A. This section shall not apply to any
5 reinsurance, group annuity purchased under a retirement plan
6 or plan of deferred compensation established or maintained by
7 an employer, including a partnership or sole proprietorship
8 or by an employee organization, or by both, other than a plan
9 providing individual retirement accounts or individual
10 retirement annuities under Section 408 of the Internal
11 Revenue Code of 1986, as now or hereafter amended, premium
12 deposit fund, variable annuity, investment annuity, immediate
13 annuity, any deferred annuity contract after annuity payments
14 have commenced or reversionary annuity, nor to any contract
15 that shall be delivered outside this state through an agent
16 or other representative of the insurer issuing the contract.

17 B. In the case of contracts issued on or after the
18 operative date of this section as defined in Subsection P of
19 this section, no contract of annuity, except as stated in
20 Subsection A of this section, shall be delivered or issued
21 for delivery in this state unless it contains in substance
22 the following provisions, or corresponding provisions that in
23 the opinion of the superintendent are at least as favorable
24 to the contractholder, upon cessation of payment of
25 considerations under the contract:

1 (1) that upon cessation of payment of
2 considerations under a contract or upon the written request
3 of the contract owner, the insurer shall grant a paid-up
4 annuity benefit on a plan stipulated in the contract of such
5 value as is specified in Subsections H, I, J, K and M of this
6 section;

7 (2) if a contract provided for a lump sum
8 settlement at maturity, or at any other time, that upon
9 surrender of the contract at or prior to the commencement of
10 any annuity payments, the insurer shall pay in lieu of any
11 paid-up annuity benefit a cash surrender benefit of such
12 amount as is specified in Subsections H, I, K and M of this
13 section. The insurer may reserve the right to defer the
14 payment of such cash surrender benefit for a period not to
15 exceed six months after demand therefor with surrender of the
16 contract after making written request and receiving written
17 approval of the superintendent. The request shall address
18 the necessity and equatability to all policyholders of the
19 deferral;

20 (3) a statement of the mortality table, if
21 any, and interest rates used in calculating any minimum paid-
22 up annuity, cash surrender or death benefits that are
23 guaranteed under the contract, together with sufficient
24 information to determine the amounts of such benefits; and

25 (4) a statement that any paid-up annuity,

1 cash surrender or death benefits that may be available under
2 the contract are not less than the minimum benefits required
3 by any statute of the state in which the contract is
4 delivered and an explanation of the manner in which such
5 benefits are altered by the existence of any additional
6 amounts credited by the insurer to the contract, any
7 indebtedness to the insurer on the contract or any prior
8 withdrawals from or partial surrenders of the contract.

9 C. Notwithstanding the requirements of this
10 section, any deferred annuity contract may provide that if no
11 considerations have been received under a contract for a
12 period of two full years and the portion of the paid-up
13 annuity benefit at maturity on the plan stipulated in the
14 contract arising from prior considerations paid would be less
15 than twenty dollars (\$20.00) monthly, the insurer may at its
16 option terminate such contract by payment in cash of the then
17 present value of such portion of the paid-up annuity benefit,
18 calculated on the basis of the mortality table, if any, and
19 interest rate specified in the contract for determining the
20 paid-up annuity benefit, and by such payment shall be
21 relieved of any further obligation under such contract.

22 D. The minimum values as specified in Subsections
23 H, I, J, K and M of this section of any paid-up annuity, cash
24 surrender or death benefits available under an annuity
25 contract shall be based upon minimum nonforfeiture amounts as

1 defined in this section. The minimum nonforfeiture amount at
2 any time at or prior to the commencement of any annuity
3 payments shall be equal to an accumulation up to such time at
4 rates of interest as indicated in Subsection E of this
5 section of the net considerations, as hereinafter defined,
6 paid prior to such time, decreased by the sum of Paragraphs
7 (1) through (4) of this subsection:

8 (1) any prior withdrawals from or partial
9 surrenders of the contract accumulated at rates of interest
10 as indicated in Subsection E of this section;

11 (2) an annual contract charge of fifty
12 dollars (\$50.00), accumulated at rates of interest as
13 indicated in Subsection E of this section;

14 (3) any tax pursuant to the Insurance
15 Premium Tax Act paid by the insurer for the contract,
16 accumulated at rates of interest as indicated in Subsection E
17 of this section; and

18 (4) the amount of any indebtedness to the
19 insurer on the contract, including interest due and accrued.

20 E. The net considerations for a given contract
21 year used to define the minimum nonforfeiture amount shall be
22 an amount equal to eighty-seven and one-half percent of the
23 gross considerations credited to the contract during that
24 contract year. The interest rate used in determining minimum
25 nonforfeiture amounts shall be an annual rate of interest

1 determined as the lesser of three percent per annum and the
2 following, which shall be specified in the contract if the
3 interest rate will be reset:

4 (1) the five-year constant maturity treasury
5 rate reported by the federal reserve as of a date, or average
6 over a period, rounded to the nearest one-twentieth percent,
7 specified in the contract no longer than fifteen months prior
8 to the contract issue date or redetermination date pursuant
9 to Paragraph (2) of this subsection reduced by one hundred
10 twenty-five basis points, where the resulting interest rate
11 is not less than one percent; and

12 (2) the interest rate shall apply for an
13 initial period and may be redetermined for additional
14 periods. The redetermination date, basis and period, if any,
15 shall be stated in the contract. The basis is the date or
16 average over a specified period that produces the value of
17 the five-year constant maturity treasury rate to be used at
18 each redetermination date.

19 F. Notwithstanding the provisions of Subsections D
20 and E of this section, during the period or term that a
21 contract provides substantive participation in an equity
22 indexed benefit, it may increase the reduction described in
23 Paragraph (1) of Subsection E of this section by up to an
24 additional one hundred basis points to reflect the value of
25 the equity index benefit. The present value at the contract

1 issue date, and at each redetermination date thereafter, of
2 the additional reduction shall not exceed the market value of
3 the benefit. The superintendent may require a demonstration
4 that the present value of the reduction does not exceed the
5 market value of the benefit. Lacking such a demonstration
6 that is acceptable to the superintendent, the superintendent
7 may disallow or limit the additional reduction.

8 G. The superintendent may adopt rules to implement
9 the provisions of Subsection F of this section and to provide
10 for further adjustments to the calculation of minimum
11 nonforfeiture amounts for contracts that provide substantive
12 participation in an equity index benefit and for other
13 contracts that the superintendent determines adjustments are
14 justified.

15 H. Any paid-up annuity benefit available under a
16 contract shall be such that its present value on the date
17 annuity payments are to commence is at least equal to the
18 minimum nonforfeiture amount on that date. Such present
19 value shall be computed using the mortality table, if any,
20 and the interest rates specified in the contract for
21 determining the minimum paid-up annuity benefits guaranteed
22 in the contract.

23 I. For contracts that provide cash surrender
24 benefits, such cash surrender benefits available prior to
25 maturity shall not be less than the present value as of the

1 date of surrender of that portion of the maturity value of
2 the paid-up annuity benefit that would be provided under the
3 contract at maturity arising from considerations paid prior
4 to the time of cash surrender reduced by the amount
5 appropriate to reflect any prior withdrawals from or partial
6 surrenders of the contract, such present value being
7 calculated on the basis of an interest rate not more than one
8 percent higher than the interest rate specified in the
9 contract for accumulating the net considerations to determine
10 such maturity value, decreased by the amount of any
11 indebtedness to the insurer on the contract, including
12 interest due and accrued, and increased by any existing
13 additional amounts credited by the insurer to the contract.
14 In no event shall any cash surrender benefit be less than the
15 minimum nonforfeiture amount at that time. The death benefit
16 under such contracts shall be at least equal to the cash
17 surrender benefit.

18 J. For contracts that do not provide cash
19 surrender benefits, the present value of any paid-up annuity
20 benefit available as a nonforfeiture option at any time prior
21 to maturity shall not be less than the present value of that
22 portion of the maturity value of the paid-up annuity benefit
23 provided under the contract arising from considerations paid
24 prior to the time the contract is surrendered in exchange
25 for, or changed to, a deferred paid-up annuity, such present

1 value being calculated for the period prior to the maturity
2 date on the basis of the interest rate specified in the
3 contract for accumulating the net considerations to determine
4 such maturity value, and increased by any existing additional
5 amounts credited by the insurer to the contract. For
6 contracts that do not provide any death benefits prior to the
7 commencement of any annuity payments, such present values
8 shall be calculated on the bases of such interest rate and
9 the mortality table specified in the contract for determining
10 the maturity value of the paid-up annuity benefit. However,
11 in no event shall the present value of a paid-up annuity
12 benefit be less than the minimum nonforfeiture amount at that
13 time.

14 K. For the purpose of determining the benefits
15 calculated under Subsections I and J of this section, in the
16 case of annuity contracts under which an election may be made
17 to have annuity payments commence at optional maturity dates,
18 the maturity date shall be deemed to be the latest date for
19 which election shall be permitted by the contract, but shall
20 not be deemed to be later than the anniversary of the
21 contract next following the annuitant's seventieth birthday
22 or the tenth anniversary of the contract, whichever is later.

23 L. Any contract that does not provide cash
24 surrender benefits or does not provide death benefits at
25 least equal to the minimum nonforfeiture amount prior to the

1 commencement of any annuity payments shall include a
2 statement in a prominent place in the contract that such
3 benefits are not provided.

4 M. Any paid-up annuity, cash surrender or death
5 benefits available at any time, other than on the contract
6 anniversary under any contract with fixed scheduled
7 considerations, shall be calculated with allowance for the
8 lapse of time and the payment of any scheduled considerations
9 beyond the beginning of the contract year in which cessation
10 of payment of considerations under the contract occurs.

11 N. For any contract that provides, within the same
12 contract by rider or supplemental contract provision, both
13 annuity benefits and life insurance benefits that are in
14 excess of the greater of cash surrender benefits or a return
15 of the gross considerations with interest, the minimum
16 nonforfeiture benefits shall be equal to the sum of the
17 minimum nonforfeiture benefits for the annuity portion and
18 the minimum nonforfeiture benefits, if any, for the life
19 insurance portion computed as if each portion were a separate
20 contract. Notwithstanding the provisions of Subsections H,
21 I, J, K and M of this section, additional benefits payable in
22 the event of total and permanent disability, as reversionary
23 annuity or deferred reversionary annuity benefits, or as
24 other policy benefits additional to life insurance, endowment
25 and annuity benefits, and considerations for all such

1 additional benefits, shall be disregarded in ascertaining the
2 minimum nonforfeiture amounts, paid-up annuity, cash
3 surrender and death benefits that may be required by this
4 section. The inclusion of such additional benefits shall not
5 be required in any paid-up benefits, unless such additional
6 benefits separately would require minimum nonforfeiture
7 amounts, paid-up annuity, cash surrender and death benefits.

8 O. The superintendent may adopt rules to implement
9 the provisions of this section.

10 P. After July 1, 2003, an insurer may elect to
11 apply its provisions to annuity contracts on a contract-form
12 by contract-form basis before July 1, 2005. In all other
13 instances this section shall become operative with respect to
14 annuity contracts issued by the insurer after June 30, 2005."

15 **SECTION 20.** Section 59A-22-50 NMSA 1978 (being Laws
16 2010, Chapter 94, Section 1, as amended) is amended to read:

17 "59A-22-50. HEALTH INSURERS--DIRECT SERVICES.--

18 A. A health insurer shall make reimbursement for
19 direct services at a level not less than eighty-five percent
20 of premiums across all health product lines, except
21 individually underwritten health insurance policies, contracts
22 or plans, that are governed by the provisions of Chapter 59A,
23 Article 22 NMSA 1978, the Health Maintenance Organization Law
24 and the Nonprofit Health Care Plan Law. Reimbursement shall
25 be made for direct services provided over the preceding three

1 calendar years, but not earlier than calendar year 2010, as
2 determined by reports filed with the office of superintendent
3 of insurance. Nothing in this subsection shall be construed
4 to preclude a purchaser from negotiating an agreement with a
5 health insurer that requires a higher amount of premiums paid
6 to be used for reimbursement for direct services for one or
7 more products or for one or more years.

8 B. For individually underwritten health care
9 policies, plans or contracts, the superintendent shall
10 establish, after notice and informal hearing, the level of
11 reimbursement for direct services, as determined by the
12 reports filed with the office of superintendent of insurance,
13 as a percent of premiums. Additional informal hearings may be
14 held at the superintendent's discretion. In establishing the
15 level of reimbursement for direct services, the superintendent
16 shall consider the costs associated with the individual
17 marketing and medical underwriting of these policies, plans or
18 contracts at a level not less than seventy-five percent of
19 premiums. A health insurer writing these policies shall make
20 reimbursement for direct services at a level not less than
21 that level established by the superintendent pursuant to this
22 subsection over the three calendar years preceding the date
23 upon which that rate is established, but not earlier than
24 calendar year 2010. Nothing in this subsection shall be
25 construed to preclude a purchaser of one of these policies,

1 plans or contracts from negotiating an agreement with a health
2 insurer that requires a higher amount of premiums paid to be
3 used for reimbursement for direct services.

4 C. An insurer that fails to comply with the
5 reimbursement requirements pursuant to this section shall
6 issue a dividend or credit against future premiums to all
7 policyholders in an amount sufficient to assure that the
8 benefits paid in the preceding three calendar years plus the
9 amount of the dividends or credits are equal to the required
10 direct services reimbursement level pursuant to Subsection A
11 of this section for group health coverage and blanket health
12 coverage or the required direct services reimbursement level
13 pursuant to Subsection B of this section for individually
14 underwritten health policies, contracts or plans for the
15 preceding three calendar years. If the insurer fails to issue
16 the dividend or credit in accordance with the requirements of
17 this section, the superintendent shall enforce these
18 requirements and may pursue any other penalties as provided by
19 law, including general penalties pursuant to Section 59A-1-18
20 NMSA 1978.

21 D. After notice and hearing, the superintendent
22 may adopt and promulgate reasonable rules necessary and proper
23 to carry out the provisions of this section.

24 E. For the purposes of this section:

25 (1) "direct services" means services

1 rendered to an individual by a health insurer or a health care
2 practitioner, facility or other provider, including case
3 management, disease management, health education and
4 promotion, preventive services, quality incentive payments to
5 providers and any portion of an assessment that covers
6 services rather than administration and for which an insurer
7 does not receive a tax credit pursuant to the Medical
8 Insurance Pool Act; provided, however, that "direct services"
9 does not include care coordination, utilization review or
10 management or any other activity designed to manage
11 utilization or services;

12 (2) "health insurer" means a person duly
13 authorized to transact the business of health insurance in the
14 state pursuant to the Insurance Code but does not include a
15 person that only issues a limited-benefit policy intended to
16 supplement major medical coverage, including medicare
17 supplement, vision, dental, disease-specific, accident-only or
18 hospital indemnity-only insurance policies, or that only
19 issues policies for long-term care or disability income; and

20 (3) "premium" means all income received from
21 individuals and private and public payers or sources for the
22 procurement of health coverage, including capitated payments,
23 self-funded administrative fees, self-funded claim
24 reimbursements, recoveries from third parties or other
25 insurers and interests less any tax paid pursuant to the

1 Insurance Premium Tax Act and fees associated with
2 participating in a health insurance exchange that serves as a
3 clearinghouse for insurance."

4 SECTION 21. Section 59A-23C-10 NMSA 1978 (being Laws
5 2010, Chapter 94, Section 2, as amended) is amended to read:

6 "59A-23C-10. HEALTH INSURERS--DIRECT SERVICES.--

7 A. A health insurer shall make reimbursement for
8 direct services at a level not less than eighty-five percent
9 of premiums across all health product lines over the preceding
10 three calendar years, but not earlier than calendar year 2010,
11 as determined by reports filed with the office of
12 superintendent of insurance. Nothing in this subsection shall
13 be construed to preclude a purchaser from negotiating an
14 agreement with a health insurer that requires a higher amount
15 of premiums paid to be used for reimbursement for direct
16 services for one or more products or for one or more years.

17 B. An insurer that fails to comply with the
18 eighty-five percent reimbursement requirement in Subsection A
19 of this section shall issue a dividend or credit against
20 future premiums to all policyholders in an amount sufficient
21 to assure that the benefits paid in the preceding three
22 calendar years plus the amount of the dividends or credits
23 equal eighty-five percent of the premiums collected in the
24 preceding three calendar years. If the insurer fails to issue
25 the dividend or credit in accordance with the requirements of

1 this section, the superintendent shall enforce the
2 requirements and may pursue any other penalties as provided by
3 law, including general penalties pursuant to Section 59A-1-18
4 NMSA 1978.

5 C. After notice and hearing, the superintendent
6 may adopt and promulgate reasonable rules necessary and proper
7 to carry out the provisions of this section.

8 D. For the purposes of this section:

9 (1) "direct services" means services
10 rendered to an individual by a health insurer or a health care
11 practitioner, facility or other provider, including case
12 management, disease management, health education and
13 promotion, preventive services, quality incentive payments to
14 providers and any portion of an assessment that covers
15 services rather than administration and for which an insurer
16 does not receive a tax credit pursuant to the Medical
17 Insurance Pool Act; provided, however, that "direct services"
18 does not include care coordination, utilization review or
19 management or any other activity designed to manage
20 utilization or services;

21 (2) "health insurer" means a person duly
22 authorized to transact the business of health insurance in the
23 state pursuant to the Insurance Code but does not include a
24 person that only issues a limited-benefit policy intended to
25 supplement major medical coverage, including medicare

1 supplement, vision, dental, disease-specific, accident-only or
2 hospital indemnity-only insurance policies, or that only
3 issues policies for long-term care or disability income; and

4 (3) "premium" means all income received from
5 individuals and private and public payers or sources for the
6 procurement of health coverage, including capitated payments,
7 self-funded administrative fees, self-funded claim
8 reimbursements, recoveries from third parties or other
9 insurers and interests less any tax paid pursuant to the
10 Insurance Premium Tax Act and fees associated with
11 participating in a health insurance exchange that serves as a
12 clearinghouse for insurance."

13 **SECTION 22.** Section 59A-39-5 NMSA 1978 (being Laws
14 1984, Chapter 127, Section 662) is amended to read:

15 "59A-39-5. ATTORNEY.--

16 A. "Attorney", as used in Chapter 59A, Article 39
17 NMSA 1978, refers to the attorney-in-fact of a reciprocal
18 insurer. The attorney may be an individual, firm or
19 corporation.

20 B. The attorney of a foreign reciprocal insurer,
21 which insurer is duly authorized to transact insurance in this
22 state, shall not, by virtue of the discharge of its duties as
23 such attorney with respect to the insurer's transactions in
24 this state, be thereby deemed to be doing business in this
25 state within the meaning of any laws of this state applying to

1 foreign persons, firms or corporations.

2 C. The subscribers and the attorney-in-fact
3 comprise a reciprocal insurer and single entity for the
4 purposes of the Insurance Premium Tax Act and Sections 59A-6-3
5 through 59A-6-6 NMSA 1978 as to all operations under the
6 insurer's certificate of authority."

7 SECTION 23. Section 59A-40-5 NMSA 1978 (being Laws
8 1984, Chapter 127, Section 688) is amended to read:

9 "59A-40-5. REPORTS.-- The insurer shall pay any
10 applicable fees and charges as are required under the
11 Insurance Code to be paid by other authorized insurers
12 transacting in New Mexico the same kind of insurance. The
13 insurer shall make the same reports to the superintendent and
14 the national association of insurance commissioners as are
15 required of such other authorized insurers, but in such
16 adapted forms as may for the purpose be prescribed by the
17 superintendent."

18 SECTION 24. Section 59A-46-51 NMSA 1978 (being Laws
19 2010, Chapter 94, Section 3, as amended) is amended to read:

20 "59A-46-51. HEALTH MAINTENANCE ORGANIZATIONS--DIRECT
21 SERVICES.--

22 A. A health maintenance organization shall make
23 reimbursement for direct services at a level not less than
24 eighty-five percent of premiums across all health product
25 lines, except individually underwritten health insurance

1 policies, contracts or plans, that are governed by the
2 provisions of Chapter 59A, Article 22 NMSA 1978, the Health
3 Maintenance Organization Law and the Nonprofit Health Care
4 Plan Law. Reimbursement shall be made for direct services
5 provided over the preceding three calendar years, but not
6 earlier than calendar year 2010, as determined by reports
7 filed with the office of superintendent of insurance. Nothing
8 in this subsection shall be construed to preclude a purchaser
9 from negotiating an agreement with a health maintenance
10 organization that requires a higher amount of premiums paid to
11 be used for reimbursement for direct services for one or more
12 products or for one or more years.

13 B. For individually underwritten health care
14 policies, plans or contracts, the superintendent shall
15 establish, after notice and informal hearing, the level of
16 reimbursement for direct services, as determined by the
17 reports filed with the office of superintendent of insurance,
18 as a percent of premiums. Additional informal hearings may be
19 held at the superintendent's discretion. In establishing the
20 level of reimbursement for direct services, the superintendent
21 shall consider the costs associated with the individual
22 marketing and medical underwriting of these policies, plans or
23 contracts at a level not less than seventy-five percent of
24 premiums. A health insurer or health maintenance organization
25 writing these policies, plans or contracts shall make

1 reimbursement for direct services at a level not less than
2 that level established by the superintendent pursuant to this
3 subsection over the three calendar years preceding the date
4 upon which that rate is established, but not earlier than
5 calendar year 2010. Nothing in this subsection shall be
6 construed to preclude a purchaser of one of these policies,
7 plans or contracts from negotiating an agreement with a health
8 insurer or health maintenance organization that requires a
9 higher amount of premiums paid to be used for reimbursement
10 for direct services.

11 C. A health maintenance organization that fails to
12 comply with the reimbursement requirements pursuant to this
13 section shall issue a dividend or credit against future
14 premiums to all policy or contract holders in an amount
15 sufficient to assure that the benefits paid in the preceding
16 three calendar years plus the amount of the dividends or
17 credits are equal to the required direct services
18 reimbursement level pursuant to Subsection A of this section
19 for group health coverage and blanket health coverage or the
20 required direct services reimbursement level pursuant to
21 Subsection B of this section for individually underwritten
22 health policies, contracts or plans for the preceding three
23 calendar years. If the insurer fails to issue the dividend or
24 credit in accordance with the requirements of this section,
25 the superintendent shall enforce these requirements and may

1 pursue any other penalties as provided by law, including
2 general penalties pursuant to Section 59A-1-18 NMSA 1978.

3 D. After notice and hearing, the superintendent
4 may adopt and promulgate reasonable rules necessary and proper
5 to carry out the provisions of this section.

6 E. For the purposes of this section:

7 (1) "direct services" means services
8 rendered to an individual by a health maintenance organization
9 or a health care practitioner, facility or other provider,
10 including case management, disease management, health
11 education and promotion, preventive services, quality
12 incentive payments to providers and any portion of an
13 assessment that covers services rather than administration and
14 for which an insurer does not receive a tax credit pursuant to
15 the Medical Insurance Pool Act; provided, however, that
16 "direct services" does not include care coordination,
17 utilization review or management or any other activity
18 designed to manage utilization or services;

19 (2) "health maintenance organization" means
20 any person who undertakes to provide or arrange for the
21 delivery of basic health care services to enrollees on a
22 prepaid basis, except for enrollee responsibility for
23 copayments or deductibles, but does not include a person that
24 only issues a limited-benefit policy or contract intended to
25 supplement major medical coverage, including medicare

1 supplement, vision, dental, disease-specific, accident-only or
2 hospital indemnity-only insurance policies, or that only
3 issues policies for long-term care or disability income; and

4 (3) "premium" means all income received from
5 individuals and private and public payers or sources for the
6 procurement of health coverage, including capitated payments,
7 self-funded administrative fees, self-funded claim
8 reimbursements, recoveries from third parties or other
9 insurers and interests less any tax paid pursuant to the
10 Insurance Premium Tax Act and fees associated with
11 participating in a health insurance exchange that serves as a
12 clearinghouse for insurance."

13 SECTION 25. Section 59A-47-3 NMSA 1978 (being Laws
14 1984, Chapter 127, Section 879.1, as amended) is amended to
15 read:

16 "59A-47-3. DEFINITIONS.--As used in Chapter 59A,
17 Article 47 NMSA 1978:

18 A. "health care" means the treatment of persons
19 for the prevention, cure or correction of any illness or
20 physical or mental condition, including optometric services;

21 B. "item of health care" includes any services or
22 materials used in health care;

23 C. "health care expense payment" means a payment
24 for health care to a purveyor on behalf of a subscriber, or
25 such a payment to the subscriber;

1 D. "purveyor" means a person who furnishes any
2 item of health care and charges for that item;

3 E. "service benefit" means a payment that the
4 purveyor has agreed to accept as payment in full for health
5 care furnished the subscriber;

6 F. "indemnity benefit" means a payment that the
7 purveyor has not agreed to accept as payment in full for
8 health care furnished the subscriber;

9 G. "subscriber" means any individual who, because
10 of a contract with a health care plan entered into by or for
11 the individual, is entitled to have health care expense
12 payments made on the individual's behalf or to the individual
13 by the health care plan;

14 H. "underwriting manual" means the health care
15 plan's written criteria, approved by the superintendent, that
16 defines the terms and conditions under which subscribers may
17 be selected. The underwriting manual may be amended from time
18 to time, but the amendment will not be effective until
19 approved by the superintendent. The superintendent shall
20 notify the health care plan filing the underwriting manual or
21 the amendment thereto of the superintendent's approval or
22 disapproval thereof in writing within thirty days after filing
23 or within sixty days after filing if the superintendent shall
24 so extend the time. If the superintendent fails to act within
25 such period, the filing shall be deemed to be approved;

1 I. "acquisition expenses" includes all expenses
2 incurred in connection with the solicitation and enrollment of
3 subscribers;

4 J. "administration expenses" means all expenses of
5 the health care plan other than the cost of health care
6 expense payments and acquisition expenses;

7 K. "health care plan" means an organization that
8 demonstrates to the superintendent that it has been granted
9 exemption from the federal income tax by the United States
10 commissioner of internal revenue as an organization described
11 in Section 501(c)(3) of the United States Internal Revenue
12 Code of 1986, as that section may be amended or renumbered,
13 and is authorized by the superintendent to enter into
14 contracts with subscribers and to make health care expense
15 payments;

16 L. "agent" means a person appointed by a health
17 care plan authorized to transact business in this state to act
18 as its representative in any given locality for soliciting
19 health care policies and other related duties as may be
20 authorized;

21 M. "solicitor" means a person employed by the
22 licensed agent of a health care plan for the purpose of
23 soliciting health care policies and other related duties in
24 connection with the handling of the business of the agent as
25 may be authorized and paid for the person's services either on

1 a commission basis or salary basis or part by commission and
2 part by salary;

3 N. "chiropractor" means any person holding a
4 license provided for in the Chiropractic Physician Practice
5 Act;

6 O. "doctor of oriental medicine" means any person
7 licensed as a doctor of oriental medicine under the
8 Acupuncture and Oriental Medicine Practice Act;

9 P. "pharmacist" means a person licensed as a
10 pharmacist pursuant to the Pharmacy Act;

11 Q. "pharmacist clinician" means a pharmacist who
12 exercises prescriptive authority pursuant to the Pharmacist
13 Prescriptive Authority Act;

14 R. "credentialing" means the process of obtaining
15 and verifying information about a provider and evaluating that
16 provider when that provider seeks to become a participating
17 provider; and

18 S. "provider" means a physician or other
19 individual licensed or otherwise authorized to furnish health
20 care services in the state."

21 **SECTION 26.** Section 59A-47-46 NMSA 1978 (being Laws
22 2010, Chapter 94, Section 4, as amended) is amended to read:

23 "59A-47-46. HEALTH INSURERS--DIRECT SERVICES.--

24 A. A health care plan shall make reimbursement for
25 direct services at a level not less than eighty-five percent

1 of premiums across all health product lines, except
2 individually underwritten health care policies, contracts or
3 plans, that are governed by the provisions of Chapter 59A,
4 Article 22 NMSA 1978, the Health Maintenance Organization Law
5 and the Nonprofit Health Care Plan Law. Reimbursement shall
6 be made for direct services provided over the preceding three
7 calendar years, but not earlier than calendar year 2010, as
8 determined by reports filed with the office of superintendent
9 of insurance. Nothing in this subsection shall be construed
10 to preclude a purchaser from negotiating an agreement with a
11 health insurer that requires a higher amount of premiums paid
12 to be used for reimbursement for direct services for one or
13 more products or for one or more years.

14 B. For individually underwritten health care
15 policies, plans or contracts, the superintendent shall
16 establish, after notice and informal hearing, the level of
17 reimbursement for direct services as determined as a percent
18 of premiums. Additional hearings may be held at the
19 superintendent's discretion. In establishing the level of
20 reimbursement for direct services, the superintendent shall
21 consider the costs associated with the individual marketing
22 and medical underwriting of these policies, plans or contracts
23 at a level not less than seventy-five percent of premiums. A
24 health insurer writing these policies, plans or contracts
25 shall make reimbursement for direct services at a level not

1 less than that level established by the superintendent
2 pursuant to this subsection over the three calendar years
3 preceding the date upon which that rate is established, but
4 not earlier than calendar year 2010. Nothing in this
5 subsection shall be construed to preclude a purchaser of one
6 of these policies, plans or contracts from negotiating an
7 agreement with a health insurer that requires a higher amount
8 of premiums paid to be used for reimbursement for direct
9 services.

10 C. A health care plan that fails to comply with
11 the reimbursement requirements pursuant to this section shall
12 issue a dividend or credit against future premiums to all
13 policyholders in an amount sufficient to assure that the
14 benefits paid in the preceding three calendar years plus the
15 amount of the dividends or credits are equal to the required
16 direct services reimbursement level pursuant to Subsection A
17 of this section for group health coverage and blanket health
18 coverage or the required direct services reimbursement level
19 pursuant to Subsection B of this section for individually
20 underwritten health policies, contracts or plans for the
21 preceding three calendar years. If the insurer fails to issue
22 the dividend or credit in accordance with the requirements of
23 this section, the superintendent shall enforce these
24 requirements and may pursue any other penalties as provided by
25 law, including general penalties pursuant to Section 59A-1-18

1 NMSA 1978.

2 D. After notice and hearing, the superintendent
3 may adopt and promulgate reasonable rules necessary and proper
4 to carry out the provisions of this section.

5 E. For the purposes of this section:

6 (1) "direct services" means services
7 rendered to an individual by a health care plan, health
8 insurer or a health care practitioner, facility or other
9 provider, including case management, disease management,
10 health education and promotion, preventive services, quality
11 incentive payments to providers and any portion of an
12 assessment that covers services rather than administration and
13 for which a health care plan or a health insurer does not
14 receive a tax credit pursuant to the Medical Insurance Pool
15 Act; provided, however, that "direct services" does not
16 include care coordination, utilization review or management or
17 any other activity designed to manage utilization or services;

18 (2) "health care plan" means a nonprofit
19 corporation authorized by the superintendent to enter into
20 contracts with subscribers and to make health care expense
21 payments but does not include a person that only issues a
22 limited-benefit policy intended to supplement major medical
23 coverage, including medicare supplement, vision, dental,
24 disease-specific, accident-only or hospital indemnity-only
25 insurance policies, or that only issues policies for long-term

1 care or disability income; and

2 (3) "premium" means all income received from
3 individuals and private and public payers or sources for the
4 procurement of health coverage, including capitated payments,
5 self-funded administrative fees, self-funded claim
6 reimbursements, recoveries from third parties or other
7 insurers and interests less any tax paid pursuant to the
8 Insurance Premium Tax Act and fees associated with
9 participating in a health insurance exchange that serves as a
10 clearinghouse for insurance."

11 SECTION 27. Section 59A-49-6 NMSA 1978 (being Laws
12 1984, Chapter 127, Section 904) is amended to read:

13 "59A-49-6. TRUST FUND--ACCOUNTING--DEPOSIT, RESERVES
14 AND PREMIUM TAX.--

15 A. In all cases where funeral plans are sold, all
16 money paid, directly or indirectly, under such agreement, or
17 under any agreement collateral thereto, shall be held in trust
18 for the purpose for which it was paid until the obligation is
19 fulfilled according to its terms; provided, however, that any
20 payment made pursuant to this section shall be released upon
21 death of the person for whose benefit such payment was made,
22 and no payments so made shall be subject to forfeiture.
23 Accruals of interest upon this money shall be subject to the
24 same trust.

25 B. All funds received as herein provided shall be

1 placed in trust with a trustee pursuant to an agreement
2 executed by the depositor and trustee that shall provide that
3 the trustee shall hold the same in trust for the purposes for
4 which deposited; that the trustee shall pay the same to the
5 depositor upon the filing of a certified copy of the death
6 certificate or other satisfactory evidence of the death of the
7 beneficiary; and that the beneficiary or the beneficiary's
8 duly appointed guardian may, in writing, demand the return of
9 the money, together with accrued interest, if any, less cost
10 incurred in the operation of such trust, and the depositor
11 shall be entitled to receive such money from the trustee for
12 payment to the beneficiary upon delivery of such written
13 demand to the trustee. The payment of such funds and
14 accumulated interest, pursuant to the terms of the Prearranged
15 Funeral Plan Regulatory Law and the agreement herein referred
16 to, shall relieve the trustee of any further liabilities with
17 regard to such funds or interest thereon.

18 C. Each seller of funeral plans shall submit such
19 accounting or accountings of all money collected or received
20 on account of or in connection with the sale of funeral plans
21 and of all money deposited or withdrawn from a trustee, as the
22 superintendent may reasonably direct, by regulation or order.

23 D. Funds collected and placed in trust pursuant to
24 this section shall not be used as the basis for the
25 calculation of the capital and surplus, general deposits and

1 fees otherwise required under Section 59A-5-16 NMSA 1978."

2 SECTION 28. Section 59A-54-10 NMSA 1978 (being Laws
3 1987, Chapter 154, Section 10, as amended) is amended to read:

4 "59A-54-10. ASSESSMENTS.--

5 A. Following the close of each fiscal year, the
6 pool administrator shall determine the net premium, being
7 premiums less administrative expense allowances, the pool
8 expenses and claim expense losses for the year, taking into
9 account investment income and other appropriate gains and
10 losses. The assessment for each insurer shall be determined
11 by multiplying the total cost of pool operation by a fraction,
12 the numerator of which equals that insurer's premium and
13 subscriber contract charges or their equivalent for health
14 insurance written in the state during the preceding calendar
15 year and the denominator of which equals the total of all
16 premiums and subscriber contract charges written in the state;
17 provided that premium income shall include receipts of
18 medicaid managed care premiums but shall not include any
19 payments by the secretary of human services pursuant to a
20 contract issued under Section 1876 of the Social Security Act,
21 as amended. The board may adopt other or additional methods
22 of adjusting the formula to achieve equity of assessments
23 among pool members, including assessment of health insurers
24 and reinsurers based upon the number of persons they cover
25 through primary, excess and stop-loss insurance in the state.

1 B. If assessments exceed actual losses and
2 administrative expenses of the pool, the excess shall be held
3 at interest and used by the board to offset future losses or
4 to reduce pool premiums. As used in this subsection, "future
5 losses" includes reserves for incurred but not reported
6 claims.

7 C. The proportion of participation of each member
8 in the pool shall be determined annually by the board based on
9 annual statements and other reports deemed necessary by the
10 board and filed with it by the member. Any deficit incurred
11 by the pool shall be recouped by assessments apportioned among
12 the members of the pool pursuant to the assessment formula
13 provided by Subsection A of this section.

14 D. The board may abate or defer, in whole or in
15 part, the assessment of a member of the pool if, in the
16 opinion of the board, payment of the assessment would endanger
17 the ability of the member to fulfill its contractual
18 obligation. In the event an assessment against a member of
19 the pool is abated or deferred in whole or in part, the amount
20 by which such assessment is abated or deferred may be assessed
21 against the other members in a manner consistent with the
22 basis for assessments set forth in Subsection A of this
23 section. The member receiving the abatement or deferment
24 shall remain liable to the pool for the deficiency for four
25 years."

1 **SECTION 29.** Section 59A-55-6 NMSA 1978 (being Laws
2 1988, Chapter 125, Section 6, as amended) is amended to read:

3 "59A-55-6. RISK RETENTION GROUPS--REPORTS.--

4 A. Each risk retention group shall report to the
5 superintendent the net premium written for risks resident or
6 located within New Mexico.

7 B. To the extent a licensed insurance producer is
8 utilized pursuant to Section 59A-55-24 NMSA 1978, the licensed
9 insurance producer shall report to the superintendent the
10 premiums for direct business for risks resident or located
11 within this state that the insurance producers have placed
12 with or on behalf of a risk retention group not licensed in
13 this state.

14 C. To the extent that an insurance producer is
15 utilized pursuant to Section 59A-55-24 NMSA 1978, the
16 insurance producer shall keep a complete and separate record
17 of all policies procured from each such risk retention group,
18 which record shall be open to examination by the
19 superintendent and shall contain the information required by
20 the superintendent by rule."

21 **SECTION 30.** TEMPORARY PROVISION--TRANSFER OF PERSONNEL,
22 FUNCTIONS, APPROPRIATIONS, MONEY, PROPERTY AND CONTRACTUAL
23 OBLIGATIONS.--

24 A. On the effective date of this act, all
25 personnel directly involved with the audit and collection of

1 the taxes imposed pursuant to the New Mexico Insurance Code
2 prior to the effective date of this act, functions,
3 appropriations, money, records, furniture, equipment and other
4 property of, or attributable to, the financial audit bureau of
5 the office of superintendent of insurance shall be transferred
6 to the taxation and revenue department.

7 B. On the effective date of this act, no
8 contractual obligations of the office of superintendent of
9 insurance shall be binding on the taxation and revenue
10 department.

11 SECTION 31. REPEAL.--Sections 59A-6-2, 59A-14-12,
12 59A-14-18, 59A-23B-9 and 59A-55-21 NMSA 1978 (being Laws 1984,
13 Chapter 127, Sections 102, 250 and 256, Laws 1991, Chapter
14 111, Section 9 and Laws 1988, Chapter 125, Section 21, as
15 amended) are repealed.

16 SECTION 32. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is January 1, 2020._____