AN ACT

RELATING TO INSURANCE; AMENDING AND REPEALING SECTIONS OF
THE NEW MEXICO INSURANCE CODE TO PROVIDE FOR LICENSURE
PROCEDURES AND TECHNICAL CLEANUP.

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

Section 1. Section 29-13-3 NMSA 1978 (being Laws 1983,
Chapter 289, Section 3, as amended) is amended to read:

"29-13-3. DISTRIBUTION OF CERTAIN INSURANCE DEPARTMENT
COLLECTIONS--LAW ENFORCEMENT PROTECTION FUND CREATED.--There
is created in the state treasury the "law enforcement
protection fund". Ten percent of all money received for
fees, licenses, penalties and taxes from life, general
casualty and title insurance business pursuant to the New
Mexico Insurance Code shall be paid monthly to the state
treasurer and by him credited to the fund. On or before
June 30 of each year, the state treasurer shall transfer to
the general fund any balance in the law enforcement
protection fund in excess of one hundred thousand dollars
($100,000) that is not obligated and that is in excess of
the amount certified by the division to be distributed from
that fund."

Section 2. Section 59A-5-19 NMSA 1978 (being Laws
1984, Chapter 127, Section 86, as amended) is amended to
read:
59A-5-19. SPECIAL DEPOSIT OR BOND.--

A. To qualify for and continue to hold a certificate of authority to transact insurance in this state, the insurer shall also make a special deposit in trust for the benefit only of all its policyholders and creditors in this state in applicable amount as shown in Schedule I of Section 59A-5-16 NMSA 1978. The deposit shall consist of assets eligible therefor under Section 59A-10-3 NMSA 1978 and shall be deposited with or through the superintendent or in a commercial depository located in the state of New Mexico approved by the superintendent subject to rules and regulations issued by the superintendent.

B. In lieu of such deposit, the insurer may file with the state treasurer of New Mexico through the superintendent a surety bond issued by a surety insurer authorized to transact such insurance in this state, in penal sum not less than the aggregate special deposits required by this section. The bond shall be in such form as may be prescribed by the attorney general of New Mexico. The bond shall not be subject to cancellation except upon not less than sixty days advance written notice to the superintendent by the insurer or surety; and the insurer shall promptly replace, not later than fifteen days prior to expiration of the bond, with another like bond, any bond so canceled or otherwise terminated. The bond shall expressly
provide that failure of the insurance company to replace a canceled or terminated bond as provided in this section shall constitute a breach of the condition upon which the bond is given, upon which occurrence the superintendent may immediately recover from the surety the penal sum of the bond to be held as a special deposit in the manner described in Subsection A of this section.

C. The special deposit, or bond in lieu thereof, shall remain on deposit or on file and in force for so long as there may arise in this state any claim under any policy issued by the insurer covering a subject located or a service to be performed in this state or claim arising out of the insurer’s operations in this state.

D. Whenever because of volume of business being transacted by the insurer, methods of doing business, regulatory practices of the domiciliary state or for other good cause the superintendent deems advisable for protection of policyholders and creditors, the superintendent may require an insurer to make and maintain a special deposit in reasonable amount greater than required under Schedule I of Section 59A-5-16 NMSA 1978, but no greater than one hundred fifteen percent of its direct unpaid losses in New Mexico.

E. The special deposit shall be subject to the applicable provisions of Chapter 59A, Article 10 NMSA 1978.

F. This section shall not apply as to domestic
Section 3. Section 59A-10-3 NMSA 1978 (being Laws 1984, Chapter 127, Section 163, as amended) is amended to read:

"59A-10-3. SECURITIES ELIGIBLE FOR DEPOSIT.--

A. All general deposits required under Section 59A-5-18 NMSA 1978 and special deposits required under Section 59A-5-19 NMSA 1978, in the minimum amount specified therefor, shall consist of public obligations of the type eligible for investment of funds of domestic insurers under Section 59A-9-6 NMSA 1978.

B. All additional general or special deposits required by the superintendent under Section 59A-5-18 or 59A-5-19 NMSA 1978 shall consist of:

(1) public obligations as referred to in Subsection A of this section;

(2) corporate obligations of the kind in which a domestic insurer may invest funds pursuant to Section 59A-9-8 NMSA 1978, if the security has such rating and additional qualifications as the superintendent may from time to time by rule or regulation reasonably prescribe for deposit purposes; and

(3) notes or bonds secured by mortgages insured and debentures issued by the federal housing..."

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administrator and obligations of national mortgage associations.

C. Evidences of indebtedness secured by real property shall be eligible for deposit only if the real property securing the indebtedness is situated in New Mexico.

D. Notwithstanding any other provision of law, the securities qualified for deposit under Chapter 59A, Article 10 NMSA 1978 by domestic insurance companies may be deposited with a clearing corporation or held in the federal reserve book-entry system. Securities deposited with a clearing corporation or held in the federal reserve book-entry system and used to meet the deposit requirements set forth in this article shall be under the control of the superintendent and shall not be withdrawn by the insurance company without the approval of the superintendent. Any insurance company holding securities in such manner shall provide to the superintendent evidence issued by its custodian or member bank through which such insurance company has deposited such securities in a clearing corporation or through which such securities are held in the federal reserve book-entry system respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank and that the records of the
custodian, other participant or member bank reflect that such securities are held subject to the order of the superintendent.

E. Notwithstanding any other provision of law, securities eligible for deposit under the insurance laws of this state relating to deposit of securities by a foreign insurance company as a condition of commencing or continuing to do an insurance business in this state may be deposited with a clearing corporation or held in the federal reserve book-entry system. Securities deposited with a clearing corporation or held in the federal reserve book-entry system and used to meet the deposit requirements under the insurance laws of this state shall be under the control of the superintendent and shall not be withdrawn by the insurance company without the approval of the superintendent. Any insurance company holding such securities in such manner shall provide to the superintendent evidence issued by its custodian or a member bank through which such insurance company has deposited securities with a clearing corporation or held in the federal reserve book-entry system respectively, in order to establish that the securities are actually recorded in an account in the name of the custodian or other direct participant or member bank and evidence that the records of the custodian, other participant or member bank reflect that
such securities are held subject to the order of the superintendent.

F. Deposits of a domestic insurer held in this state pursuant to the laws of another state, province or country (other than the general deposit provided for by Section 59A-5-18 NMSA 1978) shall consist of such assets as are required or permitted by the laws of such state, province or country.

G. Deposits of foreign insurers made in this state under Section 59A-5-33 NMSA 1978 shall consist of such assets as are required by the superintendent pursuant to such law."

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

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

A. Where a license is required under the Insurance Code for categories referred to in Section 59A-11-1 NMSA 1978, application by an individual shall be filed with, and on a form prescribed by, the superintendent. The application shall be signed by the applicant, under oath if required by the form.

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

(1) name, date of birth, social security
number, residence and business address, if applicable;

(2) personal history, business experience in general;

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

(4) previous licensing;

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

(6) proof of applicant's identity; and

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

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

D. The application shall be accompanied by the applicable license application filing fee specified in Section 59A-6-1 NMSA 1978 and by the fee specified in such fee schedule for any examination required under the Insurance Code to be taken and passed by the applicant prior to licensing.

E. The superintendent may require a criminal history background investigation of the applicant for a license by means of fingerprint checks by the department of
public safety and the federal bureau of investigation.

F. The superintendent may obtain from the department of public safety and the federal bureau of investigation, at the expense of the applicant for a license, criminal history information concerning each applicant, using the applicant’s fingerprints or other identifying information. The information shall be used by the superintendent solely in determining whether to grant the application."

Section 5. Section 59A-11-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 189, as amended by Laws 1999, Chapter 272, Section 4 and also by Laws 1999, Chapter 289, Section 5) is amended to read:

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

A. Each license, other than insurance agent, issued under this article shall continue in force until it is suspended, revoked or otherwise terminated, but except as may be provided pursuant to Section 59A-11-11 NMSA 1978, subject to payment to the superintendent annually on or before April 1, or December 31 as to motor club representatives, of the applicable continuation fee specified in Section 59A-6-1 NMSA 1978 accompanied by request for such continuation:

(1) for broker, surplus line broker, independent adjuster, bail bondsman license and similar
other independent licensees, request shall be made and
signed by the licensee;

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

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

B. Subject to Section 59A-11-11 NMSA 1978, any
license referred to in Subsection A of this section, not so
continued shall be deemed to have terminated as of midnight
on April 30, or December 31 as to motor club
representatives, then current; except that the
superintendent may effectuate a request for continuation
received within thirty days thereafter if accompanied by
annual continuation fee equal to one hundred fifty percent
of the continuation fee otherwise required.

C. Within sixty days of obtaining an agent
license, the licensee shall become appointed by an
authorized insurer to act as its agent; otherwise the
license shall expire. A person shall not act as an agent of
an insurer unless the person becomes appointed as an agent
of the insurer. Within fifteen days from the date an agency
contract is executed or the first insurance application from
the person is accepted by the insurer, the insurer shall
file a notice of appointment on a form approved by the superintendent. The agent or the insurer may terminate an appointment by notifying the superintendent and the other party in writing of the termination. If at any time all of the licensee’s appointments have been terminated for a period of sixty days, the agent’s license shall expire.

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

E. This section shall not apply as to temporary licenses, which shall be for such duration and subject to extension as provided in the respective sections of the Insurance Code by which such licenses are authorized.

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

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

Section 6. Section 59A-12-6 NMSA 1978 (being Laws 1984, Chapter 127, Section 207) is amended to read:

"59A-12-6. LICENSE REQUIRED--PENALTY.---

A. No person shall in this state be, act as or hold himself out to be, as to subjects of insurance resident, located or to be performed in this state or elsewhere, an agent or solicitor unless then licensed as such under the Insurance Code.

B. No authorized insurer shall accept insurance of any subject located, resident or to be performed in this state through any person acting as insurance agent in this state if the insurer knows, or reasonably should have known, that such person was not then licensed as an agent as to such insurance or not appointed as its agent by the insurer.

C. No license as agent or broker shall be issued to any entity other than an individual, firm (partnership) or corporation.

D. No agent or solicitor shall solicit or take an application for, or place for others, any kind of insurance as to which not then so licensed.
E. No agent shall place any insurance with any insurer as to which not then licensed or appointed as agent under the Insurance Code.

F. A license as agent or solicitor, or appointment as agent of a particular insurer, shall not be in effect until the license has actually been delivered to the agent or solicitor or to the solicitor's employer agent or the appointment has been duly filed with and approved by the superintendent.

G. In addition to any applicable denial, suspension or revocation of license, refusal to continue license, or administrative fine, violation of this section shall be a misdemeanor punishable by a fine of from one hundred dollars ($100) to five hundred dollars ($500) and by forfeiture to the state of New Mexico of an amount equal to all compensation for services as agent or solicitor received or to be received by the violator by reason of the prohibited transactions."

Section 7. Section 59A-12-22 NMSA 1978 (being Laws 1984, Chapter 127, Section 223) is amended to read:

"59A-12-22. FIDUCIARY FUNDS--AGENTS, BROKERS, SOLICITORS, SURPLUS LINE BROKERS, BAIL BONDSMEN, MOTOR CLUB AGENTS AND OTHERS.--

A. All funds of others received by any person licensed or acting as an insurance agent, broker, solicitor,
surplus line broker, bail bondsman or solicitor, motor club agent, or agent or solicitor for health care plan, prepaid dental plan, or in any similar capacity for which licensing of such person is required under the Insurance Code, are received and held by such person in a fiduciary capacity. Any such person who diverts or appropriates such funds to his own use, or takes or secretes with intent to embezzle, all without consent of the person entitled to such funds, is guilty of larceny by embezzlement.

B. Subject to the terms of any agreement between such person or licensee and his principal or obligee, each such person who does not make immediate remittance of such funds to the insurer or other person entitled thereto, shall elect and follow as to funds received for account of a particular insurer or person either of the following methods:

(1) remit received premiums (less applicable commissions, if any) and return premiums to the insurer or other person entitled thereto within fifteen days after such receipt; or

(2) establish and maintain in a commercial bank or other established financial institution depositary one or more accounts, separate from accounts holding general personal, firm or corporate funds, and forthwith deposit and retain therein pending transmittal to the insurer or other
person entitled thereto, all such premiums (net of applicable commissions, if any) and return premiums. Funds belonging to more than one principal may be as deposited and held in the same such account so long as the amount held for each such principal is readily ascertainable from the records of the depositor. The depositor may commingle with such fiduciary funds in a particular such account such additional funds as the licensee deems prudent for advancing premiums, reserves for payment of return commissions, or for other contingencies arising in the business of receiving and transmitting premiums or return premiums.

C. Such person may commingle with his own funds to an unlimited amount funds of a particular principal who has in writing in advance expressly waived the segregation requirements of Subsection B of this section.

D. Any commingling of funds with funds of any such person permitted under this section shall not alter the fiduciary capacity of such person as to funds of others.

Section 8. Section 59A-14-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 248) is amended to read:

"59A-14-10. OFFICE AND RECORDS.--

A. A surplus line broker shall maintain an office accessible to the public wherein transactions under his license may be transacted. Nothing herein shall be deemed to prohibit maintenance of the office in the surplus
line broker's place of residence, subject to accessibility above stated.

B. The surplus line broker shall keep in the office complete records of surplus line insurance business transacted, including, but not limited to, income and disbursements, copies of all policies, endorsements, cancellations, filing documents, reports and other related records. The records shall be made available for examination by the superintendent at all times within seven years after issuance of a coverage to which the record relates.

C. The surplus line broker shall immediately notify the superintendent in writing of any change of office address. Failure to notify the superintendent of a change of address within twenty days shall subject the licensee to a penalty in the amount of fifty dollars ($50.00)."

Section 9. Section 59A-17-9 NMSA 1978 (being Laws 1984, Chapter 127, Section 305, as amended) is amended to read:

"59A-17-9. FILING OF RATES (OTHER THAN WORKERS' COMPENSATION).--As to insurance subject to Chapter 59A, Article 17 NMSA 1978, other than workers' compensation insurance, every insurer shall file with the superintendent all rates and supplementary rate information and all changes and amendments thereof made by it for use in this state at
least sixty days before their proposed effective date. No filing made pursuant to this section shall become effective nor shall it be used until approved or deemed approved by the superintendent in accordance with Section 59A-17-13 NMSA 1978, at which time it may be used."

Section 10. Section 59A-17-17 NMSA 1978 (being Laws 1984, Chapter 127, Section 313, as amended) is amended to read:

"59A-17-17. USE OF RATE SERVICE ORGANIZATION ADVISORY FILINGS.---

A. An insurer may itself establish rates and supplementary rate information for any market segment based on the factors set forth in Section 59A-17-7 NMSA 1978 or it may in its rate filing incorporate by reference loss costs and other supplementary rate information prepared by a rate service organization, with such modification for its own loss experience as the credibility of that experience allows.

B. Nothing in Chapter 59A, Article 17 NMSA 1978 shall be construed as requiring any insurer to become a member of or subscriber to any rate service organization.

C. The superintendent may adopt rules establishing standards and administrative procedures to carry out the provisions of this section."

Section 11. Section 59A-18-12 NMSA 1978 (being Laws
1984, Chapter 127, Section 342, as amended) is amended to read:

"59A-18-12.  FILING OF FORMS AND CLASSIFICATIONS--REVIEW OF EFFECT UPON INSURED.--

A. An insurance policy or annuity contract shall not be delivered or issued for delivery in this state, nor shall any assumption certificate, endorsement, rider or application that becomes a part of any such policy be used, until a copy of the form and the classification of risks pertaining thereto have been filed with the superintendent. Any such filing shall be made at least sixty days before its proposed effective date. A filing made pursuant to this section shall not become effective nor shall it be used until approved by the superintendent pursuant to Section 59A-18-14 NMSA 1978, at which time it may be used.

Provided, that:

(1) this subsection shall not apply as to policies, contracts, endorsements or riders of unique and special character not for general use or offering but designed and used solely as to a particular insured or risk; and

(2) if the superintendent has exempted a person or a class of persons or a market segment from a part or all of the provisions of the Insurance Rate Regulation Law pursuant to Subsection C of Section 59A-17-2 NMSA 1978,
the superintendent also may exempt by rule that person, class of persons or market segment from a part or all of the provisions of this subsection.

B. A workers' compensation insurance policy covering a risk arising from the employment of a worker performing work for an employer in New Mexico when that employer is not domiciled in New Mexico shall not be issued or become effective, nor shall any endorsement or rider covering such a risk be issued or become effective, until a copy of the form and the classification of risks pertaining thereto have been filed with the superintendent.

C. Any insured may in writing request the insurer to review the manner in which its filing has been applied as to insurance afforded him. If the insurer fails to make a review and grant appropriate relief within thirty days after the request is received, the insured may file a written complaint and request for a hearing with the superintendent, stating grounds relied upon. If the complaint charges a violation of the Insurance Code and the superintendent finds that the complaint was made in good faith and that the insured would be aggrieved if the violation is proved, he shall hold a hearing, with notice to the insured and insurer stating the grounds of complaint. If upon the hearing the superintendent finds the complaint justified, he shall order the insurer to correct the matter.
complained of within a reasonable time specified but not
less than twenty days after a copy of his order was mailed
to or served upon the insurer."

Section 12. Section 59A-22-42 NMSA 1978 (being Laws
2001, Chapter 14, Section 1) is amended to read:

"59A-22-42. COVERAGE FOR PRESCRIPTION CONTRACEPTIVE
DRUGS OR DEVICES.--

A. Each individual and group health insurance
policy, health care plan and certificate of health insurance
delivered or issued for delivery in this state that provides
a prescription drug benefit shall provide coverage for
prescription contraceptive drugs or devices approved by the
food and drug administration.

B. Coverage for food and drug administration-
approved prescription contraceptive drugs or devices may be
subject to deductibles and coinsurance consistent with those
imposed on other benefits under the same policy, plan or
certificate.

C. The provisions of this section shall not
apply to short-term travel, accident-only or limited or
specified-disease policies.

D. A religious entity purchasing individual or
group health insurance coverage may elect to exclude
prescription contraceptive drugs or devices from the health
coverage purchased."
Section 13. Section 59A-46-44 NMSA 1978 (being Laws 2001, Chapter 14, Section 3) is amended to read:

"59A-46-44. COVERAGE FOR PRESCRIPTION CONTRACEPTIVE DRUGS OR DEVICES.--

A. Each individual and group health maintenance organization contract delivered or issued for delivery in this state that provides a prescription drug benefit shall provide coverage for prescription contraceptive drugs or devices approved by the food and drug administration.

B. Coverage for food and drug administration-approved prescription contraceptive drugs or devices may be subject to deductibles and coinsurance consistent with those imposed on other benefits under the same contract.

C. A religious entity purchasing individual or group health maintenance organization coverage may elect to exclude prescription contraceptive drugs or devices from the health coverage purchased."

Section 14. Section 59A-51-14 NMSA 1978 (being Laws 1984, Chapter 127, Section 941) is amended to read:

"59A-51-14. DENIAL, SUSPENSION, REVOCATION OR REFUSAL TO CONTINUE LICENSE.--

A. The superintendent may deny, suspend, revoke or refuse to continue any license issued under Chapter 59A, Article 51 NMSA 1978 for any of the following causes or for any violation of the laws of this state relating to bail or
the bail bond business:

(1) for any cause for which issuance of the license could have been refused had it then existed and been known to the superintendent;

(2) material misstatement, misrepresentation or fraud in obtaining the license;

(3) misappropriation, conversion or unlawful withholding of money belonging to insurers or others and received in the conduct of business under the license;

(4) fraudulent or dishonest practices in the conduct of business under the license;

(5) willful failure to comply with, or willful violation of any proper order, rule or regulation of the superintendent;

(6) failure or refusal, upon demand, to pay over to any insurer he represented, any money coming into his hands belonging to the insurer;

(7) willful failure to return collateral security to the principal when the principal is entitled thereto;

(8) for knowingly having in his employ a person whose bail bond business license has been revoked, suspended or denied in this or any other state; or

(9) willful failure, neglect or refusal to
supervise a solicitor's activities in his behalf.

B. When, in the judgment of the superintendent, the licensee in the conduct of affairs under the license has demonstrated incompetency, untrustworthiness, conduct or practices rendering him unfit to engage in the bail bond business, or making his continuance in such business detrimental to the public interest, or that he is no longer in good faith engaged in the bail bond business, or that he is guilty of rebating, or offering to rebate his commissions in the case of limited surety agents or premiums in the case of professional bondsmen, and for such reasons is found by the superintendent to be a source of detriment, injury or loss to the public, he shall revoke or suspend the license.

C. In case of the suspension or revocation of license of any bail bondsman, the license of any or all other bail bondsmen who are members of the same agency and any or all solicitors employed by such agency, who knowingly were parties to the act that formed the ground for the suspension or revocation shall likewise be suspended or revoked, except for the purpose of completing pending matters, and those persons who knowingly were parties to the act are prohibited from being licensed as a member of or bail bondsman or solicitor for some other agency.

D. No license under Chapter 59A, Article 51 NMSA 1978 shall be issued, renewed or permitted to exist when the
same is used directly or indirectly to circumvent the provisions of that article."

Section 15. TEMPORARY PROVISION - RECOMPILETION. --
Section 59A-2-9.2 NMSA 1978 (being Laws 2000, Chapter 58, Section 1) is recompiled as Section 59A-16-21.1 NMSA 1978.

Section 16. REPEAL. --Sections 59A-14-8 and 59A-18-15 NMSA 1978 (being Laws 1984, Chapter 127, Sections 246 and 345) are repealed.