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HOUSE BILL 86

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Mimi Stewart

AN ACT

RELATING TO INSURANCE; DEFINING DOMESTIC PARTNER BENEFITS;
AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. A new section of Chapter 59A, Article 18 NMSA
1978 is enacted to read:

"NEW MATERIAL "DOMESTIC PARTNER" DEFINED. -- As used in
the Insurance Code, "domestic partner" means an adult in a
mutually exclusive, intimate and committed relationship who
shares a primary residence for twelve or more consecutive
months with, is jointly responsible for the common welfare of
and shares financial obligations with another person. A
domestic partner is a family member, and domestic partners
constitute a family; the dependent child of a domestic partner
may be included as a family member at the election of the

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1 insured domestic partner; a domestic partner is included in the
2 term "spouse". An affidavit of domestic partnership may be
3 required by an insurer. "

4 Section 2. Section 59A-18-4 NMSA 1978 (being Laws 1984,
5 Chapter 127, Section 334) is amended to read:

6 "59A-18-4. INSURABLE INTEREST--PERSONAL INSURANCE. --

7 A. Any individual of competent legal capacity may
8 procure or effect an insurance contract upon his own life or
9 body for the benefit of any person. No person shall procure or
10 cause to be procured any insurance contract upon the life or
11 body of another individual unless the benefits under such
12 contract are payable to the individual insured or his personal
13 representatives, or to a person having, at the time such
14 contract was made, an insurable interest in the individual
15 insured.

16 B. If the beneficiary, assignee or other payee
17 under any contract made in violation of this section receives
18 from the insurer any benefits thereunder accruing upon the
19 death, disablement or injury of the individual insured, the
20 individual insured or personal representative may maintain an
21 action to recover such benefits from the person so receiving
22 them.

23 C. As used in this section, "insurable" interest as
24 to such personal insurance means that every person has an
25 insurable interest in the life, body and health of himself, if

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1 an individual, and in the life, body and health of other
2 individuals as follows:

3 (1) in the case of individuals related closely
4 by blood or by law or in the case of domestic partners, a
5 substantial interest engendered by love and affection; and

6 (2) in the case of other persons, a lawful and
7 substantial economic interest in having the life, health or
8 bodily safety of the insured individual continue, as
9 distinguished from an interest which would arise only, or would
10 be enhanced in value, by the death, disablement or injury of
11 the individual insured.

12 D. An individual party to a contract or option for
13 purchase or sale of an interest in a business partnership or
14 firm, or of shares of stock of a corporation or of an interest
15 in such shares, has an insurable interest in the life, body and
16 health of each individual party to such contract and for the
17 purposes of such contract only, in addition to any insurable
18 interest which may otherwise exist as to such individual.

19 E. An insurer shall be entitled to rely upon all
20 statements, declarations and representations made by an
21 applicant for insurance relative to the insurable interest of
22 the applicant in the insured; and no insurer shall incur legal
23 liability, except as set forth in the policy, by virtue of any
24 untrue statements, declarations or representations so relied
25 upon in good faith by the insurer. "

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1 Section 3. Section 59A-18-8 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 338) is amended to read:

3 "59A-18-8. CONSENT OF INSURED--LIFE, HEALTH INSURANCE. --
4 No life or health insurance contract upon an individual, except
5 a contract of group life insurance or of group or blanket
6 health insurance, shall be made or effectuated unless at the
7 time of the making of the contract, such individual applies
8 therefor or has consented thereto in writing, except in the
9 following cases:

10 A. a spouse or domestic partner may effectuate such
11 insurance upon the other spouse or domestic partner;

12 B. any person having an insurable interest in the
13 life of a minor, or any person upon whom a minor is dependent
14 for support and maintenance, may effectuate insurance upon the
15 life of or pertaining to such minor; and

16 C. family policies may be issued insuring any two
17 [~~(2)~~] or more members of a family on an application signed by
18 either parent, a stepparent, a guardian, a domestic partner or
19 by a husband or wife. "

20 Section 4. Section 59A-21-10 NMSA 1978 (being Laws 1984,
21 Chapter 127, Section 407, as amended) is amended to read:

22 "59A-21-10. DEPENDENTS' COVERAGE. --Insurance under any
23 group life insurance policy issued pursuant to Sections
24 59A-21-4 and 59A-21-6 through 59A-21-8 NMSA 1978 may be
25 extended to insure the dependents, or any class or classes

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1 thereof, of each employee or member who so elects. The term
2 "dependent" means the spouse or domestic partner of the
3 employee or member and an employee's or member's minor child,
4 including a child beyond the age of majority up to a maximum of
5 twenty-five years of age while attending an educational
6 institution, and such other children of the employee or member
7 as provided within the group life insurance policy. The
8 premiums for the insurance on such dependents may be paid by
9 the group policyholder or by the employee or member or by the
10 group policyholder and the employee or member jointly. "

11 Section 5. Section 59A-22-2 NMSA 1978 (being Laws 1984,
12 Chapter 127, Section 423) is amended to read:

13 "59A-22-2. FORM AND CONTENT OF POLICY.--No policy of
14 individual health insurance shall be delivered or issued for
15 delivery in this state unless:

- 16 A. the entire money and other considerations
17 therefor are expressed therein; [~~and~~]
18 B. the time at which insurance takes effect and
19 terminates is expressed therein; [~~and~~]
20 C. it purports to insure only one person, except as
21 provided in Chapter 59A, Article 23 [~~of the Insurance Code~~]
22 NMSA 1978, and except that a policy or contract may be issued
23 upon application of the head of a family, who shall be deemed
24 the policyholder, covering members of any one family, including
25 husband, wife, domestic partner, dependent children or any

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1 children under the age of nineteen [~~(19)~~] and other dependents
2 living with the family; [~~and~~]

3 D. every printed portion of the text matter and of
4 any endorsements or attached papers shall be printed in uniform
5 type of which the face shall be not less than ten [~~(10)~~] point
6 (the "text" shall include all printed matter except the name
7 and address of the insurer, name and title of the policy,
8 captions, subcaptions and form numbers), but notwithstanding
9 any provision of this law, the superintendent shall not
10 disapprove any such policy on the ground that every printed
11 portion of its text matter or of any endorsement or attached
12 paper is not printed in uniform type if it shall be shown that
13 the type used is required to conform to the laws of another
14 state in which the insurer is authorized; [~~and~~]

15 E. the exceptions and reductions of indemnity are
16 adequately captioned and clearly set forth in the policy or
17 contract; [~~and~~]

18 F. each such form, including riders and
19 endorsements, shall be identified by a form number in the lower
20 left-hand corner of the first page thereof; and

21 G. if any policy is issued by an insurer domiciled
22 in this state for delivery to a person residing in another
23 state, and if the official having responsibility for the
24 administration of insurance laws of such other state shall have
25 advised the superintendent that any such policy is not subject

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1 to approval or disapproval by such official, the superintendent
2 may by ruling require that such policy meet the standards set
3 forth in Sections [~~424 through 446 of this article~~] 59A-22-3
4 through 59A-22-25 NMSA 1978. "

5 Section 6. A new section of Chapter 59A, Article 23 NMSA
6 1978 is enacted to read:

7 "[NEW MATERIAL] DOMESTIC PARTNER COVERAGE OPTIONAL TO
8 GROUP. --

9 A. Health care coverage may be offered to a
10 domestic partner or a dependent child of the domestic partner
11 of an insured in blanket or group health insurance coverage by
12 a group. If a group chooses to offer coverage to a domestic
13 partner or a dependent child of the domestic partner of an
14 insured under a blanket or group health insurance policy, the
15 insurer shall not deny the enrollment of a domestic partner or
16 a dependent child of the domestic partner based on the status
17 of the person or child as a domestic partner or as a child of
18 the domestic partner of an insured. Whether a domestic partner
19 or a child of a domestic partner is insurable shall be
20 determined by the insurer according to the same criteria used
21 to determine if a spouse or a biological child of an insured
22 may be covered.

23 B. As used in Chapter 59A, Article 23 NMSA 1978,
24 "group" means a special group described in Section 59A-23-2
25 NMSA 1978 or a group as described in Section 59A-23-3 NMSA

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1 1978. "

2 Section 7. A new section of Chapter 59A, Article 23C NMSA
3 1978 is enacted to read:

4 "[NEW MATERIAL] COVERAGE FOR DOMESTIC PARTNER OPTIONAL TO
5 SMALL EMPLOYER. -- Health insurance coverage may be offered to a
6 domestic partner or a dependent child of the domestic partner
7 of an employee of a small employer. If a small employer
8 chooses to offer coverage to a domestic partner or a dependent
9 child of the domestic partner of an employee under a health
10 insurance plan offered by the small employer, the insurer shall
11 not deny the enrollment of a domestic partner or a dependent
12 child of the domestic partner based on the status of the person
13 as a domestic partner or the child as a child of the domestic
14 partner of an employee. Whether a domestic partner or a child
15 of a domestic partner is insurable shall be determined by the
16 insurer according to the same criteria used to determine if a
17 spouse or a biological child of an employee of a small employer
18 may be covered. "

19 Section 8. Section 59A-23D-2 NMSA 1978 (being Laws 1995,
20 Chapter 93, Section 2, as amended) is amended to read:

21 "59A-23D-2. DEFINITIONS. -- As used in the Medical Care
22 Savings Account Act:

23 A. "account administrator" means any of the
24 following that administers medical care savings accounts:

25 (1) a national or state chartered bank,

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1 savings and loan association, savings bank or credit union;

2 (2) a trust company authorized to act as a
3 fiduciary in this state;

4 (3) an insurance company or health maintenance
5 organization authorized to do business in this state pursuant
6 to the New Mexico Insurance Code; or

7 (4) a person approved by the federal secretary
8 of health and human services;

9 B. "deductible" means the total covered medical
10 expense an employee or his dependents must pay prior to any
11 payment by a qualified higher deductible health plan for a
12 calendar year;

13 C. "department" means the insurance division of the
14 public regulation commission;

15 D. "dependent" means:

16 (1) a spouse or domestic partner;

17 (2) an unmarried or unemancipated child of the
18 employee who is a minor and who is:

19 (a) a natural child;

20 (b) a legally adopted child;

21 (c) a stepchild living in the same
22 household who is primarily dependent on the employee for
23 maintenance and support;

24 (d) a child for whom the employee is the
25 legal guardian and who is primarily dependent on the employee

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1 for maintenance and support, as long as evidence of the
2 guardianship is evidenced in a court order or decree; [øø]

3 (e) a foster child living in the same
4 household, if the child is not otherwise provided with health
5 care or health insurance coverage; or

6 (f) a child of the employee's domestic
7 partner;

8 (3) an unmarried child described in
9 Subparagraphs (a) through (e) of Paragraph (2) of this
10 subsection who is between the ages of eighteen and twenty-five;
11 or

12 (4) a child over the age of eighteen who is
13 incapable of self-sustaining employment by reason of mental
14 retardation or physical handicap and who is chiefly dependent
15 on the employee for support and maintenance;

16 E. "eligible individual" means an individual who
17 with respect to any month:

18 (1) is covered under a qualified higher
19 deductible health plan as of the first day of that month;

20 (2) is not, while covered under a qualified
21 higher deductible health plan, covered under any health plan
22 that:

23 (a) is not a qualified higher deductible
24 health plan; and

25 (b) provides coverage for any benefit

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1 that is covered under the qualified higher deductible health
2 plan; and

3 (3) is covered by a qualified higher
4 deductible health plan that is established and maintained by
5 the employer of the individual or of the spouse of the
6 individual;

7 F. "eligible medical expense" means an expense paid
8 by the employee for medical care described in Section 213(d) of
9 the Internal Revenue Code of 1986 that is deductible for
10 federal income tax purposes to the extent that those amounts
11 are not compensated for by insurance or otherwise;

12 G. "employee" includes a self-employed individual;

13 H. "employer" includes a self-employed individual;

14 I. "medical care savings account" or "savings
15 account" means an account established by an employer in the
16 United States exclusively for the purpose of paying the
17 eligible medical expenses of the employee or dependent, but
18 only if the written governing instrument creating the trust
19 meets the following requirements:

20 (1) except in the case of a rollover
21 contribution, no contribution will be accepted:

22 (a) unless it is in cash; or

23 (b) to the extent the contribution, when
24 added to previous contributions to the trust for the calendar
25 year, exceeds seventy-five percent of the highest annual limit

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1 deductible permitted pursuant to the Medical Care Savings
2 Account Act;

3 (2) no part of the trust assets will be
4 invested in life insurance contracts;

5 (3) the assets of the trust will not be
6 commingled with other property except in a common trust fund or
7 common investment fund; and

8 (4) the interest of an individual in the
9 balance in his account is nonforfeitable;

10 J. "program" means the medical care savings account
11 program established by an employer for his employees; and

12 K. "qualified higher deductible health plan" means
13 a health coverage policy, certificate or contract that provides
14 for payments for covered health care benefits that exceed the
15 policy, certificate or contract deductible, that is purchased
16 by an employer for the benefit of an employee and that has the
17 following deductible provisions:

18 (1) self-only coverage with an annual
19 deductible of not less than one thousand five hundred dollars
20 (\$1,500) or more than two thousand two hundred fifty dollars
21 (\$2,250) and a maximum annual out-of-pocket expense requirement
22 of three thousand dollars (\$3,000), not including premiums;

23 (2) family coverage with an annual deductible
24 of not less than three thousand dollars (\$3,000) or more than
25 four thousand five hundred dollars (\$4,500) and a maximum

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1 annual out-of-pocket expense requirement of five thousand five
2 hundred dollars (\$5,500), not including premiums; and

3 (3) preventive care coverage may be provided
4 within the policies without the preventive care being subjected
5 to the qualified higher deductibles. "

6 Section 9. Section 59A-23E-9 NMSA 1978 (being Laws 1997,
7 Chapter 243, Section 9, as amended) is amended to read:

8 "59A-23E-9. GROUP HEALTH PLAN--SPECIAL ENROLLMENT PERIODS
9 FOR DEPENDENT BENEFICIARIES. --

10 A. A group health plan shall provide for a
11 dependent special enrollment period described in Subsection B
12 of this section during which a person may be enrolled under the
13 plan as a dependent of the individual, and in the case of the
14 birth or adoption of a child, the spouse or domestic partner of
15 the individual may be enrolled as a dependent of the individual
16 if the spouse or domestic partner is otherwise eligible for
17 coverage, if:

18 (1) the plan makes coverage available to a
19 dependent of an individual;

20 (2) the individual is a participant under the
21 plan or has met any waiting period applicable to becoming a
22 participant and is eligible to be enrolled under the plan but
23 for a failure to enroll during a previous enrollment period;
24 and

25 (3) the person has become the dependent of the

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1 individual through marriage, birth, adoption or affidavit of
2 domestic partnership or placement for adoption.

3 B. A dependent special enrollment period pursuant
4 to this subsection shall be for a period of not less than
5 thirty days and shall begin on the later of:

6 (1) the date dependent coverage is made
7 available; or

8 (2) the date of the marriage, domestic
9 partnership, birth, adoption or placement for adoption
10 described in Subsection A of this section.

11 C. If an individual seeks to enroll a person as a
12 dependent during the first thirty days of a dependent special
13 enrollment period, the coverage of the dependent becomes
14 effective:

15 (1) in the case of marriage or domestic
16 partnership, not later than the first day of the first month
17 beginning after the date the completed request for enrollment
18 is received;

19 (2) in the case of birth, as of the date of
20 the birth; or

21 (3) in the case of adoption or placement for
22 adoption, the date of the adoption or placement. "