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HOUSE BILL 488

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Ben Lujan

AN ACT

RELATING TO INSURANCE; PROVIDING FOR MAXIMUM TITLE INSURANCE
RATES AND MAXIMUM FEES; REPLACING THE ANNUAL TITLE INSURANCE
HEARING WITH A BIENNIAL HEARING; REQUIRING COVERAGE FOR DEFECTS
NOT SHOWN BY THE PUBLIC RECORD; PROVIDING FOR DAMAGES FROM
NEGLIGENT TITLE SEARCHES AND EXAMINATIONS; PROHIBITING
INDUCEMENTS FOR THE REFERRAL OF TITLE BUSINESS; PROVIDING FOR
TITLE PREMIUM COMPARISON GUIDES; AMENDING AND REPEALING
SECTIONS OF THE NMSA 1978.

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

Section 1. Section 59A-16-17 NMSA 1978 (being Laws 1984,
Chapter 127, Section 283) is amended to read:

"59A-16-17. UNFAIR DISCRIMINATION, REBATES PROHIBITED--
OTHER COVERAGES.--

A. No property, casualty, marine and

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1 transportation, surety, vehicle or title insurer, or nonprofit
2 health care or prepaid dental plan or other insurance-type
3 organization, or any employee or representative thereof, and no
4 broker, agent, solicitor or other representative shall pay,
5 allow or give, or offer to pay, allow or give, directly or
6 indirectly, as an inducement to insurance or coverage, or after
7 insurance or coverage has been effected, any rebate, discount,
8 abatement, credit or reduction of the premium named in a
9 policy, or any special favor or advantage in the dividends or
10 other benefits to accrue thereon, or any valuable consideration
11 or inducement whatever, not specified or provided for in the
12 policy, except to the extent provided for in an applicable
13 filing with the superintendent as provided by law.

14 B. No title insurer or title insurance agent shall:

15 (1) pay, directly or indirectly, to the
16 insured or any person acting as agent, representative, attorney
17 or employee of the owner, lessee, mortgagee, existing or
18 prospective, of the real property, or interest therein, [~~which~~]
19 that is the subject matter of title insurance or as to which a
20 service is to be performed any commission or part of its fee or
21 charges or other consideration as inducement or compensation
22 for the placing of any order for a title insurance policy or
23 for performance of any escrow or other service by the insurer
24 with respect thereto; [~~or~~]

25 (2) issue any policy or perform any service in

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1 connection with which it or any agent or other person has paid
2 or contemplates paying any commission, rebate or inducement in
3 violation of this section;

4 (3) give or receive, directly or indirectly,
5 any consideration or thing of value for the referral of title
6 insurance business or escrow or other service provided by a
7 title insurer or title insurance agent; or

8 (4) enter into a reinsurance agreement with an
9 affiliate of a real estate developer, real estate agency,
10 mortgage lender or referrer of title business without the prior
11 written approval of the superintendent.

12 C. No insured named in a policy or any employee
13 [~~or~~] of such insured shall knowingly receive or accept,
14 directly or indirectly, any such rebate, discount, abatement,
15 credit or reduction of premium, or any such special favor or
16 advantage or valuable consideration or inducement.

17 D. No such insurer or organization shall make or
18 permit any unfair discrimination between insureds or property
19 having like insuring or risk characteristics, in the premium or
20 rates charged for insurance or coverage, or in the dividends or
21 other benefits payable thereon or in any other of the terms and
22 conditions of the insurance or coverage.

23 E. Nothing in this section shall be construed as
24 prohibiting the payment of commissions or other compensation to
25 licensed agents, brokers, solicitors or other representatives;

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1 or as prohibiting the extension of credit to an insured for the
2 payment of any premium and for which credit a reasonable rate
3 of interest is charged and collected; or as prohibiting any
4 insurer from allowing or returning to its participating
5 policyholders, members or subscribers, dividends, savings or
6 unabsorbed premium deposits. As to title insurance, nothing in
7 this section shall prohibit bulk rates or special rates for
8 customers of prescribed classes if such bulk or special rates
9 are provided for in the currently effective schedule of fees
10 and charges of the title insurer as filed with the
11 superintendent.

12 F. This section does not apply to wet marine and
13 transportation insurance."

14 Section 2. Section 59A-16-30 NMSA 1978 (being Laws 1984,
15 Chapter 127, Section 296.1, as amended) is amended to read:

16 "59A-16-30. PRIVATE RIGHT OF ACTION.--~~[Any]~~

17 A. A person covered by Chapter 59A, Article 16 NMSA
18 1978 who has suffered damages as a result of a violation of
19 that article by an insurer or agent is granted a right to bring
20 an action in district court to recover actual damages. Costs
21 shall be allowed to the prevailing party unless the court
22 otherwise directs. The court may award ~~[attorneys']~~ attorney
23 fees to the prevailing party if:

24 ~~[A.]~~ (1) the party complaining of the
25 violation of that article has brought an action that ~~[he]~~ the

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1 party knew to be groundless; or

2 [B-] (2) the party charged with the violation
3 of that article has willfully engaged in the violation.

4 The relief provided in this section is in addition to remedies
5 otherwise available against the same conduct under the common
6 law or other statutes of this state; provided, however, that
7 the Workers' Compensation Act and the New Mexico Occupational
8 Disease Disablement Law provide exclusive remedies.

9 B. A title insurer or title insurance agent doing
10 business in the same county as a title insurer or title
11 insurance agent who may be in violation of the prohibitions or
12 limitations of Section 59A-16-17 NMSA 1978 has a cause of
13 action against the violating title insurer or title insurance
14 agent or recipient and, upon establishing the existence of a
15 violation, is entitled to injunctive relief as the court deems
16 necessary or desirable to prevent future violations of this
17 section. The court may award court costs and reasonable
18 attorney fees to the prevailing party in an action under this
19 subsection."

20 Section 3. Section 59A-17-11.1 NMSA 1978 (being Laws
21 2007, Chapter 367, Section 6) is amended to read:

22 "59A-17-11.1. CONSUMER INFORMATION.--

23 A. The superintendent shall use, develop or cause
24 to be developed a consumer information system that will provide
25 and disseminate price and other relevant information on a

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1 readily available basis to purchasers of homeowners, private
2 passenger non-fleet automobile or property insurance for
3 personal, family or household needs as well as for title
4 insurance and for any other types of personal or commercial
5 insurance designated by the superintendent. To the extent
6 deemed necessary and appropriate by the superintendent,
7 insurers, advisory organizations and other persons or
8 organizations involved in conducting the business of insurance
9 in New Mexico, to which this section applies, shall cooperate
10 in the development and utilization of a consumer information
11 system.

12 B. An insurer writing homeowners insurance or
13 private passenger non-fleet automobile insurance in New Mexico
14 shall, upon renewal or upon the transfer of a policy to another
15 insurer under the same ownership or management as the
16 transferring insurer, provide its policyholders with written
17 notification of their right to obtain from the insurer a
18 detailed written explanation of the reasons why their policy
19 premium has changed or is about to change."

20 Section 4. Section 59A-30-1 NMSA 1978 (being Laws 1985,
21 Chapter 28, Section 1) is amended to read:

22 "59A-30-1. SHORT TITLE.--~~[This article]~~ Chapter 59A,
23 Article 30 NMSA 1978 may be cited as the "New Mexico Title
24 Insurance Law"."

25 Section 5. Section 59A-30-2 NMSA 1978 (being Laws 1985,

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1 Chapter 28, Section 2) is amended to read:

2 "59A-30-2. PURPOSE AND LEGISLATIVE INTENT OF ARTICLE.--

3 ~~[A.]~~ The purpose of the New Mexico Title Insurance
4 Law is to provide a comprehensive body of law for the effective
5 regulation and active supervision of the business of title
6 insurance transacted within this state in ~~[response to]~~
7 accordance with the McCarran-Ferguson Act (P.L. 79-15, 15
8 U.S.C. Sections 1011-1015)

9 ~~[B. The legislature intends that the business of~~
10 ~~title insurance be totally regulated by the state]~~ and to
11 provide for the protection of consumers and purchasers of title
12 insurance policies and the financial stability of the title
13 insurance industry."

14 Section 6. Section 59A-30-3 NMSA 1978 (being Laws 1985,
15 Chapter 28, Section 3, as amended) is amended to read:

16 "59A-30-3. DEFINITIONS.--As used in the New Mexico Title
17 Insurance Law:

18 A. "agency agreement" means a document executed by
19 a title insurer and title insurance agent ~~[which]~~ that defines
20 the compensation of the title insurance agent and the scope of
21 the title insurance agent's authority;

22 B. "business of title insurance" means:

23 (1) issuing as title insurer or offering to
24 issue as title insurer a title insurance policy; or

25 (2) transacting or proposing to transact by a

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1 title insurer or title insurance agent any of the following
2 activities when conducted or performed in contemplation of the
3 issuance of a title insurance policy:

4 (a) soliciting or negotiating the
5 issuance of a title insurance policy;

6 (b) guaranteeing, warranting or
7 otherwise insuring the correctness of title searches;

8 (c) executing ~~[of]~~ title insurance
9 policies;

10 (d) effecting contracts of reinsurance;

11 (e) abstracting, searching or examining
12 titles; ~~[or]~~

13 (f) handling of escrows, settlements or
14 closings; or

15 ~~[+f)]~~ (g) doing or proposing to do any
16 business in substance equivalent to the business of title
17 insurance in a manner designed to evade the provisions of the
18 New Mexico Title Insurance Law or other laws applicable to the
19 business of title insurance;

20 C. ~~["charge"]~~ "fees" means any consideration, other
21 than premiums billed by a title insurance agent or title
22 insurer or both, for the performance of services provided for
23 residential properties, including but not necessarily limited
24 to:

25 (1) consideration for the supervising or

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1 handling of escrows, settlements, closings, preparation of
2 abstracts, delivery or recording of transfer and lien documents
3 and disbursing funds;

4 (2) consideration for services commenced but not
5 completed; and

6 (3) consideration for title searches conducted
7 for a purpose other than issuance of a title insurance policy.
8 [~~but not including~~]

9 "Fees" does not include consideration collected by a title
10 insurer or title insurance agent when the consideration is
11 limited to the amount billed for services rendered by a third
12 party or consideration for the performance of services provided
13 for non-residential properties;

14 D. "premium" means the consideration for issuing a
15 title insurance policy and includes the consideration for
16 searching and examining a title when conducted or performed for
17 the purpose of the issuance of a title insurance policy;

18 E. "available funds" means funds subject to immediate
19 withdrawal by cash or check in a depository account with a
20 financial institution, held in the name of and subject to the
21 control of a title insurance agent, title insurer or third
22 party fiduciary, not including a person or entity that is a
23 party to the transaction, cooperating in the closing of a
24 transaction with a title insurance agent or title insurer;

25 F. "title insurance agent" means a person licensed as

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1 an agent under the Insurance Code and appointed by a title
2 insurer;

3 G. "title insurance policy" or "policy" means a
4 contract indemnifying against loss or damage arising from any
5 of the following [~~which~~] that exist on or before the effective
6 date of the policy:

- 7 (1) defects in the insured title;
- 8 (2) liens or encumbrances on the insured title;
- 9 (3) unmarketability of the insured title; [~~or~~]
- 10 (4) invalidity or unenforceability of liens or
11 encumbrances on the property [~~which~~] that is the subject of the
12 policy; or

13 (5) lack of legal right of access to the
14 property.

15 "Title insurance policy" or "policy" does not include an
16 abstract; [~~and~~]

17 H. "title insurer" means any person authorized under
18 the laws of this state to transact as insurer the business of
19 title insurance; and

20 I. "residential property" means property consisting
21 of one or more dwellings together with appurtenant structures,
22 the land underlying both the dwellings and the appurtenant
23 structures and a quantity of land reasonably necessary for
24 parking and other uses that facilitate the use of the dwellings
25 and appurtenant structures; as used in this subsection,

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1 "dwellings" includes both manufactured homes and other
2 structures when used primarily for permanent human habitation,
3 but the term does not include structures when used primarily
4 for temporary or transient human habitation such as hotels,
5 motels and similar structures."

6 Section 7. Section 59A-30-4 NMSA 1978 (being Laws 1985,
7 Chapter 28, Section 4) is amended to read:

8 "59A-30-4. CONTROL AND SUPERVISION BY SUPERINTENDENT.--

9 A. Title insurers and title insurance agents shall
10 operate in New Mexico under the control and supervision of the
11 superintendent. The superintendent shall promulgate such rules
12 and regulations as are necessary to carry out the provisions of
13 the New Mexico Title Insurance Law [~~including rules and~~
14 ~~regulations requiring uniform forms of policies and uniform~~
15 ~~premiums~~]. The superintendent may adopt uniform rules and
16 regulations [~~as~~] to encourage price competition and to address
17 underwriting standards and practices, including but not limited
18 to rules and regulations [~~which~~] that prohibit title insurers
19 from insuring specified risks [~~which~~] that the superintendent
20 determines may pose an unreasonable risk to the financial
21 stability of title insurers.

22 B. No title insurer or title insurance agent shall
23 collect any premium or fees, issue any title insurance policy
24 or agency agreement, or reinsure any portion of the risk
25 assumed under any title insurance policy, other than in

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1 conformance with the New Mexico Title Insurance Law and rules
2 and regulations adopted by the superintendent as authorized by
3 the New Mexico Title Insurance Law."

4 Section 8. Section 59A-30-5 NMSA 1978 (being Laws 1985,
5 Chapter 28, Section 5) is amended to read:

6 "59A-30-5. POLICY FORMS.--No title insurer or title
7 insurance agent shall use any form of title insurance policy
8 other than the uniform forms promulgated by the superintendent
9 under the New Mexico Title Insurance Law. The superintendent
10 shall not promulgate any uniform form under which the coverage
11 offered is excessive or inadequate in relation to the premium
12 charged for the coverage. A policy shall provide coverage for
13 defects in the policyholder's right to title that are not shown
14 by the public records where such failure to appear in the
15 public records is not the fault of the policyholder."

16 Section 9. Section 59A-30-6 NMSA 1978 (being Laws 1985,
17 Chapter 28, Section 6, as amended) is amended to read:

18 "59A-30-6. PREMIUMS--~~[AGENCY AGREEMENTS]~~ DUTY TO ~~[FIX]~~
19 SET MAXIMUM RATES AND MAXIMUM FEES--EXCEPTION.--

20 A. The superintendent shall promulgate ~~[the]~~ maximum
21 premium rates ~~[of title insurers and title insurance agents]~~
22 for title insurance policies and the percentage of premium to
23 be retained by title insurers under agency agreements, except
24 that premium rates for reinsurance as between title insurers
25 shall not be promulgated by the superintendent. ~~[No premium~~

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1 ~~that has not been promulgated by the superintendent shall be~~
2 ~~charged for any title insurance policy. The superintendent~~
3 ~~shall not promulgate charges of title insurers and title~~
4 ~~insurance agents other than premium rates for title insurance~~
5 ~~policies and the percentage of premium to be retained by title~~
6 ~~insurers under agency agreements.]~~

7 B. The superintendent shall promulgate additional
8 maximum premium rates for searches or examinations of title
9 conducted or performed for the purpose of issuance of a title
10 insurance policy when the search or examination involves more
11 than one chain of title or other unusual complexity.

12 C. Maximum premium rates promulgated by the
13 superintendent shall not be excessive, inadequate or unfairly
14 discriminatory and shall contain an allowance permitting a
15 profit that is not unreasonable in relation to the [~~riskiness~~
16 ~~of~~] risks incurred in the business of title insurance. In
17 determining maximum rates, the superintendent may give due
18 consideration to past and prospective revenue, loss and expense
19 experience within New Mexico and any other factors the
20 superintendent determines to be relevant. Premium rates may
21 include an allowance for recoupment of assessments made
22 pursuant to the Title Insurance Guaranty Act.

23 D. The superintendent shall promulgate the maximum
24 fees that title insurers and title insurance agents may charge.
25 A title insurer or a title insurance agent shall not charge any

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1 fee that exceeds the maximum fee promulgated by the
2 superintendent.

3 E. The superintendent shall promulgate maximum
4 premium rates that may be charged for the issuance of title
5 insurance policies purchased in association with the refinance
6 of a property for which the title insurer has previously issued
7 a title insurance policy for the property to the insured.
8 Premium rates promulgated under this subsection shall be at
9 least forty percent lower than premium rates for the original
10 issuance of a title insurance policy on the same property.

11 F. A title insurer shall file with the superintendent
12 its rates and supplementary rate information, as defined in
13 Section 59A-17-4 NMSA 1978, for title insurance policies prior
14 to their use. No rate or premium derived from a rate that
15 exceeds the maximum rate promulgated by the superintendent
16 shall be filed or used.

17 G. The superintendent shall disapprove any filed rate
18 if the superintendent finds that the rate is inadequate or
19 unfairly discriminatory. In disapproving rates under this
20 subsection, the superintendent shall comply with the procedural
21 requirements for disapproval of file-and-use rates as contained
22 in the Insurance Rate Regulation Law.

23 H. No title insurer or title insurance agent shall
24 issue a policy except in accordance with rates that are
25 lawfully filed and in effect as provided in the New Mexico

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1 Title Insurance Law."

2 Section 10. Section 59A-30-7 NMSA 1978 (being Laws 1985,
3 Chapter 28, Section 7) is amended to read:

4 "59A-30-7. REPORTING OF EXPERIENCE.--The superintendent
5 shall promulgate reasonable rules, including rules providing
6 statistical plans, for use thereafter by all title insurers and
7 title insurance agents in the recording and reporting of
8 revenue, loss and expense experience and search and examination
9 activity, so that the experience and activities of title
10 insurers and title insurance agents may be made available to
11 ~~[him]~~ the superintendent at least annually in such form and
12 detail as may be necessary to aid ~~[him]~~ the superintendent in
13 promulgating maximum premium rates and maximum fees."

14 Section 11. Section 59A-30-8 NMSA 1978 (being Laws 1985,
15 Chapter 28, Section 8, as amended) is amended to read:

16 "59A-30-8. HEARINGS--NOTICE.--

17 A. The superintendent shall ~~[hold an annual]~~ commence
18 a hearing during November of each odd-numbered calendar year to
19 consider promulgation of maximum premium rates, maximum fees
20 and any other matters related to the regulation of the business
21 of title insurance deemed necessary by the superintendent.

22 B. The superintendent may, in ~~[his]~~ the
23 superintendent's discretion, hold a public hearing at any time
24 to consider promulgation of maximum premium rates or maximum
25 fees and such other matters and subjects related to the

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1 regulation of the business of title insurance as the
2 superintendent shall determine necessary or proper.

3 C. Notice of the public hearings provided for in
4 Subsections A and B of this section shall be as provided in
5 Subsection A of Section 59A-4-16 NMSA 1978.

6 D. The superintendent may promulgate maximum premium
7 rates or maximum fees and forms of title insurance policies
8 only after a public hearing as provided in Subsections A and B
9 of this section.

10 E. The superintendent shall issue ~~[his]~~ a decision
11 within sixty days following the ~~[conclusion of a]~~
12 superintendent's closure of the administrative record for the
13 public hearing provided for in Subsections A and B of this
14 section. However, if the superintendent determines that the
15 data and information presented to the superintendent pursuant
16 to Section 59A-30-7 NMSA 1978 ~~[is]~~ are incomplete, inaccurate
17 or otherwise insufficient to determine whether ~~[the]~~ a change
18 in maximum rates or maximum fees is warranted, the
19 superintendent shall require the ~~[title insurers or the title~~
20 ~~agents or both]~~ relevant person to furnish the additional
21 necessary data and information, and, in such event, the period
22 of time allowed for the superintendent to issue ~~[his]~~ a
23 decision shall commence from the date such additional data and
24 information ~~[is]~~ are furnished."

25 Section 12. Section 59A-30-9 NMSA 1978 (being Laws 1985,

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1 Chapter 28, Section 9, as amended) is amended to read:

2 "59A-30-9. REVIEW--APPEALS.--A person aggrieved by an
3 order of the superintendent promulgating maximum rates or
4 maximum fees under the New Mexico Title Insurance Law shall
5 have the rights to review and appeal provided for in Sections
6 59A-17-34 and 59A-17-35 NMSA 1978. The request for review
7 shall be filed no later than thirty days after the
8 superintendent's issuance of the order that promulgated the
9 rates or fees."

10 Section 13. Section 59A-30-11 NMSA 1978 (being Laws 1985,
11 Chapter 28, Section 11, as amended) is amended to read:

12 "59A-30-11. UNDERWRITING STANDARDS AND RECORD
13 RETENTION.--

14 A. No title insurance policy may be written unless
15 the title insurer or its title insurance agent has caused to be
16 conducted a reasonable search and examination of the title
17 using an abstract plant meeting the requirements of Section
18 59A-12-13 NMSA 1978 and has caused to be made a determination
19 of insurability of title in accordance with sound underwriting
20 practices. ~~[The duty to search and examine imposed by this~~
21 ~~section is solely for the purpose of enhancing the financial~~
22 ~~stability of title insurers for the benefit of insureds under~~
23 ~~title insurance policies. The New Mexico Title Insurance Law~~
24 ~~is not intended and should not be construed to create any duty~~
25 ~~to search and examine that runs to the benefit of, or to create~~

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1 ~~any right or cause of action in favor of, any person other than~~
2 ~~a title insurer.]~~ Provided that a title insurance policy has
3 been issued, only the title insurer, and not its agent or the
4 agent's employees, shall be liable for damages caused to the
5 insured or any other party by a negligent search and
6 examination. In no case shall an award of damages caused by a
7 negligent search and examination exceed the fair market value
8 of the property as of the date of the search and examination.

9 B. Evidence of the examination of title and
10 determination of insurability shall be preserved and retained
11 in the files of the title insurer or its title insurance agent
12 for a period of not less than fifteen years after the title
13 insurance policy has been issued. Instead of retaining the
14 original evidence, the title insurer or title insurance agent
15 may in the regular course of business establish a system
16 whereby all or part of the evidence is recorded, copied or
17 reproduced by any process that accurately and legibly
18 reproduces or forms a durable medium for reproducing the
19 contents of the original. This subsection shall not apply to:

20 (1) a title insurer assuming liability through a
21 contract of reinsurance; or

22 (2) a title insurer acting as coinsurer if one
23 of the other coinsuring title insurers has complied with this
24 section."

25 Section 14. Section 59A-30-12 NMSA 1978 (being Laws 1985,

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1 Chapter 28, Section 12) is amended to read:

2 "59A-30-12. MAINTENANCE ASSESSMENT.--The superintendent
3 shall determine a rate of assessment and collect a maintenance
4 fee in an amount not to exceed one percent of the correctly
5 reported gross title insurance premiums on policies written in
6 New Mexico of all authorized title insurers. The fee required
7 by this section is in addition to all other taxes and fees now
8 imposed or that may be subsequently imposed and that are not in
9 conflict with this article. The superintendent, after taking
10 into account the unexpended funds produced by this fee, if any,
11 shall adjust the rate of assessment each year to produce the
12 amount of funds that ~~[he]~~ the superintendent estimates will be
13 necessary to pay all the expenses of regulating the business of
14 title insurance during the succeeding year. The superintendent
15 in promulgating maximum premium rates and maximum fees shall
16 take into account assessments made under this section."

17 Section 15. A new section of the New Mexico Title
18 Insurance Law is enacted to read:

19 "[NEW MATERIAL] REPORTING BY SUPERINTENDENT.--The
20 superintendent shall compile a report for the commission and
21 the legislature no later than October 1 each year beginning in
22 2010 detailing title insurance statistics, including a report
23 on the status of price competition within the title insurance
24 industry in New Mexico. Annual reports shall be made available
25 to interested parties and the general public."

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