

FORTY-NINTH LEGISLATURE
FIRST SESSION, 2009

SB 75/a

February 2, 2009

Madam President:

Your **CORPORATIONS AND TRANSPORTATION COMMITTEE**, to whom has been referred

SENATE BILL 75

has had it under consideration and reports same with recommendation that it **DO PASS**, amended as follows:

1. On page 1, line 12, after "LAW;" insert "CLARIFYING WHO IS A CREDITOR IN REGARD TO SPECIAL DEPOSITS, CLARIFYING THE RELEASE OF DEPOSITS AND CLARIFYING THE RECOVERY OF ASSETS TO MEET THE PURPOSES OF THE LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT;".

2. On page 1, between lines 20 and 21, insert the following new sections:

"Section 1. 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

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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 Lloyds plan automobile insurers as identified in Chapter 59A, Article 38 NMSA 1978.

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G. For purposes of this section, "creditors" shall not include:

(1) shareholders or other owners of the insurer regarding claims arising out of their capacity as shareholders or other owners; or

(2) holders of bonds, surplus notes, capital notes, contribution notes or similar obligations of the insurer regarding claims arising out of their capacity as holders of bonds, surplus notes, capital notes, contribution notes or similar obligations of the insurer."

Section 2. Section 59A-10-9 NMSA 1978 (being Laws 1984, Chapter 127, Section 169) is amended to read:

"59A-10-9. RELEASE OF DEPOSIT.--

A. All general and special deposits of an insurer under the Insurance Code shall be released only:

(1) upon extinguishment of all liabilities of the insurer for the security of which the deposit is held, by reinsurance contract or otherwise; ~~[or]~~

(2) upon the insurer ceasing to transact business in this state, and all of the liabilities for which the deposit was security have been satisfied or terminated, or assumed by another insurer authorized to transact insurance in New Mexico; ~~[or]~~

(3) if the insurer is subject to delinquency proceedings, upon proper order of a court of competent jurisdiction the insurer's deposited assets shall be released to the receiver, conservator, rehabilitator or liquidator of the insurer; ~~[or]~~

(4) upon the entry of a final order of liquidation or order approving a rehabilitation plan of a member insurer, and upon

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request of the domiciliary receiver, the deposit shall be released to the domiciliary receiver or to the applicable New Mexico guaranty association; or

~~[(4)]~~ (5) deposits held under Section ~~[166 (excess deposits) of this article]~~ 59A-10-6 NMSA 1978 shall be released in whole or in part to the insurer on the insurer's request while the insurer is solvent and its general or special deposit, as applicable, is otherwise in amount not less than that required of the insurer under the Insurance Code.

B. If the deposited assets are held pursuant to Section ~~[100 (reciprocity provision) of the Insurance Code]~~ 59A-5-33 NMSA 1978, the deposit shall be released when the basis for such reciprocity no longer exists as to the deposit.

C. Release of a deposit shall be made only on application to and written order of the superintendent, made upon proof satisfactory to the superintendent of the existence of one or more of grounds for release stated in Subsection A ~~[above]~~ of this section. The superintendent, before directing release of deposited assets, may require such evidence as ~~[he]~~ the superintendent deems satisfactory that the release of the deposit, in whole or in part, should be made. ~~[The superintendent shall have no personal liability for any release of a deposit or part thereof so made by him in good faith.]~~ In the case of special deposits, prior to release of the deposit pursuant to Paragraphs (3) and (4) of Subsection A of this section, the superintendent may require written assurances from the domiciliary receiver that the deposit will be handled in accordance with Section 59A-5-19 NMSA 1978 and applicable federal law."

Section 3. A new section of the Insurers Conservation, Rehabilitation and Liquidation Law is enacted to read:

"[NEW MATERIAL] RECOVERY FROM AFFILIATES.--The receiver shall have a right to recover from an affiliate of the insurer property of

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the insurer transferred to or for the benefit of the affiliate within the five years preceding the initial petition for receivership. No transfer is recoverable under this section if the affiliate shows that, when the transfer was made:

A. the insurer was solvent;

B. the transfer was lawful; and

C. neither the insurer nor the affiliate knew or should have known that the transfer, under then-applicable statutory accounting standards, would:

(1) place the insurer in violation of applicable capital or surplus requirements;

(2) place the insurer below the risk-based capital level as defined in the Risk-Based Capital Act;

(3) cause the insurer's filed financial statements not to present fairly the capital and surplus of the insurer; or

(4) otherwise cause the insurer to be in a hazardous financial condition."".

3. Renumber the succeeding sections accordingly.

4. On page 9, line 2, before "state", insert "domiciliary".

5. On page 25, line 9, strike "insured" and insert in lieu thereof "insurer".

6. On pages 61 through 63, strike Subsection G in its entirety.,

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and thence referred to the **JUDICIARY COMMITTEE.**

Respectfully submitted,

Phil Griego, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

No: 0

Excused: None

Absent: None

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