

AN ACT

RELATING TO INSURANCE; REPLACING THE ANNUAL TITLE INSURANCE HEARING WITH A BIENNIAL HEARING; PROVIDING FOR THE FILING OF RATES LOWER THAN THE PROMULGATED RATE SUBJECT TO PRIOR APPROVAL; PROVIDING FOR DISCOUNTED PREMIUMS FOR CERTAIN LOAN TRANSACTIONS; PROHIBITING INDUCEMENTS FOR THE REFERRAL OF TITLE BUSINESS; PROVIDING FOR TITLE PREMIUM COMPARISON GUIDES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978; DECLARING AN EMERGENCY.

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 transportation, surety, vehicle or title insurer, or nonprofit health care or prepaid dental plan or other insurance-type organization, or any employee or representative thereof, and no broker, agent, solicitor or other representative shall pay, allow or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance or coverage, or after insurance or coverage has been effected, any rebate, discount, abatement, credit or reduction of the premium named in a policy, or any special favor or advantage in the

dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified or provided for in the policy, except to the extent provided for in an applicable filing with the superintendent as provided by law.

B. No title insurer or title insurance agent shall:

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

(2) issue any policy or perform any service in connection with which it or any agent or other person has paid or contemplates paying any commission, rebate or inducement in violation of this section;

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

permitted by regulation of the superintendent; or

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

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

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

E. Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to licensed agents, brokers, solicitors or other representatives; or as prohibiting the extension of credit to an insured for the payment of any premium and for which credit a reasonable rate of interest is charged and collected; or as prohibiting any insurer or agent from allowing or returning to its participating policyholders, members or subscribers, dividends, savings or unabsorbed premium deposits. As to

title insurance, nothing in this section shall prohibit bulk rates or special rates for customers of prescribed classes if such bulk or special rates are provided for in the currently effective schedule of fees and charges of the title insurer as filed with the superintendent.

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

Section 2. Section 59A-17-11.1 NMSA 1978 (being Laws 2007, Chapter 367, Section 6) is amended to read:

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

A. The superintendent shall use, develop or cause to be developed a consumer information system that will provide and disseminate price and other relevant information on a readily available basis to purchasers of homeowners, private passenger non-fleet automobile or property insurance for personal, family or household needs as well as for title insurance, including escrow, closing and settlement charges for one to four family residential property transactions, and for any other types of personal or commercial insurance designated by the superintendent. To the extent deemed necessary and appropriate by the superintendent, insurers, advisory organizations and other persons or organizations involved in conducting the business of insurance in New Mexico, to which this section applies, shall cooperate in the development and utilization of a consumer information system.

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

Section 3. Section 59A-30-1 NMSA 1978 (being Laws 1985, Chapter 28, Section 1) is amended to read:

"59A-30-1. SHORT TITLE.--Chapter 59A, Article 30 NMSA 1978 may be cited as the "New Mexico Title Insurance Law"."

Section 4. Section 59A-30-2 NMSA 1978 (being Laws 1985, Chapter 28, Section 2) is amended to read:

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

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

B. The legislature intends that the business of title insurance be regulated by the state to provide for the protection of consumers and purchasers of title insurance policies and the financial stability of the title insurance

industry.

C. The legislature intends that the title insurance market be competitive for all title insurance agents, that regulation of the title insurance industry does not disproportionately impact independent title agencies and that regulation of the industry does not place independent title insurance agents at a competitive disadvantage with underwriter-owned title companies."

Section 5. Section 59A-30-3 NMSA 1978 (being Laws 1985, Chapter 28, Section 3, as amended) is amended to read:

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

A. "agency agreement" means a document executed by a title insurer and title insurance agent that defines the compensation of the title insurance agent and the scope of the title insurance agent's authority;

B. "basic premium rate" means the premium rate for an original owner's policy of title insurance;

C. "business of title insurance" means:

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

(2) transacting or proposing to transact by a title insurer or title insurance agent any of the following activities when conducted or performed in contemplation of the issuance of a title insurance policy:

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

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

(c) executing title insurance policies;

(d) effecting contracts of reinsurance;

(e) abstracting, searching or examining titles; or

(f) doing or proposing to do any business in substance equivalent to the business of title insurance in a manner designed to evade the provisions of the New Mexico Title Insurance Law or other laws applicable to the business of title insurance;

D. "charge" means any consideration, other than premiums billed by a title insurance agent or title insurer or both, for the performance of services, including but not necessarily limited to:

(1) consideration for the supervising or handling of escrows, settlements, closings, preparation of abstracts, delivery or recording of transfer and lien documents and disbursing funds;

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

(3) consideration for title searches conducted for a purpose other than issuance of a title insurance policy.

"Charge" does not include consideration collected by a title insurer or title insurance agent when the consideration is limited to the amount billed for services rendered by a third party;

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

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

G. "title insurance agent" means a person licensed as an agent under the Insurance Code and appointed by a title insurer;

H. "title insurance policy" or "policy" means a contract indemnifying against loss or damage arising from any of the following that exist on or before the effective date of the policy:

- (1) defects in the insured title;
- (2) liens or encumbrances on the insured title;
- (3) unmarketability of the insured title;

(4) invalidity or unenforceability of liens or encumbrances on the property that is the subject of the policy; or

(5) lack of legal right of access to and from the property.

"Title insurance policy" or "policy" does not include an abstract; and

I. "title insurer" means any person authorized under the laws of this state to transact as insurer the business of title insurance."

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

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

A. Title insurers and title insurance agents shall operate in New Mexico under the control and supervision of the superintendent. The superintendent shall promulgate such rules and regulations as are necessary to carry out the provisions of the New Mexico Title Insurance Law. The superintendent may adopt uniform rules and regulations to address underwriting standards and practices, including but not limited to rules and regulations that prohibit title insurers from insuring specified risks that the superintendent determines may pose an unreasonable risk to the financial stability of title insurers.

B. No title insurer or title insurance agent shall

collect any premium, issue any title insurance policy or agency agreement, or reinsure any portion of the risk assumed under any title insurance policy, other than in conformance with the New Mexico Title Insurance Law and rules and regulations adopted by the superintendent as authorized by the New Mexico Title Insurance Law."

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

"59A-30-6. PREMIUMS--AGENCY AGREEMENTS--DUTY TO PROMULGATE REASONABLE RATES--EXCEPTION.--

A. The superintendent shall promulgate the premium rates of title insurers and title insurance agents for title insurance policies and the percentage of premium to be retained by title insurers under agency agreements, except that premium rates for reinsurance as between title insurers shall not be promulgated by the superintendent. No premium that has not been promulgated or approved by the superintendent shall be charged for any title insurance policy. The superintendent shall not promulgate charges of title insurers and title insurance agents other than premium rates for title insurance policies and the percentage of premium to be retained by title insurers under agency agreements.

B. The superintendent shall promulgate additional premium rates for searches or examinations of title conducted

or performed for the purpose of issuance of a title insurance policy when the search or examination involves more than one chain of title or other unusual complexity.

C. Premium rates promulgated by the superintendent shall not be excessive, inadequate or unfairly discriminatory and shall contain an allowance permitting a profit that is not unreasonable in relation to the risks incurred in the business of title insurance. Premium rates may include an allowance for recoupment of assessments made pursuant to the Title Insurance Guaranty Act.

D. Title insurance agents shall retain not less than eighty percent of the gross premiums collected on commitments, policies and endorsements issued for one to four family residential property transactions with a liability amount of not more than two million dollars (\$2,000,000); provided, however, that from July 1, 2009 until otherwise ordered by the superintendent, title insurance agents shall retain not less than eighty-one percent of the gross premiums collected on commitments, policies and endorsements issued for one to four family residential property transactions with a liability amount of not more than two million dollars (\$2,000,000). The portion of the premium to be retained by the title insurance agent for policies with a liability amount greater than two million dollars (\$2,000,000) shall be set by rule.

E. A title insurer may file with the superintendent

proposed title insurance rates for a specific county or counties lower than the premium rate promulgated by the superintendent. The superintendent shall provide notice of the filed title insurance rates to all agents and underwriters doing business in that county or counties and may conduct a hearing. In determining whether to approve filed title insurance rates, the superintendent shall consider the interests and protection of consumers and independent title insurance agents and the potential impact on competition within the title insurance industry. Upon approval of the filed title insurance rates, the title insurer and its agents shall use the filed and approved title insurance rates.

F. The superintendent shall adopt rules to establish standards and procedures by which a title insurance rate lower than the promulgated rate shall be filed and may be approved."

Section 8. A new section of the New Mexico Title Insurance Law, Section 59A-30-6.1 NMSA 1978, is enacted to read:

"59A-30-6.1. PREMIUMS--REFINANCED PROPERTY.--The premium rates for title insurance policies issued in connection with the refinance of an existing mortgage or deed of trust, where a prior loan policy has been issued and a copy of the policy or a closing statement evidencing the issuance of the policy is furnished to the insurer or title insurance agent showing title vested in the same borrower and covering the same

property, shall not exceed the percentage of the basic premium rate promulgated or approved by the superintendent as follows:

A. forty percent of the current basic premium rate applied to any amount up to the amount of the previous policy insuring the mortgage or deed of trust being refinanced, if the new policy is issued within three years from the date of the prior policy;

B. fifty percent of the current basic premium rate applied to any amount up to the amount of the previous policy insuring the mortgage or deed of trust being refinanced, if the new policy is issued more than three years but less than five years from the date of the prior policy;

C. sixty percent of the current basic premium rate applied to any amount up to the amount of the previous policy insuring the mortgage or deed of trust being refinanced, if the new policy is issued more than five years but less than ten years from the date of the prior policy;

D. eighty percent of the current basic premium rate applied to any amount up to the amount of the previous policy insuring the mortgage or deed of trust being refinanced, if the new policy is issued more than ten years but less than twenty years from the date of the prior policy; or

E. the premium for insurance coverage above the amount of the previous policy shall be ninety percent of the current basic premium rate as set by rule. In no event shall

the premium collected be less than the minimum premium based on the promulgated or approved rate for a loan policy."

Section 9. A new section of the New Mexico Title Insurance Law, Section 59A-30-6.2 NMSA 1978, is enacted to read:

"59A-30-6.2. PREMIUMS--INDIAN NATION, TRIBE OR PUEBLO TRUST PROPERTY.--Title insurance policies purchased in association with the acquisition of title to property by the United States in trust for a federally recognized Indian nation, tribe or pueblo located wholly or partially in New Mexico where no monetary consideration is paid, shall be issued subject to the promulgated or filed and approved premium rates for the original issuance of a title insurance policy on the same property for an amount equal to the reduced liability limit for the acquisition provided for by the United States department of justice, unless a higher liability amount is required by the United States."

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

"59A-30-7. REPORTING OF EXPERIENCE.--The superintendent shall promulgate reasonable rules, including rules providing statistical plans, for use thereafter by all title insurers and title insurance agents in the recording and reporting of revenue, loss and expense experience so that the experience of title insurers and title insurance agents may be made

available to the superintendent at least annually in such form and detail as may be necessary to aid the superintendent in promulgating or approving premium rates."

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

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

A. The superintendent shall commence a hearing during November of each odd-numbered calendar year to consider promulgation of premium rates and any other matters related to the regulation of the business of title insurance deemed necessary by the superintendent.

B. The superintendent may, in the superintendent's discretion, hold a public hearing at any time to consider promulgation of premium rates and such other matters and subjects related to the regulation of the business of title insurance as the superintendent shall determine necessary or proper.

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

D. The superintendent may promulgate premium rates and forms of title insurance policies only after a public hearing as provided in Subsections A and B of this section.

E. After the collection of all evidence relevant to the hearing, the superintendent shall file a notice of closure

of the administrative record. The superintendent shall issue a decision within sixty days following the filing of the notice of closure of the administrative record for the public hearing provided for in Subsections A and B of this section. However, if the superintendent determines that the data and information presented to the superintendent pursuant to Section 59A-30-7 NMSA 1978 are incomplete, inaccurate or otherwise insufficient to determine whether a change in rates is warranted, the superintendent shall require a party, intervenor or participant at the public hearing to furnish the additional necessary data and information, and, in such event, the period of time allowed for the superintendent to issue a decision shall commence from the date such additional data and information are furnished."

Section 12. Section 59A-30-9 NMSA 1978 (being Laws 1985, Chapter 28, Section 9, as amended) is amended to read:

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

Section 13. A new section of the New Mexico Title

Insurance Law is enacted to read:

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

Section 14. REPEAL.--Section 59A-30-15 NMSA 1978 (being Laws 1985, Chapter 28, Section 16) is repealed.

Section 15. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 16. EFFECTIVE DATE.--The effective date of the provisions of Sections 1 through 7 and 10 through 15 of this act is July 1, 2009. The effective date of the provisions of Section 8 of this act is May 1, 2009.

Section 17. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.
