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HOUSE BILL 45

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Thomas C. Taylor and Carroll H. Leavell

AN ACT

RELATING TO INSURANCE; IMPLEMENTING A CONSTITUTIONAL MANDATE TO
TRANSFER INSURANCE REGULATORY POWER AWAY FROM THE PUBLIC
REGULATION COMMISSION; PROVIDING FOR THE OFFICE OF
SUPERINTENDENT OF INSURANCE; CREATING THE POSITION OF
SUPERINTENDENT OF INSURANCE; CREATING THE INSURANCE NOMINATING
COMMITTEE; ADDRESSING APPEALS FROM DECISIONS OF THE
SUPERINTENDENT OF INSURANCE; AMENDING, REPEALING AND ENACTING
SECTIONS OF THE NMSA 1978; PROVIDING A TEMPORARY PROVISION
TRANSFERRING FUNCTIONS, PERSONNEL, APPROPRIATIONS, PROPERTY,
RECORDS, CONTRACTS AND REFERENCES IN LAW; PROVIDING A TEMPORARY
PROVISION ADDRESSING THE INITIAL INSURANCE NOMINATING
COMMITTEE; DECLARING AN EMERGENCY.

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

SECTION 1. Section 8-8-5 NMSA 1978 (being Laws 1998,

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1 Chapter 108, Section 5, as amended) is amended to read:

2 "8-8-5. CHIEF OF STAFF--DIVISION DIRECTORS--OTHER
3 STAFF.--

4 A. The commission shall appoint a "chief of staff"
5 who is responsible for the day-to-day operations of the
6 commission staff under the general direction of the commission.
7 The chief of staff shall serve at the pleasure of the
8 commission.

9 B. With the consent of the commission, the chief of
10 staff shall appoint division directors. Appointments shall be
11 made without reference to party affiliation and solely on the
12 ground of fitness to perform the duties of their offices.

13 C. Each director, with the consent of the chief of
14 staff, shall employ such professional, technical and support
15 staff as necessary to carry out the duties of ~~[his]~~ the
16 director's division. Employees shall be hired solely on the
17 ground of their fitness to perform the job for which they are
18 hired. ~~[Except as provided in Subsection D of this section]~~
19 Division staff are subject to the provisions of the Personnel
20 Act.

21 ~~[D. With the consent of the chief of staff, the~~
22 ~~superintendent of insurance may designate the following~~
23 ~~insurance division positions as exempt from the provisions of~~
24 ~~the Personnel Act: deputy superintendents, chief actuaries and~~
25 ~~bureau chiefs.]"~~

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1 SECTION 2. Section 8-8-6 NMSA 1978 (being Laws 1998,
2 Chapter 108, Section 6, as amended) is amended to read:

3 "8-8-6. COMMISSION--DIVISIONS.--The commission shall
4 include the following organizational units:

- 5 A. the administrative services division;
- 6 B. the consumer relations division;
- 7 ~~[G. the insurance division;~~
- 8 ~~D.]~~ C. the legal division;
- 9 ~~[E.]~~ D. the transportation division;
- 10 ~~[F.]~~ E. the utility division; and
- 11 ~~[G.]~~ F. the fire marshal division."

12 SECTION 3. Section 8-8-14 NMSA 1978 (being Laws 1998,
13 Chapter 108, Section 14, as amended) is amended to read:

14 "8-8-14. HEARING EXAMINERS.--

15 A. The commission may appoint a commissioner or a
16 hearing examiner to preside over any matter before the
17 commission, including rulemakings, adjudicatory hearings and
18 administrative matters.

19 B. ~~[Except as provided in the New Mexico Insurance~~
20 ~~Code]~~ A hearing examiner shall provide the commission with a
21 recommended decision on the matter assigned to ~~[him]~~ the
22 hearing examiner, including findings of fact and conclusions of
23 law. The recommended decision shall be provided to the
24 parties, and they may file exceptions to the decision prior to
25 the final decision of the commission.

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1 C. When the commission has appointed a hearing
2 examiner to preside over a matter, at least one member of the
3 commission shall, at the request of a party to the proceedings,
4 attend oral argument."

5 SECTION 4. Section 9-7-11.3 NMSA 1978 (being Laws 2003,
6 Chapter 235, Section 2) is amended to read:

7 "9-7-11.3. TASK FORCE CREATED--RESPONSIBILITIES--
8 PARTICIPANTS--FUNDING.--

9 A. The "health care providers licensing and
10 credentialing task force" is created under the direction of the
11 New Mexico health policy commission to study and make
12 recommendations for the consolidation and simplification of the
13 health care licensure processes. The task force shall make
14 recommendations for the establishment of a web site portal for
15 licensure to facilitate and complement or replace the present
16 system conducted by individual health care provider boards and
17 for a central database for credentialing information to
18 simplify and eliminate duplication of effort.

19 B. The task force shall study and make
20 recommendations to the superintendent of insurance on health
21 care provider credentialing issues and obstacles to one-time
22 efforts by providers to meet all necessary requirements to
23 practice independently or as a provider for any appropriately
24 licensed health care organization or facility. The task force
25 shall study and recommend, if practicable, use of credentialing

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1 expertise developed by a statewide association of hospitals.

2 C. The task force shall include participation by
3 the New Mexico health policy commission; the department of
4 health; the New Mexico medical board [~~of medical examiners~~];
5 the board of nursing; other health care provider boards; the
6 regulation and licensing department; the office of
7 superintendent of insurance [~~division of the public regulation~~
8 ~~commission~~]; the human services department; the office of the
9 attorney general; other affected state agencies; members of the
10 health care industry, including statewide associations and
11 societies representing providers, hospitals and other affected
12 facilities; insurers; [~~and~~] other third-party payers; [~~as well~~
13 ~~as~~] health care advocates; and members of the public.

14 D. The New Mexico health policy commission,
15 together with the New Mexico medical board [~~of medical~~
16 ~~examiners~~] and the board of nursing, shall hire an information
17 technology project manager to work under the commission to
18 design, implement and maintain a web site portal for licensure
19 and a central database for credentialing of health care
20 providers."

21 SECTION 5. Section 52-5-3 NMSA 1978 (being Laws 1986,
22 Chapter 22, Section 29, as amended) is amended to read:

23 "52-5-3. REPORTS--DATA GATHERING.--

24 A. The intent of this section is to allow the
25 director to gather data and conduct studies to evaluate the

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1 workers' compensation and occupational disease disablement
2 system in New Mexico. This includes evaluating the benefits
3 structure and the costs incurred under each version of the
4 Workers' Compensation Act and the New Mexico Occupational
5 Disease Disablement Law. To this end, the director shall
6 establish baseline data against which to assess the changes in
7 the law.

8 B. The director shall independently evaluate
9 insurance industry data pertaining to workers' compensation and
10 occupational disease disablement claims and payments, as well
11 as other information the director believes to be necessary and
12 relevant to a thorough evaluation of the system's
13 effectiveness. In addition to data generated by insurance
14 industry representatives and organizations, the director shall
15 collect data from employers, claimants and other relevant
16 parties.

17 C. Unless otherwise provided by law, the director
18 shall have access to insurance industry information that
19 contains workers' compensation and occupational disease
20 disablement claim data as the director determines is necessary
21 to carry out the provisions of this section.

22 D. The director shall have access to files and
23 records of:

24 (1) the ~~[labor]~~ workforce solutions department
25 that pertain to:

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1 (a) the name and number of employees
2 reported by employers;

3 (b) employers' mailing addresses;

4 (c) federal identification numbers; and

5 (d) general wage information;

6 (2) the office of superintendent of insurance
7 [~~division of the public regulation commission~~] that pertain to:

8 (a) historical insurance classification
9 rates and total premiums paid during given periods of time;

10 (b) insurers licensed to underwrite
11 casualty insurance; and

12 (c) records of group self-insurers;

13 (3) the human services department that include
14 names, addresses and other identifying information of
15 recipients of benefits and services pertaining to income
16 support;

17 (4) the taxation and revenue department that
18 identify employers paying workers' compensation assessments in
19 accordance with Section 52-5-19 NMSA 1978; and

20 (5) the motor vehicle division of the taxation
21 and revenue department that pertain to the identity of licensed
22 drivers and the ownership of motor vehicles.

23 E. Information that is confidential under state law
24 shall be accessible to the director and shall remain
25 confidential.

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1 F. The director shall prepare an annual report.
2 [He] The director shall publish in that report and in other
3 reports as [~~he~~] the director deems appropriate such statistical
4 and informational reports and analyses based on reports and
5 records available as, in [~~his~~] the director's opinion, will be
6 useful in increasing public understanding of the purposes,
7 effectiveness, costs, coverage and administrative procedures of
8 workers' compensation and in providing basic information
9 regarding the occurrence and sources of work injuries or
10 disablements to public and private agencies engaged in
11 industrial injury prevention activities. The reports shall
12 include information concerning the nature and frequency of
13 injuries and occupational diseases sustained and the resulting
14 benefits, costs and other factors that are important to
15 furthering the intent of this section."

16 **SECTION 6.** Section 52-6-2 NMSA 1978 (being Laws 1986,
17 Chapter 22, Section 76, as amended) is amended to read:

18 "52-6-2. DEFINITIONS.--As used in the Group Self-
19 Insurance Act:

20 A. "administrator" means an individual, partnership
21 or corporation engaged by a group's board of trustees to carry
22 out the policies established by that board and to provide day-
23 to-day management of the group;

24 B. "group" means a not-for-profit unincorporated
25 association consisting of two or more public hospital employers

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1 or private employers [~~who~~] that are engaged in the same or
2 similar type of business, are members of the same bona fide
3 trade or professional association that has been in existence
4 for not less than five years and [~~who~~] that enter into
5 agreements to pool their liabilities for workers' compensation
6 benefits; except that public hospital employers shall segregate
7 their accounting records and investment accounts from those of
8 private employers in accordance with applicable state law;

9 C. "insolvent" means that a group is unable to pay
10 its outstanding lawful obligations as they mature in the
11 regular course of business, as shown both by having an excess
12 of required reserves and other liabilities over assets and by
13 not having sufficient assets to reinsure all outstanding
14 liabilities after paying all accrued claims owed;

15 D. "net premium" means premium derived from
16 standard premium adjusted by any advance premium discounts;

17 E. "private employer" means every employer [~~who~~]
18 that is not a public employer or a public hospital employer;

19 F. "public employer" means the state of New Mexico
20 or any of its branches, agencies, departments, boards,
21 instrumentalities or institutions and all school districts and
22 all political subdivisions of the state or any of their
23 agencies, instrumentalities or institutions. "Public employer"
24 does not include a public hospital employer;

25 G. "public hospital employer" means any local,

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1 county, district, city-county or other public hospital or
2 health-related facility, whether operating in wholly or
3 partially owned or leased premises;

4 H. "service company" means a person or entity that
5 provides services not provided by the administrator, including
6 claims adjustment; safety engineering; compilation of
7 statistics and the preparation of premium, loss and tax
8 reports; preparation of other required self-insurance reports;
9 development of members' assessments and fees; and
10 administration of a claim fund;

11 I. "standard premium" means the premium derived
12 from the manual rates adjusted by experience modification
13 factors but before advance premium discounts;

14 J. "superintendent" means the superintendent of
15 insurance [~~designated by the state corporation commission~~]; and

16 K. "workers' compensation benefits" means benefits
17 pursuant to the Workers' Compensation Act or the New Mexico
18 Occupational Disease Disablement Law."

19 SECTION 7. Section 58-19-7 NMSA 1978 (being Laws 1959,
20 Chapter 204, Section 7, as amended) is amended to read:

21 "58-19-7. RETAIL INSTALLMENT CONTRACTS--REQUIREMENTS--
22 PROHIBITIONS.--

23 A. [~~(+)~~] A retail installment contract shall be in
24 writing and shall be signed by both the buyer and the seller;
25 it shall be completed as to all essential provisions prior to

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1 its signing by the buyer.

2 [~~(2)~~] B. The printed portion of the contract, other
3 than instructions for completion, shall be in at least eight-
4 point type. The contract shall contain in a size equal to at
5 least ten-point bold type the following notice: "Notice to the
6 Buyer: 1. Do not sign this contract before you read it or if
7 it contains any blank spaces. 2. You are entitled to an exact
8 copy of the contract you sign."

9 [~~(3)~~] C. The seller shall deliver to the buyer or
10 mail to [~~him~~] the buyer at [~~his~~] the buyer's address shown on
11 the contract a copy of the contract signed by the seller.
12 Until the seller does so, a buyer who has not received delivery
13 of the motor vehicle shall have the right to rescind [~~his~~] the
14 buyer's agreement and to receive a refund of all payments made
15 and return of all goods traded in to the seller on account of
16 or in contemplation of the contract; if such goods cannot be
17 returned, the value thereof shall be paid by the seller. Any
18 acknowledgment by the buyer or delivery of a copy of the
19 contract shall be in a size equal to at least ten-point bold
20 type and, if contained in the contract, shall appear directly
21 above the buyer's signature.

22 [~~(4)~~] D. Any such agreement shall contain
23 immediately before the buyer's signature substantially the
24 following notice printed or typed in a size equal to at least
25 twelve-point bold type as follows:

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"NOTICE TO BUYER

LIABILITY INSURANCE FOR BODILY INJURY CAUSED TO YOURSELF OR TO OTHERS OR PROPERTY DAMAGE CAUSED TO OTHERS IS NOT PROVIDED WITH THIS AGREEMENT. IF YOU DESIRE LIABILITY INSURANCE COVERAGE, YOU SHOULD OBTAIN SUCH COVERAGE FROM AN AGENT OF YOUR CHOICE."

~~[B-]~~ E. The contract shall contain the following items:

(1) the names of the seller and the buyer, the place of business of the seller, the residence or place of business of the buyer as specified by the buyer and a description of the motor vehicle, including its make, year model, model and identification numbers or marks;

(2) the cash sale price of the motor vehicle;

(3) the amount of the buyer's down payment and whether made in money or goods;

(4) the difference between items in Paragraphs (2) and (3) of this subsection;

(5) the amount, if any, included for insurance and other benefits, specifying the types of coverage and benefits, and if it is the case, including as a benefit amounts paid or to be paid by the seller pursuant to agreement with the buyer to discharge a security interest, lien or lease interest on property traded in;

(6) the amount of official fees;

(7) the principal balance, which is the sum of

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1 items in Paragraphs (4), (5) and (6) of this subsection;

2 (8) the amount of the finance charge; and

3 (9) the time balance, which is the sum of
4 items in Paragraphs (7) and (8) of this subsection, payable in
5 installments by the buyer to the seller, the number of
6 installments, the amount of each installment and the due date
7 or term thereof.

8 The above items need not be stated in the sequence or
9 order set forth, and additional items may be included to
10 explain the calculations involved in determining the stated
11 time balance to be paid by the buyer.

12 [~~G.~~] F. The amount, if any, included for insurance,
13 which may be purchased by the holder of the retail installment
14 contract, shall not exceed the applicable premiums chargeable
15 in accordance with the rates filed with the office of
16 superintendent of insurance [~~division of the public regulation~~
17 ~~commission~~]. If dual interest insurance on the motor vehicle
18 is purchased by the holder, it shall, within thirty days after
19 execution of the retail installment contract, send or cause to
20 be sent to the buyer a policy or policies or certificate of
21 insurance written by an insurance company authorized to do
22 business in this state, clearly setting forth the amount of the
23 premium, the kind or kinds of insurance, the coverages and all
24 the terms, exceptions, limitations, restrictions and conditions
25 of the contract or contracts of insurance. The buyer shall

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1 have the privilege of purchasing such insurance from an agent
2 or broker of [~~his~~] the buyer's own selection and of selecting
3 an insurance company acceptable to the holder, and in such
4 case, the inclusion of the insurance premium in the retail
5 installment contract shall be optional with the seller.

6 [~~D-~~] G. If any insurance is canceled or the premium
7 adjusted, any refund of the insurance premium received by the
8 holder shall be credited to the final maturing installments of
9 the contract except to the extent applied toward payment for
10 similar insurance protecting the interests of the buyer and the
11 holder or either of them.

12 [~~E-~~] H. The holder may, if the contract or
13 refinancing agreement so provides, collect a delinquency and
14 collection charge on each installment in default for a period
15 not less than ten days, in an amount not in excess of five
16 percent of each installment or fifteen dollars (\$15.00),
17 whichever is less. In addition to such delinquency and
18 collection charge, the contract may provide for the payment of
19 attorney fees not exceeding fifteen percent of the amount due
20 and payable under such contract, where such contract is
21 referred for collection to any attorney not a salaried employee
22 of the holder of the contract, plus the court costs.

23 [~~F-~~] I. A buyer may transfer [~~his~~] the buyer's
24 equity in the motor vehicle at any time to another person upon
25 agreement by the holder, but in such event, the holder of the

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1 contract shall be entitled to a transfer of equity fee, which
2 shall not exceed twenty-five dollars (\$25.00).

3 ~~[G.]~~ J. No retail installment contract shall be
4 signed by any party thereto when it contains blank spaces to be
5 filled in after execution, except that if delivery of the motor
6 vehicle is not made at the time of the execution of the
7 contract, the identifying numbers or marks of the motor vehicle
8 or similar information and the due date of the first
9 installment may be inserted in the contract after its
10 execution. The buyer's written acknowledgement, conforming to
11 the requirements of ~~[Paragraph (3) of]~~ Subsection ~~[A]~~ C of this
12 section, of delivery of a copy of a contract shall be
13 conclusive proof of such delivery, that the contract when
14 signed did not contain any blank spaces except as herein
15 provided and of compliance with this section in any action or
16 proceeding by or against the holder of the contract.

17 ~~[H.]~~ K. Upon written request from the buyer, the
18 holder of a retail installment contract shall give or forward
19 to the buyer a written statement of the dates and amounts of
20 payments made and the total amount unpaid under such contract.
21 A buyer shall be given a written receipt for any payment when
22 made in cash.

23 ~~[I.]~~ L. No provision in a retail installment
24 contract relieving the seller from liability under any legal
25 remedies ~~[which]~~ that the buyer may have against the seller

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1 under the contract, or any separate instrument of similar
2 import executed in connection therewith, shall be enforceable.

3 [J.] M. In the event that the seller or the holder
4 of the retail installment contract repossesses a motor vehicle,
5 the buyer shall be responsible and liable for any deficiency in
6 accordance with Section [~~55-9-504~~] 55-9-608 NMSA 1978."

7 **SECTION 8.** Section 59A-1-7 NMSA 1978 (being Laws 1984,
8 Chapter 127, Section 7, as amended) is amended to read:

9 "59A-1-7. INSURANCE DEPARTMENT.--"Insurance department",
10 "insurance division" or "division" means the office of
11 superintendent of insurance [~~division of the commission~~]."

12 **SECTION 9.** Section 59A-2-1 NMSA 1978 (being Laws 1984,
13 Chapter 127, Section 19, as amended) is amended to read:

14 "59A-2-1. OFFICE OF SUPERINTENDENT OF INSURANCE [~~DIVISION~~
15 ~~CREATED~~].--

16 A. The [~~insurance division is created within the~~
17 ~~commission~~] office of superintendent of insurance, created as
18 of July 1, 2013 by Article 11, Section 20 of the constitution
19 of New Mexico, is an adjunct agency pursuant to Section 9-1-6
20 NMSA 1978.

21 B. All powers relating to state supervision of
22 insurance, insurance rates and rate practices, together with
23 collection of insurance licenses, taxes or fees, and all
24 records pertaining to such supervision are under control of the
25 [~~commission through the division~~] office of superintendent of

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1 insurance."

2 SECTION 10. Section 59A-2-2 NMSA 1978 (being Laws 1984,
3 Chapter 127, Section 20, as amended) is amended to read:

4 "59A-2-2. SUPERINTENDENT--APPOINTMENT--TERM--
5 COMPENSATION--REMOVAL.--

6 A. The position of superintendent of insurance
7 shall be the chief officer of the office of superintendent of
8 insurance [division].

9 B. The superintendent shall be appointed [and may
10 be removed for cause at any time] by the [commission] insurance
11 nominating committee.

12 C. The superintendent shall serve for a term of
13 four years, except that the initial term beginning July 1, 2013
14 shall end on December 31, 2015. If the position of
15 superintendent becomes vacant, the successor shall serve for
16 the remainder of the term vacated. An incumbent superintendent
17 may apply to the insurance nominating committee for appointment
18 to additional terms.

19 D. The superintendent's annual compensation shall
20 be established by the legislature in an appropriations act and
21 shall be no lower than that of the lowest-compensated cabinet
22 secretary and no higher than that of the highest-compensated
23 cabinet secretary.

24 E. The superintendent shall not be removed except
25 for incompetence, willful neglect of duty or malfeasance in

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1 office. The supreme court may remove the superintendent upon
2 complaint of the governor after first providing the
3 superintendent with notice and a hearing."

4 SECTION 11. Section 59A-2-3 NMSA 1978 (being Laws 1984,
5 Chapter 127, Section 21) is amended to read:

6 "59A-2-3. SUPERINTENDENT--QUALIFICATIONS AND BOND.--The
7 superintendent shall:

8 A. have been a resident of New Mexico for at least
9 [three (3) years] one year before appointment [The
10 superintendent shall];

11 B. be bonded as provided in the Surety Bond Act
12 [Sections 10-2-13 through 10-2-16 NMSA 1978]; and

13 C. not have any direct financial interest in an
14 insurer, insurance agency or insurance transaction except as a
15 policyholder or a claimant under a policy or as an owner of
16 less than one percent of the shares of an insurer that is a
17 publicly traded corporation."

18 SECTION 12. Section 59A-2-4 NMSA 1978 (being Laws 1984,
19 Chapter 127, Section 22, as amended) is amended to read:

20 "59A-2-4. STAFF.--~~[With the chief of staff's approval]~~
21 The superintendent:

22 A. may hire employees and prescribe their duties
23 and qualifications and fix their compensation pursuant to the
24 Personnel Act; and

25 B. shall designate an employee of the office of

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1 superintendent of insurance [~~division~~] as chief deputy
2 superintendent, who shall be acting superintendent when the
3 [~~office of~~] superintendent position is vacant or the
4 superintendent is unable to perform the duties of that office
5 because of mental or physical disability."

6 SECTION 13. Section 59A-2-8 NMSA 1978 (being Laws 1984,
7 Chapter 127, Section 26) is amended to read:

8 "59A-2-8. GENERAL POWERS AND DUTIES OF SUPERINTENDENT.--
9 The superintendent shall:

10 A. organize and manage the office of superintendent
11 of insurance [~~department~~] and direct and supervise all its
12 activities;

13 B. execute the duties imposed upon [~~him~~] the
14 superintendent by the Insurance Code;

15 C. enforce those provisions of the Insurance Code
16 [~~which~~] that are administered by [~~him~~] the superintendent;

17 D. have the powers and authority expressly
18 conferred by or reasonably implied from the provisions of the
19 Insurance Code;

20 E. conduct such examinations and investigations of
21 insurance matters, in addition to those expressly authorized,
22 as [~~he~~] the superintendent may deem proper upon reasonable and
23 probable cause to determine whether [~~any~~] a person has violated
24 [~~any~~] a provision of the Insurance Code or to secure
25 information useful in the lawful enforcement or administration

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1 of [~~any such~~] the provision; [~~and~~]

2 F. have the power to sue or be sued;

3 G. have the power to make, enter into and enforce
4 all contracts, agreements and other instruments necessary,
5 convenient or desirable in the exercise of the superintendent's
6 powers and functions and for the purposes of the Insurance
7 Code;

8 H. prepare an annual budget for the office of
9 superintendent of insurance;

10 I. have the right to require performance bonds of
11 employees as the superintendent deems necessary pursuant to the
12 Surety Bond Act. The office of superintendent of insurance
13 shall pay the cost of required bonds; and

14 [~~F-~~] J. have such additional powers and duties as
15 may be provided by other laws of this state."

16 SECTION 14. A new section of the New Mexico Insurance
17 Code is enacted to read:

18 "[NEW MATERIAL] ANNUAL REPORT REQUIRED.--No later than
19 December 1 of each year, the superintendent shall report to the
20 legislature and to the governor on the activities of the office
21 of superintendent of insurance during the previous fiscal
22 year."

23 SECTION 15. A new section of the New Mexico Insurance
24 Code is enacted to read:

25 "[NEW MATERIAL] INSURANCE NOMINATING COMMITTEE.--

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1 A. The "insurance nominating committee" is created
2 and consists of nine members, including:

3 (1) four members who are selected by the New
4 Mexico legislative council as follows:

5 (a) two members who shall represent the
6 interests of the insurance industry;

7 (b) two members who shall represent the
8 interests of insurance consumers and who have experience
9 advocating on behalf of consumers or the public interest on
10 insurance issues. These members shall not be employed by or on
11 behalf of or have a contract with an employer that is regulated
12 by the office of superintendent of insurance; and

13 (c) no more than two of the four members
14 shall be from the same political party;

15 (2) four members who are selected by the
16 governor as follows:

17 (a) two members who shall represent the
18 interests of the insurance industry;

19 (b) two members who shall represent the
20 interests of insurance consumers and who have experience
21 advocating on behalf of consumers or the public interest on
22 insurance issues. These members shall not be employed by or on
23 behalf of or have a contract with an employer that is regulated
24 by the office of superintendent of insurance; and

25 (c) no more than two of the four members

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1 shall be from the same political party; and

2 (3) a member who shall be chair of the
3 committee and who shall be selected by a majority vote of the
4 other eight members; provided that the member shall:

5 (a) not be a candidate for the position
6 of superintendent of insurance; and

7 (b) be either a former New Mexico
8 superintendent of insurance or another person with extensive
9 knowledge of insurance regulation in New Mexico.

10 B. A committee member shall:

11 (1) be a resident of New Mexico;

12 (2) serve a four-year term; except that a
13 member of the first committee appointed shall serve for a term
14 that ends on June 30, 2015; and

15 (3) serve without compensation, but shall be
16 reimbursed for expenses incurred in pursuit of the member's
17 duties on the committee pursuant to the Per Diem and Mileage
18 Act.

19 C. The committee and individual members shall be
20 subject to the Governmental Conduct Act, the Inspection of
21 Public Records Act, the Financial Disclosure Act and the Open
22 Meetings Act.

23 D. A regular session of the committee shall convene
24 ninety days prior to the date of the initial term of the
25 superintendent and thereafter ninety days prior to the date on

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1 which the term of a superintendent ends and shall conclude on
2 the date that the initial superintendent or next superintendent
3 takes office. The committee shall select a superintendent
4 within sixty days of convening.

5 E. Upon the occurrence of a vacancy in the
6 superintendent position, the committee shall convene within
7 thirty days of the date of the beginning of the vacancy for a
8 special session and shall appoint a successor to fill the
9 remainder of the superintendent's term within sixty days of
10 convening.

11 F. If a position on the committee becomes vacant
12 during a term, a successor shall be selected in the same manner
13 as the original appointment for that position and shall serve
14 for the remainder of the term of the position vacated.

15 G. The committee shall actively solicit, accept and
16 evaluate applications from qualified individuals for the
17 position of superintendent and may require an applicant to
18 submit any information it deems relevant to the consideration
19 of the individual's application.

20 H. The committee shall select the applicant that,
21 in the committee's judgment, is best qualified to serve as
22 superintendent.

23 I. A majority vote of all members of the committee
24 in favor of an applicant is required for that applicant to be
25 appointed superintendent."

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1 SECTION 16. Section 59A-2-12 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 30) is amended to read:

3 "59A-2-12. RECORDS--INSPECTION--DESTRUCTION.--

4 A. The superintendent shall preserve in the office
5 of superintendent of insurance [~~department~~] and in permanent
6 form copies of all notices and orders given or made and of all
7 other papers and records relating to the business and
8 transactions of the [~~department~~] office and shall hand the same
9 over to [~~his~~] the superintendent's successor in office.

10 B. Except as otherwise provided by the Insurance
11 Code or by order of court, the papers and records shall be open
12 to public inspection. The superintendent may classify as
13 confidential certain records and information obtained from
14 another governmental agency or other source upon the express
15 condition that they remain confidential or are deemed
16 confidential by the superintendent, and such records and
17 information shall not be subject to public inspection while
18 confidentiality exists; except that no filing required to be
19 made with the superintendent under the Insurance Code shall be
20 deemed confidential unless expressly so provided by law.

21 C. The superintendent may destroy unneeded or
22 obsolete records and filings in the office of superintendent of
23 insurance [~~department~~] in accordance with provisions and
24 procedures applicable in general to records and filings of [~~the~~
25 ~~corporation commission~~] state government."

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1 SECTION 17. Section 59A-2-13 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 31) is amended to read:

3 "59A-2-13. SEAL AS EVIDENCE.--~~[The corporation commission~~
4 ~~shall provide]~~ The superintendent ~~[with]~~ shall have an official
5 seal. Every instrument executed by the superintendent in
6 pursuance with law and sealed with such seal shall be received
7 as evidence. Copies of books, records and papers kept or filed
8 in the office of superintendent of insurance ~~[department]~~
9 pursuant to law, certified by the superintendent and
10 authenticated by the seal, shall be received in evidence in
11 like manner as the originals."

12 SECTION 18. Section 59A-12-10 NMSA 1978 (being Laws 1997,
13 Chapter 48, Section 1, as amended) is amended to read:

14 "59A-12-10. LICENSING OF LENDING INSTITUTION--DEFINITIONS
15 AND EXCEPTIONS.--

16 A. As used in this section:

17 (1) "lending institution" means an
18 institution, including its holding company, subsidiary or
19 insurance agent, solicitor or broker affiliate, whose business
20 includes accepting deposits or lending money in New Mexico,
21 including banks, savings and loan associations and credit
22 unions; "lending institution" does not include insurance
23 companies;

24 (2) "holding company", "subsidiary" and
25 "affiliate" mean those terms as defined in regulations adopted

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1 by the superintendent; except "bank holding company" means that
2 term as defined in Section 2 of the federal Bank Holding
3 Company Act of 1956;

4 (3) "public utility" means a private employer
5 subject to the jurisdiction of the public regulation commission
6 that is engaged in the business of providing
7 telecommunications, electric, gas, water or steam heat services
8 to the public;

9 (4) "sell" means to engage in the
10 solicitation, sale and placement of insurance and such other
11 related activities conducted by an agent, solicitor or broker
12 pursuant to the Insurance Code;

13 (5) "service contract" means a contract issued
14 on consumer products pursuant to which the vendor or
15 manufacturer bears the cost of the repair or replacement of the
16 consumer product;

17 (6) "insurance premium finance agreement"
18 means an agreement by which an insured or a prospective insured
19 promises to pay to any person engaged in the business of
20 premium financing the amount advanced or to be advanced under
21 the agreement to an insurer or to an insurance agent or broker
22 in payment of premiums on an insurance contract; and

23 (7) "loan transaction" and any other reference
24 to lending or extension of credit does not include loans made
25 by broker-dealers registered in accordance with applicable

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1 state and federal securities laws that are wholly
2 collateralized by securities.

3 B. A lending institution:

4 (1) that is a subsidiary or an affiliate of a
5 state or federally chartered bank may be licensed to sell:

6 (a) any insurance in accordance with the
7 Insurance Code and to the extent authorized by federal and
8 state lending institution regulators; and

9 (b) annuities to the extent authorized
10 by law and federal and state lending institution regulators;
11 but nothing in this subparagraph shall affect the rights and
12 obligations of nationally chartered lending institutions; and

13 (2) other than one described in Paragraph (1)
14 of this subsection, may be licensed to sell:

15 (a) any insurance except title insurance
16 in accordance with the Insurance Code and to the extent
17 authorized by federal and state lending institution regulators;
18 and

19 (b) annuities to the extent authorized
20 by law and federal and state lending institution regulators;
21 but nothing in this subparagraph shall affect the rights and
22 obligations of nationally chartered lending institutions.

23 C. A public utility or its holding company,
24 subsidiary or affiliate shall not be licensed to sell insurance
25 or act as a broker for insurance in New Mexico.

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1 D. As used in Subsections E through Y of this
2 section, "insurance" means all products defined or regulated as
3 insurance under the Insurance Code except:

4 (1) credit life, credit accident and health,
5 credit involuntary unemployment, credit casualty and credit
6 property insurance, and when providing insurance coverage to a
7 borrower or co-borrower or both, the following insurance
8 products: accidental death and dismemberment, accidental
9 disability and any other accidental casualty insurance product;

10 (2) insurance placed by a lending institution
11 on the collateral pledged as security for a loan when the
12 debtor breaches the contractual obligation to provide that
13 insurance;

14 (3) private mortgage insurance and financial
15 guarantee insurance;

16 (4) annuities;

17 (5) service contracts;

18 (6) insurance premium finance agreements; and

19 (7) travel accident or baggage insurance.

20 E. A lending institution shall not require as a
21 condition precedent to the extension of credit, or any
22 subsequent renewal thereof, or the procurement of other bank
23 services that the customer purchase insurance through a
24 particular insurer, agent, solicitor or broker.

25 F. A lending institution shall not extend credit,

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1 lease or sell property or furnish any other service or fix or
2 vary the consideration for any of the foregoing on the
3 condition or requirement that the customer obtain insurance
4 from that lending institution or from a particular insurer,
5 agent, solicitor or broker.

6 G. A lending institution shall not impose a
7 requirement on an insurance agent, solicitor or broker who is
8 not associated with the lending institution that is not imposed
9 on an insurance agent, solicitor or broker who is associated
10 with that institution or, unless otherwise authorized by
11 applicable federal or state law, require a debtor, insurer,
12 agent, solicitor or broker to pay a separate charge in
13 connection with the handling of insurance that is required
14 under a contract.

15 H. A lending institution, except an institution
16 that does not accept deposits that are federally insured, that
17 sells insurance on its premises shall:

18 (1) conspicuously post a notice that is
19 clearly visible to anyone who may purchase insurance that
20 insurance is not a deposit account insured by a federal deposit
21 insuring agency;

22 (2) orally inform a prospective purchaser of
23 insurance that insurance is not a deposit account insured by a
24 federal deposit insuring agency; and

25 (3) provide a written disclosure to the

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1 customer containing the following statements before the sale of
2 insurance is complete:

3 (a) insurance is not a lending
4 institution deposit account and is not insured by its federal
5 deposit insuring agency;

6 (b) insurance is not an obligation of or
7 guaranteed by the lending institution;

8 (c) the customer is not required to
9 obtain insurance from a particular lending institution, agent,
10 solicitor or broker; and

11 (d) where applicable, insurance involves
12 investment risk, including potential loss of principal.

13 I. The sale of insurance by a lending institution,
14 except an institution that does not accept deposits that are
15 federally insured, shall be effectuated in such a manner so as
16 to avoid confusion between federally insured deposit products
17 offered by a lending institution and the nonfederally insured
18 insurance sold. Insurance advertisements and other sales
19 material shall be accurate and not misleading or deceptive.
20 Insurance advertising and other sales materials regarding
21 insurance shall include disclosures that contain language that
22 is the same or substantially similar to the following:

23 (1) insurance is not a lending institution
24 deposit and is not insured by its federal deposit insuring
25 agency;

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1 (2) insurance is not an obligation of or
2 guaranteed by the lending institution; and

3 (3) where applicable, insurance involves
4 investment risk, including potential loss of principal.

5 J. Insurance operations may be conducted by the
6 lending institution, its holding company, an affiliate or
7 subsidiary of either or through a separate corporate entity or
8 partnership.

9 K. A lending institution shall not provide
10 nonpublic customer information to a third party for the purpose
11 of another's sale of insurance without written authorization
12 from the customer. As used in this subsection, "nonpublic
13 customer information" means information regarding a person that
14 has been derived from a record of a financial institution.
15 "Nonpublic customer information" does not include customer
16 names and addresses and telephone numbers or information about
17 an individual that could be obtained from an unaffiliated
18 credit bureau that is subject to the federal Fair Credit
19 Reporting Act by a third party that is not entering into a
20 credit relationship with the individual but has a legitimate
21 need for the information in connection with a business
22 transaction with the individual; except that "nonpublic
23 customer information" includes information concerning insurance
24 premiums, the terms and conditions of insurance coverage,
25 insurance expirations, insurance claims and insurance history

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1 of an individual. Notwithstanding any provision in this
2 section to the contrary, compliance with Section 603 of the
3 federal Fair Credit Reporting Act by a lending institution
4 shall be deemed to be full compliance with this subsection.
5 "Nonpublic customer information" does not include material
6 excluded from the definition of "consumer report" by Section
7 603(d)(2)(A) of the federal Fair Credit Reporting Act.

8 L. Records relating to the insurance sales of a
9 lending institution, including files relating to and reflecting
10 customer complaints, shall be kept separate and apart from all
11 records relating to the banking transactions of the lending
12 institution. Records pertaining to insurance activities of the
13 lending institution or copies of those records shall be subject
14 to the inspection and audit by the office of superintendent of
15 insurance [~~division~~]. If the [~~division~~] office determines to
16 inspect and audit the records relating to the insurance
17 activities of a lending institution, that institution shall
18 make available to the [~~division~~] office, at a location in New
19 Mexico, the lending institution's records and knowledgeable
20 personnel to assist in the interpretation of the lending
21 institution's records.

22 M. A lending institution, or officer, director or
23 employee acting on behalf of the institution, who qualifies for
24 issuance of an agent's, solicitor's or broker's license
25 pursuant to the Insurance Code may be issued an agent or broker

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1 license authorizing the sale of insurance.

2 N. A lending institution shall not pay a commission
3 or other valuable consideration to a person for services of an
4 insurance agent, solicitor or broker unless the person
5 performing the service holds a valid insurance license for the
6 class of insurance for which the service is rendered or
7 performed at the time the service is performed. No person,
8 other than a person properly licensed in accordance with the
9 Insurance Code, shall accept any commission or valuable
10 consideration for those services.

11 O. A lending institution shall not offer an
12 inducement to a customer to purchase insurance from the
13 institution other than as plainly expressed in the insurance
14 policy. Investment programs, memberships or other programs
15 designed or represented to waive, reduce, pay, produce or
16 provide funds to pay all or part of the cost on insurance are
17 an illegal inducement.

18 P. A lending institution may not in the same
19 transaction solicit the purchase of insurance from a customer
20 who has applied for a loan from the institution before the time
21 the customer has received a written commitment from the lending
22 institution with respect to that loan, or, in the event that no
23 written commitment has been or will be issued in connection
24 with the loan, a lending institution shall not solicit the
25 purchase of insurance before the time the customer receives

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1 notification of approval of the loan by the lending institution
2 and the institution creates a written record of the loan
3 approval. This subsection shall not apply when a lending
4 institution contacts a customer in the course of direct or mass
5 marketing to a group of persons in a manner that bears no
6 relation to the customer's loan application or credit decision.

7 Q. The sale of insurance by a lending institution,
8 credit union, sales finance company, insurance company,
9 insurance agent, an institution that grants or arranges
10 consumer credit or an institution that solicits or makes loans
11 in New Mexico may be conducted by a person whose
12 responsibilities include loan transactions or other
13 transactions involving the extension of credit so long as the
14 person who is primarily responsible for making the specific
15 loan or extension of credit is not the same person engaged in
16 the sale of insurance for that same transaction; provided,
17 however, that the provisions of this subsection shall not apply
18 to:

19 (1) a broker or dealer registered under the
20 federal Securities Exchange Act of 1934; or

21 (2) a lending institution location that has
22 three or fewer persons with lending authority.

23 R. If insurance is required as a condition of
24 obtaining a loan, the credit and insurance transactions shall
25 be completed independently and through separate documents.

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1 S. A loan for premiums on required insurance shall
2 not be included in the primary credit without the written
3 consent of the customer, which may be evidenced by compliance
4 with the federal Truth in Lending Act.

5 T. A person who engages in loan transactions at any
6 office of, or on behalf of, a lending institution or any other
7 agent, employee, director or officer of the lending institution
8 may refer a customer who seeks to purchase, or seeks an opinion
9 or advice on, any insurance product to a person, or may give
10 the phone number of a person, who sells or provides opinions or
11 advice on such products only if the customer expressly requests
12 the referral; the person who engages in loan transactions does
13 not solicit the customer request; and the person who engages in
14 the loan transaction does not receive any compensation for the
15 referral.

16 U. The location for the sale of insurance on the
17 premises of a lending institution, except an institution that
18 does not accept deposits that are federally insured, to the
19 extent practicable shall be:

20 (1) physically located to be distinct from the
21 lending activities of the institution; and

22 (2) clearly and conspicuously signed to be
23 easily distinguishable by the public as separate and distinct
24 from the lending activities of the institution.

25 V. Signs and other informational material

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1 concerning the availability of insurance products from the
2 lending institution or third party soliciting the purchase of
3 or selling insurance on the premises of the lending institution
4 shall not be displayed to the extent practicable in an area
5 where application for loans or other extensions of credit are
6 being taken or closed.

7 W. Nothing in this section grants a lending
8 institution, including its holding company, subsidiary or
9 affiliate, except those enumerated in this section, the power
10 to sell insurance that was not allowed prior to July 1, 1997.

11 X. Nothing in this section precludes the
12 superintendent from adopting reasonable rules and regulations
13 for the purposes of the administration of the provisions of
14 this section, including rules and regulations for written
15 disclosures.

16 Y. If any of the provisions of this section are
17 preempted by federal law, then those preempted provisions shall
18 not apply to any person or lending institution subject to the
19 provisions of this section."

20 SECTION 19. Section 59A-16-21.1 NMSA 1978 (being Laws
21 2000, Chapter 58, Section 1) is amended to read:

22 "59A-16-21.1. HEALTH PLAN REQUIREMENTS.--

23 A. As used in this section:

24 (1) "clean claim" means a manually or
25 electronically submitted claim from a participating provider

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1 that:

2 (a) contains substantially all the
3 required data elements necessary for accurate adjudication
4 without the need for additional information from outside of the
5 health plan's system;

6 (b) is not materially deficient or
7 improper, including lacking substantiating documentation
8 currently required by the health plan; ~~or~~ and

9 (c) has no particular or unusual
10 circumstances requiring special treatment that prevent payment
11 from being made by the health plan within thirty days of the
12 date of receipt if submitted electronically or forty-five days
13 if submitted manually; and

14 (2) "health plan" means health maintenance
15 organizations, provider service networks or third-party payers
16 or their agents.

17 B. A health plan shall provide for payment of
18 interest on the plan's liability at the rate of one and one-
19 half percent a month on:

20 (1) the amount of a clean claim electronically
21 submitted by the participating provider and not paid within
22 thirty days of the date of receipt; and

23 (2) the amount of a clean claim manually
24 submitted by the participating provider and not paid within
25 forty-five days of the date of receipt.

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1 C. If a health plan is unable to determine
2 liability for or refuses to pay a claim of a participating
3 provider within the times specified in Subsection B of this
4 section, the health plan shall make a good-faith effort to
5 notify the participating provider by fax, electronic or other
6 written communication within thirty days of receipt of the
7 claim if submitted electronically or forty-five days if
8 submitted manually of all specific reasons why it is not liable
9 for the claim or that specific information is required to
10 determine liability for the claim.

11 D. No contract between a health plan and a
12 participating provider shall include a clause that has the
13 effect of relieving either party of liability for its actions
14 or inactions.

15 E. By December 1, 2000, the office of
16 superintendent of insurance [~~division of the public regulation~~
17 ~~commission~~], with input from interested parties, including
18 health plans and participating providers, shall promulgate
19 rules to require health plans to provide:

20 (1) timely participating provider access to
21 claims status information;

22 (2) processes and procedures for submitting
23 claims and changes in coding for claims;

24 (3) standard claims forms; and

25 (4) uniform calculation of interest."

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1 SECTION 20. Section 59A-17-34 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 329, as amended) is amended to read:

3 "59A-17-34. [~~HEARING AND REVIEW AS TO SUPERINTENDENT'S~~
4 ~~ACTIONS]~~ HEARINGS.--~~[A.]~~ Any person aggrieved by any action,
5 threatened action or failure to act of the superintendent or
6 otherwise under Chapter 59A, Article 17 NMSA 1978 shall have
7 the same right to a hearing before the superintendent with
8 respect thereto as provided for in general under Section 59A-4-
9 15 NMSA 1978. Notice of hearing shall be given, the hearing
10 conducted, rights and powers exercised and the superintendent's
11 order on hearing made and given as provided as to hearings in
12 general under the applicable provisions of Chapter 59A, Article
13 4 NMSA 1978.

14 ~~[B. Any person aggrieved by the superintendent's~~
15 ~~order issued pursuant to this section or by the~~
16 ~~superintendent's refusal to hold the hearing may request a~~
17 ~~review by the public regulation commission in the manner set~~
18 ~~forth by rule of the commission. The request for review shall~~
19 ~~be filed no later than thirty days after the issuance of the~~
20 ~~order of the superintendent or the superintendent's refusal to~~
21 ~~hold a hearing.]"~~

22 SECTION 21. Section 59A-17-35 NMSA 1978 (being Laws 1984,
23 Chapter 127, Section 330, as amended) is amended to read:

24 "59A-17-35. APPEALS FROM ~~[COMMISSION]~~ SUPERINTENDENT.--
25 Any order made by the ~~[commission]~~ superintendent pursuant to

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1 Section 59A-17-34 NMSA 1978, or by the superintendent's refusal
2 to hold a hearing, shall be subject to review by appeal to the
3 [~~district~~] court [~~pursuant to~~] of appeals in the same manner as
4 provided in the provisions of Section [~~39-3-1.1~~] 59A-18-13.5
5 NMSA 1978. Upon institution of the appeal and for good cause
6 shown upon motion and hearing, the court may, in the following
7 cases, stay operation of the [~~commission's~~] superintendent's
8 order:

9 A. where, pursuant to the Insurance Rate Regulation
10 Law, an advisory organization has been refused a license or an
11 insurer has been refused a certificate of authority or had its
12 license or certificate of authority suspended, it may, with
13 leave of court, be allowed to continue to engage in business,
14 subject to the provisions of the Insurance Rate Regulation Law,
15 pending final disposition of its application for review; or

16 B. where any order of the [~~commission~~]
17 superintendent shall provide for [~~or sustain the~~
18 ~~superintendent's order for~~] a change in a rate or rating system
19 that results in an increase or decrease in rates, an insurer
20 affected may, with leave of court pending final disposition of
21 the proceedings in the [~~district~~] court of appeals, continue to
22 charge rates that existed prior to the order, on condition that
23 the difference in the rates be deposited in a special escrow or
24 trust account with a reputable financial institution by the
25 insurer affected, to be held in trust by the insurer and to be

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1 retained by the insurer or paid to the holders of policies
2 issued after the order of the court, as the court may
3 determine."

4 SECTION 22. Section 59A-17A-3 NMSA 1978 (being Laws 2005,
5 Chapter 275, Section 3) is amended to read:

6 "59A-17A-3. DEFINITIONS.--As used in the Personal
7 Insurance Credit Information Act:

8 A. "adverse action" means a denial or cancellation
9 of, an increase in a charge for or a reduction or other adverse
10 or unfavorable change in the terms of coverage or amount of
11 insurance, existing or applied for, in connection with the
12 underwriting, rating or renewal of personal insurance, which
13 adverse action occurs when an insurer offers insurance at less
14 favorable terms than it would have offered a consumer if the
15 consumer's credit information had been more favorable;

16 B. "affiliate" means a company that directly or
17 indirectly controls, is controlled by or is under the common
18 ownership or control of another company;

19 C. "company placement" means the assignment of a
20 consumer to a particular insurer within a group of affiliates;

21 D. "consumer" means an individual applicant or
22 insured whose credit information is relied upon or used to
23 calculate an insurance score for underwriting, rating or
24 renewing a personal insurance coverage;

25 E. "consumer reporting agency" means a person or

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1 entity that, for monetary fees, dues or on a cooperative
2 nonprofit basis, regularly engages in whole or in part in the
3 practice of assembling or evaluating consumer credit
4 information or other information on consumers for the purpose
5 of furnishing consumer reports to third parties;

6 F. "credit information" means a written, oral or
7 other communication of information prepared by a consumer
8 reporting agency or provided by the consumer on an application
9 for or renewal of credit, bearing on a consumer's credit
10 worthiness, credit standing or credit capacity, that is used or
11 expected to be used or collected in whole or in part for the
12 purpose of underwriting, rating or renewing a personal
13 insurance coverage;

14 G. "insurance score" means a number or rating that
15 is derived from an algorithm, computer application, model or
16 other process that is based in whole or in part on credit
17 information and is used for underwriting, rating or renewing
18 personal insurance coverage; and

19 H. "personal insurance" means private passenger
20 automobile, homeowners', motorcycle, mobile-homeowners', boat,
21 personal watercraft, snowmobile, recreational vehicle,
22 noncommercial dwelling fire, personal umbrella or any other
23 type of insurance policy that is individually underwritten for
24 personal, family or household use [~~and~~

25 ~~I. "superintendent" means the superintendent of the~~

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1 ~~insurance division of the public regulation commission]."~~

2 SECTION 23. Section 59A-18-13.3 NMSA 1978 (being Laws
3 2011, Chapter 144, Section 6) is amended to read:

4 "59A-18-13.3. HEALTH INSURANCE FILINGS--GROUNDS AND
5 PROCEDURE FOR APPROVAL OR DISAPPROVAL.--

6 A. The superintendent shall issue a final order
7 within sixty days of the filing date for health insurance
8 filings made on rates. The superintendent shall consider any
9 public comment made pursuant to Subsection H of Section [~~5 of~~
10 ~~this 2011 act~~] 59A-18-13.2 NMSA 1978. The superintendent shall
11 issue findings and shall approve any rates on the following
12 grounds:

13 (1) the proposed rate is in compliance with
14 federal law and the Insurance Code;

15 (2) the proposed rate does not contain, or
16 incorporate by reference, any inconsistent, ambiguous or
17 misleading clause, exception or condition that deceptively
18 affects the risk purported to be assumed in the general
19 coverage of the contract or that encourages misrepresentation
20 of the policy or its benefits;

21 (3) the proposed rate is actuarially sound and
22 is supported by the actuarial memorandum submitted;

23 (4) the proposed rate is reasonable, not
24 excessive or inadequate and not unfairly discriminatory; and

25 (5) the proposed rate is based upon

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1 administrative expenses that are permitted by federal and state
2 law.

3 B. In order to determine whether the proposed rates
4 are reasonable, actuarially sound and based on reasonable
5 administrative expenses, the superintendent shall consider, at
6 a minimum:

7 (1) the financial position of the insurer's
8 insurance operations in the state, including surplus and
9 reserves as reported in the latest three years' financial
10 statements filed by the insurer;

11 (2) information provided to the superintendent
12 for calculation of the amount of the insurer's direct services
13 reimbursement pursuant to Section 59A-22-50, 59A-23C-10,
14 59A-46-51 or 59A-47-46 NMSA 1978;

15 (3) any anticipated change in the number of
16 enrollees if the proposed rate is approved;

17 (4) changes to covered benefits or health
18 benefit plan design;

19 (5) the insurer's compliance with all federal
20 and state requirements for pooling risk and for participation
21 in risk adjustment programs in effect under federal and state
22 law; and

23 (6) the reliability and accuracy of the
24 information provided in order to assure a meaningful review.

25 C. No final order shall be issued until after the

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1 close of the public comment period pursuant to Subsection H of
2 Section [~~5 of this 2011 act~~] 59A-18-13.2 NMSA 1978.

3 D. In rate filings for which the superintendent
4 holds a hearing on reconsideration pursuant to Section 59A-4-15
5 NMSA 1978, the superintendent shall issue a final order within
6 sixty days of the hearing.

7 E. A final order of the superintendent under this
8 section may be appealed to the [~~commission~~] court of appeals
9 pursuant to the provisions of Section [~~7 of this 2011 act~~]
10 59A-18-13.5 NMSA 1978 within twenty days.

11 F. As used in this section, "health insurance" or
12 "health care plan" means a hospital and medical expense-
13 incurred policy, plan or contract offered by a health insurer;
14 nonprofit health service provider; health maintenance
15 organization; managed care organization; or provider service
16 organization; "health insurance" or "health care plan" does not
17 include an individual policy intended to supplement major
18 medical group-type coverage such as medicare supplement,
19 long-term care, disability income, specified disease,
20 accident-only, hospital indemnity or any other limited-benefit
21 health insurance policy."

22 SECTION 24. Section 59A-18-13.5 NMSA 1978 (being Laws
23 2011, Chapter 144, Section 8) is amended to read:

24 "59A-18-13.5. REVIEW OF HEALTH INSURANCE OR PLAN RATES--
25 APPEAL TO [~~SUPREME~~] COURT OF APPEALS FROM [~~COMMISSION~~]

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1 SUPERINTENDENT.--

2 A. In a matter arising from an order of the
3 [~~commission~~] superintendent on appeal pursuant to Section [~~7 of~~
4 ~~this 2011 act~~] 59A-18-13.3 NMSA 1978, an aggrieved party may
5 appeal to the [~~supreme~~] court of appeals.

6 B. The [~~supreme~~] court of appeals shall consider
7 the [~~commission's~~] superintendent's order on appeal and reverse
8 the [~~commission's~~] order [~~on appeal~~] only if the [~~supreme~~]
9 court determines:

10 (1) after evaluation of the record of evidence
11 as a whole, that the superintendent's decision was not based on
12 substantial evidence as to whether the proposed rates are
13 reasonable, actuarially sound and based on reasonable
14 administrative expenses;

15 (2) that the [~~commission's~~] superintendent's
16 decision was arbitrary, capricious or an abuse of discretion;
17 or

18 (3) that the [~~commission's~~] superintendent's
19 decision on appeal is otherwise not in accordance with law."

20 SECTION 25. Section 59A-21-9 NMSA 1978 (being Laws 1984,
21 Chapter 127, Section 406a) is amended to read:

22 "59A-21-9. DISCRETIONARY GROUPS.--A policy of group life
23 insurance may be issued to any other group [~~which~~] that, in the
24 discretion of the [~~commission~~] superintendent, may be subject
25 to the issuance of a group life insurance contract."

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1 SECTION 26. Section 59A-22-50 NMSA 1978 (being Laws 2010,
2 Chapter 94, Section 1) is amended to read:

3 "59A-22-50. HEALTH INSURERS--DIRECT SERVICES.--

4 A. A health insurer shall make reimbursement for
5 direct services at a level not less than eighty-five percent of
6 premiums across all health product lines, except individually
7 underwritten health insurance policies, contracts or plans,
8 that are governed by the provisions of Chapter 59A, Article 22
9 NMSA 1978, the Health Maintenance Organization Law and the
10 Nonprofit Health Care Plan Law. Reimbursement shall be made
11 for direct services provided over the preceding three calendar
12 years, but not earlier than calendar year 2010, as determined
13 by reports filed with the office of superintendent of insurance
14 [~~division of the commission~~]. Nothing in this subsection shall
15 be construed to preclude a purchaser from negotiating an
16 agreement with a health insurer that requires a higher amount
17 of premiums paid to be used for reimbursement for direct
18 services for one or more products or for one or more years.

19 B. For individually underwritten health care
20 policies, plans or contracts, the superintendent shall
21 establish, after notice and informal hearing, the level of
22 reimbursement for direct services, as determined by the reports
23 filed with the office of superintendent of insurance
24 [~~division~~], as a percent of premiums. Additional informal
25 hearings may be held at the superintendent's discretion. In

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1 establishing the level of reimbursement for direct services,
2 the superintendent shall consider the costs associated with the
3 individual marketing and medical underwriting of these
4 policies, plans or contracts at a level not less than seventy-
5 five percent of premiums. A health insurer writing these
6 policies shall make reimbursement for direct services at a
7 level not less than that level established by the
8 superintendent pursuant to this subsection over the three
9 calendar years preceding the date upon which that rate is
10 established, but not earlier than calendar year 2010. Nothing
11 in this subsection shall be construed to preclude a purchaser
12 of one of these policies, plans or contracts from negotiating
13 an agreement with a health insurer that requires a higher
14 amount of premiums paid to be used for reimbursement for direct
15 services.

16 C. An insurer that fails to comply with the
17 reimbursement requirements pursuant to this section shall issue
18 a dividend or credit against future premiums to all
19 policyholders in an amount sufficient to assure that the
20 benefits paid in the preceding three calendar years plus the
21 amount of the dividends or credits are equal to the required
22 direct services reimbursement level pursuant to Subsection A of
23 this section for group health coverage and blanket health
24 coverage or the required direct services reimbursement level
25 pursuant to Subsection B of this section for individually

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1 underwritten health policies, contracts or plans for the
2 preceding three calendar years. If the insurer fails to issue
3 the dividend or credit in accordance with the requirements of
4 this section, the superintendent shall enforce these
5 requirements and may pursue any other penalties as provided by
6 law, including general penalties pursuant to Section 59A-1-18
7 NMSA 1978.

8 D. After notice and hearing, the superintendent may
9 adopt and promulgate reasonable rules necessary and proper to
10 carry out the provisions of this section.

11 E. For the purposes of this section:

12 (1) "direct services" means services rendered
13 to an individual by a health insurer or a health care
14 practitioner, facility or other provider, including case
15 management, disease management, health education and promotion,
16 preventive services, quality incentive payments to providers
17 and any portion of an assessment that covers services rather
18 than administration and for which an insurer does not receive a
19 tax credit pursuant to the Medical Insurance Pool Act or the
20 Health Insurance Alliance Act; provided, however, that "direct
21 services" does not include care coordination, utilization
22 review or management or any other activity designed to manage
23 utilization or services;

24 (2) "health insurer" means a person duly
25 authorized to transact the business of health insurance in the

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1 state pursuant to the Insurance Code but does not include a
2 person that only issues a limited-benefit policy intended to
3 supplement major medical coverage, including medicare
4 supplement, vision, dental, disease-specific, accident-only or
5 hospital indemnity-only insurance policies, or that only issues
6 policies for long-term care or disability income; and

7 (3) "premium" means all income received from
8 individuals and private and public payers or sources for the
9 procurement of health coverage, including capitated payments,
10 self-funded administrative fees, self-funded claim
11 reimbursements, recoveries from third parties or other insurers
12 and interests less any premium tax paid pursuant to Section
13 59A-6-2 NMSA 1978 and fees associated with participating in a
14 health insurance exchange that serves as a clearinghouse for
15 insurance."

16 SECTION 27. Section 59A-23-6 NMSA 1978 (being Laws 1983,
17 Chapter 64, Section 1, as amended) is amended to read:

18 "59A-23-6. ALCOHOL DEPENDENCY COVERAGE.--

19 A. Each insurer that delivers or issues for
20 delivery in this state a group health insurance policy shall
21 offer and make available benefits for the necessary care and
22 treatment of alcohol dependency. Such benefits shall:

23 (1) be subject to annual deductibles and
24 coinsurance consistent with those imposed on other benefits
25 within the same policy;

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1 (2) provide no less than thirty days necessary
2 care and treatment in an alcohol dependency treatment center
3 and thirty outpatient visits for alcohol dependency treatment;
4 and

5 (3) be offered for benefit periods of no more
6 than one year and may be limited to a lifetime maximum of no
7 less than two benefit periods. Such offer of benefits shall be
8 subject to the rights of the group health insurance holder to
9 reject the coverage or to select any alternative level of
10 benefits if that right is offered by or negotiated with that
11 insurer.

12 B. For purposes of this section, "alcohol
13 dependency treatment center" means a facility that provides a
14 program for the treatment of alcohol dependency pursuant to a
15 written treatment plan approved and monitored by a physician or
16 meeting the quality standards of the behavioral health services
17 division of the human services department and which facility
18 also:

19 (1) is affiliated with a hospital under a
20 contractual agreement with an established system for patient
21 referral;

22 (2) is accredited as such a facility by the
23 joint commission [~~on accreditation of hospitals~~]; or

24 (3) meets at least the minimum standards
25 adopted by the behavioral health services division for

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1 treatment of alcoholism in regional treatment centers.

2 C. This section applies to policies delivered or
3 issued for delivery or renewed, extended or amended in this
4 state on or after July 1, 1983 or upon expiration of a
5 collective bargaining agreement applicable to a particular
6 policyholder, whichever is later; provided that this section
7 does not apply to blanket, short-term travel, accident-only,
8 limited or specified disease, individual conversion policies or
9 policies designed for issuance to persons eligible for coverage
10 under Title 18 of the Social Security Act, known as medicare,
11 or any other similar coverage under state or federal
12 governmental plans. With respect to any policy forms approved
13 by the office of superintendent of insurance [~~division of the~~
14 ~~public regulation commission~~] prior to the effective date of
15 this section, an insurer is authorized to comply with this
16 section by the use of endorsements or riders; provided that
17 such endorsements or riders are approved by the office of
18 superintendent of insurance [~~division~~] as being in compliance
19 with this section and applicable provisions of the Insurance
20 Code.

21 D. If an organization offering group health
22 benefits to its members makes more than one health insurance
23 policy or nonprofit health care plan available to its members
24 on a member option basis, the organization shall not require
25 alcohol dependency coverage from one health insurer or health

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1 care plan without requiring the same level of alcohol
2 dependency coverage for all other health insurance policies or
3 health care plans that the organization makes available to its
4 members."

5 SECTION 28. Section 59A-23C-10 NMSA 1978 (being Laws
6 2010, Chapter 94, Section 2) is amended to read:

7 "59A-23C-10. HEALTH INSURERS--DIRECT SERVICES.--

8 A. A health insurer shall make reimbursement for
9 direct services at a level not less than eighty-five percent of
10 premiums across all health product lines, except individually
11 underwritten health insurance policies, contracts or plans,
12 that are governed by the provisions of Chapter 59A, Article 22
13 NMSA 1978, the Health Maintenance Organization Law and the
14 Nonprofit Health Care Plan Law. Reimbursement shall be made
15 for direct services provided over the preceding three calendar
16 years, but not earlier than calendar year 2010, as determined
17 by reports filed with the office of superintendent of insurance
18 [~~division of the commission~~]. Nothing in this subsection shall
19 be construed to preclude a purchaser from negotiating an
20 agreement with a health insurer that requires a higher amount
21 of premiums paid to be used for reimbursement for direct
22 services for one or more products or for one or more years.

23 B. For individually underwritten health care
24 policies, plans or contracts, the superintendent shall
25 establish, after notice and informal hearing, the level of

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1 reimbursement for direct services, as determined by the reports
2 filed with the office of superintendent of insurance
3 [~~division~~], as a percent of premiums. Additional informal
4 hearings may be held at the superintendent's discretion. In
5 establishing the level of reimbursement for direct services,
6 the superintendent shall consider the costs associated with the
7 individual marketing and medical underwriting of these
8 policies, plans or contracts at a level not less than seventy-
9 five percent of premiums. A health insurer writing these
10 policies shall make reimbursement for direct services at a
11 level not less than that level established by the
12 superintendent pursuant to this subsection over the three
13 calendar years preceding the date upon which that rate is
14 established, but not earlier than calendar year 2010. Nothing
15 in this subsection shall be construed to preclude a purchaser
16 of one of these policies, plans or contracts from negotiating
17 an agreement with a health insurer that requires a higher
18 amount of premiums paid to be used for reimbursement for direct
19 services.

20 C. An insurer that fails to comply with the
21 reimbursement requirements pursuant to this section shall issue
22 a dividend or credit against future premiums to all
23 policyholders in an amount sufficient to assure that the
24 benefits paid in the preceding three calendar years plus the
25 amount of the dividends or credits are equal to the required

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1 direct services reimbursement level pursuant to Subsection A of
2 this section for group health coverage and blanket health
3 coverage or the required direct services reimbursement level
4 pursuant to Subsection B of this section for individually
5 underwritten health policies, contracts or plans for the
6 preceding three calendar years. If the insurer fails to issue
7 the dividend or credit in accordance with the requirements of
8 this section, the superintendent shall enforce these
9 requirements and may pursue any other penalties as provided by
10 law, including general penalties pursuant to Section 59A-1-18
11 NMSA 1978.

12 D. After notice and hearing, the superintendent may
13 adopt and promulgate reasonable rules necessary and proper to
14 carry out the provisions of this section.

15 E. For the purposes of this section:

16 (1) "direct services" means services rendered
17 to an individual by a health insurer or a health care
18 practitioner, facility or other provider, including case
19 management, disease management, health education and promotion,
20 preventive services, quality incentive payments to providers
21 and any portion of an assessment that covers services rather
22 than administration and for which an insurer does not receive a
23 tax credit pursuant to the Medical Insurance Pool Act or the
24 Health Insurance Alliance Act; provided, however, that "direct
25 services" does not include care coordination, utilization

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1 review or management or any other activity designed to manage
2 utilization or services;

3 (2) "health insurer" means a person duly
4 authorized to transact the business of health insurance in the
5 state pursuant to the Insurance Code but does not include a
6 person that only issues a limited-benefit policy intended to
7 supplement major medical coverage, including medicare
8 supplement, vision, dental, disease-specific, accident-only or
9 hospital indemnity-only insurance policies, or that only issues
10 policies for long-term care or disability income; and

11 (3) "premium" means all income received from
12 individuals and private and public payers or sources for the
13 procurement of health coverage, including capitated payments,
14 self-funded administrative fees, self-funded claim
15 reimbursements, recoveries from third parties or other insurers
16 and interests less any premium tax paid pursuant to Section
17 59A-6-2 NMSA 1978 and fees associated with participating in a
18 health insurance exchange that serves as a clearinghouse for
19 insurance."

20 SECTION 29. Section 59A-23D-2 NMSA 1978 (being Laws 1995,
21 Chapter 93, Section 2, as amended) is amended to read:

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

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

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1 (1) a national or state-chartered bank,
2 savings and loan association, savings bank or credit union;

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

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

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

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

14 C. "department" means the office of superintendent
15 of insurance [~~division of the public regulation commission~~];

16 D. "dependent" means:

17 (1) a spouse;

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

20 (a) a natural child;

21 (b) a legally adopted child;

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

25 (d) a child for whom the employee is the

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1 legal guardian and who is primarily dependent on the employee
2 for maintenance and support, as long as evidence of the
3 guardianship is evidenced in a court order or decree; or

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

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

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

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

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

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

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

24 (b) provides coverage for ~~any~~ a
25 benefit that is covered under the qualified higher deductible

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1 health plan; and

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

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

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

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

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

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

21 (a) unless it is in cash; or

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

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1 Account Act;

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

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

7 (4) the interest of an individual in the
8 balance in [~~his~~] the individual's account is nonforfeitable;

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

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

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

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

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1 hundred dollars (\$5,500), not including premiums; and

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

5 SECTION 30. Section 59A-30-4.1 NMSA 1978 (being Laws
6 2009, Chapter 80, Section 13) is amended to read:

7 "59A-30-4.1. REPORTING BY SUPERINTENDENT.--The
8 superintendent shall compile a report for [~~the commission and~~]
9 the legislature no later than October 1 each year beginning in
10 [~~2010~~] 2013 detailing title insurance statistics, including a
11 report on the status of price competition within the title
12 insurance industry in New Mexico. Annual reports shall be made
13 available to interested parties and the general public."

14 SECTION 31. Section 59A-35-12 NMSA 1978 (being Laws 1984,
15 Chapter 127, Section 601, as amended) is amended to read:

16 "59A-35-12. PERMIT AS INDUCEMENT.--

17 A. The granting of a securities permit is
18 permissive only and shall not constitute an endorsement or
19 approval by the superintendent [~~public regulation commission~~]
20 or any other agency or department of the state of New Mexico of
21 any person or thing related to the offering of securities or
22 constitute evidence of the completeness or accuracy of
23 information presented in any prospectus or other sales
24 publicity or literature, or a recommendation of purchase of any
25 securities offered. The existence of the permit shall not be

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1 advertised or used as an inducement in any solicitation.

2 B. Each permit issued by the superintendent shall
3 state conspicuously in boldface type the substance of
4 Subsection A of this section in terminology prescribed by the
5 superintendent."

6 SECTION 32. Section 59A-46-51 NMSA 1978 (being Laws 2010,
7 Chapter 94, Section 3) is amended to read:

8 "59A-46-51. HEALTH MAINTENANCE ORGANIZATIONS--DIRECT
9 SERVICES.--

10 A. A health maintenance organization shall make
11 reimbursement for direct services at a level not less than
12 eighty-five percent of premiums across all health product
13 lines, except individually underwritten health insurance
14 policies, contracts or plans, that are governed by the
15 provisions of Chapter 59A, Article 22 NMSA 1978, the Health
16 Maintenance Organization Law and the Nonprofit Health Care Plan
17 Law. Reimbursement shall be made for direct services provided
18 over the preceding three calendar years, but not earlier than
19 calendar year 2010, as determined by reports filed with the
20 office of superintendent of insurance [~~division of the~~
21 ~~commission~~]. Nothing in this subsection shall be construed to
22 preclude a purchaser from negotiating an agreement with a
23 health maintenance organization that requires a higher amount
24 of premiums paid to be used for reimbursement for direct
25 services for one or more products or for one or more years.

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1 B. For individually underwritten health care
2 policies, plans or contracts, the superintendent shall
3 establish, after notice and informal hearing, the level of
4 reimbursement for direct services, as determined by the reports
5 filed with the office of superintendent of insurance
6 [~~division~~], as a percent of premiums. Additional informal
7 hearings may be held at the superintendent's discretion. In
8 establishing the level of reimbursement for direct services,
9 the superintendent shall consider the costs associated with the
10 individual marketing and medical underwriting of these
11 policies, plans or contracts at a level not less than seventy-
12 five percent of premiums. A health insurer or health
13 maintenance organization writing these policies, plans or
14 contracts shall make reimbursement for direct services at a
15 level not less than that level established by the
16 superintendent pursuant to this subsection over the three
17 calendar years preceding the date upon which that rate is
18 established, but not earlier than calendar year 2010. Nothing
19 in this subsection shall be construed to preclude a purchaser
20 of one of these policies, plans or contracts from negotiating
21 an agreement with a health insurer or health maintenance
22 organization that requires a higher amount of premiums paid to
23 be used for reimbursement for direct services.

24 C. A health maintenance organization that fails to
25 comply with the reimbursement requirements pursuant to this

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1 section shall issue a dividend or credit against future
2 premiums to all policy or contract holders in an amount
3 sufficient to assure that the benefits paid in the preceding
4 three calendar years plus the amount of the dividends or
5 credits are equal to the required direct services reimbursement
6 level pursuant to Subsection A of this section for group health
7 coverage and blanket health coverage or the required direct
8 services reimbursement level pursuant to Subsection B of this
9 section for individually underwritten health policies,
10 contracts or plans for the preceding three calendar years. If
11 the insurer fails to issue the dividend or credit in accordance
12 with the requirements of this section, the superintendent shall
13 enforce these requirements and may pursue any other penalties
14 as provided by law, including general penalties pursuant to
15 Section 59A-1-18 NMSA 1978.

16 D. After notice and hearing, the superintendent may
17 adopt and promulgate reasonable rules necessary and proper to
18 carry out the provisions of this section.

19 E. For the purposes of this section:

20 (1) "direct services" means services rendered
21 to an individual by a health maintenance organization or a
22 health care practitioner, facility or other provider, including
23 case management, disease management, health education and
24 promotion, preventive services, quality incentive payments to
25 providers and any portion of an assessment that covers services

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1 rather than administration and for which an insurer does not
2 receive a tax credit pursuant to the Medical Insurance Pool Act
3 or the Health Insurance Alliance Act; provided, however, that
4 "direct services" does not include care coordination,
5 utilization review or management or any other activity designed
6 to manage utilization or services;

7 (2) "health maintenance organization" means
8 any person who undertakes to provide or arrange for the
9 delivery of basic health care services to enrollees on a
10 prepaid basis, except for enrollee responsibility for
11 copayments or deductibles, but does not include a person that
12 only issues a limited-benefit policy or contract intended to
13 supplement major medical coverage, including medicare
14 supplement, vision, dental, disease-specific, accident-only or
15 hospital indemnity-only insurance policies, or that only issues
16 policies for long-term care or disability income; and

17 (3) "premium" means all income received from
18 individuals and private and public payers or sources for the
19 procurement of health coverage, including capitated payments,
20 self-funded administrative fees, self-funded claim
21 reimbursements, recoveries from third parties or other insurers
22 and interests less any premium tax paid pursuant to Section
23 59A-6-2 NMSA 1978 and fees associated with participating in a
24 health insurance exchange that serves as a clearinghouse for
25 insurance."

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1 SECTION 33. Section 59A-47-46 NMSA 1978 (being Laws 2010,
2 Chapter 94, Section 4) is amended to read:

3 "59A-47-46. HEALTH INSURERS--DIRECT SERVICES.--

4 A. A health care plan shall make reimbursement for
5 direct services at a level not less than eighty-five percent of
6 premiums across all health product lines, except individually
7 underwritten health care policies, contracts or plans, that are
8 governed by the provisions of Chapter 59A, Article 22 NMSA
9 1978, the Health Maintenance Organization Law and the Nonprofit
10 Health Care Plan Law. Reimbursement shall be made for direct
11 services provided over the preceding three calendar years, but
12 not earlier than calendar year 2010, as determined by reports
13 filed with the office of superintendent of insurance [~~division~~
14 ~~of the commission~~]. Nothing in this subsection shall be
15 construed to preclude a purchaser from negotiating an agreement
16 with a health insurer that requires a higher amount of premiums
17 paid to be used for reimbursement for direct services for one
18 or more products or for one or more years.

19 B. For individually underwritten health care
20 policies, plans or contracts, the superintendent shall
21 establish, after notice and informal hearing, the level of
22 reimbursement for direct services as determined as a percent of
23 premiums. Additional hearings may be held at the
24 superintendent's discretion. In establishing the level of
25 reimbursement for direct services, the superintendent shall

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1 consider the costs associated with the individual marketing and
2 medical underwriting of these policies, plans or contracts at a
3 level not less than seventy-five percent of premiums. A health
4 insurer writing these policies, plans or contracts shall make
5 reimbursement for direct services at a level not less than that
6 level established by the superintendent pursuant to this
7 subsection over the three calendar years preceding the date
8 upon which that rate is established, but not earlier than
9 calendar year 2010. Nothing in this subsection shall be
10 construed to preclude a purchaser of one of these policies,
11 plans or contracts from negotiating an agreement with a health
12 insurer that requires a higher amount of premiums paid to be
13 used for reimbursement for direct services.

14 C. A health care plan that fails to comply with the
15 reimbursement requirements pursuant to this section shall issue
16 a dividend or credit against future premiums to all
17 policyholders in an amount sufficient to assure that the
18 benefits paid in the preceding three calendar years plus the
19 amount of the dividends or credits are equal to the required
20 direct services reimbursement level pursuant to Subsection A of
21 this section for group health coverage and blanket health
22 coverage or the required direct services reimbursement level
23 pursuant to Subsection B of this section for individually
24 underwritten health policies, contracts or plans for the
25 preceding three calendar years. If the insurer fails to issue

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1 the dividend or credit in accordance with the requirements of
2 this section, the superintendent shall enforce these
3 requirements and may pursue any other penalties as provided by
4 law, including general penalties pursuant to Section 59A-1-18
5 NMSA 1978.

6 D. After notice and hearing, the superintendent may
7 adopt and promulgate reasonable rules necessary and proper to
8 carry out the provisions of this section.

9 E. For the purposes of this section:

10 (1) "direct services" means services rendered
11 to an individual by a health care plan, health insurer or a
12 health care practitioner, facility or other provider, including
13 case management, disease management, health education and
14 promotion, preventive services, quality incentive payments to
15 providers and any portion of an assessment that covers services
16 rather than administration and for which a health care plan or
17 a health insurer does not receive a tax credit pursuant to the
18 Medical Insurance Pool Act or the Health Insurance Alliance
19 Act; provided, however, that "direct services" does not include
20 care coordination, utilization review or management or any
21 other activity designed to manage utilization or services;

22 (2) "health care plan" means a nonprofit
23 corporation authorized by the superintendent to enter into
24 contracts with subscribers and to make health care expense
25 payments but does not include a person that only issues a

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1 limited-benefit policy intended to supplement major medical
2 coverage, including medicare supplement, vision, dental,
3 disease-specific, accident-only or hospital indemnity-only
4 insurance policies, or that only issues policies for long-term
5 care or disability income; and

6 (3) "premium" means all income received from
7 individuals and private and public payers or sources for the
8 procurement of health coverage, including capitated payments,
9 self-funded administrative fees, self-funded claim
10 reimbursements, recoveries from third parties or other insurers
11 and interests less any premium tax paid pursuant to Section
12 59A-6-2 NMSA 1978 and fees associated with participating in a
13 health insurance exchange that serves as a clearinghouse for
14 insurance."

15 SECTION 34. Section 59A-53-19 NMSA 1978 (being Laws 2006,
16 Chapter 103, Section 8, as amended) is amended to read:

17 "59A-53-19. FIRE PROTECTION GRANT COUNCIL--DUTIES.--

18 A. The "fire protection grant council" is created.
19 Subject to the requirements of Subsection B of this section,
20 the council shall consist of:

21 (1) a representative of the New Mexico
22 municipal league;

23 (2) a representative of the New Mexico
24 association of counties;

25 (3) two members appointed by the public

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1 regulation commission who shall serve at the pleasure of the
2 commission;

3 (4) three members, one from each congressional
4 district, appointed by the governor who shall serve at the
5 pleasure of the governor; and

6 (5) the marshal, who shall serve as a
7 nonvoting advisory member. The council shall elect a chair and
8 vice chair from its membership.

9 B. No appointee to the council shall be a member or
10 employee of the public regulation commission or the office of
11 superintendent of insurance [~~or any other employee of the~~
12 ~~commission~~].

13 C. The public members are entitled to receive per
14 diem and mileage as provided in the Per Diem and Mileage Act
15 and shall receive no other compensation, perquisite or
16 allowance.

17 D. The council shall develop criteria for assessing
18 the critical needs of municipal fire departments and county
19 fire districts for:

- 20 (1) fire apparatus and equipment;
21 (2) communications equipment;
22 (3) equipment for wildfires;
23 (4) fire station construction or expansion;
24 (5) equipment for hazardous material response;

25 and

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1 (6) stipends for volunteer firefighters in
2 underserved areas.

3 E. Applications for grant assistance from the fire
4 protection grant fund shall be made by fire districts to the
5 council in accordance with the requirements of the council.
6 Using criteria developed by the council, the council shall
7 evaluate applications and prioritize those applications most in
8 need of grant assistance from the fund. To the extent that
9 money in the fund is available, the council shall award grant
10 assistance for those prioritized applications.

11 F. In awarding grant assistance, the council may
12 require conditions and procedures necessary to ensure that the
13 money is expended in the most prudent manner.

14 G. When considering applications for grant
15 assistance to pay stipends to volunteer firefighters in
16 underserved areas, the council shall:

- 17 (1) define "underserved area";
- 18 (2) ensure the proposed stipends will comply
19 with the federal Fair Labor Standards Act of 1938 and United
20 States department of labor requirements for maintaining
21 volunteer status;
- 22 (3) require a basic level of training before a
23 volunteer may receive a stipend;
- 24 (4) consider whether the fire district
25 requires a service commitment from its volunteer firefighters

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1 in exchange for stipends; and

2 (5) weight the applications against other
3 criteria or requirements determined by the council."

4 SECTION 35. Section 59A-56-3 NMSA 1978 (being Laws 1994,
5 Chapter 75, Section 3, as amended) is amended to read:

6 "59A-56-3. DEFINITIONS.--As used in the Health Insurance
7 Alliance Act:

8 A. "alliance" means the New Mexico health insurance
9 alliance;

10 B. "approved health plan" means any arrangement for
11 the provisions of health insurance offered through and approved
12 by the alliance;

13 C. "board" means the board of directors of the
14 alliance;

15 D. "child" means a dependent unmarried individual
16 who is less than twenty-five years of age;

17 E. "creditable coverage" means, with respect to an
18 individual, coverage of the individual pursuant to:

19 (1) a group health plan;

20 (2) health insurance coverage;

21 (3) Part A or Part B of Title 18 of the
22 federal Social Security Act;

23 (4) Title 19 of the federal Social Security
24 Act except coverage consisting solely of benefits pursuant to
25 Section 1928 of that title;

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- 1 (5) 10 USCA Chapter 55;
- 2 (6) a medical care program of the Indian
3 health service or of an Indian nation, tribe or pueblo;
- 4 (7) the Medical Insurance Pool Act;
- 5 (8) a health plan offered pursuant to 5 USCA
6 Chapter 89;
- 7 (9) a public health plan as defined in federal
8 regulations; or
- 9 (10) a health benefit plan offered pursuant to
10 Section 5(e) of the federal Peace Corps Act;
- 11 F. "department" means the office of superintendent
12 of insurance [~~division of the commission~~];
- 13 G. "director" means an individual who serves on the
14 board;
- 15 H. "earned premiums" means premiums paid or due
16 during a calendar year for coverage under an approved health
17 plan less any unearned premiums at the end of that calendar
18 year plus any unearned premiums from the end of the immediately
19 preceding calendar year;
- 20 I. "eligible expenses" means the allowable charges
21 for a health care service covered under an approved health
22 plan;
- 23 J. "eligible individual":
- 24 (1) means an individual who:
- 25 (a) as of the date of the individual's

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1 application for coverage under an approved health plan, has an
2 aggregate of eighteen or more months of creditable coverage,
3 the most recent of which was under a group health plan,
4 governmental plan or church plan as those plans are defined in
5 Subsections P, N and D of Section 59A-23E-2 NMSA 1978,
6 respectively, or health insurance offered in connection with
7 any of those plans; but for the purposes of aggregating
8 creditable coverage, a period of creditable coverage shall not
9 be counted with respect to enrollment of an individual for
10 coverage under an approved health plan if, after that period
11 and before the enrollment date, there was a sixty-three-day or
12 longer period during all of which the individual was not
13 covered under any creditable coverage; or

14 (b) is entitled to continuation coverage
15 pursuant to Section 59A-56-20 or 59A-23E-19 NMSA 1978; and

16 (2) does not include an individual who:

17 (a) has or is eligible for coverage
18 under a group health plan;

19 (b) is eligible for coverage under
20 medicare or a state plan under Title 19 of the federal Social
21 Security Act or any successor program;

22 (c) has health insurance coverage as
23 defined in Subsection R of Section 59A-23E-2 NMSA 1978;

24 (d) during the most recent coverage
25 within the coverage period described in Subparagraph (a) of

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1 Paragraph (1) of this subsection was terminated from coverage
2 as a result of nonpayment of premium or fraud; or

3 (e) has been offered the option of
4 coverage under a COBRA continuation provision as that term is
5 defined in Subsection F of Section 59A-23E-2 NMSA 1978, or
6 under a similar state program, except for continuation coverage
7 under Section 59A-56-20 NMSA 1978, and did not exhaust the
8 coverage available under the offered program;

9 K. "enrollment date" means, with respect to an
10 individual covered under a group health plan or health
11 insurance coverage, the date of enrollment of the individual in
12 the plan or coverage or, if earlier, the first day of the
13 waiting period for that enrollment;

14 L. "gross earned premiums" means premiums paid or
15 due during a calendar year for all health insurance written in
16 the state less any unearned premiums at the end of that
17 calendar year plus any unearned premiums from the end of the
18 immediately preceding calendar year;

19 M. "group health plan" means an employee welfare
20 benefit plan to the extent the plan provides hospital, surgical
21 or medical expenses benefits to employees or their dependents,
22 as defined by the terms of the plan, directly through
23 insurance, reimbursement or otherwise;

24 N. "health care service" means a service or product
25 furnished an individual for the purpose of preventing,

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1 alleviating, curing or healing human illness or injury and
2 includes services and products incidental to furnishing the
3 described services or products;

4 O. "health insurance" means "health" insurance as
5 defined in Section 59A-7-3 NMSA 1978; any hospital and medical
6 expense-incurred policy; nonprofit health care plan service
7 contract; health maintenance organization subscriber contract;
8 short-term, accident, fixed-indemnity, specified-disease policy
9 or disability income insurance contracts and limited health
10 benefit or credit health insurance; coverage for health care
11 services under uninsured arrangements of group or group-type
12 contracts, including employer self-insured, cost-plus or other
13 benefits methodologies not involving insurance or not subject
14 to New Mexico premium taxes; coverage for health care services
15 under group-type contracts that are not available to the
16 general public and can be obtained only because of connection
17 with a particular organization or group; or coverage by
18 medicare or other governmental programs providing health care
19 services; but "health insurance" does not include insurance
20 issued pursuant to provisions of the Workers' Compensation Act
21 or similar law, automobile medical payment insurance or
22 provisions by which benefits are payable with or without regard
23 to fault and are required by law to be contained in any
24 liability insurance policy;

25 P. "health maintenance organization" means a health

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1 maintenance organization as defined by Subsection M of Section
2 59A-46-2 NMSA 1978;

3 Q. "incurred claims" means claims paid during a
4 calendar year plus claims incurred in the calendar year and
5 paid prior to April 1 of the succeeding year, less claims
6 incurred previous to the current calendar year and paid prior
7 to April 1 of the current year;

8 R. "insured" means a small employer or its employee
9 and an individual covered by an approved health plan, a former
10 employee of a small employer who is covered by an approved
11 health plan through conversion or an individual covered by an
12 approved health plan that allows individual enrollment;

13 S. "medicare" means coverage under both Parts A and
14 B of Title 18 of the federal Social Security Act;

15 T. "member" means a member of the alliance;

16 U. "nonprofit health care plan" means a health care
17 plan as defined in Subsection K of Section 59A-47-3 NMSA 1978;

18 V. "premiums" means the premiums received for
19 coverage under an approved health plan during a calendar year;

20 W. "small employer" means a person that is a
21 resident of this state, that has employees at least fifty
22 percent of whom are residents of this state, that is actively
23 engaged in business and that, on at least fifty percent of its
24 working days during either of the two preceding calendar years,
25 employed no fewer than two and no more than fifty eligible

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1 employees; provided that:

2 (1) in determining the number of eligible
3 employees, the spouse or dependent of an employee may, at the
4 employer's discretion, be counted as a separate employee;

5 (2) companies that are affiliated companies or
6 that are eligible to file a combined tax return for purposes of
7 state income taxation shall be considered one employer; and

8 (3) in the case of an employer that was not in
9 existence throughout a preceding calendar year, the
10 determination of whether the employer is a small or large
11 employer shall be based on the average number of employees that
12 it is reasonably expected to employ on working days in the
13 current calendar year;

14 [~~X.~~ "superintendent" means the superintendent of
15 insurance;

16 ~~Y.~~ X. "total premiums" means the total premiums
17 for business written in the state received during a calendar
18 year; and

19 [~~Z.~~ Y. "unearned premiums" means the portion of a
20 premium previously paid for which the coverage period is in the
21 future."

22 SECTION 36. Section 59A-56-25 NMSA 1978 (being Laws 1994,
23 Chapter 75, Section 25, as amended) is amended to read:

24 "59A-56-25. EXPANDED SERVICE DEVELOPMENT.--The office of
25 superintendent of insurance [~~division of the commission~~], in

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1 cooperation with the alliance, shall develop a plan to provide
2 health insurance coverage for uninsured children, individuals
3 and other employers, including outreach and technical
4 assistance activities conducted by the alliance to increase
5 employer, employee and public awareness of available health
6 insurance coverage options and to assist employers in securing
7 or retaining health insurance coverage for employees and their
8 dependents."

9 SECTION 37. Section 59A-58-2 NMSA 1978 (being Laws 2001,
10 Chapter 206, Section 2) is amended to read:

11 "59A-58-2. DEFINITIONS.--As used in the Service Contract
12 Regulation Act:

13 A. "administrator" means a person who is
14 responsible for administering a service contract that is
15 issued, sold or offered for sale by a provider;

16 B. "consumer" means a person who purchases, other
17 than for resale, property used primarily for personal, family
18 or household purposes and not for business or research
19 purposes;

20 C. "holder" means a resident of this state who:
21 (1) purchases a service contract; or
22 (2) is legally in possession of a service
23 contract and is entitled to enforce the rights of the original
24 purchaser of the service contract;

25 D. "maintenance agreement" means a contract for a

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1 limited period that provides only for scheduled maintenance;

2 E. "major manufacturing company" means a person
3 who:

4 (1) manufactures or produces and sells
5 products under its own name or label or is a wholly owned
6 subsidiary of the person who manufactures or produces products;
7 and

8 (2) maintains, or its parent company
9 maintains, a net worth or stockholders' equity of at least one
10 hundred million dollars (\$100,000,000);

11 F. "property" means all property, whether movable
12 at the time of purchase or a fixture, that is used primarily
13 for personal, family or household purposes;

14 G. "provider" means a person who is contractually
15 obligated to a holder or to indemnify the holder for the costs
16 of repairing, replacing or performing maintenance on property;

17 H. "service contract" means a contract pursuant to
18 which a provider, in exchange for separately stated
19 consideration, is obligated for a specified period to a holder
20 to repair, replace or perform maintenance on, or indemnify or
21 reimburse the holder for the costs of repairing, replacing or
22 performing maintenance on, property that is described in the
23 service contract and that has an operational or structural
24 failure as a result of a defect in materials, workmanship or
25 normal wear and tear, including:

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1 (1) a contract that includes a provision for
2 incidental payment of indemnity under limited circumstances,
3 including towing, rental and emergency road service and food
4 spoilage; and

5 (2) a contract that provides for the repair,
6 replacement or maintenance of property for damages that result
7 from power surges or accidental damage from handling; and

8 [~~I. "superintendent" means the superintendent of~~
9 ~~insurance of the insurance division of the public regulation~~
10 ~~commission; and~~

11 ~~∫.~~ I. "warranty" means a warranty provided solely
12 by a manufacturer, importer or seller of property for which the
13 manufacturer, importer or seller did not receive separate
14 consideration and that:

15 (1) is not negotiated or separated from the
16 sale of the property;

17 (2) is incidental to the sale of the property;
18 and

19 (3) guarantees to indemnify the consumer for
20 defective parts, mechanical or electrical failure, labor or
21 other remedial measures required to repair or replace the
22 property."

23 **SECTION 38. TEMPORARY PROVISION--TRANSFER OF FUNCTIONS,**
24 **PERSONNEL, APPROPRIATIONS, PROPERTY, RECORDS, CONTRACTS AND**
25 **REFERENCES IN LAW.--On the effective date of this act, all:**

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1 A. staff positions and all money, appropriations,
2 records, furniture, equipment, supplies and other property
3 belonging to the insurance division of the public regulation
4 commission are transferred to the office of superintendent of
5 insurance;

6 B. pending cases, legal actions, appeals and other
7 legal proceedings and all pending administrative proceedings
8 that involve the insurance division of the public regulation
9 commission shall be unaffected and shall continue in the name
10 of the office of superintendent of insurance;

11 C. rules, orders and other official acts of the
12 insurance division of the public regulation commission shall
13 continue in effect until amended, replaced or repealed by the
14 office of superintendent of insurance; and

15 D. references in law, rules, orders and other
16 official acts to the insurance department or the insurance
17 division of the public regulation commission shall be deemed to
18 be references to the office of superintendent of insurance.

19 **SECTION 39. TEMPORARY PROVISION--APPOINTMENTS TO**
20 **INSURANCE NOMINATING COMMITTEE--SUPERINTENDENT SELECTION.--**

21 A. Within fifteen days of the effective date of
22 this act, if it is adopted with an emergency clause, or as soon
23 as practicable otherwise, the governor and the New Mexico
24 legislative council shall appoint their members to the
25 insurance nominating committee.

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B. The insurance nominating committee shall pursue its duties on a foreshortened schedule as necessary to select a superintendent of insurance by July 1, 2013.

SECTION 40. REPEAL.--Sections 8-8-9 and 59A-18-13.4 NMSA 1978 (being Laws 1998, Chapter 108, Section 9 and Laws 2011, Chapter 144, Section 7, as amended) are repealed.

SECTION 41. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.