

1 AN ACT

2 RELATING TO INSURANCE; ENACTING A PRINCIPLE-BASED VERSION OF  
3 THE STANDARD VALUATION LAW; REVISING STANDARD NONFORFEITURE  
4 PROVISIONS TO COMPLY WITH THE PRINCIPLE-BASED VERSION OF THE  
5 STANDARD VALUATION LAW; CLARIFYING THE PROVISIONS OF THE  
6 RISK-BASED CAPITAL ACT AS THEY APPLY TO CERTAIN INSURERS;  
7 SUBJECTING HEALTH ORGANIZATIONS TO THE RISK-BASED CAPITAL  
8 ACT; INCORPORATING TREND TESTS FOR CERTAIN INSURERS IN THE  
9 RISK-BASED CAPITAL ACT; REVISING CERTAIN TRIGGERS FOR  
10 REGULATORY INTERVENTION IN THE RISK-BASED CAPITAL ACT;  
11 CLARIFYING THAT FRATERNAL BENEFIT ORGANIZATIONS ARE SUBJECT  
12 TO THE RISK-BASED CAPITAL ACT; PROVIDING ADDITIONAL TERMS FOR  
13 THE ALLOWANCE OF CREDIT FOR REINSURANCE; CLARIFYING THE  
14 SUPERINTENDENT OF INSURANCE'S ROLE IN RELATIONSHIP WITH  
15 VARIOUS REGULATORY, ENFORCEMENT AND RELATED ENTITIES IN  
16 STATE, FEDERAL AND INTERNATIONAL JURISDICTIONS; CLARIFYING  
17 TERMS OF CONFIDENTIALITY OF CERTAIN INFORMATION UNDER THE  
18 CONTROL OF THE SUPERINTENDENT; INCLUDING ENTERPRISE RISK IN  
19 THE INSURANCE HOLDING COMPANY LAW; REMOVING RESTRICTIONS ON  
20 THE TYPE OF SUBSIDIARIES A DOMESTIC INSURER MAY ORGANIZE OR  
21 ACQUIRE; EXPANDING REGULATORY REQUIREMENTS INVOLVED IN  
22 HOLDING COMPANY TRANSACTIONS; PROVIDING STANDARDS FOR  
23 DETERMINING WHEN AN ACQUISITION WOULD LESSEN COMPETITION;  
24 EXPANDING FACTORS THAT THE SUPERINTENDENT MAY CONSIDER IN  
25 DETERMINING A HAZARDOUS FINANCIAL CONDITION; EXPANDING

1 REQUIREMENTS THAT THE SUPERINTENDENT MAY PLACE ON AN INSURER  
2 IN A HAZARDOUS FINANCIAL CONDITION; REVISING THE DEFINITION  
3 OF "MEMBER INSURER" IN THE LIFE AND HEALTH INSURANCE GUARANTY  
4 ASSOCIATION ACT; CLARIFYING THE PROVISIONS OF REQUIRED  
5 PREMIUM TAX PAYMENTS; PROVIDING PENALTIES.

6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

8 SECTION 1. Section 59A-2-15 NMSA 1978 (being Laws 1984,  
9 Chapter 127, Section 34, as amended) is amended to read:

10 "59A-2-15. INTERSTATE, FEDERAL AND INTERNATIONAL  
11 COOPERATION.--

12 A. On request of the insurance supervisory  
13 official of any other state, province or country; of the  
14 national association of insurance commissioners or similar  
15 association of insurance regulatory officials; or of a  
16 federal agency, the superintendent shall communicate to the  
17 official, association or agency information that it is the  
18 superintendent's duty by law to ascertain respecting an  
19 insurer or other person transacting insurance in this state  
20 or otherwise subject to the superintendent's supervision.

21 B. The superintendent may be a member of the  
22 national association of insurance commissioners or any  
23 successor organization and may participate in and support  
24 cooperative activities of public agencies having supervision  
25 of the insurance business."

1 SECTION 2. Section 59A-5A-2 NMSA 1978 (being Laws 1995,  
2 Chapter 149, Section 2) is amended to read:

3 "59A-5A-2. DEFINITIONS.--As used in the Risk-Based  
4 Capital Act:

5 A. "adjusted risk-based capital report" means a  
6 risk-based capital report adjusted in accordance with  
7 Subsection E of Section 59A-5A-3 NMSA 1978;

8 B. "authorized control level risk-based capital"  
9 means the number determined under the risk-based capital  
10 formula in accordance with the risk-based capital  
11 instructions bearing the same designation;

12 C. "company action level risk-based capital" means  
13 an amount equal to two hundred percent of an insurer's or  
14 health organization's authorized control level risk-based  
15 capital;

16 D. "corrective order" means an order issued by the  
17 superintendent specifying required corrective actions;

18 E. "domestic insurer or health organization" means  
19 an insurer, fraternal benefit society or health organization  
20 domiciled in New Mexico;

21 F. "foreign insurer or health organization" means  
22 an insurer, fraternal benefit society or health organization  
23 that is authorized to do business in New Mexico but is not  
24 domiciled in New Mexico;

25 G. "fraternal benefit society" means an

1 incorporated society, order or supreme lodge, without capital  
2 stock, including one exempted pursuant to the provisions of  
3 Paragraph (2) of Subsection A of Section 59A-44-40 NMSA 1978,  
4 whether incorporated or not, conducted solely for the benefit  
5 of its members and their beneficiaries and not for profit,  
6 operated on a lodge system with ritualistic form of work,  
7 having a representative form of government and that provides  
8 benefits in accordance with Chapter 59A, Article 44 NMSA  
9 1978;

10 H. "health organization" means a health  
11 maintenance organization; nonprofit health care plan; limited  
12 health service organization; dental or vision plan; hospital,  
13 medical and dental indemnity or service corporation; or other  
14 managed care organization, but does not mean an organization  
15 that is licensed as either a life or health insurer or as a  
16 property and casualty insurer and that is otherwise subject  
17 to either the life or property and casualty risk-based  
18 capital requirements;

19 I. "life or health insurer" means any authorized  
20 life insurer, health insurer or property and casualty insurer  
21 writing only health insurance;

22 J. "mandatory control level risk-based capital"  
23 means an amount equal to seventy percent of an insurer's or  
24 health organization's authorized control level risk-based  
25 capital;

1           K. "property and casualty insurer" means any  
2 insurer authorized to write property, marine and  
3 transportation, casualty, vehicle or surety insurance, but  
4 does not include any insurer writing only one of the  
5 following:

- 6                   (1) mortgage guaranty insurance;
- 7                   (2) financial guaranty insurance;
- 8                   (3) title insurance; or
- 9                   (4) health insurance;

10           L. "negative trend" means, with respect to a life  
11 or health insurer or a fraternal benefit society, a negative  
12 trend over a period of time, as determined in accordance with  
13 the trend test calculation included in the life or fraternal  
14 risk-based capital instructions;

15           M. "regulatory action level risk-based capital"  
16 means an amount equal to one hundred fifty percent of an  
17 insurer's or health organization's authorized control level  
18 risk-based capital;

19           N. "revised risk-based capital plan" means a  
20 risk-based capital plan that has been rejected by the  
21 superintendent and revised by the insurer or health  
22 organization, with or without the superintendent's  
23 recommendation;

24           O. "risk-based capital instructions" means the  
25 risk-based capital report, including risk-based capital

1 instructions, adopted by the national association of  
2 insurance commissioners, as they may be amended by the  
3 national association of insurance commissioners from time to  
4 time, and not disapproved by the superintendent;

5 P. "risk-based capital level" means an insurer's  
6 or health organization's company action level risk-based  
7 capital, regulatory action level risk-based capital,  
8 authorized control level risk-based capital or mandatory  
9 control level risk-based capital;

10 Q. "risk-based capital plan" means a comprehensive  
11 financial plan as specified in Subsection B of Section  
12 59A-5A-4 NMSA 1978;

13 R. "risk-based capital report" means the report  
14 specified in Section 59A-5A-3 NMSA 1978; and

15 S. "total adjusted capital" means the sum of:

16 (1) an insurer's or health organization's  
17 capital and surplus as determined in accordance with  
18 statutory accounting principles applicable to annual  
19 financial statements required to be filed under Section  
20 59A-5-29 NMSA 1978; and

21 (2) such other items, if any, as the  
22 risk-based capital instructions may provide."

23 SECTION 3. Section 59A-5A-3 NMSA 1978 (being Laws 1995,  
24 Chapter 149, Section 3) is amended to read:

25 "59A-5A-3. RISK-BASED CAPITAL REPORTS.--

1           A. On or before March 1 each year, every domestic  
2 insurer and health organization shall prepare and submit to  
3 the superintendent a report of its risk-based capital levels  
4 as of December 31 of the immediately preceding calendar year,  
5 in a form and containing such information as is required by  
6 the risk-based capital instructions. In addition, every  
7 domestic insurer and health organization shall file its  
8 risk-based capital report with:

9                   (1) the national association of insurance  
10 commissioners in accordance with the risk-based capital  
11 instructions; and

12                   (2) the insurance commissioner of each state  
13 in which the insurer or health organization is authorized to  
14 do business, if the insurance commissioner for that state has  
15 notified the insurer or health organization of the request in  
16 writing. The insurer or health organization shall file a  
17 copy of its risk-based capital report with each commissioner  
18 not later than March 1 each year or fifteen days from receipt  
19 of the notice, whichever is later.

20           B. A life or health insurer's or a fraternal  
21 benefit society's risk-based capital shall be determined in  
22 accordance with the formula in the risk-based capital  
23 instructions. The formula shall take into account and may  
24 adjust for the covariance among the following factors:

25                   (1) asset risk;

1 (2) the risk of adverse insurance experience  
2 with respect to the insurer's liabilities and obligations;

3 (3) the interest rate risk with respect to  
4 the insurer's business; and

5 (4) all other business risks and other  
6 relevant risks set forth in the risk-based capital  
7 instructions.

8 C. A health organization's or property and  
9 casualty insurer's risk-based capital shall be determined in  
10 accordance with the appropriate formula in the risk-based  
11 capital instructions. The formula shall take into account  
12 and may adjust for the covariance among the following  
13 factors:

14 (1) asset risk;

15 (2) credit risk;

16 (3) underwriting risk; and

17 (4) all other business risks and other  
18 relevant risks set forth in the risk-based capital  
19 instructions.

20 D. Capital in excess of the amount produced by the  
21 risk-based capital requirements contained in the Risk-Based  
22 Capital Act and formulas, schedules and instructions  
23 referenced in the Risk-Based Capital Act is desirable in the  
24 business of insurance. Additional capital is used and useful  
25 in the insurance business and helps to secure an insurer or

1 health organization against various risks inherent in, or  
2 affecting, the business of insurance and not accounted for or  
3 only partially measured by the risk-based capital  
4 requirements contained in the Risk-Based Capital Act.  
5 Accordingly, insurers and health organizations should seek to  
6 maintain capital above the risk-based capital levels required  
7 by that act.

8 E. If a domestic insurer or health organization  
9 files a risk-based capital report that in the  
10 superintendent's judgment is inaccurate, then the  
11 superintendent shall adjust the risk-based capital report to  
12 correct the inaccuracy and shall notify the insurer or health  
13 organization of the adjustment. The notice shall contain a  
14 statement of the reason for the adjustment."

15 SECTION 4. Section 59A-5A-4 NMSA 1978 (being Laws 1995,  
16 Chapter 149, Section 4) is amended to read:

17 "59A-5A-4. COMPANY ACTION LEVEL EVENT.--

18 A. As used in the Risk-Based Capital Act, a  
19 "company action level event" means any of the following  
20 events:

21 (1) the filing of a risk-based capital  
22 report by an insurer or health organization that indicates:

23 (a) that the insurer or health  
24 organization has total adjusted capital greater than or equal  
25 to its regulatory action level risk-based capital but less

1 than its company action level risk-based capital;

2 (b) in the case of a life or health  
3 insurer or fraternal benefit society, that the insurer has  
4 total adjusted capital greater than or equal to its company  
5 action level risk-based capital but less than three hundred  
6 percent of its authorized control level risk-based capital  
7 and has a negative trend;

8 (c) in the case of a property and  
9 casualty insurer, that the insurer has total adjusted capital  
10 greater than or equal to its company action level risk-based  
11 capital but less than three hundred percent of its authorized  
12 control level risk-based capital and triggers the trend test  
13 determined in accordance with the trend test calculation  
14 included in the property and casualty risk-based capital  
15 instructions; or

16 (d) in the case of a health  
17 organization, that the health organization has total adjusted  
18 capital greater than or equal to its company action level  
19 risk-based capital but less than three hundred percent of its  
20 authorized control level risk-based capital and triggers the  
21 trend test determined in accordance with the trend test  
22 calculation included in the health risk-based capital  
23 instructions;

24 (2) the superintendent's notification to an  
25 insurer or health organization that its adjusted risk-based

1 capital report indicates the existence of an event described  
2 in Paragraph (1) of this subsection, unless the insurer or  
3 health organization challenges the adjusted report pursuant  
4 to Section 59A-5A-8 NMSA 1978; or

5 (3) if an insurer or health organization  
6 challenges the adjusted risk-based capital report,  
7 notification to the insurer or health organization that the  
8 superintendent has, after hearing, rejected the challenge.

9 B. In the event of a company action level event,  
10 the insurer or health organization shall prepare and submit  
11 to the superintendent a risk-based capital plan, which shall:

12 (1) identify the conditions that contribute  
13 to the company action level event;

14 (2) contain proposals of corrective actions  
15 that the insurer or health organization intends to take to  
16 eliminate the company action level event;

17 (3) provide projections of the insurer's or  
18 health organization's expected financial results in the  
19 current year and at least the four succeeding years, both in  
20 the absence of and giving effect to the proposed corrective  
21 actions, including projections of statutory operating income,  
22 net income, capital and surplus. Projections for new and  
23 renewal business may, if appropriate, include separate  
24 projections for each major line of business and separately  
25 identify each significant income, expense and benefit

1 component;

2 (4) identify the key assumptions impacting  
3 the insurer's or health organization's projections and the  
4 sensitivity of the projections to the assumptions; and

5 (5) identify the quality of, and problems  
6 associated with, the insurer's or health organization's  
7 business, including its assets, anticipated business growth  
8 and associated surplus strain, extraordinary exposure to  
9 risk, mix of business and use of reinsurance, if any, in each  
10 case.

11 C. The risk-based capital plan shall be submitted  
12 on or before the later of the following dates:

13 (1) forty-five days after the company action  
14 level event; or

15 (2) if the insurer or health organization  
16 challenges the adjusted risk-based capital report pursuant to  
17 Section 59A-5A-8 NMSA 1978, forty-five days after the date of  
18 the notification to the insurer or health organization that  
19 the superintendent has, after hearing, rejected the insurer's  
20 or health organization's challenge.

21 D. Within sixty days after the submission of an  
22 insurer's or health organization's risk-based capital plan,  
23 the superintendent shall notify the insurer or health  
24 organization whether the plan shall be implemented or is, in  
25 the superintendent's judgment, unsatisfactory. If the

1 superintendent determines that the risk-based capital plan is  
2 unsatisfactory, the notification to the insurer or health  
3 organization shall set forth the reasons for the  
4 determination and may set forth proposed revisions that will  
5 render the plan satisfactory. Upon notification, the insurer  
6 or health organization shall prepare a revised risk-based  
7 capital plan, which may incorporate by reference any  
8 revisions proposed by the superintendent, and shall submit  
9 the revised plan to the superintendent. The revised plan  
10 shall be submitted on or before the last of the following  
11 dates:

12 (1) forty-five days after the date of the  
13 superintendent's notification; or

14 (2) if the insurer or health organization  
15 challenges the notification pursuant to Section 59A-5A-8 NMSA  
16 1978, forty-five days after the date of the notification to  
17 the insurer or health organization that the superintendent  
18 has, after hearing, rejected the insurer's or health  
19 organization's challenge.

20 E. A notification that the insurer's or health  
21 organization's risk-based capital plan or revised risk-based  
22 capital plan is unsatisfactory may include a statement that  
23 the notification constitutes a regulatory action level event,  
24 subject to the insurer's or health organization's right to a  
25 hearing pursuant to Section 59A-5A-8 NMSA 1978.

1 F. Every domestic insurer or health organization  
2 that files a risk-based capital plan or revised risk-based  
3 capital plan with the superintendent shall file a copy of the  
4 risk-based capital plan and any revised risk-based capital  
5 plan with the insurance commissioner of each state in which  
6 the insurer or health organization is authorized to do  
7 business if:

8 (1) the state has confidentiality provisions  
9 substantially similar to those in Subsection A of Section  
10 59A-5A-9 NMSA 1978; and

11 (2) the insurance commissioner for that  
12 state has notified the insurer or health organization of the  
13 request in writing. The insurer or health organization shall  
14 file a copy of the risk-based capital plan or revised  
15 risk-based capital plan with each commissioner on or before  
16 the later of the following dates:

17 (a) fifteen days after the receipt of  
18 notice to file a copy of its risk-based capital plan or  
19 revised risk-based capital plan with the state; or

20 (b) the date that the risk-based  
21 capital plan or revised risk-based capital plan is filed  
22 under Subsections C and D of this section."

23 SECTION 5. Section 59A-5A-5 NMSA 1978 (being Laws 1995,  
24 Chapter 149, Section 5) is amended to read:

25 "59A-5A-5. REGULATORY ACTION LEVEL EVENT.--

1           A. For purposes of the Risk-Based Capital Act,  
2 "regulatory action level event" means any of the following  
3 events:

4                   (1) the filing of a risk-based capital  
5 report by an insurer or health organization that indicates  
6 that the insurer's or health organization's total adjusted  
7 capital is greater than or equal to its authorized control  
8 level risk-based capital but less than its regulatory action  
9 level risk-based capital;

10                   (2) the superintendent's notification to an  
11 insurer or health organization that its adjusted risk-based  
12 capital report indicates the existence of an event described  
13 in Paragraph (1) of this subsection, unless the insurer or  
14 health organization challenges the adjusted report pursuant  
15 to Section 59A-5A-8 NMSA 1978;

16                   (3) if an insurer or health organization  
17 challenges the adjusted risk-based capital report,  
18 notification to the insurer or health organization that the  
19 superintendent has, after hearing, rejected the challenge;

20                   (4) an insurer's or health organization's  
21 failure to file a risk-based capital report by the filing  
22 date, unless the insurer or health organization has provided  
23 an explanation satisfactory to the superintendent and has  
24 cured the failure within ten days after the filing date;

25                   (5) an insurer's or health organization's

1 failure to submit a risk-based capital plan to the  
2 superintendent by the date specified in Subsection C of  
3 Section 59A-5A-4 NMSA 1978;

4 (6) the superintendent's notification to an  
5 insurer or health organization that:

6 (a) the risk-based capital plan or  
7 revised risk-based capital plan submitted by the insurer or  
8 health organization is, in the superintendent's judgment,  
9 unsatisfactory; and

10 (b) the notification constitutes a  
11 regulatory action level event with respect to the insurer or  
12 health organization, unless the insurer or health  
13 organization has challenged the determination pursuant to  
14 Section 59A-5A-8 NMSA 1978;

15 (7) if an insurer or health organization  
16 challenges the superintendent's determination made pursuant  
17 to Paragraph (6) of this subsection, notification to the  
18 insurer or health organization that the superintendent has,  
19 after hearing, rejected the challenge;

20 (8) the superintendent's notification to an  
21 insurer or health organization that the insurer or health  
22 organization has failed to adhere to its risk-based capital  
23 plan or revised risk-based capital plan and that the failure  
24 has had or will have a substantial adverse effect on the  
25 ability of the insurer or health organization to eliminate

1 the company action level event, unless the insurer or health  
2 organization has challenged the determination pursuant to  
3 Section 59A-5A-8 NMSA 1978; or

4 (9) if an insurer or health organization  
5 challenges the superintendent's determination made pursuant  
6 to Paragraph (8) of this subsection, notification to the  
7 insurer or health organization that the superintendent has,  
8 after hearing, rejected the challenge.

9 B. In the event of a regulatory action level  
10 event, the superintendent shall:

11 (1) require the insurer or health  
12 organization to prepare and submit a risk-based capital plan  
13 or, if applicable, a revised risk-based capital plan;

14 (2) perform such examination or analysis as  
15 the superintendent deems necessary of the assets, liabilities  
16 and operations of the insurer or health organization,  
17 including a review of its risk-based capital plan or revised  
18 risk-based capital plan; and

19 (3) subsequent to the examination or  
20 analysis, issue an order specifying such corrective actions  
21 as the superintendent determines are required.

22 C. In determining corrective actions, the  
23 superintendent may take into account such factors as are  
24 deemed relevant based upon the superintendent's examination  
25 or analysis of the assets, liabilities and operations of the

1 insurer or health organization, including the results of any  
2 sensitivity tests undertaken pursuant to the risk-based  
3 capital instructions. The risk-based capital plan or revised  
4 risk-based capital plan shall be submitted on or before the  
5 later of the following dates:

6 (1) forty-five days after the occurrence of  
7 the regulatory action level event; or

8 (2) if the insurer or health organization  
9 challenges an adjusted or revised risk-based capital report  
10 or plan pursuant to Section 59A-5A-8 NMSA 1978 and the  
11 challenge is not frivolous in the superintendent's judgment,  
12 forty-five days after notification to the insurer or health  
13 organization that the superintendent has, after hearing,  
14 rejected the insurer's or health organization's challenge.

15 D. The superintendent may retain actuaries and  
16 investment experts and other consultants as the  
17 superintendent deems necessary to review the insurer's or  
18 health organization's risk-based capital plan or revised  
19 risk-based capital plan, examine or analyze the assets,  
20 liabilities and operations of the insurer or health  
21 organization and formulate the corrective order with respect  
22 to the insurer or health organization. The fees, costs and  
23 expenses incurred by consultants shall be paid by the  
24 affected insurer or health organization or such other party  
25 as the superintendent directs."

1 SECTION 6. Section 59A-5A-6 NMSA 1978 (being Laws 1995,  
2 Chapter 149, Section 6) is amended to read:

3 "59A-5A-6. AUTHORIZED CONTROL LEVEL EVENT.--

4 A. As used in the Risk-Based Capital Act,  
5 "authorized control level event" means any of the following  
6 events:

7 (1) the filing of a risk-based capital  
8 report by an insurer or health organization that indicates  
9 that the insurer's or health organization's total adjusted  
10 capital is greater than or equal to its mandatory control  
11 level risk-based capital but less than its authorized control  
12 level risk-based capital;

13 (2) the superintendent's notification to an  
14 insurer or health organization that its adjusted risk-based  
15 capital report indicates the existence of an event described  
16 in Paragraph (1) of this subsection, unless the insurer or  
17 health organization challenges the adjusted report pursuant  
18 to Section 59A-5A-8 NMSA 1978;

19 (3) if an insurer or health organization  
20 challenges the adjusted risk-based capital report,  
21 notification to the insurer or health organization that the  
22 superintendent has, after hearing, rejected the challenge;

23 (4) an insurer's or health organization's  
24 failure to respond, in a manner satisfactory to the  
25 superintendent, to a corrective order unless the insurer or

1 health organization has challenged the order pursuant to  
2 Section 59A-5A-8 NMSA 1978; or

3 (5) if an insurer or health organization has  
4 challenged a corrective order and the superintendent has,  
5 after hearing, rejected the challenge or modified the  
6 corrective order, the failure of the insurer or health  
7 organization to respond, in a manner satisfactory to the  
8 superintendent, to the corrective order subsequent to  
9 rejection or modification.

10 B. In the event of an authorized control level  
11 event with respect to an insurer or health organization, the  
12 superintendent shall:

13 (1) take such actions as are required  
14 pursuant to Section 59A-5A-5 NMSA 1978 regarding an insurer  
15 or health organization with respect to which a regulatory  
16 action level event has occurred; or

17 (2) if the superintendent deems it to be in  
18 the best interests of the insurer's or health organization's  
19 policyholders and creditors and of the public, take such  
20 actions as are necessary to cause the insurer or health  
21 organization to be placed under regulatory control pursuant  
22 to Chapter 59A, Article 41 NMSA 1978. The authorized control  
23 level event constitutes sufficient grounds for the  
24 superintendent to take action pursuant to Chapter 59A,  
25 Article 41 NMSA 1978, and the superintendent has the rights,

1 powers and duties with respect to the insurer or health  
2 organization set forth in Chapter 59A, Article 41 NMSA 1978."

3 SECTION 7. Section 59A-5A-7 NMSA 1978 (being Laws 1995,  
4 Chapter 149, Section 7) is amended to read:

5 "59A-5A-7. MANDATORY CONTROL LEVEL EVENT.--

6 A. As used in the Risk-Based Capital Act,  
7 "mandatory control level event" means any of the following  
8 events:

9 (1) the filing of a risk-based capital  
10 report that indicates that an insurer's or health  
11 organization's total adjusted capital is less than its  
12 mandatory control level risk-based capital;

13 (2) the superintendent's notification to an  
14 insurer or health organization that its adjusted risk-based  
15 capital report indicates the existence of an event described  
16 in Paragraph (1) of this subsection, unless the insurer or  
17 health organization challenges the adjusted report pursuant  
18 to Section 59A-5A-8 NMSA 1978; or

19 (3) if the insurer or health organization  
20 challenges the adjusted risk-based capital report,  
21 notification to the insurer or health organization that the  
22 superintendent has, after hearing, rejected the insurer's or  
23 health organization's challenge.

24 B. In the event of a mandatory control level  
25 event, the superintendent shall:

1 (1) with respect to a life or health  
2 insurer, fraternal benefit society or health organization,  
3 take such actions as are necessary to place the life or  
4 health insurer, fraternal benefit society or health  
5 organization under regulatory control pursuant to Chapter  
6 59A, Article 41 NMSA 1978. In that event, the mandatory  
7 control level event constitutes sufficient grounds for the  
8 superintendent to take action pursuant to Chapter 59A,  
9 Article 41 NMSA 1978, and the superintendent has the rights,  
10 powers and duties with respect to the insurer set forth in  
11 Chapter 59A, Article 41 NMSA 1978. Notwithstanding the  
12 foregoing provisions of this paragraph, the superintendent  
13 may forgo action for up to ninety days after the mandatory  
14 control level event if the superintendent finds that there is  
15 a reasonable expectation that the mandatory control level  
16 event can be eliminated within the ninety-day period; or

17 (2) with respect to a property and casualty  
18 insurer, take such actions as are necessary to place the  
19 insurer under regulatory control pursuant to Chapter 59A,  
20 Article 41 NMSA 1978, or, in the case of an insurer that is  
21 writing no business and that is running off its existing  
22 business, may allow the insurer to continue its run off under  
23 the superintendent's supervision. In either event, the  
24 mandatory control level event constitutes sufficient grounds  
25 for the superintendent to take action pursuant to Chapter

1 59A, Article 41 NMSA 1978, and the superintendent has the  
2 rights, powers and duties with respect to the insurer as are  
3 set forth in Chapter 59A, Article 41 NMSA 1978.

4 Notwithstanding the foregoing provisions of this paragraph,  
5 the superintendent may forgo action for up to ninety days  
6 after the mandatory control level event if the superintendent  
7 finds that there is a reasonable expectation that the  
8 mandatory control level event can be eliminated within the  
9 ninety-day period."

10 SECTION 8. Section 59A-5A-8 NMSA 1978 (being Laws 1995,  
11 Chapter 149, Section 8) is amended to read:

12 "59A-5A-8. CHALLENGE HEARINGS.--Any insurer or health  
13 organization has the right to a confidential administrative  
14 hearing of record in accordance with Chapter 59A, Article 4  
15 NMSA 1978 at which the insurer or health organization may  
16 challenge any determination or action by the superintendent  
17 pursuant to the Risk-Based Capital Act.

18 A. The insurer or health organization shall file  
19 and serve on the superintendent its request for hearing  
20 within five days after any of the following events:

21 (1) the superintendent's notification to the  
22 insurer or health organization of an adjusted risk-based  
23 capital report;

24 (2) the superintendent's notification to the  
25 insurer or health organization that:

1 (a) the insurer's or health  
2 organization's risk-based capital plan or revised risk-based  
3 capital plan is unsatisfactory; and

4 (b) such notification constitutes a  
5 regulatory action level event with respect to the insurer or  
6 health organization;

7 (3) the superintendent's notification to the  
8 insurer or health organization that the insurer or health  
9 organization has failed to adhere to its risk-based capital  
10 plan or revised risk-based capital plan and that such failure  
11 has had or will have a substantial adverse effect on the  
12 ability of the insurer or health organization to eliminate  
13 the company action level event; or

14 (4) the superintendent's notification to an  
15 insurer or health organization of a corrective order with  
16 respect to the insurer or health organization.

17 B. Upon receipt of the insurer's or health  
18 organization's request for hearing, the superintendent shall  
19 set a hearing date, which shall be not less than ten nor more  
20 than thirty days after the date of the insurer's or health  
21 organization's request."

22 SECTION 9. Section 59A-5A-9 NMSA 1978 (being Laws 1995,  
23 Chapter 149, Section 9) is amended to read:

24 "59A-5A-9. CONFIDENTIALITY--PROHIBITION ON  
25 ANNOUNCEMENTS--PROHIBITION ON USE IN RATEMAKING.--

1           A. To the extent not set forth in any other form  
2 accessible to the public, all information in risk-based  
3 capital reports, risk-based capital plans, results or reports  
4 of any examination or analysis of an insurer or health  
5 organization performed exclusively for the purposes required  
6 by the Risk-Based Capital Act and all corrective orders  
7 issued by the superintendent pursuant to such examination or  
8 analysis are and shall be kept confidential by the  
9 superintendent and are not subject to the Inspection of  
10 Public Records Act. Nothing in this section shall be  
11 construed as a grant of privilege or confidentiality or a bar  
12 to production of that information by an insurer in a civil  
13 suit, whether or not the office of superintendent of  
14 insurance is a party.

15           B. To assist in the performance of the  
16 superintendent's duties, the superintendent may:

17           (1) share documents, materials or other  
18 information, including the confidential and privileged  
19 documents, materials or information identified in Subsection  
20 A of this section, with other state, federal and  
21 international regulatory agencies, with the national  
22 association of insurance commissioners, its affiliates or its  
23 subsidiaries and with state, federal and international law  
24 enforcement authorities if the recipient agrees in writing to  
25 maintain the confidentiality and privilege of the documents,

1 materials or other information;

2 (2) receive documents, materials or  
3 information, including otherwise confidential and privileged  
4 documents, materials or information, from the national  
5 association of insurance commissioners, its affiliates or its  
6 subsidiaries and from regulatory and law enforcement  
7 officials of foreign or domestic jurisdictions, except that  
8 the superintendent shall maintain as confidential or  
9 privileged documents, materials or other information received  
10 with notice or the understanding that the content is  
11 confidential or privileged pursuant to the laws of the  
12 jurisdiction from which the information originates; and

13 (3) enter into agreements governing the  
14 sharing and use of information that are consistent with this  
15 subsection.

16 C. The comparison of an insurer's or health  
17 organization's total adjusted capital to any of its  
18 risk-based capital levels is a regulatory tool that may  
19 indicate the need for possible corrective action by the  
20 superintendent with respect to the insurer or health  
21 organization and is not intended as a means to rank insurers  
22 or health organizations generally or to compare insurers or  
23 health organizations for marketing purposes. Use of such  
24 comparisons for such purposes is inherently misleading and  
25 deceptive. Except as otherwise required under the provisions

1 of the Risk-Based Capital Act or applicable law, no insurer,  
2 health organization, agent, broker or other person engaged in  
3 any manner in the business of insurance shall make, publish,  
4 disseminate, circulate or place before the public, or cause,  
5 directly or indirectly, to be made, published, disseminated,  
6 circulated or placed before the public in a newspaper,  
7 magazine or other publication, or in the form of a notice,  
8 circular, pamphlet, letter or poster, or over any radio or  
9 television station, or in any other way, an advertisement,  
10 announcement or statement containing an assertion,  
11 representation or statement with regard to the risk-based  
12 capital levels of any insurer or health organization, or of  
13 any component derived in their calculation; provided,  
14 however, that if any materially false statement with respect  
15 to the comparison regarding an insurer's or health  
16 organization's total adjusted capital to its risk-based  
17 capital levels or an inappropriate comparison of any other  
18 amount to the insurer's or health organization's risk-based  
19 capital levels is published in any written publication and  
20 the insurer or health organization is able to demonstrate to  
21 the superintendent's satisfaction the falsity or  
22 inappropriateness of the statement, then the insurer or  
23 health organization may publish an announcement approved in  
24 advance by the superintendent in a written publication whose  
25 sole purpose is to rebut the materially false statement.

1           D. The risk-based capital instructions, risk-based  
2 capital reports, adjusted risk-based capital reports,  
3 risk-based capital plans and revised risk-based capital plans  
4 are intended solely for use by the superintendent in  
5 monitoring the solvency of insurers and health organizations  
6 and the need for possible corrective action with respect to  
7 insurers and health organizations. They shall not be used by  
8 the superintendent for ratemaking, considered or introduced  
9 as evidence in any rate proceeding or used to calculate or  
10 derive any elements of an appropriate premium level or rate  
11 of return for any line of insurance that an insurer, health  
12 organization or any affiliate is authorized to write."

13           SECTION 10. Section 59A-5A-11 NMSA 1978 (being Laws  
14 1995, Chapter 149, Section 11) is amended to read:

15           "59A-5A-11. FOREIGN INSURERS.--

16           A. Any foreign insurer or health organization  
17 shall, upon the superintendent's written request, submit to  
18 the superintendent a risk-based capital report, as of the end  
19 of the most recent calendar year, on the same date risk-based  
20 capital reports are required to be filed by domestic insurers  
21 and health organizations under the Risk-Based Capital Act or  
22 fifteen days after the request is received by the foreign  
23 insurer or health organization, whichever is later. Any  
24 foreign insurer or health organization shall, upon the  
25 superintendent's written request, promptly submit to the

1 superintendent a copy of any risk-based capital plan filed  
2 with the insurance commissioner of any other state.

3 B. In the event of a company action level event,  
4 regulatory action level event or authorized control level  
5 event with respect to any foreign insurer or health  
6 organization as determined pursuant to the risk-based capital  
7 statute applicable in an insurer's or health organization's  
8 state of domicile, or, if no risk-based capital requirements  
9 are in force in that state, under the provisions of the  
10 Risk-Based Capital Act, the superintendent may require the  
11 foreign insurer or health organization to file a risk-based  
12 capital plan with the superintendent unless the insurance  
13 commissioner of the insurer's or health organization's state  
14 of domicile has previously so required. The failure of the  
15 foreign insurer or health organization to timely file a  
16 risk-based capital plan with the superintendent shall be  
17 grounds to order the insurer or health organization to cease  
18 and desist from writing new insurance business in this state  
19 or to suspend or revoke its certificate of authority.

20 C. In the event of a mandatory control level event  
21 with respect to any foreign insurer or health organization,  
22 the superintendent may proceed in accordance with Subsection  
23 B of Section 59A-5A-7 NMSA 1978."

24 SECTION 11. Section 59A-5A-13 NMSA 1978 (being Laws  
25 1995, Chapter 149, Section 13) is amended to read:

1           "59A-5A-13. NOTICES.--The superintendent's notices to  
2 an insurer or health organization pursuant to the Risk-Based  
3 Capital Act shall be effective upon mailing by certified mail  
4 or, in the case of any other mode of transmission, shall be  
5 effective upon the insurer's or health organization's  
6 receipt."

7           SECTION 12. A new section of the Risk-Based Capital Act  
8 is enacted to read:

9           "SEVERABILITY.--If any part or application of the  
10 Risk-Based Capital Act is held invalid, the remainder or its  
11 application to other situations or persons shall not be  
12 affected."

13           SECTION 13. Section 59A-6-2 NMSA 1978 (being Laws 1984,  
14 Chapter 127, Section 102, as amended) is amended to read:

15           "59A-6-2. PREMIUM TAX--HEALTH INSURANCE PREMIUM  
16 SURTAX.--

17           A. The premium tax provided for in this section  
18 shall apply as to the following taxpayers:

19                   (1) each insurer authorized to transact  
20 insurance in New Mexico;

21                   (2) each insurer formerly authorized to  
22 transact insurance in New Mexico and receiving premiums on  
23 policies remaining in force in New Mexico, except that this  
24 provision shall not apply as to an insurer that withdrew from  
25 New Mexico prior to March 26, 1955;

1 (3) each plan operating under provisions of  
2 Chapter 59A, Articles 46 through 49 NMSA 1978;

3 (4) each property bondsman, as that person  
4 is defined in Section 59A-51-2 NMSA 1978, as to any  
5 consideration received as security or surety for a bail bond  
6 in connection with a judicial proceeding, which consideration  
7 shall be considered "gross premiums" for the purposes of this  
8 section; and

9 (5) each unauthorized insurer that has  
10 assumed a contract or policy of insurance directly or  
11 indirectly from an authorized or formerly authorized insurer  
12 and is receiving premiums on such policies remaining in force  
13 in New Mexico, except that this provision shall not apply if  
14 a ceding insurer continues to pay the tax provided in this  
15 section as to such policy or contract.

16 B. Each such taxpayer shall pay in accordance with  
17 this subsection a premium tax of three and three-thousandths  
18 percent of the gross premiums and membership and policy fees  
19 received or written by it, as reported in Schedule T and  
20 supporting schedules of its annual financial statement on  
21 insurance or contracts covering risks within this state  
22 during the preceding calendar year, less all return premiums,  
23 including dividends paid or credited to policyholders or  
24 contract holders and premiums received for reinsurance on New  
25 Mexico risks.

1           C. In addition to the premium tax imposed pursuant  
2 to Subsection B of this section, each taxpayer described in  
3 Subsection A of this section that transacts health insurance  
4 in New Mexico or is a plan described in Chapter 59A, Article  
5 46 or 47 NMSA 1978 shall pay a health insurance premium  
6 surtax of one percent of the gross health insurance premiums  
7 and membership and policy fees received by it on hospital and  
8 medical expense incurred insurance or contracts; nonprofit  
9 health care service plan contracts, excluding dental or  
10 vision only contracts; and health maintenance organization  
11 subscriber contracts covering health risks within this state  
12 during the preceding calendar year, less all return health  
13 insurance premiums, including dividends paid or credited to  
14 policyholders or contract holders and health insurance  
15 premiums received for reinsurance on New Mexico risks.  
16 Except as provided in this section, all references in the  
17 Insurance Code to the premium tax shall include both the  
18 premium tax and the health insurance premium surtax.

19           D. For each calendar quarter, an estimated payment  
20 of the premium tax and the health insurance premium surtax  
21 shall be made on April 15, July 15, October 15 and the  
22 following January 15. The estimated payments shall be equal  
23 to at least one-fourth of the payment made during the  
24 previous calendar year or one-fifth of the actual payment due  
25 for the current calendar year, whichever is greater. The

1 final adjustment for payments due for the prior year shall be  
2 made with the return, which shall be filed on April 15 of  
3 each year, at which time all taxes for that year are due.  
4 Dividends paid or credited to policyholders or contract  
5 holders and refunds, savings, savings coupons and similar  
6 returns or credits applied or credited to payment of premiums  
7 for existing, new or additional insurance shall, in the  
8 amount so used, constitute premiums subject to tax under this  
9 section for the year in which so applied or credited.

10 E. Exempted from the taxes imposed by this section  
11 are:

12 (1) premiums attributable to insurance or  
13 contracts purchased by the state or a political subdivision  
14 for the state's or political subdivision's active or retired  
15 employees; and

16 (2) payments received by a health  
17 maintenance organization from the federal secretary of health  
18 and human services pursuant to a contract issued under the  
19 provisions of 42 U.S.C. Section 1395 mm(g)."

20 SECTION 14. Section 59A-7-11 NMSA 1978 (being Laws  
21 1984, Chapter 127, Section 117, as amended) is amended to  
22 read:

23 "59A-7-11. REINSURANCE.--

24 A. An insurer may reinsure all or any part of a  
25 particular risk or of a particular class of risks in another

1 insurer, or accept such reinsurance from another insurer. No  
2 domestic insurer shall so reinsure with an insurer not  
3 authorized to transact insurance in New Mexico unless the  
4 unauthorized insurer is authorized to transact insurance in  
5 another state and conforms to the same standards of solvency  
6 as would be required if at the time such reinsurance is  
7 effected the reinsurer was so authorized in New Mexico or  
8 unless, in the case of a group that includes incorporated and  
9 individual, unincorporated alien insurers, it has assets held  
10 in trust for the benefit of its United States policyholders  
11 in an amount not less than one hundred million dollars  
12 (\$100,000,000) and is authorized to transact insurance in at  
13 least one state or unless with the superintendent's approval  
14 in advance. With the superintendent's approval, a domestic  
15 insurer may reinsure all or substantially all of its risks in  
16 another insurer, or similarly reinsure the risks of another  
17 insurer, as provided in Section 59A-34-40 NMSA 1978.

18 B. Credit for reinsurance shall be allowed as an  
19 asset or as a deduction from liability to any ceding insurer  
20 for reinsurance lawfully ceded only when the reinsurance is  
21 payable by the assuming insurer on the basis of the liability  
22 of the ceding insurer under the contracts reinsured without  
23 diminution because of the insolvency of the ceding insurer  
24 directly to the ceding insurer or to its domiciliary  
25 liquidator or receiver, except where the assuming insurer

1 with the consent of the direct insured or insureds has  
2 assumed such policy obligations of the ceding insurer as  
3 direct obligations of the assuming insurer to the payees  
4 under such policies and in substitution for the obligations  
5 of the ceding insurer to such payees, and the reinsurer meets  
6 the requirements of Paragraph (1), (2), (3), (4), (5) or (6)  
7 of this subsection. If meeting the requirements of Paragraph  
8 (3) or (4) of this subsection, the requirements of Paragraph  
9 (7) of this subsection shall also be met. Credit shall be  
10 allowed pursuant to Paragraph (1), (2) or (3) of this  
11 subsection only for cessions of those kinds or classes of  
12 business that the assuming insurer is licensed or otherwise  
13 permitted to write or assume in its state of domicile or, in  
14 the case of a United States branch of an alien assuming  
15 insurer, in the state through which it is entered and  
16 licensed to transact insurance or reinsurance.

17 (1) Credit shall be allowed when the  
18 reinsurance is ceded to an assuming insurer authorized to  
19 transact insurance or reinsurance in New Mexico.

20 (2) Credit shall be allowed when the  
21 reinsurance is ceded to an assuming insurer accredited as a  
22 reinsurer in New Mexico. An accredited reinsurer is one  
23 that:

24 (a) files with the superintendent  
25 evidence of its submission to New Mexico's jurisdiction;

1 (b) submits to New Mexico's authority  
2 to examine its books and records;

3 (c) is licensed to transact insurance  
4 or reinsurance in at least one state or, in the case of a  
5 United States branch of an alien assuming insurer, is entered  
6 through and licensed to transact insurance or reinsurance in  
7 at least one state; and

8 (d) files annually with the  
9 superintendent a copy of its annual statement filed with the  
10 insurance department of its state of domicile and a copy of  
11 its most recent audited financial statement and demonstrates  
12 to the satisfaction of the superintendent that it has  
13 adequate financial capacity to meet its reinsurance  
14 obligations and is otherwise qualified to assume reinsurance  
15 from domestic insurers. An assuming insurer is deemed to  
16 meet this requirement at the time of its application if it  
17 maintains a surplus for policyholders in an amount not less  
18 than twenty million dollars (\$20,000,000) and its  
19 accreditation has not been denied by the superintendent  
20 within ninety days after the submission of its application.

21 (3) Credit shall be allowed when the  
22 reinsurance is ceded to an assuming insurer domiciled in or,  
23 in the case of a United States branch of an alien assuming  
24 insurer, is entered through, a state that employs standards  
25 for credit for reinsurance substantially similar to those

1 provided in this section if the assuming insurer or United  
2 States branch of an alien assuming insurer:

3 (a) maintains a surplus as regards  
4 policyholders in an amount not less than twenty million  
5 dollars (\$20,000,000), unless the reinsurance is ceded and  
6 assumed pursuant to pooling arrangements among insurers in  
7 the same holding company system; and

8 (b) submits to New Mexico's authority  
9 to examine the insurer's books and records.

10 (4) Credit shall be allowed when the  
11 reinsurance is ceded to an assuming insurer that maintains a  
12 trust in a qualified United States financial institution, as  
13 defined in Paragraph (2) of Subsection D of this section, for  
14 the payment of the valid claims of its United States  
15 policyholders and ceding insurers, their assigns and  
16 successors in interest. The assuming insurer shall report  
17 annually to the superintendent information substantially the  
18 same as that required to be reported on the national  
19 association of insurance commissioners annual statement form  
20 by licensed insurers to enable the superintendent to  
21 determine the sufficiency of the trust and shall submit to  
22 and bear the expense of the examination of its books and  
23 records by the superintendent. Credit for reinsurance shall  
24 not be granted pursuant to this paragraph unless the trust  
25 and amendments to the trust have been approved by the

1 insurance supervisory official of the state in which the  
2 trust is domiciled or the insurance supervisory official of  
3 another state who, pursuant to the terms of the trust, has  
4 accepted principal regulatory oversight of the trust. The  
5 trust and every trust amendment shall be filed with the  
6 superintendent and with the insurance supervisory official of  
7 every state in which the ceding insurer beneficiaries of the  
8 trust are domiciled. The trust shall provide that contested  
9 claims be valid and enforceable upon the final order of a  
10 court of competent jurisdiction in the United States. The  
11 trust shall vest legal title to its assets in its trustees  
12 for the benefit of the assuming insurer's United States  
13 ceding insurers, their assigns and successors in interest and  
14 shall remain in effect for as long as the assuming insurer  
15 has an outstanding obligation due pursuant to the reinsurance  
16 agreements subject to the trust. The superintendent may  
17 examine the trust and the assuming insurer. No later than  
18 February 28 of each year, the trustee of the trust shall  
19 report in writing to the superintendent the balance of the  
20 trust and a list of the trust's investments at the preceding  
21 year's end and certify the date of termination of the trust,  
22 if planned, or that the trust will not expire prior to the  
23 following December 31.

24 (a) For a single assuming insurer, the  
25 trust shall consist of a trusteed account representing the

1 assuming insurer's liabilities attributable to business  
2 written in the United States, and, in addition, the assuming  
3 insurer shall maintain a trusted surplus of not less than  
4 twenty million dollars (\$20,000,000).

5 (b) At any time after a single assuming  
6 insurer has permanently discontinued underwriting new  
7 business secured by the trust for at least three years and  
8 after a finding based on an assessment of the risk that the  
9 new required surplus level, in light of reasonably  
10 foreseeable adverse loss development, is adequate for the  
11 protection of United States ceding insurers, policyholders  
12 and claimants, the insurance supervisory official with  
13 principal regulatory oversight of the trust may authorize a  
14 reduction in the required trusted surplus. The risk  
15 assessment may involve an actuarial review, including an  
16 independent analysis of reserves and cash flows, and shall  
17 consider all material risk factors, including when applicable  
18 the lines of business involved, the stability of the incurred  
19 loss estimates and the effect of the surplus requirements on  
20 the assuming insurer's liquidity or solvency. The minimum  
21 required trusted surplus shall not be reduced to less than  
22 thirty percent of the assuming insurer's liabilities  
23 attributable to reinsurance ceded by United States ceding  
24 insurers covered by the trust.

25 (c) For a group that includes

1 incorporated and individual unincorporated underwriters, the  
2 trust shall consist of a trustee account representing the  
3 group's liabilities attributable to business written in the  
4 United States and, in addition, the group shall maintain a  
5 trustee surplus of which one hundred million dollars  
6 (\$100,000,000) shall be held jointly for the benefit of  
7 United States ceding insurers of any member of the group for  
8 all years of account; provided that the group shall make  
9 available to the superintendent an annual certification of  
10 the solvency of each underwriter by the group's domiciliary  
11 regulator and its independent public accounts; and provided  
12 further that the incorporated members of the group shall not  
13 engage in any business other than underwriting as a member of  
14 the group and shall be subject to the same level of solvency  
15 regulation and control by the group's domiciliary regulator  
16 as are the unincorporated members.

17 (d) A group of incorporated insurers  
18 under common administration shall: 1) have continuously  
19 transacted an insurance business outside the United States  
20 for at least three years immediately prior to making  
21 application for accreditation; 2) maintain aggregate  
22 policyholders' surplus of at least ten billion dollars  
23 (\$10,000,000,000); 3) maintain a trust fund in an amount not  
24 less than the group's several liabilities attributable to  
25 business ceded by United States ceding insurers to any member

1 of the group pursuant to reinsurance contracts issued in the  
2 name of such group; and 4) maintain a joint trustee surplus  
3 of which one hundred million dollars (\$100,000,000) is held  
4 jointly and exclusively for the benefit of the United States  
5 ceding insurers of any member of the group as additional  
6 security for any such liabilities. Each member of the group  
7 shall make available to the superintendent an annual  
8 certification of the member's solvency by the member's  
9 domiciliary regulator and its independent public accountant.

10 (5) Credit shall be allowed when the  
11 reinsurance is ceded to an assuming insurer that has been  
12 certified by the superintendent as a reinsurer in New Mexico  
13 and that secures its obligations in accordance with the  
14 requirements of this paragraph.

15 (a) To be eligible for certification,  
16 an assuming insurer shall: 1) be domiciled and licensed to  
17 transact insurance or reinsurance in a qualified  
18 jurisdiction, pursuant to Subparagraph (c) of this paragraph;  
19 2) maintain minimum capital and surplus, or its equivalent,  
20 in an amount to be determined by the superintendent pursuant  
21 to rule; 3) maintain financial strength ratings from two or  
22 more rating agencies deemed acceptable by the superintendent  
23 pursuant to rule; 4) agree to submit to the jurisdiction of  
24 New Mexico, appoint the superintendent as its agent for  
25 service of process in New Mexico and agree to provide

1 security for one hundred percent of the assuming insurer's  
2 liabilities attributable to reinsurance ceded by United  
3 States ceding insurers if it resists enforcement of a final  
4 United States judgment; 5) in an initial application for  
5 certification and on an ongoing basis, agree to meet  
6 applicable information-filing requirements, as determined by  
7 the superintendent; and 6) satisfy other requirements for  
8 certification that the superintendent deems relevant.

9 (b) To be eligible for certification,  
10 an association that includes incorporated and individual  
11 unincorporated underwriters shall: 1) satisfy the  
12 requirements of Subparagraph (a) of this paragraph;  
13 2) satisfy its minimum capital and surplus requirements  
14 through the capital and surplus equivalents, net of  
15 liabilities, of the association and its members, which shall  
16 include a joint central fund that may be applied to an  
17 unsatisfied obligation of the association or any of its  
18 members, in an amount determined by the superintendent to  
19 provide adequate protection; 3) not have incorporated members  
20 who engage in a business other than underwriting as a member  
21 of the association and who are subject to the same level of  
22 regulation and solvency control by the association's  
23 domiciliary regulator as the unincorporated members; and 4)  
24 within ninety days after its financial statements must be  
25 filed with the association's domiciliary regulator, provide

1 to the superintendent an annual certification by the  
2 association's domiciliary regulator of the solvency of each  
3 underwriter member or if a certification is unavailable,  
4 provide to the superintendent financial statements, prepared  
5 by independent public accountants, of each underwriter member  
6 of the association.

7 (c) The superintendent shall create and  
8 publish a list of qualified jurisdictions in which an  
9 assuming insurer licensed and domiciled in the jurisdiction  
10 is eligible to be considered by the superintendent for  
11 certification as a reinsurer. 1) In creating the list of  
12 qualified jurisdictions, the superintendent shall evaluate  
13 the appropriateness and effectiveness of the reinsurance  
14 supervisory system of the jurisdiction, initially and on an  
15 ongoing basis, and the rights, benefits and extent of  
16 reciprocal recognition afforded by the alien jurisdiction to  
17 reinsurers licensed and domiciled in the United States. The  
18 superintendent may consider additional factors. A  
19 jurisdiction shall not be recognized as a qualified  
20 jurisdiction if it does not agree to share information and  
21 cooperate with the superintendent with respect to all  
22 certified reinsurers domiciled within that jurisdiction. A  
23 jurisdiction shall not be recognized as a qualified  
24 jurisdiction if the superintendent has determined that a  
25 jurisdiction does not adequately and promptly enforce final

1 United States judgments and arbitration awards. 2) The  
2 superintendent shall consider the list of qualified  
3 jurisdictions published through the national association of  
4 insurance commissioners' committee process in determining  
5 qualified jurisdictions. If the superintendent recognizes as  
6 qualified a jurisdiction that does not appear on the list of  
7 qualified jurisdictions, the superintendent shall provide  
8 thoroughly documented justification in accordance with  
9 criteria developed by rule. 3) United States jurisdictions  
10 that meet the requirement for accreditation pursuant to the  
11 national association of insurance commissioners' financial  
12 standards and accreditation program shall be recognized as  
13 qualified jurisdictions. 4) If a certified reinsurer's  
14 domiciliary jurisdiction ceases to be a qualified  
15 jurisdiction, the superintendent may suspend the reinsurer's  
16 certification indefinitely in lieu of revocation.

17 (d) The superintendent shall consider  
18 the financial strength ratings that have been assigned by  
19 rating agencies deemed acceptable to the superintendent  
20 pursuant to rule and assign a rating to each certified  
21 reinsurer. The superintendent shall publish a list of all  
22 certified reinsurers and their ratings.

23 (e) A certified reinsurer shall secure  
24 obligations assumed from United States ceding insurers  
25 pursuant to this subsection at a level consistent with its

1 rating, as specified in rules promulgated by the  
2 superintendent. 1) In order for a domestic ceding insurer to  
3 qualify for full financial statement credit for reinsurance  
4 ceded to a certified reinsurer, the certified reinsurer shall  
5 maintain security in a form acceptable to the superintendent  
6 and consistent with the provisions of Subsection C of this  
7 section, or in a multi-beneficiary trust in accordance with  
8 Paragraph (4) of this subsection, except as otherwise  
9 provided in this subsection. 2) If a certified reinsurer  
10 maintains a trust to fully secure its obligations pursuant to  
11 Paragraph (4) of this subsection and secures its obligations  
12 incurred as a certified reinsurer in the form of a  
13 multi-beneficiary trust, the certified reinsurer shall  
14 maintain separate trust accounts for its obligations incurred  
15 pursuant to reinsurance agreements issued or renewed as a  
16 certified reinsurer with reduced security as permitted by  
17 this subsection or comparable laws of other United States  
18 jurisdictions and for its obligations pursuant to Paragraph  
19 (4) of this subsection. To be certified pursuant to  
20 Paragraph (5) of this subsection, a certified reinsurer shall  
21 have bound itself, by the language of the trust and by  
22 agreement with the insurance supervisory official with  
23 principal regulatory oversight of each such trust account, to  
24 fund, upon termination of that trust account, out of the  
25 remaining surplus of the trust any deficiency of any other

1 such trust account. 3) The minimum trustee surplus  
2 requirements provided in Paragraph (4) of this subsection do  
3 not apply to a multi-beneficiary trust maintained by a  
4 certified reinsurer for the purpose of securing obligations  
5 incurred pursuant to this subsection if that  
6 multi-beneficiary trust maintains a minimum trustee surplus  
7 of ten million dollars (\$10,000,000). 4) If the security for  
8 obligations incurred by a certified reinsurer pursuant to  
9 this subsection is insufficient, the superintendent shall  
10 reduce the allowable credit by an amount proportionate to the  
11 deficiency and may, upon a finding of material risk that the  
12 certified reinsurer's obligations will not be paid in full  
13 when due, impose further reductions in allowable credit.  
14 5) For the purposes of this paragraph, a certified reinsurer  
15 whose certification has been terminated for any reason shall  
16 be treated as a certified reinsurer required to secure one  
17 hundred percent of its obligations. If the superintendent  
18 continues to assign a higher rating as permitted by other  
19 provisions of this section, this requirement does not apply  
20 to a certified reinsurer in inactive status or to a reinsurer  
21 whose certification has been suspended. As used in this  
22 subparagraph, "terminated" means revocation, suspension,  
23 voluntary surrender or inactive status.

24 (f) If an applicant for certification  
25 has been certified as a reinsurer in a jurisdiction

1 accredited by the national association of insurance  
2 commissioners, the superintendent may defer to that  
3 jurisdiction's certification and to the rating assigned by  
4 that jurisdiction, and the assuming insurer shall be  
5 considered a certified reinsurer in New Mexico.

6 (g) To continue to qualify for a  
7 reduction in security for its in-force business, a certified  
8 reinsurer that ceases to assume new business in New Mexico  
9 may request that it maintain its certification in inactive  
10 status. An inactive, certified reinsurer shall comply with  
11 all applicable requirements of this subsection, and the  
12 superintendent shall assign a rating that reflects, if  
13 relevant, the reason that the reinsurer is not assuming new  
14 business.

15 (6) Credit shall be allowed when the  
16 reinsurance is ceded to an assuming insurer not meeting the  
17 requirements of Paragraph (1), (2), (3), (4) or (5) of this  
18 subsection but only with respect to the insurance of risks  
19 located in jurisdictions where such reinsurance is required  
20 by applicable law or regulation of that jurisdiction.

21 (7) If the assuming insurer is not licensed,  
22 accredited or certified to transact insurance or reinsurance  
23 in New Mexico, the credit permitted by Paragraphs (3) and (4)  
24 of this subsection shall not be allowed unless the assuming  
25 insurer agrees in the reinsurance agreements:

1 (a) that in the event of the failure of  
2 the assuming insurer to perform its obligations under the  
3 terms of the reinsurance agreement, the assuming insurer, at  
4 the request of the ceding insurer, shall submit to the  
5 jurisdiction of any court of competent jurisdiction in any  
6 state of the United States, will comply with all requirements  
7 necessary to give such court jurisdiction and will abide by  
8 the final decision of such court or of any appellate court in  
9 the event of an appeal; and

10 (b) to designate the superintendent or  
11 a designated attorney as its true and lawful attorney upon  
12 whom may be served any lawful process in any action, suit or  
13 proceeding instituted by or on behalf of the ceding company.  
14 This provision is not intended to conflict with or override  
15 the obligation of the parties to a reinsurance agreement to  
16 arbitrate their disputes, if such an obligation is created in  
17 the agreement.

18 (8) If an assuming insurer does not meet the  
19 requirements of Paragraph (1), (2) or (3) of this subsection,  
20 the insurer shall not receive the credit permitted by  
21 Paragraph (4) or (5) of this subsection unless the assuming  
22 insurer agrees in the trust to the following conditions:

23 (a) notwithstanding any other provision  
24 in the trust, if the trust is inadequate because it contains  
25 an amount less than the amount required by Paragraph (4) of

1 this subsection, or if the grantor of the trust has been  
2 declared insolvent or placed into receivership,  
3 rehabilitation, liquidation or similar proceeding pursuant to  
4 the laws of its state or country of domicile, the trustee  
5 shall comply with an order of either the superintendent or  
6 the insurance supervisory official with regulatory oversight  
7 over the trust or of a court of competent jurisdiction  
8 directing the trustee to transfer to the superintendent or  
9 the insurance supervisory official with regulatory oversight  
10 all of the assets of the trust fund;

11 (b) in accordance with the laws of the  
12 state in which the trust is domiciled that apply to the  
13 liquidation of domestic insurance companies, claims are filed  
14 with the superintendent or the insurance supervisory official  
15 with regulatory oversight, who will value the claim and  
16 distribute the assets;

17 (c) if the superintendent or the  
18 insurance supervisory official with regulatory oversight  
19 determines that the assets of the trust fund or any part of  
20 the trust fund are not necessary to satisfy the claims of the  
21 United States ceding insurers of the grantor of the trust,  
22 the assets or a part thereof will be returned by the  
23 superintendent or the insurance supervisory official with  
24 regulatory oversight to the trustee for distribution in  
25 accordance with the trust; and

1 (d) the grantor will waive any right  
2 otherwise available to it pursuant to federal law that is  
3 inconsistent with the provisions of this paragraph.

4 (9) If an accredited or certified reinsurer  
5 ceases to meet the requirements for accreditation or  
6 certification, the superintendent may suspend or revoke the  
7 reinsurer's accreditation or certification.

8 (a) The superintendent shall give the  
9 reinsurer notice and the opportunity for a hearing. The  
10 suspension or revocation shall not take effect until after  
11 the superintendent delivers an order on the hearing, unless:  
12 1) the reinsurer waives its right to a hearing; 2) the  
13 superintendent's order is based on regulatory action by the  
14 reinsurer's domiciliary jurisdiction or the voluntary  
15 surrender or termination of the reinsurer's eligibility to  
16 transact insurance or reinsurance business in its domiciliary  
17 jurisdiction or in the primary certifying state of the  
18 reinsurer pursuant to Subparagraph (f) of Paragraph (5) of  
19 this subsection; or 3) the superintendent finds that an  
20 emergency requires immediate action and a court of competent  
21 jurisdiction has not stayed the superintendent's action.

22 (b) While a reinsurer's accreditation  
23 or certification is suspended, no reinsurance contract issued  
24 or renewed after the effective date of the suspension shall  
25 qualify for credit except to the extent that the reinsurer's

1 obligations pursuant to the contract are secured in  
2 accordance with Subsection C of this section. If a  
3 reinsurer's accreditation or certification is revoked, no  
4 credit for reinsurance shall be granted after the effective  
5 date of the revocation except to the extent that the  
6 reinsurer's obligations pursuant to the contract are secured  
7 in accordance with either Subparagraph (e) of Paragraph (5)  
8 of this subsection or Subsection C of this section.

9 (10) A ceding insurer shall attempt to  
10 manage its reinsurance recoverables in proportion to its book  
11 of business. Within thirty days after one of the following  
12 events, a domestic ceding insurer shall notify the  
13 superintendent of the event and, in the notification,  
14 demonstrate that the domestic ceding insurer is safely  
15 managing the exposure:

16 (a) reinsurance recoverables from any  
17 single assuming insurer or group of affiliated assuming  
18 insurers exceed fifty percent of the domestic ceding  
19 insurer's last reported surplus to policyholders; or

20 (b) reinsurance recoverables from any  
21 single assuming insurer, or group of affiliated assuming  
22 insurers, are likely to exceed fifty percent of the domestic  
23 ceding insurer's last reported surplus to policyholders.

24 (11) A ceding insurer shall attempt to  
25 diversify its reinsurance program. Within thirty days after

1 one of the following events, a domestic ceding insurer shall  
2 notify the superintendent of the event and, in the  
3 notification, demonstrate that the domestic ceding insurer is  
4 safely managing the exposure:

5 (a) ceding to any single assuming  
6 insurer or group of affiliated assuming insurers more than  
7 twenty percent of the ceding insurer's gross written premium  
8 in the prior calendar year; or

9 (b) reinsurance ceded to a single  
10 assuming insurer or group of affiliated assuming insurers is  
11 likely to exceed twenty percent of the ceding insurer's gross  
12 written premium in the prior calendar year.

13 C. An asset or a reduction from liability for the  
14 reinsurance ceded by an insurer to an assuming insurer not  
15 meeting the requirements of Subsection B of this section  
16 shall be allowed in an amount not exceeding the liabilities  
17 carried by the ceding insurer and such reduction shall be in  
18 the amount of funds held by or on behalf of the ceding  
19 insurer, including funds held in trust for the ceding  
20 insurer, under a reinsurance contract with such assuming  
21 insurer as security for the payment of obligations  
22 thereunder, if such security is held in the United States  
23 subject to withdrawal solely by, and under the exclusive  
24 control of, the ceding insurer; or, in the case of a trust,  
25 held in a qualified United States financial institution, as

1 defined in Paragraph (2) of Subsection D of this section.

2 This security may be in the form of:

3 (1) cash;

4 (2) securities listed by the securities  
5 valuation office of the national association of insurance  
6 commissioners, including those deemed exempt from filing as  
7 defined by the purposes and procedures manual of the  
8 securities valuation office, and qualifying as admitted  
9 assets;

10 (3) clean, irrevocable, unconditional  
11 letters of credit, issued or confirmed by a qualified United  
12 States financial institution, as defined in Paragraph (1) of  
13 Subsection D of this section, no later than December 31 in  
14 respect of the year for which filing is being made, and in  
15 the possession of the ceding company on or before the filing  
16 date of its annual statement. Letters of credit meeting  
17 applicable standards of issuer acceptability as of the dates  
18 of their issuance or confirmation shall, notwithstanding the  
19 issuing or confirming institution's subsequent failure to  
20 meet applicable standards of issuer acceptability, continue  
21 to be acceptable as security until their expiration,  
22 extension, renewal, modification or amendment, whichever  
23 first occurs; or

24 (4) any other form of security acceptable to  
25 the superintendent.

1 D. A "qualified United States financial  
2 institution" means:

3 (1) for purposes of Paragraph (3) of  
4 Subsection C of this section, an institution that:

5 (a) is organized or, in the case of a  
6 United States office of a foreign banking organization,  
7 licensed under the laws of the United States or any state  
8 thereof;

9 (b) is regulated, supervised and  
10 examined by United States federal or state authorities having  
11 regulatory authority over banks and trust companies; and

12 (c) has been determined by either the  
13 superintendent or the securities valuation office of the  
14 national association of insurance commissioners to meet such  
15 standards of financial condition and standing as are  
16 considered necessary and appropriate to regulate the quality  
17 of financial institutions whose letters of credit are  
18 acceptable to the superintendent; and

19 (2) for purposes of those provisions of this  
20 section specifying those institutions that are eligible to  
21 act as a fiduciary of a trust, an institution that:

22 (a) is organized or, in the case of a  
23 United States branch or agency office of a foreign banking  
24 organization, licensed under the laws of the United States or  
25 any state thereof and has been granted authority to operate

1 with fiduciary powers; and

2 (b) is regulated, supervised and  
3 examined by federal or state authorities having regulatory  
4 authority over banks and trust companies.

5 E. No insurer shall accept reinsurance of risk of  
6 any kind of insurance that it is not authorized to transact  
7 directly in New Mexico, if an authorized insurer, or in  
8 another state if the insurer does not hold a certificate of  
9 authority in New Mexico.

10 F. Upon the superintendent's request, an insurer  
11 shall furnish the superintendent with copies of its  
12 reinsurance treaties then in effect and promptly inform the  
13 superintendent in writing of cancellation or other material  
14 change in its reinsurance treaties or arrangements.

15 G. No person shall have any rights against the  
16 reinsurer that are not expressly stated in the reinsurance  
17 contract or in a written agreement between such person and  
18 the reinsurer.

19 H. This section does not apply to wet marine and  
20 transportation insurance."

21 SECTION 15. A new Section 59A-8A-1 NMSA 1978 is enacted  
22 to read:

23 "59A-8A-1. SHORT TITLE.--Chapter 59A, Article 8A  
24 NMSA 1978 may be cited as the "Standard Valuation Law"."

25 SECTION 16. A new Section 59A-8A-2 NMSA 1978 is enacted

1 to read:

2 "59A-8A-2. DEFINITIONS.--As used in the Standard  
3 Valuation Law:

4 A. "accident and health insurance" means a policy  
5 that reflects morbidity risk and provides protection against  
6 economic loss resulting from an accident, a sickness or a  
7 medical condition and includes policies identified by the  
8 valuation manual as accident and health insurance;

9 B. "appointed actuary" means a qualified actuary  
10 who is appointed pursuant to the valuation manual to prepare  
11 the actuarial opinion required by Section 59A-8A-5 NMSA 1978;

12 C. "company" means an entity that has written,  
13 issued or reinsured life insurance contracts, accident and  
14 health insurance contracts or deposit-type contracts in New  
15 Mexico and has at least one contract for a life insurance,  
16 accident and health insurance or deposit-type policy in force  
17 or on claim or an entity that has written, issued or  
18 reinsured life insurance contracts, accident and health  
19 insurance contracts or deposit-type contracts in any state  
20 and is required to hold a certificate of authority to write  
21 life insurance, accident and health insurance or deposit-type  
22 contracts in New Mexico;

23 D. "deposit-type contract" means a contract that  
24 does not reflect mortality or morbidity risks and includes  
25 contracts identified by the valuation manual as deposit-type

1 contracts;

2 E. "life insurance" means a policy that reflects  
3 mortality risk and includes annuity policies, pure endowment  
4 policies and policies identified by the valuation manual as  
5 life insurance;

6 F. "operative date of the valuation manual" means  
7 the January 1 of the first calendar year following the first  
8 July 1 after which the following have occurred:

9 (1) the valuation manual has been adopted by  
10 the national association of insurance commissioners by an  
11 affirmative vote of at least forty-two members or  
12 three-fourths of the members voting, whichever is greater;

13 (2) the Standard Valuation Law of the  
14 national association of insurance commissioners, as amended  
15 in 2009, or legislation including substantially similar terms  
16 and provisions, has been enacted by states that collectively  
17 represent more than seventy-five percent of written direct  
18 premiums, as reported in the life, accident and health annual  
19 statements, the health annual statements and the fraternal  
20 annual statements submitted for 2008; and

21 (3) the Standard Valuation Law of the  
22 national association of insurance commissioners, as amended  
23 in 2009, or legislation including substantially similar terms  
24 and provisions, has been enacted by at least forty-two of the  
25 following fifty-five jurisdictions:

1 (a) the fifty states of the United

2 States;

3 (b) American Samoa;

4 (c) the Virgin Islands of the United

5 States;

6 (d) the District of Columbia;

7 (e) Guam; and

8 (f) Puerto Rico;

9 G. "policyholder behavior" means an action that a  
10 policyholder, a contract holder or a person who has the right  
11 to elect options, such as a certificate holder, may take  
12 pursuant to a policy or contract that is subject to the  
13 Standard Valuation Law and, if allowed pursuant to the policy  
14 or contract, includes lapses, withdrawals, transfers,  
15 deposits, premium payments, loans and annuitization and  
16 benefit elections, but excludes events of mortality or  
17 morbidity that result in benefits prescribed in their  
18 essential aspects by the terms of the policy or contract;

19 H. "principle-based valuation" means a reserve  
20 valuation that uses one or more methods or one or more  
21 assumptions determined by the insurer and that is required to  
22 comply with Section 59A-8A-9 NMSA 1978;

23 I. "qualified actuary" means, on or after the  
24 operative date of the valuation manual, an individual who,  
25 according to the applicable qualification standards of the

1 American academy of actuaries, is qualified to sign the  
2 applicable statement of actuarial opinion and who meets the  
3 applicable requirements indicated by the valuation manual;

4 J. "tail risk" means a risk that occurs either  
5 when the frequency of low-probability events is higher than  
6 expected under a normal probability distribution or when  
7 events of very significant magnitude are observed; and

8 K. "valuation manual" means the most recent  
9 version of the manual of valuation instructions adopted by  
10 the national association of insurance commissioners."

11 SECTION 17. Section 59A-8-6 NMSA 1978 (being Laws 1984,  
12 Chapter 127, Section 123, as amended) is recompiled as  
13 Section 59A-8A-3 NMSA 1978 and is amended to read:

14 "59A-8A-3. RESERVE VALUATION.--

15 A. For policies and contracts issued prior to the  
16 operative date of the valuation manual:

17 (1) the superintendent shall annually value,  
18 or cause to be valued, the reserve liabilities (hereinafter  
19 called reserves) for all outstanding life insurance policies  
20 and annuity and pure endowment contracts of every life  
21 insurer authorized to do business in New Mexico and that are  
22 issued on or after the operative date of Section 59A-20-31  
23 NMSA 1978, except that, for an alien insurer, the value is  
24 limited to the alien insurer's United States business. In  
25 calculating such reserves the superintendent may use group

1 methods and approximate averages for fractions of a year or  
2 otherwise. In lieu of valuation of reserves herein required  
3 of a foreign or alien insurer, the superintendent may accept  
4 any valuation made, or caused to be made, by the insurance  
5 supervisory official of any state or other jurisdiction when  
6 such valuation complies with the minimum standard provided by  
7 the Standard Valuation Law;

8 (2) the provisions of Sections 59A-8A-6 and  
9 59A-8A-7 NMSA 1978 apply, as appropriate, to a policy or  
10 contract that is subject to the provisions of the Standard  
11 Valuation Law and that is issued on or after the operative  
12 date of Section 59A-20-31 NMSA 1978 but prior to the  
13 operative date of the valuation manual. The provisions of  
14 Sections 59A-8A-8 and 59A-8A-9 NMSA 1978 do not apply to a  
15 policy or contract that is subject to the provisions of the  
16 Standard Valuation Law and that is issued on or after the  
17 operative date of Section 59A-20-31 NMSA 1978 but prior to  
18 the operative date of the valuation manual; and

19 (3) the minimum standard for the valuation  
20 of a policy or contract that is issued prior to the operative  
21 date of Section 59A-20-31 NMSA 1978 is the minimum standard  
22 provided in the laws in effect immediately prior to that  
23 date.

24 B. For a policy or contract that is issued on or  
25 after the operative date of the valuation manual:

1 (1) the superintendent shall annually value,  
2 or cause to be valued, the reserve liabilities, hereinafter  
3 called reserves, of all outstanding life insurance, annuity  
4 and pure endowment, accident and health and deposit-type  
5 contracts of a life insurer authorized to do business in  
6 New Mexico that are issued on or after the operative date of  
7 the valuation manual. In the case of a foreign or alien  
8 insurer, the superintendent may, in the alternative, accept a  
9 valuation made, or caused to be made, by the insurance  
10 supervisory official of a state or other jurisdiction if that  
11 valuation complies with the minimum standard provided in the  
12 Standard Valuation Law; and

13 (2) the provisions of Sections 59A-8A-8 and  
14 59A-8A-9 NMSA 1978 apply to all policies and contracts issued  
15 on or after the operative date of the valuation manual.

16 C. In no event shall the aggregate reserves for  
17 all policies, contracts and benefits issued prior to the  
18 operative date of the valuation manual be less than the  
19 aggregate reserves determined by the qualified actuary to be  
20 necessary to render the opinion required by Section 59A-8A-4  
21 NMSA 1978."

22 SECTION 18. Section 59A-8-7 NMSA 1978 (being Laws 1993,  
23 Chapter 320, Section 22) is recompiled as Section 59A-8A-4  
24 NMSA 1978 and is amended to read:

25 "59A-8A-4. ACTUARIAL OPINION PRIOR TO OPERATIVE DATE OF

1 VALUATION MANUAL.--

2 A. This section applies to actuarial opinions  
3 issued prior to the operative date of the valuation manual.

4 B. Every life insurer doing business in New Mexico  
5 shall annually submit the opinion of a qualified actuary as  
6 to whether the reserves and related actuarial items held in  
7 support of the policies and contracts specified by the  
8 superintendent by regulation are computed appropriately, are  
9 based on assumptions that satisfy contractual provisions, are  
10 consistent with prior reported amounts and comply with  
11 applicable laws of New Mexico. The superintendent by  
12 regulation shall define the specifics of this opinion and add  
13 any other items deemed to be necessary to its scope.

14 C. Every life insurer, except as exempted by or  
15 pursuant to regulation, shall also annually include in the  
16 opinion required by Subsection B of this section, an opinion  
17 of the same qualified actuary as to whether the reserves and  
18 related actuarial items held in support of the policies and  
19 contracts specified by the superintendent by regulation, when  
20 considered in light of the assets held by the insurer with  
21 respect to the reserves and related actuarial items,  
22 including but not limited to the investment earnings on the  
23 assets and the considerations anticipated to be received and  
24 retained under the policies and contracts, make adequate  
25 provision for the insurer's obligations under the policies

1 and contracts, including but not limited to the benefits  
2 under and expenses associated with the policies and  
3 contracts. The superintendent may provide by regulation for  
4 a transition period for establishing any higher reserves that  
5 the qualified actuary may deem necessary in order to render  
6 the opinion required by this section.

7 D. Every opinion required by Subsection C of this  
8 section shall be governed by the following provisions:

9 (1) a memorandum, in form and substance  
10 acceptable to the superintendent as specified by regulation,  
11 shall be prepared to support each actuarial opinion; and

12 (2) if the insurer fails to provide a  
13 supporting memorandum at the request of the superintendent  
14 within a period specified by rule or if the superintendent  
15 determines that the supporting memorandum provided by the  
16 insurer fails to meet the standards prescribed by the  
17 regulations or is otherwise unacceptable to the  
18 superintendent, the superintendent may engage a qualified  
19 actuary at the expense of the insurer to review the opinion  
20 and the basis for the opinion and prepare such supporting  
21 memorandum as is required by the superintendent.

22 E. Every opinion required by this section shall be  
23 governed by the following provisions:

24 (1) the opinion shall be submitted with the  
25 annual statement reflecting the valuation of such reserve

1 liabilities for each year ending on or after December 31,  
2 1994;

3 (2) the opinion shall apply to all business  
4 in force, including individual and group health insurance  
5 plans in form and substance acceptable to the superintendent  
6 as specified by regulation;

7 (3) the opinion shall be based on standards  
8 adopted from time to time by the actuarial standards board  
9 and on such additional standards as the superintendent may by  
10 regulation prescribe;

11 (4) in the case of an opinion required to be  
12 submitted by a foreign or alien insurer, the superintendent  
13 may accept the opinion filed by that insurer with the  
14 insurance supervisory official of another state if the  
15 superintendent determines that the opinion reasonably meets  
16 the requirements applicable to an insurer domiciled in  
17 New Mexico;

18 (5) for the purposes of this section,  
19 "qualified actuary" means a member in good standing of the  
20 American academy of actuaries who meets the requirements set  
21 forth in such regulations;

22 (6) except in cases of fraud or willful  
23 misconduct, the qualified actuary shall not be liable for  
24 damages to any person, other than the insurer and the  
25 superintendent, for any act, error, omission, decision or

1 conduct with respect to the actuary's opinion;

2 (7) disciplinary action by the  
3 superintendent against the insurer or the qualified actuary  
4 shall be defined in regulations by the superintendent;

5 (8) except as provided in Paragraph (12) of  
6 this subsection, the documents, materials and other  
7 information that constitute a memorandum in support of the  
8 opinion and that are in the possession or control of the  
9 office of superintendent of insurance, and other materials  
10 provided by the company to the superintendent in connection  
11 with the memorandum, are confidential and are not subject to  
12 the Inspection of Public Records Act. Nothing in this  
13 section shall be construed as a grant of privilege or  
14 confidentiality or a bar to production of that information by  
15 an insurer in a civil suit, whether or not the office of  
16 superintendent of insurance is a party; provided that the  
17 superintendent may use the documents, materials or other  
18 information in the furtherance of a regulatory or legal  
19 action brought in the course of the superintendent's official  
20 duties;

21 (9) neither the superintendent nor any  
22 person who receives documents, materials or other information  
23 while acting pursuant to the authority of the superintendent  
24 shall be permitted or required in a private civil action to  
25 testify on the confidential documents, materials or

1 information subject to Paragraph (8) of this subsection;

2 (10) to assist in the performance of the  
3 superintendent's duties, the superintendent may:

4 (a) if the recipient agrees to maintain  
5 the confidentiality and privilege of the document, material  
6 or other information, share documents, materials or other  
7 information, including the confidential and privileged  
8 documents, with a state, federal or international regulatory  
9 agency, with the national association of insurance  
10 commissioners, its affiliates or its subsidiaries and with  
11 state, federal and international law enforcement authorities;

12 (b) receive documents, materials or  
13 information, including that which is otherwise confidential  
14 and privileged, from the national association of insurance  
15 commissioners, its affiliates or its subsidiaries and from  
16 regulatory and law enforcement officials of other foreign or  
17 domestic jurisdictions if the superintendent maintains as  
18 confidential or privileged a document, material or other  
19 information received with notice or the understanding that  
20 the content is confidential or privileged pursuant to the  
21 laws of the jurisdiction from which the information  
22 originates; and

23 (c) consistent with Paragraphs (8)  
24 through (10) of this subsection, enter into agreements  
25 governing sharing and the use of information;

1 (11) a disclosure to or a sharing by the  
2 superintendent pursuant to this section does not constitute a  
3 waiver of an applicable privilege or claim of confidentiality  
4 in the documents, materials or information; and

5 (12) a memorandum in support of the opinion  
6 and any other material provided by the insurer to the  
7 superintendent in connection therewith may be subject to  
8 subpoena for the purpose of defending an action seeking  
9 damages from the actuary who submitted the memorandum by  
10 reason of any action required by this section or by  
11 regulations promulgated hereunder; provided, however, that  
12 the memorandum or other material may otherwise be released by  
13 the superintendent, with the written consent of the insurer,  
14 or to the American academy of actuaries upon request stating  
15 that the memorandum or other material is required for the  
16 purpose of professional disciplinary proceedings and setting  
17 forth procedures satisfactory to the superintendent for  
18 preserving the confidentiality of the memorandum or other  
19 material. Once any portion of the confidential memorandum is  
20 cited by the insurer in its marketing or is cited before any  
21 governmental agency other than a state insurance department  
22 or is released by the insurer to the news media, all portions  
23 of the confidential memorandum shall be no longer  
24 confidential."

25 SECTION 19. A new Section 59A-8A-5 NMSA 1978 is enacted

1 to read:

2 "59A-8A-5. ACTUARIAL OPINION AFTER OPERATIVE DATE OF  
3 VALUATION MANUAL.--

4 A. This section applies to actuarial opinions  
5 issued after the operative date of the valuation manual.

6 B. A company with outstanding life insurance,  
7 accident and health insurance or deposit-type contracts in  
8 New Mexico and that is subject to regulation by the  
9 superintendent shall annually submit the opinion of the  
10 appointed actuary on whether the reserves and related  
11 actuarial items held in support of the policies and contracts  
12 are computed appropriately, based on assumptions that satisfy  
13 contractual provisions, consistent with prior reported  
14 amounts and comply with the laws of New Mexico. The opinion  
15 shall comport with related provisions of the valuation  
16 manual.

17 C. Except as excluded by the provisions of the  
18 valuation manual, a company with outstanding life insurance,  
19 accident and health insurance or deposit-type contracts in  
20 New Mexico and that is subject to regulation by the  
21 superintendent shall include in the opinion required by  
22 Subsection B of this section an assessment of whether, when  
23 considering the assets held by the company with respect to  
24 the reserves and related actuarial items, including the  
25 investment earnings on the assets and the anticipated

1 considerations to be received and retained pursuant to the  
2 policies and contracts, the reserves and related actuarial  
3 items that are held in support of the policies and contracts  
4 that are specified in the valuation manual make adequate  
5 provision for the company's obligations pursuant to the  
6 policies and contracts, including the benefits pursuant to  
7 and expenses associated with the policies and contracts.

8 D. An opinion required by Subsection B of this  
9 section shall be accompanied by a memorandum of support,  
10 whose form and substance comply with the provisions of the  
11 valuation manual and are acceptable to the superintendent.  
12 If, within a period of time specified by the provisions of  
13 the valuation manual and upon the request of the  
14 superintendent, an insurance company fails to provide a  
15 memorandum of support, the superintendent may engage, at the  
16 insurance company's expense, a qualified actuary to review  
17 the opinion and the basis for it and prepare a memorandum of  
18 support. If the superintendent determines that an insurance  
19 company's memorandum of support fails to meet the standards  
20 provided in the valuation manual or is otherwise  
21 unacceptable, the superintendent may engage the services of a  
22 qualified actuary to review the opinion and the basis for it  
23 and prepare a memorandum of support.

24 E. An opinion required by this section shall:

25 (1) conform in form and substance to the

1 provisions of the valuation manual and be acceptable to the  
2 superintendent;

3 (2) accompany an annual statement that  
4 indicates the valuation of reserve liabilities for each year  
5 ending on or after the operative date of the valuation  
6 manual;

7 (3) apply to all policies and contracts  
8 subject to Subsection B of this section and other actuarial  
9 liabilities specified by the provisions of the valuation  
10 manual; and

11 (4) meet the standards adopted by the  
12 actuarial standards board or its successor and the relevant  
13 standards provided in the valuation manual.

14 F. In the case of a foreign or alien company, the  
15 superintendent may accept, instead of an opinion filed  
16 pursuant to Subsection B of this section, an opinion filed by  
17 the company with the insurance supervisory official of  
18 another state if the superintendent determines that the  
19 opinion reasonably meets the requirements applicable to a  
20 company domiciled in New Mexico.

21 G. Except in cases of fraud or willful misconduct,  
22 an appointed actuary is not liable for damages to a person,  
23 except the insurance company that appointed the actuary or  
24 the superintendent, resulting from an act, error, omission,  
25 decision or conduct related to the appointed actuary's

1 opinion.

2 H. Disciplinary action by the superintendent  
3 against a company or its appointed actuary shall be defined  
4 by rules promulgated by the superintendent."

5 SECTION 20. Section 59A-8-5 NMSA 1978 (being Laws 1984,  
6 Chapter 127, Section 122, as amended) is recompiled as  
7 Section 59A-8A-6 NMSA 1978 and is amended to read:

8 "59A-8A-6. RULE-BASED RESERVE VALUATION METHODS.--

9 A. This subsection shall apply to only those  
10 policies and contracts issued prior to the operative date of  
11 Section 59A-20-31 NMSA 1978.

12 The legal minimum standard for valuation of life  
13 insurance contracts issued before the first day of  
14 January 1926 shall be the method and basis of valuation  
15 heretofore applied by the insurer in the valuation of such  
16 contracts, and for life insurance contracts issued on or  
17 after this date shall be the American experience table of  
18 mortality, with interest at the rate of three and one-half  
19 percent a year; or any other basis not producing a lower net  
20 value; provided, however, that the insurer may provide for  
21 not more than one-year preliminary term insurance by  
22 incorporating in the contracts a clause plainly showing that  
23 the first year's insurance under such policies is term  
24 insurance.

25 Except as otherwise provided in Paragraphs (2), (3), (4) SB 56  
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1 and (5) of Subsection B of this section and in Subsections C,  
2 D and E of this section for group annuity and pure endowment  
3 contracts, the legal minimum standard for the valuation of  
4 annuities shall be the American experience table of  
5 mortality, with interest at the rate of five percent a year  
6 for group annuity and pure endowment contracts and four  
7 percent a year for other annuities.

8 B. Subsections B, C, D and E of this section shall  
9 apply to only those policies and contracts issued on and  
10 after the operative date of Section 59A-20-31 NMSA 1978,  
11 except as otherwise provided in Paragraphs (2), (3), (4) and  
12 (5) of this subsection and in Subsections C, D and E of this  
13 section for group annuity and pure endowment contracts issued  
14 prior to such operative date.

15 (1) Except as otherwise provided in  
16 Paragraphs (2), (3), (4) and (5) of this subsection and  
17 Subsections C, D and E of this section, the minimum standard  
18 for the valuation of all such policies and contracts shall be  
19 the commissioners reserve valuation methods defined in  
20 Paragraphs (1) and (2) of Subsection E of this section, five  
21 percent interest for group annuity and pure endowment  
22 contracts and three and one-half percent interest for all  
23 other such policies and contracts, or in the case of life  
24 insurance policies and contracts, other than annuity and pure  
25 endowment contracts, issued on or after July 1, 1973, four

1 percent interest for such policies issued prior to  
2 July 1, 1977, five and one-half percent interest for single  
3 premium life insurance policies and four and one-half percent  
4 interest for all other such policies issued on or after  
5 July 1, 1977, and the following tables:

6 (a) for ordinary policies of life  
7 insurance issued on the standard basis, excluding any  
8 disability and accidental death benefits in such policies,  
9 the commissioners 1941 standard ordinary mortality table for  
10 such policies issued prior to the operative date of Paragraph  
11 (1) of Subsection D of Section 59A-20-31 NMSA 1978 and the  
12 commissioners 1958 standard ordinary mortality table for such  
13 policies issued on or after the operative date of Paragraph  
14 (1) of Subsection D of Section 59A-20-31 NMSA 1978 and prior  
15 to the operative date of Subsection F of Section 59A-20-31  
16 NMSA 1978, provided that for any category of such policies  
17 issued on female risks, all modified net premiums and present  
18 values referred to in Subsections B, C, D and E of this  
19 section may be calculated according to an age not more than  
20 six years younger than the actual age of the insured; and for  
21 such policies issued on or after the operative date of  
22 Subsection F of Section 59A-20-31 NMSA 1978: 1) the  
23 commissioners 1980 standard ordinary mortality table; or 2)  
24 at the election of the insurer for any one or more specified  
25 plans of life insurance, the commissioners 1980 standard

1 ordinary mortality table with ten-year select mortality  
2 factors; or 3) any ordinary mortality table, adopted after  
3 1980 by the national association of insurance commissioners,  
4 that is approved by regulation promulgated by the  
5 superintendent for use in determining the minimum standard of  
6 valuation for such policies;

7 (b) for industrial life insurance  
8 policies issued on the standard basis, excluding any  
9 disability and accidental death benefits in such policies,  
10 the 1941 standard industrial mortality table for such  
11 policies issued prior to the operative date of Subsection E  
12 of Section 59A-20-31 NMSA 1978, and for such policies issued  
13 on or after such operative date, the commissioners 1961  
14 standard industrial mortality table or any industrial  
15 mortality table, adopted after 1980 by the national  
16 association of insurance commissioners, that is approved by  
17 regulation promulgated by the superintendent for use in  
18 determining the minimum standard of valuation for such  
19 policies;

20 (c) for individual annuity and pure  
21 endowment contracts, excluding any disability and accidental  
22 death benefits in such policies, the 1937 standard annuity  
23 mortality table or, at the option of the insurer, the annuity  
24 mortality table for 1949, ultimate, or any modification of  
25 either of these tables approved by the superintendent;

1 (d) for group annuity and pure  
2 endowment contracts, excluding any disability and accidental  
3 death benefits in such policies, the group annuity mortality  
4 table for 1951, any modification of such table approved by  
5 the superintendent, or, at the option of the insurer, any of  
6 the tables or modifications of tables specified for  
7 individual annuity and pure endowment contracts;

8 (e) for total and permanent disability  
9 benefits in or supplementary to ordinary policies or  
10 contracts: 1) for policies or contracts issued on or after  
11 January 1, 1966, the tables of period 2 disablement rates and  
12 the 1930 to 1950 termination rates of the 1952 disability  
13 study of the society of actuaries, with due regard to the  
14 type of benefit or any tables of disablement rates and  
15 termination rates, adopted after 1980 by the national  
16 association of insurance commissioners, that are approved by  
17 regulation promulgated by the superintendent for use in  
18 determining the minimum standard of valuation for such  
19 policies; 2) for policies or contracts issued on or after  
20 January 1, 1961 and prior to January 1, 1966, either such  
21 tables or, at the option of the insurer, the class (3)  
22 disability table (1926); and 3) for policies issued prior to  
23 January 1, 1961, the class (3) disability table (1926). Any  
24 such table shall, for active lives, be combined with a  
25 mortality table permitted for calculating the reserves for

1 life insurance policies;

2 (f) for accidental death benefits in or  
3 supplementary to policies: 1) for policies issued on or  
4 after January 1, 1966, the 1959 accidental death benefits  
5 table or any accidental death benefits table, adopted after  
6 1980 by the national association of insurance commissioners,  
7 that is approved by regulation promulgated by the  
8 superintendent for use in determining the minimum standard of  
9 valuation for such policies; 2) for policies issued on or  
10 after January 1, 1961 and prior to January 1, 1966, either  
11 such table or, at the option of the insurer, the intercompany  
12 double indemnity mortality table; and 3) for policies issued  
13 prior to January 1, 1961, the intercompany double indemnity  
14 mortality table. 4) Either table shall be combined with a  
15 mortality table permitted for calculating the reserves for  
16 life insurance policies; and

17 (g) for group life insurance, life  
18 insurance issued on the substandard basis and other special  
19 benefits, such tables as may be approved by the  
20 superintendent.

21 (2) Except as provided in Paragraphs (3),  
22 (4) and (5) of this subsection and in Subsections C, D and E  
23 of this section, the minimum standard of valuation for  
24 individual annuity and pure endowment contracts issued on or  
25 after the operative date of this paragraph, as defined

1 herein, and for all annuities and pure endowments purchased  
2 on or after such operative date under group annuity and pure  
3 endowment contracts, shall be the commissioners reserve  
4 valuation methods defined in Paragraphs (1) and (2) of  
5 Subsection E of this section and the following tables and  
6 interest rates:

7 (a) for individual annuity and pure  
8 endowment contracts issued prior to July 1, 1977, excluding  
9 any disability and accidental death benefits in such  
10 contracts, the 1971 individual annuity mortality table, or  
11 any modification of this table approved by the  
12 superintendent, and six percent interest for single premium  
13 immediate annuity contracts, and four percent interest for  
14 all other individual annuity and pure endowment contracts;

15 (b) for individual single premium  
16 immediate annuity contracts issued on or after July 1, 1977,  
17 excluding any disability and accidental death benefits in  
18 such contracts, the 1971 individual annuity mortality table,  
19 or any individual annuity mortality table, adopted after 1980  
20 by the national association of insurance commissioners, that  
21 is approved by regulation promulgated by the superintendent  
22 for use in determining the minimum standard of valuation for  
23 such contracts, or any modification of these tables approved  
24 by the superintendent, and seven and one-half percent  
25 interest;

1 (c) for individual annuity and pure  
2 endowment contracts issued on or after July 1, 1977, other  
3 than single premium immediate annuity contracts, excluding  
4 any disability and accidental death benefits in such  
5 contracts, the 1971 individual annuity mortality table, or  
6 any individual annuity mortality table, adopted after 1980 by  
7 the national association of insurance commissioners, that is  
8 approved by regulation promulgated by the superintendent for  
9 use in determining the minimum standard of valuation for such  
10 contracts, or any modification of these tables approved by  
11 the superintendent, and five and one-half percent interest  
12 for single premium deferred annuity and pure endowment  
13 contracts and four and one-half percent interest for all  
14 other such individual annuity and pure endowment contracts;

15 (d) for annuities and pure endowments  
16 purchased prior to July 1, 1977, under group annuity and pure  
17 endowment contracts, excluding any disability and accidental  
18 death benefits purchased under such contracts, the 1971 group  
19 annuity mortality table, or any modification of this table  
20 approved by the superintendent, and six percent interest; and

21 (e) for annuities and pure endowments  
22 purchased on or after July 1, 1977, under group annuity and  
23 pure endowment contracts, excluding any disability and  
24 accidental death benefits purchased under such contracts, the  
25 1971 group annuity mortality table, or any group annuity

1 mortality table, adopted after 1980 by the national  
2 association of insurance commissioners, that is approved by  
3 regulation promulgated by the superintendent for use in  
4 determining the minimum standard of valuation for such  
5 annuities and pure endowments, or any modification of this  
6 table approved by the superintendent, and seven and one-half  
7 percent interest.

8 (f) After July 1, 1973, any insurer may  
9 file with the superintendent a written notice of its election  
10 to comply with the provisions of this paragraph after a  
11 specified date before January 1, 1979, which shall be the  
12 operative date of this paragraph for such insurer, provided  
13 that an insurer may elect a different operative date for  
14 individual annuity and pure endowment contracts from that  
15 elected for group annuity and pure endowment contracts. If  
16 an insurer makes no such election, the operative date of this  
17 paragraph for such insurer shall be January 1, 1979.

18 (3) The interest rates used in determining  
19 the minimum standard for the valuation of:

20 (a) life insurance policies issued in a  
21 particular calendar year, on or after the operative date of  
22 Subsection F of Section 59A-20-31 NMSA 1978;

23 (b) individual annuity and pure  
24 endowment contracts issued in a particular calendar year on  
25 or after January 1, 1982;

1 (c) annuities and pure endowments  
2 purchased in a particular calendar year on or after  
3 January 1, 1982 under group annuity and pure endowment  
4 contracts; and

5 (d) the net increase, if any, in a  
6 particular calendar year after January 1, 1982, in amounts  
7 held under guaranteed interest contracts shall be the  
8 calendar year statutory valuation interest rates as defined  
9 in Paragraph (4) of this subsection.

10 (4) The calendar year statutory valuation  
11 interest rates, I, shall be determined as follows and the  
12 results rounded to the nearest one-quarter of one percent:

13 (a) for life insurance,

$$14 \quad I = .03 + W (R1 - .03) + W/2 (R2 - .09);$$

15 (b) for single premium immediate  
16 annuities and for annuity benefits involving life  
17 contingencies arising from other annuities with cash  
18 settlement options and from guaranteed interest contracts  
19 with cash settlement options,

$$20 \quad I = .03 + W (R - .03)$$

21 where R1 is the lesser of R and .09, R2 is the greater of R  
22 and .09, R is the reference interest rate defined in  
23 Subsection D of this section, and W is the weighting factor  
24 defined in Subsection C of this section;

25 (c) for other annuities with cash

1 settlement options and guaranteed interest contracts with  
2 cash settlement options, valued on an issue year basis,  
3 except as stated in Subparagraph (b) of this paragraph, the  
4 formula for life insurance stated in Subparagraph (a) of this  
5 paragraph shall apply to annuities and guaranteed interest  
6 contracts with guarantee durations in excess of ten years and  
7 the formula for single premium immediate annuities stated in  
8 Subparagraph (b) of this paragraph shall apply to annuities  
9 and guaranteed interest contracts with guarantee duration of  
10 ten years or less;

11 (d) for other annuities with no cash  
12 settlement options and for guaranteed interest contracts with  
13 no cash settlement options, the formula for single premium  
14 immediate annuities stated in Subparagraph (b) of this  
15 paragraph shall apply; and

16 (e) for other annuities with cash  
17 settlement options and guaranteed interest contracts with  
18 cash settlement options, valued on a change in fund basis,  
19 the formula for single premium immediate annuities stated in  
20 Subparagraph (b) of this paragraph shall apply.

21 (5) However, if the calendar year statutory  
22 valuation interest rate for any life insurance policies  
23 issued in any calendar year determined without reference to  
24 this sentence differs from the corresponding actual rate for  
25 similar policies issued in the immediately preceding calendar

1 year by less than one-half of one percent, the calendar year  
2 statutory valuation interest rate for such life insurance  
3 policies shall be equal to the corresponding actual rate for  
4 the immediately preceding calendar year. For purposes of  
5 applying the immediately preceding sentence, the calendar  
6 year statutory valuation interest rate for life insurance  
7 policies issued in a calendar year shall be determined for  
8 1980 (using the reference interest rate defined for 1979) and  
9 shall be determined for each subsequent calendar year  
10 regardless of when Subsection F of Section 59A-20-31  
11 NMSA 1978 becomes operative.

12 C. The weighting factors referred to in the  
13 formulas stated above are given in the following tables:

14 (1) Weighting Factors for Life Insurance:

15 Guarantee	
16 Duration	Weighting
17 (Years)	Factors
18 _____	_____
19 10 or less	.50
20 More than 10, but not more	
21 than 20	.45
22 More than 20	.35

23 For life insurance, the guarantee duration is the  
24 maximum number of years the life insurance can remain in  
25 force on a basis guaranteed in the policy or under options to

1 convert to plans of life insurance with premium rates or  
2 nonforfeiture values or both that are guaranteed in the  
3 original policy;

4 (2) Weighting factor for single premium  
5 immediate annuities and for annuity benefits involving life  
6 contingencies arising from other annuities with cash  
7 settlement options and guaranteed interest contracts with  
8 cash settlement options:

9 .80

10 (3) Weighting factors for other annuities  
11 and for guaranteed interest contracts, except as stated in  
12 Paragraph (2) of this subsection, shall be as specified in  
13 the tables set forth in Subparagraphs (a), (b) and (c) of  
14 this paragraph, according to the rules and definitions set  
15 forth in Subparagraphs (d), (e) and (f) of this paragraph:

16 (a) For annuities and guaranteed  
17 interest contracts valued on an issue year basis:

18 Guarantee	19 Weighting Factor		
	20 for Plan Type		
21 Duration	A	B	C
22 (Years)			
23 _____	_____	_____	_____
24 5 or less:	.80	.60	.50
25 More than 5, but not more			
than 10:	.75	.60	.50
More than 10, but not more			

1	than 20:	.65	.50	.45
2	More than 20:	.45	.35	.35

3 (b) For annuities and guaranteed  
 4 interest contracts valued on a change in fund basis, the  
 5 factors shown in the table set forth in Subparagraph (a) of  
 6 this paragraph increased by:

7		Plan Type		
8		A	B	C
9		<hr/>		
10		.15	.25	.05

11 (c) For annuities and guaranteed  
 12 interest contracts valued on an issue year basis (other than  
 13 those with no cash settlement options) that do not guarantee  
 14 interest on considerations received more than one year after  
 15 issue or purchase and for annuities and guaranteed interest  
 16 contracts valued on a change in fund basis that do not  
 17 guarantee interest rates on considerations received more than  
 18 twelve months beyond the valuation date, the factors shown in  
 19 the table set forth in Subparagraph (a) of this paragraph or  
 20 derived as required in the table set forth in  
 21 Subparagraph (b) of this paragraph increased by:

22		Plan Type		
23		A	B	C
24		<hr/>		
25		.05	.05	.05

1 (d) For other annuities with cash  
2 settlement options and guaranteed interest contracts with  
3 cash settlement options, the guarantee duration is the number  
4 of years for which the contract guarantees interest rates in  
5 excess of the calendar year statutory valuation interest rate  
6 for life insurance policies with guarantee duration in excess  
7 of twenty years. For other annuities with no cash settlement  
8 options and for guaranteed interest contracts with no cash  
9 settlement options, the guarantee duration is the number of  
10 years from the date of issue or date of purchase to the date  
11 annuity benefits are scheduled to commence.

12 (e) Plan type as used in the above  
13 tables is defined as follows:

14 Plan Type A: At any time, policyholder may withdraw  
15 funds only: with an adjustment to reflect changes in  
16 interest rates or asset values since receipt of the funds by  
17 the insurer; or without such adjustment but in installments  
18 over five years or more; or as an immediate life annuity; or  
19 no withdrawal permitted.

20 Plan Type B: Before expiration of the interest rate  
21 guarantee, policyholder may withdraw funds only: with an  
22 adjustment to reflect changes in interest rates or asset  
23 values since receipt of the funds by the insurer; or without  
24 such adjustment but in installments over five years or more;  
25 or no withdrawal permitted. At the end of interest rate

1 guarantee, funds may be withdrawn without such adjustment in  
2 a single sum or installments over less than five years.

3 Plan Type C: Policyholder may withdraw funds before  
4 expiration of interest rate guarantee in a single sum or  
5 installments over less than five years either: without  
6 adjustment to reflect changes in interest rates or asset  
7 values since receipt of the funds by the insurer; or subject  
8 only to a fixed surrender charge stipulated in the contract  
9 as a percentage of the fund.

10 (f) An insurer may elect to value  
11 guaranteed interest contracts with cash settlement options  
12 and annuities with cash settlement options on either an issue  
13 year basis or on a change in fund basis. Guaranteed interest  
14 contracts with no cash settlement options and other annuities  
15 with no cash settlement options must be valued on an issue  
16 year basis. As used in Subsections B, C and D of this  
17 section, an issue year basis of valuation refers to a  
18 valuation basis under which the interest rate used to  
19 determine the minimum valuation standard for the entire  
20 duration of the annuity or guaranteed interest contract is  
21 the calendar year valuation interest rate for the year of  
22 issue or year of purchase of the annuity or guaranteed  
23 interest contract, and the change in fund basis of valuation  
24 refers to a valuation basis under which the interest rate  
25 used to determine the minimum valuation standard applicable

1 to each change in the fund held under the annuity or  
2 guaranteed interest contract is the calendar year valuation  
3 interest rate for the year of the change in the fund.

4 D. The reference interest rate referred to in  
5 Paragraph (4) of Subsection B of this section shall be  
6 defined as follows:

7 (1) for life insurance, the lesser of the  
8 average over a period of thirty-six months and the average  
9 over a period of twelve months, ending on June 30 of the  
10 calendar year next preceding the year of issue, of the  
11 monthly average of the composite yield on seasoned corporate  
12 bonds, as published by Moody's investors service,  
13 incorporated;

14 (2) for single premium immediate annuities  
15 and for annuity benefits involving life contingencies arising  
16 from other annuities with cash settlement options and  
17 guaranteed interest contracts with cash settlement options,  
18 the average over a period of twelve months, ending on June 30  
19 of the calendar year of issue or year of purchase, of the  
20 monthly average of the composite yield on seasoned corporate  
21 bonds, as published by Moody's investors service,  
22 incorporated;

23 (3) for other annuities with cash settlement  
24 options and guaranteed interest contracts with cash  
25 settlement options, valued on a year of issue basis, except

1 as stated in Paragraph (2) of this subsection, with guarantee  
2 duration in excess of ten years, the lesser of the average  
3 over a period of thirty-six months and the average over a  
4 period of twelve months, ending on June 30 of the calendar  
5 year of issue or purchase, of the monthly average of the  
6 composite yield on seasoned corporate bonds, as published by  
7 Moody's investors service, incorporated;

8 (4) for other annuities with cash settlement  
9 options and guaranteed interest contracts with cash  
10 settlement options, valued on a year of issue basis, except  
11 as stated in Paragraph (2) of this subsection, with guarantee  
12 duration of ten years or less, the average over a period of  
13 twelve months, ending on June 30 of the calendar year of  
14 issue or purchase, of the monthly average of the composite  
15 yield on seasoned corporate bonds, as published by Moody's  
16 investors service, incorporated;

17 (5) for other annuities with no cash  
18 settlement options and for guaranteed interest contracts with  
19 no cash settlement options, the average over a period of  
20 twelve months, ending on June 30 of the calendar year of  
21 issue or purchase, of the monthly average of the composite  
22 yield on seasoned corporate bonds, as published by Moody's  
23 investors service, incorporated;

24 (6) for other annuities with cash settlement  
25 options and guaranteed interest contracts with cash

1 settlement options, valued on a change in fund basis, except  
2 as stated in Paragraph (2) of this subsection, the average  
3 over a period of twelve months, ending on June 30 of the  
4 calendar year of the change in the fund, of the monthly  
5 average of the composite yield on seasoned corporate bonds,  
6 as published by Moody's investors service, incorporated; and

7 (7) in the event that the national  
8 association of insurance commissioners determines that the  
9 monthly average of the composite yield on seasoned corporate  
10 bonds, as published by Moody's investors service,  
11 incorporated, is no longer appropriate for the determination  
12 of the reference interest rate, then an alternative method  
13 for determination of the reference interest rate that is  
14 adopted by the national association of insurance  
15 commissioners and approved by regulation promulgated by the  
16 superintendent may be substituted.

17 E. The reserve valuation method shall be defined  
18 as follows:

19 (1) Except as otherwise provided in this  
20 paragraph and Paragraph (2) of this subsection, reserves  
21 according to the national association of insurance  
22 commissioners reserve valuation method, for the life  
23 insurance and endowment benefits of policies providing for a  
24 uniform amount of insurance and requiring the payment of  
25 uniform premiums, shall be the excess, if any, of the present

1 value, at the date of valuation, of such future guaranteed  
2 benefits provided for by such policies, over the then present  
3 value of any future modified net premiums therefor. The  
4 modified net premiums for any such policy shall be such  
5 uniform percentage of the respective contract premiums for  
6 such benefits that the present value, at the date of issue of  
7 the policy, of all such modified net premiums shall be equal  
8 to the sum of the then present value of such benefits  
9 provided for by the policy and the excess of Subparagraph (a)  
10 over Subparagraph (b) of this paragraph, as follows:

11 (a) a net level annual premium equal to  
12 the present value, at the date of issue, of such benefits  
13 provided for after the first policy year, divided by the  
14 present value, at the date of issue, of an annuity of one per  
15 annum payable on the first and each subsequent anniversary of  
16 such policy on which a premium falls due; provided, however,  
17 that such net level annual premium shall not exceed the net  
18 level annual premium on the nineteen-year premium whole life  
19 plan for insurance of the same amount at an age of one year  
20 higher than the age at issue of such policy; and

21 (b) a net one-year term premium for  
22 such benefits provided for in the first policy year.

23 Provided that for any life insurance policy issued on or  
24 after January 1, 1985 for which the contract premium in the  
25 first policy year exceeds that of the second year and for

1 which no comparable additional benefit is provided in the  
2 first year for such excess and that provides an endowment  
3 benefit or a cash surrender value or a combination thereof in  
4 an amount greater than such excess premium, the reserve  
5 according to the commissioners reserve valuation method as of  
6 any policy anniversary occurring on or before the assumed  
7 ending date defined herein as the first policy anniversary on  
8 which the sum of any endowment benefit and any cash surrender  
9 value then available is greater than such excess premium  
10 shall, except as otherwise provided in Subparagraph (f) of  
11 this paragraph, be the greater of the reserve as of such  
12 policy anniversary calculated as described previously in this  
13 paragraph and the reserve as of such policy anniversary  
14 calculated as previously described in this paragraph, but  
15 with: the value defined in Subparagraph (a) of this  
16 paragraph being reduced by fifteen percent of the amount of  
17 such excess first year premium; all present values of  
18 benefits and premiums being determined without reference to  
19 premiums or benefits provided for by the policy after the  
20 assumed ending date; the policy being assumed to mature on  
21 such date as an endowment; and the cash surrender value  
22 provided on such date being considered as an endowment  
23 benefit. In making the above comparison the mortality and  
24 interest bases stated in Paragraphs (1), (3), (4) and (5) of  
25 Subsection B of this section and in Subsections C and D of

1 this section shall be used.

2 Reserves according to the commissioners reserve  
3 valuation method for: 1) life insurance policies providing  
4 for a varying amount of insurance or requiring the payment of  
5 varying premiums; 2) group annuity and pure endowment  
6 contracts purchased under a retirement plan or plan of  
7 deferred compensation, established or maintained by an  
8 employer (including a partnership or sole proprietorship) or  
9 by an employee organization, or by both, other than a plan  
10 providing individual retirement accounts or individual  
11 retirement annuities under Section 408 of the Internal  
12 Revenue Code, as now or hereafter amended; 3) disability and  
13 accidental death benefits in all policies and contracts; and  
14 4) all other benefits, except life insurance and endowment  
15 benefits in life insurance policies and benefits provided by  
16 all other annuity and pure endowment contracts, shall be  
17 calculated by a method consistent with the principles of this  
18 paragraph;

19 (c) in no event shall an insurer's  
20 aggregate reserves for all life insurance policies, excluding  
21 disability and accidental death benefits, be less than the  
22 aggregate reserves calculated in accordance with the methods  
23 set forth in this paragraph and Paragraph (2) of this  
24 subsection and the mortality table or tables and rate or  
25 rates of interest used in calculating nonforfeiture benefits

1 for such policies;

2 (d) at the option of the insurer,  
3 reserves for policies and contracts issued prior to the  
4 operative date of Section 59A-20-31 NMSA 1978 may be  
5 calculated according to a standard that produces greater  
6 aggregate reserves for the policies and contracts than the  
7 minimum required by the laws in effect immediately prior to  
8 that date;

9 (e) reserves for any category of  
10 policies, contracts or benefits as established by the  
11 superintendent that are issued on or after the operative date  
12 of Section 59A-20-31 NMSA 1978 may be calculated, at the  
13 option of the insurer, according to any standards that  
14 produce greater aggregate reserves for such category than  
15 those calculated according to the minimum standard herein  
16 provided, but the rate or rates of interest used for policies  
17 and contracts, other than annuity and pure endowment  
18 contracts, shall not be greater than the corresponding rate  
19 or rates of interest used in calculating any nonforfeiture  
20 benefits provided for in the policies or contracts.

21 Any such insurer that at any time adopts any standard of  
22 valuation producing greater aggregate reserves than those  
23 calculated according to the minimum standard provided by the  
24 Standard Valuation Law may, with the approval of the  
25 superintendent, adopt any lower standard of valuation, but

1 not lower than the minimum herein provided; but, for the  
2 purpose of this section, the holding of additional reserves  
3 previously determined by a qualified actuary to be necessary  
4 to render the opinion required by Section 59A-8A-4 NMSA 1978  
5 shall not be deemed to be the adoption of a higher standard  
6 of valuation;

7 (f) if in any contract year the gross  
8 premium charged by any insurer on any policy or contract is  
9 less than the valuation net premium for the policy or  
10 contract calculated by the method used in calculating the  
11 reserve thereon but using the minimum valuation standards of  
12 mortality and rate of interest, the minimum reserve required  
13 for such policy or contract shall be the greater of either  
14 the reserve calculated according to the mortality table, rate  
15 of interest, and method actually used for such policy or  
16 contract, or the reserve calculated by the method actually  
17 used for such policy or contract but using the minimum  
18 standards of mortality and rate of interest and replacing the  
19 valuation net premium by the actual gross premium in each  
20 contract year for which the valuation net premium exceeds the  
21 actual gross premium. The minimum valuation standards of  
22 mortality and rate of interest referred to in this paragraph  
23 are those standards stated in Paragraphs (1), (3), (4) and  
24 (5) of Subsection B of this section.

25 Provided that for any life insurance policy issued on or SB 56  
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1 after January 1, 1985 for which the gross premium in the  
2 first policy year exceeds that of the second year and for  
3 which no comparable additional benefit is provided in the  
4 first year for such excess and that provides an endowment  
5 benefit or a cash surrender value or a combination thereof in  
6 an amount greater than such excess premium, the foregoing  
7 provisions of Subparagraph (f) of this paragraph shall be  
8 applied as if the method actually used in calculating the  
9 reserve for such policy were the method previously described  
10 in this paragraph ignoring the unnumbered paragraph  
11 immediately following Subparagraph (b) of this paragraph.  
12 The minimum reserve at each policy anniversary of such a  
13 policy shall be the greater of the minimum reserve calculated  
14 in accordance with the method previously described in this  
15 paragraph, including the unnumbered paragraph immediately  
16 following Subparagraph (b), and the minimum reserve  
17 calculated in accordance with Subparagraph (f) of this  
18 paragraph; and

19 (g) in the case of any plan of life  
20 insurance that provides for future premium determination, the  
21 amounts of which are to be determined by the insurer based on  
22 then estimates of future experience, or in the case of any  
23 plan of life insurance or annuity that is of such a nature  
24 that the minimum reserves cannot be determined by the methods  
25 described in Paragraphs (1) and (2) of this subsection, the

1 reserves that are held under any such plan must: 1) be  
2 appropriate in relation to the benefits and the pattern of  
3 premiums for that plan; and 2) be computed by a method that  
4 is consistent with the principles of this standard valuation  
5 law, as determined by regulations promulgated by the  
6 superintendent.

7 (2) This paragraph shall apply to all  
8 annuity and pure endowment contracts other than group annuity  
9 and pure endowment contracts purchased under a retirement  
10 plan or plan of deferred compensation, established or  
11 maintained by an employer (including a partnership or sole  
12 proprietorship) or by an employee organization, or by both,  
13 other than a plan providing individual retirement accounts or  
14 individual retirement annuities under Section 408 of the  
15 Internal Revenue Code, as now or hereafter amended.

16 Reserves according to the commissioners annuity reserve  
17 method for benefits under annuity or pure endowment  
18 contracts, excluding any disability and accidental death  
19 benefits in such contracts, shall be the greatest of the  
20 respective excesses of the present values, at the date of  
21 valuation, of the future guaranteed benefits, including  
22 guaranteed nonforfeiture benefits, provided for by such  
23 contracts at the end of each respective contract year, over  
24 the present value, at the date of valuation, of any future  
25 valuation considerations derived from future gross

1 considerations, required by the terms of such contract, that  
2 become payable prior to the end of such respective contract  
3 year. The future guaranteed benefits shall be determined by  
4 using the mortality table, if any, and the interest rate or  
5 rates, specified in such contracts for determining guaranteed  
6 benefits. The valuation considerations are the portions of  
7 the respective gross considerations applied under the terms  
8 of such contracts to determine nonforfeiture values."

9 SECTION 21. A new Section 59A-8A-7 NMSA 1978 is enacted  
10 to read:

11 "59A-8A-7. MINIMUM STANDARDS FOR ACCIDENT AND HEALTH  
12 INSURANCE CONTRACTS.--For an accident and health insurance  
13 contract issued on or after the operative date of the  
14 valuation manual, the standard prescribed in the valuation  
15 manual is the minimum standard of valuation required by  
16 Subsection B of Section 59A-8A-3 NMSA 1978. For an accident  
17 and health insurance contract issued on or after the  
18 operative date of Section 59A-20-31 NMSA 1978 and prior to  
19 the operative date of the valuation manual, the minimum  
20 standard of valuation is the standard adopted by the  
21 superintendent by rule."

22 SECTION 22. A new Section 59A-8A-8 NMSA 1978 is enacted  
23 to read:

24 "59A-8A-8. VALUATION MANUAL FOR POLICIES ISSUED ON OR  
25 AFTER OPERATIVE DATE OF VALUATION MANUAL.--

1           A. For a policy issued on or after the operative  
2 date of the valuation manual, the standard prescribed in the  
3 valuation manual is the minimum standard of valuation  
4 required by Subsection B of Section 59A-8A-3 NMSA 1978,  
5 except as provided in Subsection D or F of this section.

6           B. Unless an amendment to the valuation manual  
7 provides for a later effective date, an amendment to the  
8 valuation manual takes effect on the January 1 after the date  
9 that the amendment was adopted by the national association of  
10 insurance commissioners by an affirmative vote of:

11                   (1) at least three-fourths of the members of  
12 the national association of insurance commissioners voting,  
13 but not less than a majority of the total membership; and

14                   (2) members representing jurisdictions that  
15 collectively represent more than seventy-five percent of  
16 written direct premiums, as reported in the life, accident  
17 and health annual statements, the health annual statements  
18 and the fraternal annual statements most recently available  
19 before the time of the vote referred to in Paragraph (1) of  
20 this subsection.

21           C. The valuation manual shall indicate:

22                   (1) minimum valuation standards for and  
23 definitions of the policies or contracts subject to  
24 Subsection B of Section 59A-8A-3 NMSA 1978, including:

25                           (a) the superintendent's reserve

1 valuation method for life insurance contracts, other than  
2 annuity contracts, subject to that subsection;

3 (b) the superintendent's annuity  
4 reserve valuation method for annuity contracts subject to  
5 that subsection; and

6 (c) minimum reserves for all other  
7 policies or contracts subject to that subsection;

8 (2) which policies and contracts or types of  
9 policies and contracts are subject to the requirements of a  
10 principle-based valuation in Subsection A of Section 59A-8A-9  
11 NMSA 1978 and the minimum standards of valuation consistent  
12 with those requirements;

13 (3) for policies and contracts subject to a  
14 principle-based valuation pursuant to Section 59A-8A-9  
15 NMSA 1978:

16 (a) requirements for the format of  
17 reports filed with the superintendent pursuant to Paragraph  
18 (4) of Subsection B of Section 59A-8A-9 NMSA 1978, which  
19 shall include information necessary to determine if the  
20 valuation is appropriate and complies with the Standard  
21 Valuation Law;

22 (b) prescribed assumptions for risks  
23 over which the company has no significant control or  
24 influence; and

25 (c) procedures for, and a process for

1 appropriate waiver or modification of, corporate governance  
2 and oversight of the actuarial function;

3 (4) for policies not subject to a  
4 principle-based valuation pursuant to Section 59A-8A-9  
5 NMSA 1978, the minimum standard of valuation shall either:

6 (a) be consistent with the minimum  
7 standard of valuation in effect prior to the operative date  
8 of the valuation manual; or

9 (b) provide for reserves that quantify  
10 the benefits and guarantees and the funding associated with  
11 the contracts and their risks at a level of conservatism that  
12 reflects conditions that include unfavorable events with a  
13 reasonable probability of occurring;

14 (5) other requirements, including those  
15 related to reserve methods, models for measuring risk,  
16 generation of economic scenarios, assumptions, margins, use  
17 of company experience, risk measurement, disclosure,  
18 certifications, reports, actuarial opinions and memoranda,  
19 transition rules and internal controls; and

20 (6) the data and form of the data required  
21 by Section 59A-8A-10 NMSA 1978, the person with whom the data  
22 must be submitted and, if appropriate, data analyses and  
23 reporting of analyses.

24 D. In the absence of a specific valuation  
25 requirement or if a specific valuation requirement in the

1 valuation manual does not, in the opinion of the  
2 superintendent, comply with the Standard Valuation Law, then  
3 a company shall comply with the minimum valuation standards  
4 promulgated by rule by the superintendent.

5 E. The superintendent may engage, at the company's  
6 expense, a qualified actuary to conduct an actuarial  
7 examination of a company and issue an opinion on the  
8 appropriateness of the company's reserve assumption or  
9 method, or to review and issue an opinion on the company's  
10 compliance with a requirement of the Standard Valuation Law.  
11 The superintendent may rely upon the opinion of a qualified  
12 actuary engaged by the insurance supervisory official of  
13 another state, district or territory of the United States if  
14 that opinion relates to the provisions of the Standard  
15 Valuation Law. As used in this subsection, "engage" includes  
16 employment and contract employment.

17 F. The superintendent may require a company to  
18 change an assumption or method if the superintendent believes  
19 that the change is necessary to comply with the requirements  
20 of the valuation manual or the Standard Valuation Law. The  
21 company shall adjust its reserves to comply with the  
22 superintendent's requirement."

23 SECTION 23. A new Section 59A-8A-9 NMSA 1978 is enacted  
24 to read:

25 "59A-8A-9. REQUIREMENTS OF A PRINCIPLE-BASED

1 VALUATION.--

2 A. For policies and contracts that the valuation  
3 manual indicates are subject to this section, a company shall  
4 establish reserves using a principle-based valuation that:

5 (1) quantifies the benefits and guarantees  
6 and the funding associated with the contracts and their risks  
7 at a level of conservatism that reflects conditions that  
8 include unfavorable events with a reasonable probability of  
9 occurring during the lifetime of the contracts and, for a  
10 policy or contract with significant tail risk, reflects  
11 conditions appropriately adverse to quantify the tail risk;

12 (2) incorporates assumptions, risk analysis  
13 methods, financial models and management techniques that are  
14 consistent with, but not necessarily identical to, those used  
15 in the company's overall risk assessment process and that  
16 recognize potential differences in financial reporting  
17 structures and prescribed assumptions or methods;

18 (3) incorporates assumptions that:

19 (a) derive from the valuation manual;

20 or

21 (b) do not derive from the valuation  
22 manual, but: 1) are established using the company's  
23 available experience and are relevant and statistically  
24 credible; or 2) if company data is not available, relevant or  
25 statistically credible, are established utilizing other

1 relevant, statistically credible experience; and

2 (4) provides margins for uncertainty,  
3 including adverse deviation and estimation error, whose sizes  
4 vary in proportion to the margin and resulting reserve.

5 B. A company using a principle-based valuation for  
6 policies and contracts that the valuation manual indicates  
7 are subject to this section shall:

8 (1) establish procedures for corporate  
9 governance and oversight of the actuarial valuation function  
10 that are consistent with those provided for in the valuation  
11 manual;

12 (2) design its internal controls of  
13 principle-based valuation to ensure that all material risks  
14 inherent in the liabilities and associated assets subject to  
15 the valuation are included in the valuation and that  
16 valuations are made in accordance with the valuation manual;

17 (3) each year, provide to the superintendent  
18 and to the company's board of directors a certification of  
19 effectiveness of the internal controls of the company's  
20 principle-based valuation that are in place at the end of the  
21 preceding calendar year; and

22 (4) develop and, upon the request of the  
23 superintendent, file a principle-based valuation report that  
24 complies with the standards prescribed in the valuation  
25 manual.

1 C. A principle-based valuation may include a  
2 prescribed formulaic reserve component."

3 SECTION 24. A new Section 59A-8A-10 NMSA 1978 is  
4 enacted to read:

5 "59A-8A-10. EXPERIENCE REPORTING FOR POLICIES IN FORCE  
6 ON OR AFTER OPERATIVE DATE OF VALUATION MANUAL.--For policies  
7 in force on or after the operative date of the valuation  
8 manual, a company shall submit mortality, morbidity,  
9 policyholder behavior or expense experience and other data as  
10 prescribed in the valuation manual."

11 SECTION 25. A new Section 59A-8A-11 NMSA 1978 is  
12 enacted to read:

13 "59A-8A-11. CONFIDENTIALITY.--

14 A. As used in this section, "confidential  
15 information" includes:

16 (1) memoranda in support of opinions  
17 submitted pursuant to Sections 59A-8A-4 and 59A-8A-5  
18 NMSA 1978 and other documents, materials and information,  
19 including all working papers and copies of those papers, that  
20 are produced or obtained by or disclosed to the  
21 superintendent or another person in connection with those  
22 memoranda;

23 (2) documents, materials and other  
24 information, including all working papers and copies of those  
25 papers, that are produced or obtained by or disclosed to the

1 superintendent or another person in the course of an  
2 examination conducted pursuant to Subsection E of Section  
3 59A-8A-8 NMSA 1978; provided, however, that if an examination  
4 report or other material prepared in connection with an  
5 examination pursuant to Sections 59A-4-5 through 59A-4-13  
6 NMSA 1978 is not held as private and confidential information  
7 pursuant to Sections 59A-4-5 through 59A-4-13 NMSA 1978, an  
8 examination report made under Subsection E of Section  
9 59A-8A-8 NMSA 1978 shall not be confidential information to  
10 the same extent as if the examination report or other  
11 material had been prepared pursuant to Sections 59A-4-5  
12 through 59A-4-13 NMSA 1978;

13 (3) reports, documents, materials and other  
14 information that are developed by a company in support of or  
15 in connection with an annual certification by a company  
16 pursuant to Paragraph (3) of Subsection B of Section 59A-8A-9  
17 NMSA 1978 and that evaluate the effectiveness of the  
18 company's internal controls with respect to a principle-based  
19 valuation and any other documents, materials and other  
20 information, including working papers and copies of those  
21 papers that are produced by, obtained by or disclosed to the  
22 superintendent or another person in connection with those  
23 reports, documents, materials or other information;

24 (4) principle-based valuation reports  
25 developed pursuant to Paragraph (4) of Subsection B of

1 Section 59A-8A-9 NMSA 1978 and other documents, materials and  
2 other information, including all working papers and copies of  
3 those papers that are produced or obtained by or disclosed to  
4 the superintendent or another person in connection with those  
5 reports; and

6 (5) documents, materials, data and other  
7 information that are submitted by a company pursuant to  
8 Section 59A-8A-10 NMSA 1978 and all other documents,  
9 materials, data and other information, including all working  
10 papers and copies of those papers, that are created or  
11 produced in connection with experience data that include any  
12 potentially company- or person-identifying information and  
13 that is provided to or obtained by the superintendent or  
14 another person in connection with the submissions required by  
15 Section 59A-8A-10 NMSA 1978.

16 B. Except as provided in this section, a company's  
17 confidential information is confidential and is not subject  
18 to the Inspection of Public Records Act. Nothing in this  
19 section shall be construed as a grant of privilege or  
20 confidentiality or a bar to production of that information by  
21 an insurer in a civil suit, whether or not the office of  
22 superintendent of insurance is a party; provided that the  
23 superintendent may use the documents, materials or other  
24 information in the furtherance of a regulatory or legal  
25 action brought as a part of the superintendent's official

1 duties. Neither the superintendent nor another person who  
2 received documents, materials or other information while  
3 acting pursuant to the authority of the superintendent shall  
4 be permitted or required in a private civil action to testify  
5 on the confidential documents, materials or information  
6 subject to this subsection.

7 C. In order to assist in the performance of the  
8 superintendent's duties, the superintendent may share  
9 confidential information:

10 (1) with another state, federal or  
11 international regulatory agency and with the national  
12 association of insurance commissioners, its affiliates or its  
13 subsidiaries; and

14 (2) in the case of confidential information  
15 specified in Paragraphs (1) and (4) of Subsection A of this  
16 section:

17 (a) with the actuarial board for  
18 counseling and discipline or its successor if the actuarial  
19 board for counseling and discipline or its successor requests  
20 the confidential information and states that it is required  
21 for a professional disciplinary proceeding; and

22 (b) with a state, federal or  
23 international law enforcement official if that official has  
24 the legal authority to agree and does agree to maintain the  
25 confidentiality and privilege of the documents, materials,

1 data and other information in the same manner and to the same  
2 extent as the superintendent.

3 D. The superintendent may receive documents,  
4 materials, data and other information, including otherwise  
5 confidential and privileged documents, materials, data and  
6 other information, from the national association of insurance  
7 commissioners, its affiliates or its subsidiaries, from  
8 regulatory or law enforcement officials of foreign or  
9 domestic jurisdictions and from the actuarial board for  
10 counseling and discipline or its successor. The  
11 superintendent shall maintain as confidential or privileged a  
12 document, materials, data or other information received with  
13 notice or the understanding that the content is confidential  
14 or privileged pursuant to the laws of the jurisdiction from  
15 which the information originates.

16 E. The superintendent may enter into agreements  
17 governing the sharing and use of information that are  
18 consistent with Subsections B through H of this section.

19 F. No waiver of an applicable privilege or claim  
20 of confidentiality in confidential information results from a  
21 disclosure to the superintendent pursuant to the provisions  
22 of this section or as a result of the sharing authorized by  
23 Subsection C of this section.

24 G. A privilege established by the laws of a state  
25 or jurisdiction that is substantially similar to the

1 privilege established by Subsections B through H of this  
2 section shall be available and enforced in any official  
3 proceeding in, and in any court of, New Mexico.

4 H. For the purposes of this section, "regulatory  
5 agency", "law enforcement agency" and "national association  
6 of insurance commissioners" include the employees, agents,  
7 consultants and contractors of the entity.

8 I. Notwithstanding Subsections B through H of this  
9 section, the confidential information specified in Paragraphs  
10 (1) and (4) of Subsection A of this section:

11 (1) may be subject to subpoena for the  
12 purpose of defending an action seeking damages from an  
13 appointed actuary who submits a related memorandum in support  
14 of an opinion pursuant to Sections 59A-8A-4 and 59A-8A-5  
15 NMSA 1978 or who submits a principle-based valuation report  
16 developed pursuant to Paragraph (4) of Subsection B of  
17 Section 59A-8A-9 NMSA 1978 if the submission is required by  
18 the Standard Valuation Law or the rules promulgated in  
19 furtherance of that law;

20 (2) may, with the written consent of the  
21 company, be released by the superintendent; and

22 (3) ceases to be confidential once a portion  
23 of a memorandum in support of an opinion submitted pursuant  
24 to Sections 59A-8A-4 and 59A-8A-5 NMSA 1978 or a  
25 principle-based valuation report developed pursuant to

1 Paragraph (4) of Subsection B of Section 59A-8A-9 NMSA 1978  
2 is cited by the company in its marketing, publicly  
3 volunteered to a governmental agency other than a state  
4 insurance department or released by the company to the news  
5 media."

6 SECTION 26. A new Section 59A-8A-12 NMSA 1978 is  
7 enacted to read:

8 "59A-8A-12. SINGLE STATE EXEMPTION.--

9 A. The superintendent may exempt from the  
10 requirements of Section 59A-8A-8 NMSA 1978 the specific  
11 product forms or product lines of a domestic company that is  
12 licensed and doing business only in New Mexico if:

13 (1) the superintendent has issued a written  
14 exemption to the company and has not subsequently revoked the  
15 exemption in writing; and

16 (2) the company computes reserves using the  
17 assumptions and methods used prior to the operative date of  
18 the valuation manual and using any requirements established  
19 by the superintendent and promulgated by rule.

20 B. For a company granted an exemption pursuant to  
21 this section, Sections 59A-8A-4, 59A-8A-6 and 59A-8A-7  
22 NMSA 1978 apply. For a company that applies this exemption,  
23 a reference to Section 59A-8A-8 NMSA 1978 that is found in  
24 Sections 59A-8A-4, 59A-8A-6 and 59A-8A-7 NMSA 1978 does not  
25 apply."

1 SECTION 27. Section 59A-20-31 NMSA 1978 (being Laws  
2 1984, Chapter 127, Section 396) is amended to read:

3 "59A-20-31. STANDARD NONFORFEITURE LAW--LIFE  
4 INSURANCE.--

5 A. In the case of policies issued on and after the  
6 operative date of this section, as defined in Subsection K of  
7 this section, no policy of life insurance, except as stated  
8 in Subsection J of this section, shall be delivered or issued  
9 for delivery in this state unless it shall contain in  
10 substance the following provisions, or corresponding  
11 provisions that in the opinion of the superintendent are at  
12 least as favorable to the defaulting or surrendering  
13 policyholder as are the minimum requirements hereinafter  
14 specified and are essentially in compliance with Subsection I  
15 of this section:

16 (1) that, in the event of default in any  
17 premium payment the insurer will grant, upon proper request  
18 not later than sixty days after the due date of the premium  
19 in default, a paid-up nonforfeiture benefit on a plan  
20 stipulated in the policy, effective as of such due date, of  
21 such amount as may be hereinafter specified. In lieu of such  
22 stipulated paid-up nonforfeiture benefit, the insurer may  
23 substitute, upon proper request not later than sixty days  
24 after the due date of the premium in default, an actuarially  
25 equivalent alternative paid-up nonforfeiture benefit that

1 provides a greater amount or longer period of death benefits  
2 or, if applicable, a greater amount or earlier payment of  
3 endowment benefits;

4 (2) that, upon surrender of the policy  
5 within sixty days after the due date of any premium payment  
6 in default after premiums have been paid for at least three  
7 full years in the case of ordinary insurance or five full  
8 years in the case of industrial insurance, the insurer will  
9 pay, in lieu of any paid-up nonforfeiture benefit, a cash  
10 surrender value of such amount as may be hereinafter  
11 specified;

12 (3) that a specified paid-up nonforfeiture  
13 benefit shall become effective as specified in the policy  
14 unless the person entitled to make such election elects  
15 another available option not later than sixty days after the  
16 due date of the premium in default;

17 (4) that, if the policy shall have become  
18 paid-up by completion of all premium payments or if it is  
19 continued under any paid-up nonforfeiture benefit that became  
20 effective on or after the third policy anniversary in the  
21 case of ordinary insurance or the fifth policy anniversary in  
22 the case of industrial insurance, the insurer will pay, upon  
23 surrender of the policy within thirty days after any policy  
24 anniversary, a cash surrender value of such amount as may be  
25 hereinafter specified;

1                   (5) in the case of policies that cause on a  
2 basis guaranteed in the policy unscheduled changes in  
3 benefits or premiums, or that provide an option for changes  
4 in benefits or premiums other than a change to a new policy,  
5 a statement of the mortality table, interest rate and method  
6 used in calculating cash surrender values and the paid-up  
7 nonforfeiture benefits available under the policy. In the  
8 case of all other policies, a statement of the mortality  
9 table and interest rate used in calculating the cash  
10 surrender values and the paid-up nonforfeiture benefits  
11 available under the policy, together with a table showing the  
12 cash surrender value, if any, and paid-up nonforfeiture  
13 benefit, if any, available under the policy on each policy  
14 anniversary either during the first twenty policy years or  
15 during the term of the policy, whichever is shorter, such  
16 values and benefits to be calculated upon the assumption that  
17 there are no dividends or paid-up additions credited to the  
18 policy and that there is no indebtedness to the insurer on  
19 the policy; and

20                   (6) a statement that the cash surrender  
21 values and the paid-up nonforfeiture benefits available under  
22 the policy are not less than the minimum values and benefits  
23 required by or pursuant to the insurance law of the state in  
24 which the policy is delivered; an explanation of the manner  
25 in which the cash surrender values and the paid-up

1 nonforfeiture benefits are altered by the existence of any  
2 paid-up additions credited to the policy or any indebtedness  
3 to the insurer on the policy; if a detailed statement of the  
4 method of computation of the values and benefits shown in the  
5 policy is not stated therein, a statement that such method of  
6 computation has been filed with the insurance supervisory  
7 official of the state in which the policy is delivered; and a  
8 statement of the method to be used in calculating the cash  
9 surrender value and paid-up nonforfeiture benefit available  
10 under the policy on any policy anniversary beyond the last  
11 anniversary for which such values and benefits are  
12 consecutively shown in the policy.

13 Any of the provisions in this subsection or portions  
14 thereof not applicable by reason of the plan of insurance  
15 may, to the extent inapplicable, be omitted from the policy.

16 The insurer shall reserve the right to defer the payment  
17 of any cash surrender value for a period of six months after  
18 demand therefor with surrender of the policy.

19 B. Any cash surrender value available under the  
20 policy in the event of default in a premium payment due on  
21 any policy anniversary, whether or not required by Subsection  
22 A of this section, shall be an amount not less than the  
23 excess, if any, of the present value, on such anniversary, of  
24 the future guaranteed benefits that would have been provided  
25 for by the policy, including any existing paid-up additions,

1 if there had been no default, over the sum of:

2 (1) the then present value of the adjusted  
3 premiums as defined in Subsections D, E and F of this  
4 section, corresponding to premiums that would have fallen due  
5 on or after such anniversary; and

6 (2) the amount of any indebtedness to the  
7 insurer on the policy.

8 Provided, however, that for any policy issued on or  
9 after the operative date of Subsection F of this section, as  
10 defined therein, which provides supplemental life insurance  
11 or annuity benefits at the option of the insured and for an  
12 identifiable additional premium by rider or supplemental  
13 policy provision, the cash surrender value referred to in  
14 Paragraph (1) of this subsection shall be an amount not less  
15 than the sum of the cash surrender value as defined in such  
16 paragraph for an otherwise similar policy issued at the same  
17 age without such rider or supplemental policy provision and  
18 the cash surrender value as defined in such paragraph for a  
19 policy that provides only the benefits otherwise provided by  
20 such rider or supplemental policy provision.

21 Provided, further, that for any family policy issued on  
22 or after the operative date of Subsection F of this section  
23 as defined therein, which defines a primary insured and  
24 provides term insurance on the life of the spouse of the  
25 primary insured expiring before the spouse's age of

1 seventy-one, the cash surrender value referred to in  
2 Paragraph (1) of this subsection shall be an amount not less  
3 than the sum of the cash surrender value as defined in such  
4 paragraph for an otherwise similar policy issued at the same  
5 age without such term insurance on the life of the spouse and  
6 the cash surrender value as defined in such paragraph for a  
7 policy that provides only the benefits otherwise provided by  
8 such term insurance on the life of the spouse. Any cash  
9 surrender value available within thirty days after any policy  
10 anniversary under any policy paid up by completion of all  
11 premium payments or any policy continued under any paid-up  
12 nonforfeiture benefit, whether or not required by Subsection  
13 A of this section, shall be an amount not less than the  
14 present value, on such anniversary, of the future guaranteed  
15 benefits provided for by the policy, including any existing  
16 paid-up additions, decreased by any indebtedness to the  
17 insurer on the policy.

18 C. Any paid-up nonforfeiture benefit available  
19 under the policy in the event of default in a premium payment  
20 due on any policy anniversary shall be such that its present  
21 value as of such anniversary shall be at least equal to the  
22 cash surrender value then provided for by the policy or, if  
23 none is provided for, that cash surrender value that would  
24 have been required by this section in the absence of the  
25 condition that premiums shall have been paid for at least a

1 specified period.

2 D. This subsection shall not apply to policies  
3 issued on or after the operative date of Subsection F of this  
4 section. Except as provided in Paragraph (2) of this  
5 subsection, the adjusted premiums for any policy shall be  
6 calculated on an annual basis and shall be such uniform  
7 percentage of the respective premiums specified in the policy  
8 for each policy year, excluding any extra premiums charged  
9 because of impairments or special hazards, that the present  
10 value, at the date of issue of the policy, of all such  
11 adjusted premiums shall be equal to the sum of: (a) the then  
12 present value of the future guaranteed benefits provided for  
13 by the policy; (b) two percent of the amount of insurance, if  
14 the insurance be uniform in amount, or of the equivalent  
15 uniform amount, as hereinafter defined, if the amount of  
16 insurance varies with duration of the policy; (c) forty  
17 percent of the adjusted premium for the first policy year;  
18 (d) twenty-five percent of either the adjusted premium for  
19 the first policy year or the adjusted premium for a whole  
20 life policy of the same uniform or equivalent uniform amount  
21 with uniform premiums for the whole of life issued at the  
22 same age for the same amount of insurance, whichever is less.  
23 Provided, however, that in applying the percentages specified  
24 in (c) and (d), no adjusted premium shall be deemed to exceed  
25 four percent of the amount of insurance or uniform amount

1 equivalent thereto. The date of issue of a policy for the  
2 purpose of this subsection shall be the date as of which the  
3 rated age of the insured is determined.

4 (1) In the case of a policy providing an  
5 amount of insurance varying with duration of the policy, the  
6 equivalent uniform amount thereof for the purpose of this  
7 subsection shall be deemed to be the uniform amount of  
8 insurance provided by an otherwise similar policy, containing  
9 the same endowment benefit or benefits, if any, issued at the  
10 same age and for the same term, the amount of which does not  
11 vary with duration and the benefits under which have the same  
12 present value at the date of issue as the benefits under the  
13 policy; provided, however, that in the case of a policy  
14 providing a varying amount of insurance issued on the life of  
15 a child under age ten, the equivalent uniform amount may be  
16 computed as though the amount of insurance provided by the  
17 policy prior to the attainment of age ten were the amount  
18 provided by such policy at age ten.

19 (2) The adjusted premiums for any policy  
20 providing term insurance benefits by rider or supplemental  
21 policy provision shall be equal to: (1) the adjusted  
22 premiums for an otherwise similar policy issued at the same  
23 age without such term insurance benefits, increased, during  
24 the period for which premiums for such term insurance  
25 benefits are payable by (2) the adjusted premiums for such

1 term insurance, the foregoing items (1) and (2) being  
2 calculated separately and as specified in the first two  
3 paragraphs (the first paragraphs and Paragraph (1)) of this  
4 subsection except that, for the purposes of (b), (c) and (d)  
5 of the first such paragraph, the amount of insurance or  
6 equivalent uniform amount of insurance used in the  
7 calculation of the adjusted premiums referred to in (2) shall  
8 be equal to the excess of the corresponding amount determined  
9 for the entire policy over the amount used in the calculation  
10 of the adjusted premiums in (1).

11 (3) Except as otherwise provided in  
12 Paragraph (4) of this subsection and Subsection E of this  
13 section, all adjusted premiums and present values referred to  
14 in this section shall for all policies of ordinary insurance  
15 be calculated on the basis of the national association of  
16 insurance commissioners 1941 standard ordinary mortality  
17 table, provided that for any category of ordinary insurance  
18 issued on female risks, adjusted premiums and present values  
19 may be calculated according to an age not more than three  
20 years younger than the actual age of the insured, and such  
21 calculations for all policies of industrial insurance shall  
22 be made on the basis of the 1941 standard industrial  
23 mortality table. All calculations shall be made on the basis  
24 of the rate of interest, not exceeding three and one-half  
25 percent per annum, specified in the policy for calculating

1 cash surrender values and paid-up nonforfeiture benefits.  
2 Provided, however, that in calculating the present value of  
3 any paid-up term insurance with accompanying pure endowment,  
4 if any, offered as a nonforfeiture benefit, the rates of  
5 mortality assumed may be not more than one hundred thirty  
6 percent of the rates of mortality according to such  
7 applicable table. Provided, further, that for insurance  
8 issued on a substandard basis, the calculation of any such  
9 adjusted premiums and present values may be based on such  
10 other table of mortality as may be specified by the insurer  
11 and approved by the superintendent.

12 (4) This paragraph shall not apply to  
13 ordinary policies issued on or after the operative date of  
14 Subsection F of this section. In the case of ordinary  
15 policies issued on or after the operative date of this  
16 paragraph as defined herein, all adjusted premiums and  
17 present values referred to in this section shall be  
18 calculated on the basis of the commissioners 1958 standard  
19 ordinary mortality table and the rate of interest specified  
20 in the policy for calculating cash surrender values and  
21 paid-up nonforfeiture benefits; provided that such rate of  
22 interest shall not exceed three and one-half percent a year,  
23 except that a rate of interest not exceeding four percent a  
24 year may be used for policies issued on or after July 1, 1973  
25 and prior to July 1, 1977 and a rate of interest not

1 exceeding five and one-half percent per annum may be used for  
2 policies issued on or after July 1, 1977, except that for any  
3 single premium whole life or endowment insurance policy a  
4 rate of interest not exceeding six and one-half percent per  
5 annum may be used, and provided that for any category of  
6 ordinary insurance issued on female risks, adjusted premiums  
7 and present values may be calculated according to an age not  
8 more than six years younger than the actual age of the  
9 insured. Provided, however, that in calculating the present  
10 value of any paid-up term insurance with accompanying pure  
11 endowment, if any, offered as a nonforfeiture benefit, the  
12 rates of mortality assumed may be not more than those shown  
13 in the commissioners 1958 extended term insurance table.  
14 Provided, further, that for insurance issued on a substandard  
15 basis, the calculation of any such adjusted premiums and  
16 present values may be based on such other table of mortality  
17 as may be specified by the insurer and approved by the  
18 superintendent.

19 After June 9, 1961, any insurer may file with the  
20 superintendent a written notice of its election to comply  
21 with the provisions of Paragraph (4) of this subsection after  
22 a specified date before January 1, 1966. After the filing of  
23 such notice, then upon such specified date (which shall be  
24 the operative date of this subsection for such insurer), this  
25 subsection shall become operative with respect to the

1 ordinary policies thereafter issued by such insurer. If an  
2 insurer makes no such election, the operative date of this  
3 subsection for such insurer shall be January 1, 1966.

4 E. This subsection shall not apply to industrial  
5 policies issued on or after the operative date of Subsection  
6 F of this section.

7 In the case of industrial policies issued on or after  
8 the operative date of this subsection as defined herein, all  
9 adjusted premiums and present values referred to in this  
10 section shall be calculated on the bases of the commissioners  
11 1961 standard industrial mortality table and the rate of  
12 interest specified in the policy for calculating cash  
13 surrender values and paid-up nonforfeiture benefits; provided  
14 that such rate of interest shall not exceed three and  
15 one-half percent a year except that a rate of interest not  
16 exceeding four percent a year may be used for policies issued  
17 on or after July 1, 1973 and prior to July 1, 1977 and a rate  
18 of interest not exceeding five and one-half percent per annum  
19 may be used for policies issued on or after July 1, 1977,  
20 except that, for any single premium whole life or endowment  
21 insurance policy, a rate of interest not exceeding six and  
22 one-half percent per annum may be used. Provided, however,  
23 that in calculating the present value of any paid-up term  
24 insurance with accompanying pure endowment, if any, offered  
25 as a nonforfeiture benefit, the rates of mortality assumed

1 may be not more than those shown in the commissioners 1961  
2 industrial extended term insurance table. Provided, further,  
3 that for insurance issued on a substandard basis, the  
4 calculation of any such adjusted premiums and present values  
5 may be based on such other table of mortality as may be  
6 specified by the insurer and approved by the superintendent.

7 After June 7, 1963, any insurer may file with the  
8 superintendent a written notice of its election to comply  
9 with the provisions of this subsection after a specified date  
10 before January 1, 1968. After the filing of such notice,  
11 then upon such specified date (which shall be the operative  
12 date of this subsection for such insurer), this subsection  
13 shall become operative with respect to the industrial  
14 policies thereafter issued by such insurer. If an insurer  
15 makes no such election, the operative date of this subsection  
16 for such insurer shall be January 1, 1968.

17 F. This subsection shall apply to all policies  
18 issued on or after the operative date of this subsection.  
19 Except as provided in Paragraph (6) of this subsection, the  
20 adjusted premiums for any policy shall be calculated on an  
21 annual basis and shall be such uniform percentage of the  
22 respective premiums specified in the policy for each policy  
23 year, excluding amounts payable as extra premiums to cover  
24 impairment or special hazards and also excluding any uniform  
25 annual contract charge or policy fee specified in the policy

1 in a statement of the method to be used in calculating the  
2 cash surrender values and paid-up nonforfeiture benefits,  
3 that the present value, at the date of issue of the policy,  
4 of all adjusted premiums shall be equal to the sum of the  
5 then present value of the future guaranteed benefits provided  
6 for by the policy; one percent of either the amount of  
7 insurance, if the insurance be uniform in amount, or the  
8 average amount of insurance at the beginning of each of the  
9 first ten policy years; and one hundred twenty-five percent  
10 of the nonforfeiture net level premium as hereinafter  
11 defined. Provided, however, that, in applying the last  
12 percentage specified above, no nonforfeiture net level  
13 premium shall be deemed to exceed four percent of either the  
14 amount of insurance, if the insurance be uniform in amount,  
15 or the average amount of insurance at the beginning of each  
16 of the first ten policy years. The date of issue of a policy  
17 for the purpose of this subsection shall be the date as of  
18 which the rated age of the insured is determined; and

19 (1) the nonforfeiture net level premium  
20 shall be equal to the present value, at the date of issue of  
21 the policy, of the guaranteed benefits provided for by the  
22 policy divided by the present value, at the date of issue of  
23 the policy, of an annuity of one per annum payable on the  
24 date of issue of the policy and on each anniversary of such  
25 policy on which a premium falls due;

1                   (2) in the case of policies that cause on a  
2 basis guaranteed in the policy unscheduled changes in  
3 benefits or premiums, or that provide an option for changes  
4 in benefits or premiums other than a change to a new policy,  
5 the adjusted premiums and present values shall initially be  
6 calculated on the assumption that future benefits and  
7 premiums do not change from those stipulated at the date of  
8 issue of the policy. At the time of any such change in the  
9 benefits or premiums, the future adjusted premiums,  
10 nonforfeiture net level premiums and present values shall be  
11 recalculated on the assumption that future benefits and  
12 premiums do not change from those stipulated by the policy  
13 immediately after the change;

14                   (3) except as otherwise provided in  
15 Paragraph (6) of this subsection, the recalculated future  
16 adjusted premiums for any such policy shall be such uniform  
17 percentage of the respective future premiums specified in the  
18 policy for each policy year, excluding amounts payable as  
19 extra premiums to cover impairments and special hazards, and  
20 also excluding any uniform annual contract charge or policy  
21 fee specified in the policy in a statement of the method to  
22 be used in calculating the cash surrender values and paid-up  
23 nonforfeiture benefits, that the present value, at the time  
24 of change to the newly defined benefits or premiums, of all  
25 such future adjusted premiums shall be equal to the excess of

1 the sum of the then present value of the then future  
2 guaranteed benefits provided for by the policy and the  
3 additional expense allowance, if any, over the then cash  
4 surrender value, if any, or present value of any paid-up  
5 nonforfeiture benefit under the policy;

6 (4) the additional expense allowance, at the  
7 time of the change to the newly defined benefits or premiums,  
8 shall be the sum of one percent of the excess, if positive,  
9 of the average amount of insurance at the beginning of each  
10 of the first ten policy years subsequent to the change over  
11 the average amount of insurance prior to the change at the  
12 beginning of each of the first ten policy years subsequent to  
13 the time of the most recent previous change, or, if there has  
14 been no previous change, the date of issue of the policy; and  
15 one hundred twenty-five percent of the increase, if positive,  
16 in the nonforfeiture net level premium;

17 (5) the recalculated nonforfeiture net level  
18 premium shall be equal to the result obtained by dividing (a)  
19 by (b) where:

20 (a) equals the sum of: (1) the  
21 nonforfeiture net level premium applicable prior to the  
22 change times the present value of an annuity of one per annum  
23 payable on each anniversary of the policy on or subsequent to  
24 the date of the change on which a premium would have fallen  
25 due had the change not occurred; and (2) the present value of

1 the increase in future guaranteed benefits provided for by  
2 the policy; and

3 (b) equals the present value of an  
4 annuity of one per annum payable on each anniversary of the  
5 policy on or subsequent to the date of change on which a  
6 premium falls due;

7 (6) notwithstanding any other provisions of  
8 this subsection to the contrary, in the case of a policy  
9 issued on a substandard basis that provides reduced graded  
10 amounts of insurance so that, in each policy year, such  
11 policy has the same tabular mortality cost as an otherwise  
12 similar policy issued on the standard basis that provides  
13 higher uniform amounts of insurance, adjusted premiums and  
14 present values for such substandard policy may be calculated  
15 as if it were issued to provide such higher uniform amounts  
16 of insurance on the standard basis;

17 (7) all adjusted premiums and present values  
18 referred to in this section shall for all policies of  
19 ordinary insurance be calculated on the basis of the  
20 commissioners 1980 standard ordinary mortality table or, at  
21 the election of the insurer for any one or more specified  
22 plans of life insurance, the commissioners 1980 standard  
23 ordinary mortality table with ten-year select mortality  
24 factors; shall for all policies of industrial insurance be  
25 calculated on the basis of the commissioners 1961 standard

1 industrial mortality table; and shall for all policies issued  
2 in a particular calendar year be calculated on the basis of a  
3 rate of interest not exceeding the nonforfeiture interest  
4 rate as defined in this subsection, for policies issued in  
5 that calendar year. Provided, however, that:

6 (a) at the option of the insurer,  
7 calculations for all policies issued in a particular calendar  
8 year may be made on the basis of a rate of interest not  
9 exceeding the nonforfeiture interest rate, as defined in this  
10 subsection, for policies issued in the immediately preceding  
11 calendar year;

12 (b) under any paid-up nonforfeiture  
13 benefit, including any paid-up dividend additions, any cash  
14 surrender value available, whether or not required by  
15 Subsection A of this section, shall be calculated on the  
16 basis of the mortality table and rate of interest used in  
17 determining the amount of such paid-up nonforfeiture benefit  
18 and paid-up dividend additions, if any;

19 (c) an insurer may calculate the amount  
20 of any guaranteed paid-up nonforfeiture benefit, including  
21 any paid-up additions under the policy, on the basis of an  
22 interest rate no lower than that specified in the policy for  
23 calculating cash surrender values;

24 (d) in calculating the present value of  
25 any paid-up term insurance with accompanying pure endowment,

1 if any, offered as a nonforfeiture benefit, the rates of  
2 mortality assumed may be not more than those shown in the  
3 commissioners 1980 extended term insurance table for policies  
4 of ordinary insurance and not more than the commissioners  
5 1961 industrial extended term insurance table for policies of  
6 industrial insurance;

7 (e) for insurance issued on a  
8 substandard basis, the calculation of any such adjusted  
9 premiums and present values may be based on appropriate  
10 modifications of the aforementioned tables;

11 (f) for a policy issued prior to the  
12 operative date of the valuation manual, any commissioners  
13 standard ordinary mortality tables, adopted after 1980 by the  
14 national association of insurance commissioners, that are  
15 approved by regulation promulgated by the superintendent for  
16 use in determining the minimum nonforfeiture standard may be  
17 substituted for the commissioners 1980 standard ordinary  
18 mortality table with or without ten-year select mortality  
19 factors or for the commissioners 1980 extended term insurance  
20 table;

21 (g) for a policy issued on or after the  
22 operative date of the valuation manual, the commissioners  
23 standard mortality table in the valuation manual shall be  
24 used to determine the minimum nonforfeiture standard that may  
25 be substituted for the commissioners 1980 standard ordinary

1 mortality table, either with or without ten-year select  
2 mortality factors, or for the commissioners 1980 extended  
3 term insurance table. If the superintendent adopts through  
4 rulemaking a commissioners standard ordinary mortality table  
5 that was adopted by the national association of insurance  
6 commissioners for use in determining the minimum  
7 nonforfeiture standard for policies issued on or after the  
8 operative date of the valuation manual, then that minimum  
9 nonforfeiture standard shall substitute for the minimum  
10 nonforfeiture standard provided in the valuation manual;

11 (h) for a policy issued prior to the  
12 operative date of the valuation manual, any commissioners  
13 standard industrial mortality tables, adopted after 1980 by  
14 the national association of insurance commissioners, that are  
15 approved by regulation promulgated by the superintendent for  
16 use in determining the minimum nonforfeiture standard may be  
17 substituted for the commissioners 1961 standard industrial  
18 mortality table or the commissioners 1961 industrial extended  
19 term insurance table; and

20 (i) for a policy issued on or after the  
21 operative date of the valuation manual, the commissioners  
22 standard mortality table in the valuation manual shall be  
23 used to determine the minimum nonforfeiture standard that may  
24 be substituted for the commissioners 1961 standard industrial  
25 mortality table or the commissioners 1961 industrial extended

1 term insurance table. If the superintendent adopts through  
2 rulemaking a commissioners standard industrial mortality  
3 table that was adopted by the national association of  
4 insurance commissioners for use in determining the minimum  
5 nonforfeiture standard for policies issued on or after the  
6 operative date of the valuation manual, then that minimum  
7 nonforfeiture standard shall substitute for the minimum  
8 nonforfeiture standard provided in the valuation manual;

9 (8) the nonforfeiture interest rate per  
10 annum for a policy issued in a calendar year:

11 (a) prior to the operative date of the  
12 valuation manual shall be equal to one hundred twenty-five  
13 percent of the calendar year statutory valuation interest  
14 rate for such policy as defined in the Standard Valuation  
15 Law, rounded to the nearest one-fourth of one percent;  
16 provided, however, that the nonforfeiture interest rate per  
17 annum shall not be less than four percent; and

18 (b) on or after the operative date of  
19 the valuation manual shall be determined by the valuation  
20 manual;

21 (9) notwithstanding any other provision in  
22 the laws relating to insurance to the contrary, any refiling  
23 of nonforfeiture values or their methods of computation for  
24 any previously approved policy form that involves only a  
25 change in the interest rate or mortality table used to

1 compute nonforfeiture values shall not require refiling of  
2 any other provisions of that policy form; and

3 (10) after the effective date of this  
4 subsection, any insurer may file with the superintendent a  
5 written notice of its election to comply with the provisions  
6 of this subsection after a specified date before  
7 January 1, 1989, which shall be the operative date of this  
8 subsection for such insurer. If an insurer makes no such  
9 election, the operative date of this subsection for such  
10 insurer shall be January 1, 1989.

11 G. In the case of any plan of life insurance that  
12 provides for future premium determination, the amounts of  
13 which are to be determined by the insurer based on the then  
14 estimates of future experience, or in the case of any plan of  
15 life insurance that is of such a nature that minimum values  
16 cannot be determined by the methods described in Subsection  
17 A, B, C, D, E or F of this section, then:

18 (1) the superintendent must be satisfied  
19 that the benefits provided under the plan are substantially  
20 as favorable to policyholders and insureds as the minimum  
21 benefits otherwise required by Subsection A, B, C, D, E or F  
22 of this section;

23 (2) the superintendent must be satisfied  
24 that the benefits and the pattern of premiums of that plan  
25 are not such as to mislead prospective policyholders or

1 insureds; and

2 (3) the cash surrender values and paid-up  
3 nonforfeiture benefits provided by such plan must not be less  
4 than the minimum values and benefits required for the plan  
5 computed by a method consistent with the principles of this  
6 section, as determined by regulations promulgated by the  
7 superintendent.

8 H. Any cash surrender value and any paid-up  
9 nonforfeiture benefit, available under the policy in the  
10 event of default in a premium payment due at any time other  
11 than on the policy anniversary, shall be calculated with  
12 allowance for the lapse of time and the payment of fractional  
13 premiums beyond the last preceding policy anniversary. All  
14 values referred to in Subsections B, C, D, E and F of this  
15 section may be calculated upon the assumption that any death  
16 benefit is payable at the end of the policy year of death.  
17 The net value of any paid-up additions, other than paid-up  
18 term additions, shall be not less than the amounts used to  
19 provide such additions. Notwithstanding the provisions of  
20 Subsection B of this section, additional benefits payable (a)  
21 in the event of death or dismemberment by accident or  
22 accidental means; (b) in the event of total and permanent  
23 disability; (c) as reversionary annuity or deferred  
24 reversionary annuity benefits; (d) as term insurance benefits  
25 provided by a rider or supplemental policy provision to

1 which, if issued as a separate policy, this section would not  
2 apply; (e) as term insurance on the life of a child or on the  
3 lives of children provided in a policy on the life of a  
4 parent of the child, if such term insurance expires before  
5 the child's age is twenty-six, is uniform in amount after the  
6 child's age is one and has not become paid up by reason of  
7 the death of a parent of the child; and (f) as other policy  
8 benefits additional to life insurance and endowment benefits,  
9 and premiums for all such additional benefits, shall be  
10 disregarded in ascertaining cash surrender values and  
11 nonforfeiture benefits required by this section, and no such  
12 additional benefits shall be required to be included in any  
13 paid-up nonforfeiture benefits.

14 I. This subsection, in addition to all other  
15 applicable sections of this law, shall apply to all policies  
16 issued on or after January 1, 1985. Any cash surrender value  
17 available under the policy in the event of default in a  
18 premium payment due on any policy anniversary shall be in an  
19 amount that does not differ by more than two-tenths of one  
20 percent of either the amount of insurance, if the insurance  
21 be uniform in amount, or the average amount of insurance at  
22 the beginning of each of the first ten policy years, from the  
23 sum of (a) the greater of zero and the basic cash value  
24 hereinafter specified; and (b) the present value of any  
25 existing paid-up additions less the amount of any

1 indebtedness to the insurer under the policy.

2           The basic cash value shall be equal to the present  
3 value, on such anniversary, of the future guaranteed benefits  
4 that would have been provided for by the policy, excluding  
5 any existing paid-up additions and before deduction of any  
6 indebtedness to the insurer, if there had been no default,  
7 less the then present value of the nonforfeiture factors, as  
8 hereinafter defined, corresponding to premiums that would  
9 have fallen due on and after such anniversary. Provided,  
10 however, that the effects on the basic cash value of  
11 supplemental life insurance or annuity benefits or of family  
12 coverage, as described in Subsection B or D of this section,  
13 whichever is applicable, shall be the same as are the effects  
14 specified therein.

15           The nonforfeiture factor for each policy year shall be  
16 an amount equal to a percentage of the adjusted premium for  
17 the policy year, as defined in Subsection D or F of this  
18 section, whichever is applicable. Except as is required by  
19 the next succeeding sentence of this paragraph, such  
20 percentage:

21                   (1) must be the same percentage for each  
22 policy year between the second policy anniversary and the  
23 later of the fifth policy anniversary and the first policy  
24 anniversary at which there is available under the policy a  
25 cash surrender value in an amount, before including any

1 paid-up additions and before deducting any indebtedness, of  
2 at least two-tenths of one percent of either the amount of  
3 insurance, if the insurance be uniform in amount, or the  
4 average amount of insurance at the beginning of each of the  
5 first ten policy years; and

6 (2) must be such that no percentage after  
7 the later of the two policy anniversaries specified in  
8 Paragraph (1) of this subsection may apply to fewer than five  
9 consecutive policy years.

10 Provided that no basic cash value may be less than the  
11 value that would be obtained if the adjusted premiums for the  
12 policy, as defined in Subsection D or F of this section,  
13 whichever is applicable, were substituted for the  
14 nonforfeiture factors in the calculation of the basic cash  
15 value.

16 All adjusted premiums and present values referred to in  
17 this subsection shall for a particular policy be calculated  
18 on the same mortality and interest bases as are used in  
19 demonstrating the policy's compliance with the other  
20 subsections of this section. The cash surrender values  
21 referred to in this subsection shall include any endowment  
22 benefits provided for by the policy.

23 Any cash surrender value available other than in the  
24 event of default in a premium payment due on a policy  
25 anniversary, and the amount of any paid-up nonforfeiture

1 benefit available under the policy in the event of default in  
2 a premium payment shall be determined in manners consistent  
3 with the manners specified for determining the analogous  
4 minimum amounts in Subsections A, B, C, F and H of this  
5 section. The amounts of any cash surrender values and of any  
6 paid-up nonforfeiture benefits granted in connection with  
7 additional benefits such as those listed as items (a) through  
8 (d) in Subsection H of this section shall conform with the  
9 principles of this subsection.

10 J. This section shall not apply to any  
11 reinsurance, group insurance, pure endowment, annuity or  
12 reversionary annuity contract, nor to any term policy of  
13 uniform amount that provides no guaranteed nonforfeiture or  
14 endowment benefits, or renewal thereof, of twenty years or  
15 less expiring before age seventy-one for which uniform  
16 premiums are payable during the entire term of the policy,  
17 nor to any term policy of decreasing amount, that provides no  
18 guaranteed nonforfeiture or endowment benefits, on which each  
19 adjusted premium, calculated as specified in Subsections D, E  
20 and F of this section, is less than the adjusted premium so  
21 calculated, on a term policy of uniform amount, or renewal  
22 thereof, that provides no guaranteed nonforfeiture or  
23 endowment benefits, issued at the same age and for the same  
24 initial amount of insurance and for a term of twenty years or  
25 less expiring before age seventy-one, for which uniform

1 premiums are payable during the entire term of the policy,  
2 nor to any policy, that provides no guaranteed nonforfeiture  
3 or endowment benefits, for which no cash surrender value, if  
4 any, or present value of any paid-up nonforfeiture benefit,  
5 at the beginning of any policy year, calculated as specified  
6 in Subsections B, C, D, E and F of this section, exceeds two  
7 and one-half percent of the amount of insurance at the  
8 beginning of the same policy year; nor to any policy that  
9 shall be delivered outside this state through an agent or  
10 other representative of the insurer issuing the policy.

11 For purposes of determining the applicability of this  
12 section, the age at expiry for a joint term life insurance  
13 policy shall be the age of expiry of the oldest life.

14 K. After the effective date of this act, any  
15 insurer may file with the superintendent a written notice of  
16 its election to comply with the provisions of this section  
17 after a specified date before January 1, 1952. After the  
18 filing of such notice, then upon such specified date (which  
19 shall be the operative date for such insurer), this section  
20 shall become operative with respect to policies thereafter  
21 issued by such insurer. If an insurer makes no such  
22 election, the operative date of this section for such insurer  
23 shall be January 1, 1952.

24 L. As used in this section:

25 (1) "operative date of the valuation

1 manual" means the January 1 of the first calendar year  
2 following the first July 1 after which the following have  
3 occurred:

4 (a) the valuation manual has been  
5 adopted by the national association of insurance  
6 commissioners by an affirmative vote of at least forty-two  
7 members or three-fourths of the members voting, whichever is  
8 greater;

9 (b) the Standard Valuation Law of the  
10 national association of insurance commissioners, as amended  
11 in 2009, or legislation including substantially similar terms  
12 and provisions, has been enacted by states that collectively  
13 represent more than seventy-five percent of written direct  
14 premiums, as reported in the life, accident and health annual  
15 statements, the health annual statements and the fraternal  
16 annual statements submitted for 2008; and

17 (c) the Standard Valuation Law of the  
18 national association of insurance commissioners, as amended  
19 in 2009, or legislation including substantially similar terms  
20 and provisions, has been enacted by at least forty-two of the  
21 following fifty-five jurisdictions: 1) the fifty states of  
22 the United States; 2) American Samoa; 3) the Virgin Islands  
23 of the United States; 4) the District of Columbia; 5) Guam;  
24 and 6) Puerto Rico; and

25 (2) "valuation manual" means the most

1 recent version of the manual of valuation instructions  
2 adopted by the national association of insurance  
3 commissioners."

4 SECTION 28. Section 59A-37-1 NMSA 1978 (being Laws  
5 1984, Chapter 127, Section 616) is amended to read:

6 "59A-37-1. SHORT TITLE.--Chapter 59A, Article 37 NMSA  
7 1978 may be cited as the "Insurance Holding Company Law"."

8 SECTION 29. Section 59A-37-2 NMSA 1978 (being Laws  
9 1984, Chapter 127, Section 617, as amended) is amended to  
10 read:

11 "59A-37-2. DEFINITIONS.--As used in the Insurance  
12 Holding Company Law:

13 A. "acquire" means to come into possession or  
14 control of, and "acquisition" means any agreement,  
15 arrangement or activity the consummation of which results in  
16 a person acquiring directly or indirectly the control of  
17 another person and includes the acquisition of voting  
18 securities or assets, bulk reinsurance and mergers;

19 B. "affiliate" means a person that directly or  
20 indirectly is controlled by, is under common control with or  
21 controls another person;

22 C. "control" means the possession of the power to  
23 direct or cause the direction of the management and policies  
24 of a person, whether directly or indirectly, through the  
25 ownership of voting securities, through licensing or

1 franchise agreements, by contract other than a commercial  
2 contract for goods or nonmanagement services, or otherwise,  
3 unless the power is the result of an official position with  
4 or corporate office held by an individual. Control shall be  
5 presumed to exist if any person, directly or indirectly,  
6 owns, controls, holds with the power to vote or holds proxies  
7 representing ten or more percent of the voting securities of  
8 any other person. This presumption may be rebutted by a  
9 showing, in the manner provided by Section 59A-37-19 NMSA  
10 1978, that control does not in fact exist. The  
11 superintendent may determine, after furnishing all persons in  
12 interest notice and an opportunity to be heard, that control  
13 exists in fact, notwithstanding the absence of a presumption  
14 to that effect, provided the determination is based on  
15 specific findings of fact in its support;

16 D. "enterprise risk" means an activity, a  
17 circumstance, an event or a series of events involving one or  
18 more affiliates of an insurer that, if not remedied promptly,  
19 is likely to have a material adverse effect upon the  
20 financial condition or liquidity of the insurer or its whole  
21 insurance holding company system and includes a situation  
22 that would cause a company action level event as defined in  
23 Section 59A-5A-4 NMSA 1978 or would cause the insurer to be  
24 in a hazardous financial condition as defined in Section  
25 59A-41-24 NMSA 1978;

1           E. "health maintenance organization" means a  
2 person that undertakes to provide or arrange for the delivery  
3 of basic health care services to enrollees on a prepaid  
4 basis; provided that "prepaid basis" may include the payment  
5 of copayments and deductibles by enrollees;

6           F. "insurance holding company" is a person that  
7 controls an insurer; "insurance holding company system" means  
8 a combination of two or more affiliated persons, at least one  
9 of which is an insurer;

10          G. "insurer" means a person that undertakes,  
11 under contract, to indemnify a person against loss, damage or  
12 liability arising from an unknown or contingent future event.  
13 The term does not include agencies, authorities or  
14 instrumentalities of the United States, its possessions or  
15 territories, the commonwealth of Puerto Rico, the District of  
16 Columbia, a state or any of its political subdivisions or a  
17 fraternal benefit society;

18          H. "person" means an individual, corporation,  
19 association, partnership, joint stock company, trust,  
20 unincorporated organization or any similar entity or  
21 combination of entities;

22          I. "securityholder" means the owner of any  
23 security of a person, including common stock, preferred  
24 stock, debt obligations and any other security convertible  
25 into or evidencing the right to acquire any of the foregoing;

1           J. "subsidiary" means an affiliate of a person  
2 controlled by the person either directly or indirectly  
3 through one or more intermediaries; and

4           K. "voting security" means a certificate  
5 evidencing the ownership or indebtedness of a person, to  
6 which is attached a right to vote on the management or  
7 policymaking of that person and includes any security  
8 convertible into or evidencing a right to acquire such a  
9 voting security."

10           SECTION 30. Section 59A-37-3 NMSA 1978 (being Laws  
11 1993, Chapter 320, Section 72, as amended) is amended to  
12 read:

13           "59A-37-3. SUBSIDIARIES OF INSURERS.--

14           A. Any domestic insurer, either by itself or in  
15 cooperation with one or more persons, may organize or acquire  
16 one or more subsidiaries. A subsidiary may conduct any kind  
17 of business. Its authority to conduct one or more businesses  
18 shall not be limited by its status as a subsidiary of a  
19 domestic insurer.

20           B. In addition to investments in common stock,  
21 preferred stock, debt obligations and other securities  
22 permitted pursuant to the Insurance Holding Company Law, a  
23 domestic insurer may also invest:

24                   (1) in common stock, preferred stock, debt  
25 obligations and other securities of one or more subsidiaries,

1 amounts that do not exceed the lesser of ten percent of the  
2 insurer's assets or fifty percent of the insurer's surplus as  
3 regards policyholders; provided that after the investments,  
4 the insurer's surplus as regards policyholders shall be  
5 reasonable in relation to the insurer's outstanding  
6 liabilities and adequate to its financial needs. In  
7 calculating the amount of the investments, investments in  
8 domestic or foreign insurance subsidiaries and health  
9 maintenance organizations shall be excluded, and there shall  
10 be included:

11 (a) total net money or other  
12 consideration expended and obligations assumed in the  
13 acquisition or formation of a subsidiary, including all  
14 organizational expenses and contributions to capital and  
15 surplus of the subsidiary whether or not represented by the  
16 purchase of capital stock or issuance of other securities;  
17 and

18 (b) all amounts expended in acquiring  
19 additional common stock, preferred stock, debt obligations  
20 and other securities and all contributions to the capital or  
21 surplus of a subsidiary subsequent to its acquisition or  
22 formation;

23 (2) any amount in common stock, preferred  
24 stock, debt obligations and other securities of one or more  
25 subsidiaries engaged or organized to engage exclusively in

1 the ownership and management of assets authorized as  
2 investments for the insurer; provided that each subsidiary  
3 agrees to limit its investments in any asset so that the  
4 investments will not cause the amount of the total investment  
5 of the insurer to exceed any of the investment limitations  
6 specified in Paragraph (1) of this subsection or in Chapter  
7 59A, Article 9 NMSA 1978 applicable to the insurer. For the  
8 purpose of this paragraph, "the total investment of the  
9 insurer" includes:

10 (a) any direct investment by the  
11 insurer in an asset; and

12 (b) the insurer's proportionate share  
13 of any investment in an asset by any subsidiary of the  
14 insurer, which shall be calculated by multiplying the amount  
15 of the subsidiary's investment by the percentage of the  
16 ownership of the subsidiary; or

17 (3) with the approval of the  
18 superintendent, any greater amount in common stock, preferred  
19 stock, debt obligations or other securities of one or more  
20 subsidiaries; provided that after the investment, the  
21 insurer's surplus as regards policyholders will be reasonable  
22 in relation to the insurer's outstanding liabilities and  
23 adequate to its financial needs.

24 C. Investments in common stock, preferred stock,  
25 debt obligations or other securities of subsidiaries made

1 pursuant to Subsection B of this section shall not be subject  
2 to any of the otherwise applicable restrictions or  
3 prohibitions contained in the Insurance Code applicable to  
4 the investments of the insurer.

5 D. Whether any investment pursuant to Subsection  
6 B of this section meets the applicable requirements of that  
7 subsection shall be determined before the investment is made  
8 by calculating the applicable investment limitations as  
9 though the investment had already been made, taking into  
10 account the then outstanding principal balance on all  
11 previous investments in debt obligations and the value of all  
12 previous investments in equity securities as of the day they  
13 were made, net of any return of capital invested and not  
14 including dividends.

15 E. If an insurer ceases to control a subsidiary,  
16 it shall dispose of any investment made in it pursuant to  
17 this section within three years from the time of the  
18 cessation of control or within such further time as the  
19 superintendent may prescribe, unless at any time after the  
20 investment is made, the investment meets the requirements for  
21 investment under any other section of the Insurance Code and  
22 the insurer has so notified the superintendent."

23 SECTION 31. Section 59A-37-4 NMSA 1978 (being Laws  
24 1984, Chapter 127, Section 619, as amended) is amended to  
25 read:

1 "59A-37-4. ACQUISITION OF CONTROL OF OR MERGER WITH  
2 DOMESTIC INSURER.--

3 A. No person other than the issuer shall make a  
4 tender offer for or a request or invitation for tenders of,  
5 or enter into an agreement to exchange securities for,  
6 acquire, seek to acquire, in the open market or otherwise, a  
7 voting security of a domestic insurer if, after the  
8 consummation of it, the person would, directly or indirectly  
9 or by conversion or by exercise of any right to acquire, be  
10 in control of the insurer, and no person shall enter into an  
11 agreement to merge with or otherwise to acquire control of a  
12 domestic insurer unless, at the time any such offer, request  
13 or invitation is made or an agreement is entered into, or  
14 prior to the acquisition of the securities if no offer or  
15 agreement is involved, the person has filed with the  
16 superintendent and has sent to the insurer, and the insurer  
17 has sent to its shareholders, a statement containing the  
18 information required by Section 59A-37-5 NMSA 1978 and the  
19 offer, request, invitation, agreement or acquisition has been  
20 approved by the superintendent in the manner hereinafter  
21 prescribed.

22 B. For the purposes of Sections 59A-37-4 through  
23 59A-37-10 NMSA 1978, the superintendent shall identify the  
24 circumstances in which a person seeking to divest or acquire  
25 an interest of control of a domestic insurer is required to

1 obtain the superintendent's approval for the transaction. A  
2 person who controls a domestic insurer and seeks to divest  
3 its interest of control of the domestic insurer shall, at  
4 least thirty days prior to the cessation of control, file  
5 with the superintendent confidential notice of the proposed  
6 divestiture and give a copy of that notice to the insurer.  
7 Information contained in the notice shall remain confidential  
8 until the conclusion of the transaction if the superintendent  
9 has not determined that treating the information as  
10 confidential will interfere with the provisions of this  
11 section. This subsection does not apply to a statement filed  
12 pursuant to Subsection A of this section.

13 C. For a transaction subject to Sections 59A-37-4  
14 through 59A-37-10 NMSA 1978, the acquiring person shall file  
15 with the superintendent a pre-acquisition notice, which shall  
16 contain the information set forth in Paragraph (1) of  
17 Subsection C of 59A-37-29 NMSA 1978. The superintendent may  
18 subject a person who fails to file the notice required by  
19 this subsection to a fine of not more than fifty thousand  
20 dollars (\$50,000).

21 D. For the purposes of this section and Sections  
22 59A-37-5 through 59A-37-10 NMSA 1978:

23 (1) "domestic insurer" includes any other  
24 person controlling a domestic insurer unless the other  
25 person, as determined by the superintendent, is either

1 directly or through its affiliates primarily engaged in  
2 business other than the business of insurance; and

3 (2) "person" shall not include any  
4 securities broker holding, while in the performance of the  
5 broker's usual and customary broker's function, less than  
6 twenty percent of the voting securities of an insurer, or of  
7 any person that controls an insurer."

8 SECTION 32. Section 59A-37-5 NMSA 1978 (being Laws  
9 1984, Chapter 127, Section 620, as amended) is amended to  
10 read:

11 "59A-37-5. CONTENTS OF STATEMENT.--

12 A. The statement to be filed with the  
13 superintendent under Section 59A-37-4 NMSA 1978 shall be made  
14 under oath or affirmation and shall contain the following  
15 information:

16 (1) the name and address of each person,  
17 hereinafter called "acquiring party", by whom or on whose  
18 behalf the merger or other acquisition of control referred to  
19 in Section 59A-37-4 NMSA 1978 is to be effected and:

20 (a) if the acquiring party is an  
21 individual, the individual's principal occupation and all  
22 offices and positions held by the individual during the past  
23 five years and any conviction of crime other than minor  
24 traffic violations during the past ten years; or

25 (b) if the acquiring party is not an

1 individual, a report of the nature of its business operations  
2 during the past five years or for such lesser period as it  
3 and any of its predecessors shall have been in existence; an  
4 informative description of the business intended to be done  
5 by it and its subsidiaries; and a list of all individuals who  
6 are or who have been selected to become its directors or  
7 executive officers or who perform or will perform functions  
8 appropriate to such positions. The list shall include for  
9 each individual the information required by Subparagraph (a)  
10 of this paragraph;

11 (2) the source, nature and amount of the  
12 consideration used or to be used in effecting the merger or  
13 other acquisition of control, a description of any  
14 transaction where funds were or are to be obtained for any  
15 such purpose, including any pledge of the insurer's stock or  
16 the stock of any of its subsidiaries or controlling  
17 affiliates and the identity of persons furnishing such  
18 consideration. However, where a source of such consideration  
19 is a loan made in the lender's ordinary course of business,  
20 the identity of the lender shall remain confidential if the  
21 person filing the statement so requests;

22 (3) fully audited financial information as  
23 to the earnings and financial condition of each acquiring  
24 party for the preceding five fiscal years of each acquiring  
25 party, or for such lesser period that the acquiring party and

1 any of its predecessors shall have been in existence if less  
2 than five years, and similar unaudited information as of a  
3 date not earlier than ninety days prior to the date of the  
4 filing of the statement;

5 (4) any plans or proposals that each  
6 acquiring party may have to liquidate the insurer, to sell  
7 its assets or merge or consolidate it with any other person,  
8 or to make any other material change in its business or  
9 corporate structure or management;

10 (5) the number of shares of any security  
11 that each acquiring party proposes to acquire, the terms of  
12 the offer, request, invitation, agreement or acquisition and  
13 a statement as to the method by which the fairness of the  
14 proposal was determined;

15 (6) the amount of each class of any  
16 security referred to in Section 59A-37-4 NMSA 1978 that is  
17 beneficially owned or concerning which there is a right to  
18 acquire beneficial ownership by each acquiring party;

19 (7) a full description of any contracts,  
20 arrangements or understandings with respect to any security  
21 referred to in Section 59A-37-4 NMSA 1978 in which any  
22 acquiring party is involved, including but not limited to  
23 transfer of any of the securities, joint ventures, loan or  
24 option arrangements, puts or calls, guarantees of loans,  
25 guarantees against loss or guarantees of profits, division of

1 losses or profits or the giving or withholding of proxies.  
2 The description shall identify the persons with whom the  
3 contracts, arrangements or understandings have been entered  
4 into;

5 (8) a description of the purchase of any  
6 security referred to in Section 59A-37-4 NMSA 1978 during the  
7 twelve calendar months preceding the filing of the statement  
8 by any acquiring party, including the dates of purchase,  
9 names of the purchasers and consideration paid or agreed to  
10 be paid;

11 (9) a description of any recommendations to  
12 purchase any security referred to in Section 59A-37-4  
13 NMSA 1978 made during the twelve calendar months preceding  
14 the filing of the statement by any acquiring party or by  
15 anyone based upon interviews or at the suggestion of any  
16 acquiring party;

17 (10) copies of all tender offers for,  
18 requests or invitations for tenders of exchange offers for  
19 and agreements to acquire or exchange any securities referred  
20 to in Section 59A-37-4 NMSA 1978 and, if distributed, of  
21 additional soliciting material relating thereto;

22 (11) the terms of any agreement, contract  
23 or understanding made with or proposed to be made with any  
24 broker-dealer as to solicitation of securities referred to in  
25 Section 59A-37-4 NMSA 1978 for tender and the amount of any

1 fees, commissions or other compensation to be paid to  
2 broker-dealers with regard thereto;

3 (12) an agreement by the person required to  
4 file the statement that the person will provide, for as long  
5 as the person has control, an annual report pursuant to  
6 Section 59A-37-30 NMSA 1978;

7 (13) acknowledgment by the person required  
8 to file the statement that the person and all subsidiaries  
9 within the person's control in the insurance holding company  
10 system will provide information to the superintendent upon  
11 request and as necessary to evaluate the enterprise risk to  
12 the insurer; and

13 (14) such additional information as the  
14 superintendent may by rule or regulation prescribe as  
15 necessary or appropriate for the protection of policyholders  
16 and securityholders of the insurer or in the public interest.

17 B. If the person required to file the statement  
18 referred to in Section 59A-37-4 NMSA 1978 is a partnership,  
19 limited partnership, syndicate or other group, the  
20 superintendent may require that the information called for by  
21 Subsection A of this section shall be given with respect to  
22 each partner of the partnership or limited partnership, each  
23 member of the syndicate or group and each person who controls  
24 the partner or member. If any partner, member or person is a  
25 corporation or the person required to file the statement

1 referred to in Section 59A-37-4 NMSA 1978 is a corporation,  
2 the superintendent may require that the information called  
3 for by Subsection A of this section shall be given with  
4 respect to the corporation, each officer and director of the  
5 corporation and each person who is directly or indirectly the  
6 beneficial owner of more than ten percent of the outstanding  
7 voting securities of the corporation.

8 C. If any material change occurs in the facts set  
9 forth in the statement filed with the superintendent and sent  
10 to the insurer pursuant to Section 59A-37-4 NMSA 1978, an  
11 amendment setting forth the change, together with copies of  
12 all documents and other material relevant to the change,  
13 shall be filed with the superintendent and sent to the  
14 insurer within two business days after the person learns of  
15 the change, and the insurer shall send the amendment to its  
16 shareholders without delay.

17 D. If any offer, request, invitation, agreement  
18 or acquisition referred to in Section 59A-37-4 NMSA 1978 is  
19 proposed to be made by means of a registration statement  
20 under the federal Securities Act of 1933, as amended, or in  
21 circumstances requiring the disclosure of similar information  
22 under the federal Securities Exchange Act of 1934, as  
23 amended, or under a state law requiring similar registration  
24 or disclosure, the person required to file the statement  
25 referred to in Section 59A-37-4 NMSA 1978 may utilize such

1 documents in furnishing the information called for by that  
2 statement."

3 SECTION 33. Section 59A-37-6 NMSA 1978 (being Laws  
4 1984, Chapter 127, Section 621, as amended) is amended to  
5 read:

6 "59A-37-6. APPROVAL BY SUPERINTENDENT--REVIEW.--

7 A. The superintendent shall approve any merger or  
8 other acquisition of control referred to in Section 59A-37-4  
9 NMSA 1978 unless, after a public hearing on it, the  
10 superintendent finds that:

11 (1) after the change of control, the  
12 domestic insurer would not be able to satisfy the  
13 requirements for the issuance of a certificate of authority  
14 to write the line or lines of insurance for which it is  
15 presently authorized;

16 (2) the effect of the merger or other  
17 acquisition of control would be substantially to lessen  
18 competition in insurance in New Mexico or tend to create a  
19 monopoly in insurance. In applying this paragraph:

20 (a) the informational requirements of  
21 Paragraph (1) of Subsection C of Section 59A-37-29 NMSA 1978  
22 and the standards of Paragraph (1) of Subsection D of Section  
23 59A-37-29 NMSA 1978 apply;

24 (b) the superintendent shall approve  
25 the merger or acquisition if the superintendent finds that

1 any of the situations meeting the criteria provided in  
2 Paragraph (2) of Subsection D of Section 59A-37-29 NMSA 1978  
3 exists; and

4 (c) the superintendent may condition  
5 the approval of the merger or acquisition on the removal, to  
6 take place within a specified period of time, of the  
7 circumstances that formed the basis for disapproval;

8 (3) the financial condition of any  
9 acquiring party is such as might jeopardize the financial  
10 stability of the insurer or prejudice the interests of its  
11 policyholders or the interests of any remaining security  
12 holders who are unaffiliated with the acquiring party;

13 (4) the plans or proposals that the  
14 acquiring party has to liquidate the insurer, sell its assets  
15 or consolidate or merge it with any other person, or to make  
16 any other material change in its business or corporate  
17 structure or management, are unfair and unreasonable to  
18 policyholders of the insurer and not in the public interest;

19 (5) the competence, experience and  
20 integrity of those persons who would control the operation of  
21 the insurer are such that it would not be in the interest of  
22 policyholders of the insurer and of the public to permit the  
23 merger or other acquisition of control;

24 (6) the applicable provisions of Chapter  
25 59A, Article 34 NMSA 1978 would be violated; or

1                   (7) the acquisition is likely to be  
2 hazardous or prejudicial to the insurance-buying public.

3                   B. The superintendent may retain at the acquiring  
4 party's expense any attorneys, actuaries, accountants and  
5 other experts not otherwise a part of the superintendent's  
6 staff that are reasonably necessary to assist the  
7 superintendent to review the proposed acquisition of control.

8                   C. The superintendent shall ensure, by imposition  
9 of conditions, if necessary, that New Mexico charitable  
10 assets are protected and preserved for the benefit of the  
11 people of New Mexico.

12                   D. The public hearing held pursuant to Subsection  
13 A of this section shall be held within thirty days after the  
14 statement required by Section 59A-37-4 NMSA 1978 is filed,  
15 and the superintendent shall notify the person filing the  
16 statement at least twenty days before the hearing. The  
17 person filing the statement shall notify the insurer, and  
18 other persons whom the superintendent designates, no fewer  
19 than seven days before the hearing. The superintendent shall  
20 make a determination within the sixty days before the  
21 effective date of the proposed transaction. At the hearing,  
22 the person filing the statement, the insurer, a person to  
23 whom notice of hearing was sent and any other person whose  
24 interests may be affected shall be entitled to present  
25 evidence, examine and cross-examine witnesses, offer oral and

1 written arguments and conduct discovery proceedings according  
2 to the Rules of Civil Procedure for the District Courts. All  
3 discovery proceedings shall conclude no later than three days  
4 before the public hearing.

5 E. If the proposed acquisition of control  
6 requires the approval of one or more insurance supervisory  
7 officials in other states, and if requested by the person  
8 filing the statement required by Section 59A-37-4 NMSA 1978,  
9 the public hearing held pursuant to Subsection A of this  
10 section may be conducted as a consolidated hearing. Within  
11 five days of a person's request for a consolidated hearing,  
12 that person shall file the statement referred to in Section  
13 59A-37-4 NMSA 1978 with the national association of insurance  
14 commissioners. If the superintendent or an insurance  
15 supervisory official of another state elects not to  
16 participate in a consolidated hearing, then within ten days  
17 of receipt of the statement required by Section 59A-37-4  
18 NMSA 1978, the superintendent or insurance supervisory  
19 official shall provide notice to the applicant of that  
20 person's election not to participate. A consolidated hearing  
21 shall be public and held within the United States before the  
22 insurance supervisory officials of the states in which the  
23 insurers are domiciled. Participating insurance supervisory  
24 officials shall hear and receive evidence. The  
25 superintendent may attend the hearing in person or by

1 telecommunication.

2 F. For the change of control of a domestic  
3 insurer, a determination by the superintendent that the  
4 person acquiring control of the insurer must maintain or  
5 restore the capital of the insurer to the level required by  
6 the laws and rules of New Mexico shall be made no later than  
7 sixty days after the date of notice of the change of control  
8 submitted pursuant to Subsection A of Section 59A-37-4  
9 NMSA 1978."

10 SECTION 34. Section 59A-37-9 NMSA 1978 (being Laws  
11 1984, Chapter 127, Section 624) is amended to read:

12 "59A-37-9. VIOLATIONS.--

13 A. The following acts shall be violations of  
14 Sections 59A-37-4 through 59A-37-6 NMSA 1978:

15 (1) the failure to file any statement,  
16 amendment or other material required to be filed pursuant to  
17 Section 59A-37-4 or 59A-37-5 NMSA 1978; or

18 (2) the effectuation or any attempt to  
19 effectuate an acquisition of control of a domestic insurer  
20 unless the superintendent has given approval to it.

21 B. The failure to timely file a registration  
22 statement, a summary of the registration statement or an  
23 enterprise risk filing required by Sections 59A-37-11 through  
24 59A-37-19.2 NMSA 1978 and Section 59A-37-30 NMSA 1978 is a  
25 violation of Sections 59A-37-11 through 59A-37-19.2 NMSA 1978

1 and Section 59A-37-30 NMSA 1978."

2 SECTION 35. Section 59A-37-12 NMSA 1978 (being Laws  
3 1984, Chapter 127, Section 627, as amended) is amended to  
4 read:

5 "59A-37-12. REGISTRATION--INFORMATION--FORM.--Every  
6 insurer subject to registration shall file a registration  
7 statement on a form and in a format prescribed by the  
8 national association of insurance commissioners, which shall  
9 include:

10 A. information about the current capital  
11 structure, general financing condition, ownership and  
12 management of the insurer and any person controlling the  
13 insurer;

14 B. the identity of every current member of the  
15 insurance holding company system;

16 C. the following agreements in force,  
17 relationships subsisting and transactions currently  
18 outstanding between such insurer and its affiliates:

19 (1) loans, other investments or purchases,  
20 sales or exchanges of securities of the affiliates by the  
21 insurer or of the insurer by its affiliates;

22 (2) purchases, sales or exchanges of  
23 assets;

24 (3) transactions not in the ordinary course  
25 of business;

1 (4) guarantees or undertakings for the  
2 benefit of an affiliate that result in an actual contingent  
3 exposure of the insurer's assets to liability, other than  
4 insurance contracts entered into in the ordinary course of  
5 the insurer's business;

6 (5) all management and service contracts  
7 and all cost-sharing arrangements;

8 (6) reinsurance agreements;

9 (7) dividends and other distributions to  
10 shareholders; and

11 (8) consolidated tax allocation agreements;

12 D. information about any existing pledge of the  
13 insurer's stock, including stock of any subsidiary or  
14 controlling affiliate, for a loan made to any member of the  
15 insurance holding company system;

16 E. if requested by the superintendent, financial  
17 statements of or within an insurance holding company system  
18 and its affiliates. Financial statements may include  
19 existing annual audited financial statements filed with the  
20 federal securities and exchange commission pursuant to the  
21 federal Securities Act of 1933, as amended, or the federal  
22 Securities Exchange Act of 1934, as amended. An insurer may  
23 satisfy the requirement to file financial statements pursuant  
24 to this subsection by providing the superintendent with the  
25 most recent parent corporation financial statements that have

1 been filed with the securities and exchange commission;

2 F. other matters concerning transactions between  
3 registered insurers and any affiliates as may be included  
4 from time to time in any registration forms adopted or  
5 approved by the superintendent;

6 G. statements that the insurer's board of  
7 directors oversees corporate governance and internal controls  
8 and that the insurer's officers or senior management have  
9 approved, implemented and continue to maintain and monitor  
10 corporate governance and internal control procedures; and

11 H. other information required by a rule that was  
12 promulgated by the superintendent."

13 SECTION 36. Section 59A-37-13 NMSA 1978 (being Laws  
14 1984, Chapter 127, Section 628) is amended to read:

15 "59A-37-13. MATERIALITY.--No information need be  
16 disclosed on the registration statement filed pursuant to  
17 Sections 59A-37-4 and 59A-37-5 NMSA 1978 if such information  
18 is not material for the purposes of Sections 59A-37-11  
19 through 59A-37-19 NMSA 1978. Unless the superintendent by  
20 rule, regulation or order provides otherwise, sales,  
21 purchases, exchanges, loans or extensions of credit,  
22 investments or guarantees involving one-half of one percent  
23 or less of an insurer's admitted assets as of the most recent  
24 December 31 shall not be deemed material for the purposes of  
25 such section."

1 SECTION 37. Section 59A-37-19 NMSA 1978 (being Laws  
2 1984, Chapter 127, Section 634) is amended to read:

3 "59A-37-19. DISCLAIMER.--Any person may file with the  
4 superintendent a disclaimer of affiliation with any  
5 authorized insurer or a disclaimer may be filed by the  
6 authorized insurer or any member of an insurance holding  
7 company system. The disclaimer shall fully disclose all  
8 material relationships and bases for affiliation between the  
9 person and the insurer as well as the basis for disclaiming  
10 an affiliation. After a disclaimer has been filed, the  
11 insurer shall be relieved of any duty to register or report  
12 that may arise out of the insurer's relationship with the  
13 person unless and until the superintendent, within thirty  
14 days after the receipt of a complete disclaimer, disallows  
15 the disclaimer. The superintendent shall disallow such a  
16 disclaimer only after furnishing all parties in interest with  
17 notice and opportunity to be heard and after making specific  
18 findings of fact to support the disallowance."

19 SECTION 38. Section 59A-37-20 NMSA 1978 (being Laws  
20 1993, Chapter 320, Section 83) is amended to read:

21 "59A-37-20. TRANSACTIONS WITH AFFILIATES.--

22 A. Transactions within a holding company system  
23 to which an insurer subject to registration is a party shall  
24 be subject to the following standards:

25 (1) the terms shall be fair and reasonable;

1                   (2) agreements for cost-sharing services  
2 and management shall include the provisions required by rule  
3 promulgated by the superintendent;

4                   (3) charges or fees for services performed  
5 shall be reasonable;

6                   (4) expenses incurred and payment received  
7 shall be allocated to the insurer in conformity with  
8 customary insurance accounting practices consistently  
9 applied;

10                  (5) the books, accounts and records of each  
11 party to all such transactions shall be so maintained as to  
12 clearly and accurately disclose the nature and details of the  
13 transactions, including such accounting information as is  
14 necessary to support the reasonableness of the charges or  
15 fees to the respective parties; and

16                  (6) the insurer's surplus as regards  
17 policyholders following any dividends or distributions to  
18 shareholder affiliates shall be reasonable in relation to the  
19 insurer's outstanding liabilities and adequate to its  
20 financial needs.

21                  B. The following transactions involving a  
22 domestic insurer and any person in its holding company  
23 system, including amendments and modifications of affiliate  
24 agreements previously filed pursuant to this section that are  
25 subject to the materiality standards of this subsection, may

1 not be entered into unless the insurer has notified the  
2 superintendent in writing of its intention to enter into such  
3 transactions at least thirty days prior thereto, or such  
4 shorter period as the superintendent may permit, and the  
5 superintendent has not disapproved it within that period:

6 (1) sales, purchases, exchanges, loans or  
7 extensions of credit, guarantees or investments, provided the  
8 transactions are equal to or exceed:

9 (a) with respect to nonlife insurers,  
10 the lesser of three percent of the insurer's admitted assets  
11 or twenty-five percent of surplus as regards policyholders as  
12 of the most recent December 31; or

13 (b) with respect to life insurers,  
14 three percent of the insurer's admitted assets as of the most  
15 recent December 31;

16 (2) loans or extensions of credit to any  
17 person who is not an affiliate, where the insurer makes loans  
18 or extensions of credit with the agreement or understanding  
19 that the proceeds of the transactions, in whole or in  
20 substantial part, are to be used to make loans or extensions  
21 of credit to, to purchase assets of, or to make investments  
22 in, any affiliate of the insurer making the loans or  
23 extensions of credit, provided the transactions are equal to  
24 or exceed:

25 (a) with respect to nonlife insurers,

1 the lesser of three percent of the insurer's admitted assets  
2 or twenty-five percent of surplus as regards policyholders as  
3 of the most recent December 31; or

4 (b) with respect to life insurers,  
5 three percent of the insurer's admitted assets as of December  
6 31 next preceding;

7 (3) reinsurance agreements or modifications  
8 to those agreements, including reinsurance pooling agreements  
9 or agreements in which the reinsurance premium or a change in  
10 the insurer's liabilities, or projected reinsurance premium  
11 or a change in the insurer's liabilities in any of the next  
12 three years, equals or exceeds five percent of the insurer's  
13 surplus as regards policyholders, as of the most recent  
14 December 31, including those agreements that may require as  
15 consideration the transfer of assets from an insurer to a  
16 non-affiliate, if an agreement or understanding exists  
17 between the insurer and non-affiliate that any portion of  
18 such assets will be transferred to one or more affiliates of  
19 the insurer;

20 (4) all management agreements, service  
21 contracts, tax allocation agreements, guarantees and  
22 cost-sharing arrangements;

23 (5) guarantees made by a domestic insurer  
24 if the amount of the guarantee can be quantified and is  
25 greater than one-half of one percent of the insurer's

1 admitted assets or ten percent of surplus as regards  
2 policyholders as of the most recent December 31, whichever is  
3 less. A guarantee whose amount cannot be quantified is  
4 subject to the notice requirements of this subsection;

5 (6) direct or indirect acquisitions or  
6 investments in a person who controls the insurer or in an  
7 affiliate of the insurer in an amount that, together with its  
8 present holdings in the investments, exceeds two and one-half  
9 percent of the insurer's surplus as regards policyholders.

10 Direct or indirect acquisitions or investments in  
11 subsidiaries acquired pursuant to Section 59A-37-3 NMSA 1978  
12 or that are authorized pursuant to another section of the  
13 Insurance Code or in nonsubsidiary insurance affiliates that  
14 are subject to the provisions of the Insurance Holding  
15 Company Law are exempt from this requirement; and

16 (7) any material transactions specified by  
17 regulation that the superintendent determines may adversely  
18 affect the interests of the insurer's policyholders.

19 Notice to the superintendent for amendments or  
20 modifications shall provide the reasons for the change and a  
21 description of the change's financial impact on the domestic  
22 insurer. Within thirty days after the termination of a  
23 previously filed agreement, a person shall notify the  
24 superintendent of that event. The superintendent shall  
25 respond by indicating the type of filing, if any, that the

1 person must file.

2 Nothing contained in this subsection shall be deemed to  
3 authorize or permit any transactions that, in the case of an  
4 insurer not a member of the same holding company system,  
5 would be otherwise contrary to law.

6 C. A domestic insurer may not enter into  
7 transactions that are part of a plan or series of like  
8 transactions with persons within the holding company system  
9 if the purpose of those separate transactions is to avoid the  
10 statutory threshold amount and thus avoid the review that  
11 would occur otherwise. If the superintendent determines that  
12 such separate transactions were entered into over any  
13 twelve-month period for that purpose, the superintendent may  
14 exercise authority under Section 59A-37-26 NMSA 1978.

15 D. The superintendent, in reviewing transactions  
16 pursuant to Subsection B of this section, shall consider  
17 whether the transactions comply with the standards set forth  
18 in Subsection A of this section and whether they may  
19 adversely affect the interests of policyholders.

20 E. The superintendent shall be notified within  
21 thirty days of any investment of the domestic insurer in any  
22 one corporation if the total investment in the corporation by  
23 the insurance holding company system exceeds ten percent of  
24 the corporation's voting securities."

25 SECTION 39. Section 59A-37-22 NMSA 1978 (being Laws

1 1984, Chapter 127, Section 637, as amended) is amended to  
2 read:

3 "59A-37-22. DIVIDENDS AND OTHER DISTRIBUTIONS.--

4 A. No domestic stock insurer shall declare or  
5 distribute any dividend to shareholders, other than a pro  
6 rata distribution of any class of the insurer's own  
7 securities, except out of earned surplus. For purposes of  
8 this section, "earned surplus" means the portion of the  
9 surplus that represents the net earnings, gains or profits,  
10 after deduction of all losses, that have not been distributed  
11 to the shareholders as dividends or transferred to stated  
12 capital or capital surplus or applied to other purposes  
13 permitted by law, but does not include twenty-five percent of  
14 the unrealized appreciation of assets.

15 B. No domestic insurer shall pay an extraordinary  
16 dividend or make any other extraordinary distribution to its  
17 shareholders until:

18 (1) thirty days after the superintendent  
19 has received notice of the declaration thereof and has not  
20 within such period disapproved such payment; or

21 (2) the superintendent shall have approved  
22 such payment within the thirty-day period.

23 C. For the purposes of Sections 59A-37-20 through  
24 59A-37-22 NMSA 1978, an extraordinary dividend or  
25 distribution includes any dividend or distribution of cash or

1 other property, whose fair market value together with that of  
2 other dividends or distributions made within the preceding  
3 twelve months exceeds the lesser of ten percent of the  
4 insurer's surplus as regards policyholders as of the most  
5 recent December 31 or the net gain from operations of the  
6 insurer after dividends to policyholders and federal income  
7 taxes and before realized capital gains and losses, if the  
8 insurer is either a life insurer or a health maintenance  
9 organization, or the net income, if the insurer is not a life  
10 insurer or a health maintenance organization, not including  
11 realized capital gains, for the twelve-month period ending  
12 December 31 next preceding, but shall not include pro rata  
13 distributions of any class of the insurer's own securities.

14 D. In determining whether a dividend or  
15 distribution is extraordinary:

16 (1) an insurer other than a life insurer or  
17 a health maintenance organization may carry forward net  
18 income from the previous two calendar years that has not  
19 already been paid out as dividends, which carry-forward shall  
20 be computed by taking the net income from the second and  
21 third preceding calendar years, not including realized  
22 capital gains, less dividends paid in the second and  
23 immediate preceding calendar years; and

24 (2) a life insurer or a health maintenance  
25 organization may carry forward net gains from operations, not

1 including realized capital gains from the previous two  
2 calendar years, that have not already been paid out as  
3 dividends, which carry-forward shall be computed by taking  
4 the net gain from the second and third preceding calendar  
5 years, not including realized capital gains, less dividends  
6 paid in the second and immediate preceding calendar years.

7 E. Notwithstanding any other provision of law, an  
8 insurer may declare an extraordinary dividend or distribution  
9 that is conditioned upon the superintendent's approval  
10 thereof, and such a declaration shall confer no rights upon  
11 shareholders until the superintendent has:

12 (1) approved the payment of the dividend or  
13 distribution; or

14 (2) not disapproved the payment within  
15 thirty days after the superintendent has received notice of  
16 the declaration."

17 SECTION 40. Section 59A-37-23 NMSA 1978 (being Laws  
18 1984, Chapter 127, Section 638, as amended) is amended to  
19 read:

20 "59A-37-23. EXAMINATIONS.--

21 A. Pursuant to general powers of investigation  
22 and examination vested in the superintendent under Chapter  
23 59A, Article 4 NMSA 1978, the superintendent may order an  
24 insurer registered under Section 59A-37-11 NMSA 1978 to  
25 produce such records, books or other information papers in

1 the possession of the insurer or its affiliates as are  
2 necessary to ascertain the insurer's financial condition,  
3 including the enterprise risk to the insurer by the ultimate  
4 controlling party, or by any entity or combination of  
5 entities within the insurance holding company system, or by  
6 the insurance holding company system on a consolidated basis  
7 or the insurer's compliance with the Insurance Company  
8 Holding Law. If the insurer fails to comply with the order,  
9 the superintendent may examine its affiliates to obtain the  
10 information.

11 B. The examination shall be conducted and  
12 otherwise be subject to applicable provisions of Chapter 59A,  
13 Article 4 NMSA 1978.

14 C. To determine compliance with the Insurance  
15 Holding Company Law, the superintendent may require that an  
16 insurer registered pursuant to Section 59A-37-11 NMSA 1978  
17 produce information not possessed by the insurer if the  
18 insurer can access that information through a contractual  
19 relationship, statutory obligation or other valid method. If  
20 the insurer cannot obtain the information that the  
21 superintendent requests, the insurer shall provide the  
22 superintendent with a detailed explanation of the reasons for  
23 that inability and the identity of the holder of information.  
24 If the superintendent believes that the explanation lacks  
25 merit, the superintendent may require, after notice and a

1 hearing, that the insurer pay a penalty of five hundred  
2 dollars (\$500) for each day that the production of  
3 information is delayed, or the superintendent may suspend or  
4 revoke the insurer's license."

5 SECTION 41. Section 59A-37-24 NMSA 1978 (being Laws  
6 1984, Chapter 127, Section 639) is amended to read:

7 "59A-37-24. CONFIDENTIAL TREATMENT.--

8 A. All documents, materials or other information  
9 in the possession or control of the office of superintendent  
10 of insurance that are obtained by or disclosed to the  
11 superintendent or any other person in the course of an  
12 examination or investigation made pursuant to Sections  
13 59A-37-20 through 59A-37-22 NMSA 1978, and all information  
14 reported pursuant to Section 59A-37-4 NMSA 1978, shall be  
15 confidential and shall not be subject to the Inspection of  
16 Public Records Act. Nothing in this section shall be  
17 construed as a grant of privilege or confidentiality or a bar  
18 to production of that information by an insurer in a civil  
19 suit, whether or not the office of superintendent of  
20 insurance is a party; provided that the superintendent may  
21 use the documents, materials or other information in a  
22 regulatory or legal action brought in the course of the  
23 superintendent's official duties. The documents, materials  
24 or other information shall not be made public by the  
25 superintendent or any other person, except to insurance

1 departments of other states, without the prior written  
2 consent of the insurer to which it pertains unless the  
3 superintendent, after giving the insurer and its affiliates  
4 that would be affected by them, notice and an opportunity to  
5 be heard, determines that the interests of the policyholders,  
6 shareholders or the public will be served by the publication  
7 of them, in which case the superintendent may publish all or  
8 any part of them in the manner the superintendent deems  
9 appropriate.

10 B. Neither the superintendent nor a person who  
11 receives documents, materials or other information while  
12 acting pursuant to the authority of the superintendent or  
13 with whom such documents, materials or other information are  
14 shared pursuant to the Insurance Holding Company Law shall be  
15 permitted or required in a private civil action to testify on  
16 the confidential documents, materials or information  
17 identified in Subsection A of this section.

18 C. To assist in the performance of the  
19 superintendent's duties, the superintendent:

20 (1) may share documents, materials or other  
21 information, including the confidential and privileged  
22 documents, materials or information subject to Subsection A  
23 of this section, with other state, federal and international  
24 regulatory agencies, with the national association of  
25 insurance commissioners, its affiliates or its subsidiaries

1 and with state, federal and international law enforcement  
2 authorities, including members of a supervisory college  
3 described in Section 59A-37-32 NMSA 1978, if the recipient  
4 agrees in writing to maintain the confidentiality and  
5 privilege of the document, materials or other information and  
6 has cited in writing the legal authority to maintain the  
7 confidentiality;

8 (2) in the case of confidential and  
9 privileged documents, materials or information reported  
10 pursuant to Section 59A-37-30 NMSA 1978, and notwithstanding  
11 Paragraph (1) of this subsection, may share that information  
12 only with insurance supervisory officials of states that have  
13 statutes or regulations substantially similar to Subsection A  
14 of this section and that have agreed in writing not to  
15 disclose that information;

16 (3) may receive documents, materials or  
17 information, including otherwise confidential and privileged  
18 documents, materials or information, from the national  
19 association of insurance commissioners, its affiliates or its  
20 subsidiaries and from regulatory and law enforcement  
21 officials of foreign or domestic jurisdictions but shall  
22 maintain as confidential or privileged documents, materials  
23 or other information received with notice or the  
24 understanding that the content is confidential or privileged  
25 pursuant to the laws of the jurisdiction from which the

1 information originates; and

2 (4) shall, pursuant to the Insurance  
3 Holding Company Law, enter into written agreements with the  
4 national association of insurance commissioners that govern  
5 the sharing and use of information, that are consistent with  
6 this subsection and that:

7 (a) specify procedures and protocols  
8 for maintaining the confidentiality and security of  
9 information shared with the national association of insurance  
10 commissioners, its affiliates or its subsidiaries, including  
11 procedures and protocols for the sharing between the national  
12 association of insurance commissioners and other state,  
13 federal or international regulators;

14 (b) provide that the superintendent  
15 retains ownership and governs the use of information shared  
16 with the national association of insurance commissioners, its  
17 affiliates or its subsidiaries;

18 (c) require that the national  
19 association of insurance commissioners promptly notify an  
20 insurer whose confidential information it possesses when that  
21 information is the subject of a request or subpoena for  
22 disclosure or production; and

23 (d) require that, in a judicial or  
24 administrative action in which the national association of  
25 insurance commissioners, its affiliates or its subsidiaries

1 may be required to disclose shared confidential information  
2 about the insurer, the national association of insurance  
3 commissioners, its affiliates or its subsidiaries consent to  
4 intervention by the insurer.

5 D. The sharing of information by the  
6 superintendent pursuant to the Insurance Holding Company Law  
7 is not a delegation of regulatory authority or rulemaking.  
8 The superintendent alone is responsible for the  
9 administration, execution and enforcement of the provisions  
10 of the Insurance Holding Company Law.

11 E. The disclosure of documents, materials or  
12 information to the superintendent pursuant to this section or  
13 the sharing authorized by Subsection C of this section does  
14 not constitute a waiver of an applicable privilege or a claim  
15 of confidentiality."

16 SECTION 42. Section 59A-37-26 NMSA 1978 (being Laws  
17 1984, Chapter 127, Section 641, as amended) is amended to  
18 read:

19 "59A-37-26. ENFORCEMENT, CRIMINAL PROCEEDINGS--  
20 PENALTY.--

21 A. Any insurer failing, without just cause, to  
22 file any registration statement as required in the Insurance  
23 Holding Company Law shall be required, after notice and  
24 hearing, to pay a penalty of fifty dollars (\$50.00) for each  
25 day's delay, not to exceed a total penalty of ten thousand

1 dollars (\$10,000). The superintendent may reduce the penalty  
2 if the insurer demonstrates to the superintendent that the  
3 imposition of the penalty would constitute a financial  
4 hardship to the insurer.

5 B. Every director or officer of an insurance  
6 holding company system who knowingly violates, participates  
7 in, or assents to, or who knowingly permits any officer or  
8 agent of the insurer to engage in transactions or make  
9 investments that have not been properly reported or submitted  
10 pursuant to Section 59A-37-11 NMSA 1978, Subsection B of  
11 Section 59A-37-20 NMSA 1978 or Section 59A-37-22 NMSA 1978,  
12 or that violate the Insurance Company Holding Law, shall pay,  
13 in their individual capacity, a penalty of not more than ten  
14 thousand dollars (\$10,000) per violation, after notice and  
15 hearing before the superintendent. In determining the amount  
16 of the penalty, the superintendent shall take into account  
17 the appropriateness of the penalty with respect to the  
18 gravity of the violation, the history of previous violations  
19 and such other matters as justice may require.

20 C. Whenever it appears to the superintendent that  
21 any insurer subject to the provisions of the Insurance  
22 Holding Company Law or any director, officer, employee or  
23 agent thereof has engaged in any transaction or entered into  
24 a contract that is subject to the provisions of Sections  
25 59A-37-20 through 59A-37-22 NMSA 1978 and that would not have

1 been approved had the approval been requested, the  
2 superintendent may order the insurer to cease and desist  
3 immediately any further activity under that transaction or  
4 contract. After notice and hearing, the superintendent may  
5 also order the insurer to void any contracts and restore the  
6 status quo if the action is in the best interest of the  
7 policyholders, creditors or the public.

8 D. Whenever it appears to the superintendent that  
9 an insurer or any director, officer, employee or agent  
10 thereof has committed a willful violation of the Insurance  
11 Holding Company Law, the superintendent may cause criminal  
12 proceedings to be instituted in the district court for the  
13 county in which the principal office of the insurer is  
14 located or, if the insurer has no such office in the state,  
15 then in the district court for Santa Fe county against the  
16 insurer or the responsible director, officer, employee or  
17 agent thereof. Any insurer that willfully violates that law  
18 may be fined not more than twenty thousand dollars (\$20,000).  
19 Any individual who willfully violates that law may be fined  
20 not more than ten thousand dollars (\$10,000).

21 E. Any officer, director or employee of an  
22 insurance holding company system who willfully and knowingly  
23 subscribes to or makes or causes to be made any false  
24 statements or false reports or false filings with the intent  
25 to deceive the superintendent in the performance of the

1 superintendent's duties under the Insurance Holding Company  
2 Law, upon conviction thereof, shall be imprisoned for not  
3 more than twenty years or fined not more than one million  
4 dollars (\$1,000,000), or both. Any fines imposed shall be  
5 paid by the officer, director or employee in the officer's,  
6 director's or employee's individual capacity.

7 F. If the superintendent suspects that a person  
8 has violated a provision of Sections 59A-37-4 through  
9 59A-37-10 NMSA 1978, and if that violation prevents the full  
10 understanding of the enterprise risk to the insurer by  
11 affiliates or by the insurance holding company system, the  
12 violation alone may provide the basis for disapproving  
13 dividends or distributions and for placing the insurer under  
14 an order of supervision in accordance with the Insurers  
15 Conservation, Rehabilitation and Liquidation Law."

16 SECTION 43. A new Section 59A-37-29 NMSA 1978 is  
17 enacted to read:

18 "59A-37-29. ACQUISITIONS THAT WOULD LESSEN  
19 COMPETITION.--

20 A. As used in this section:

21 (1) "acquisition" means an agreement,  
22 arrangement or activity whose consummation results in a  
23 person directly or indirectly acquiring the control of  
24 another person and includes the acquisition of voting  
25 securities, the acquisition of assets, bulk reinsurance and

1 mergers; and

2 (2) "involved insurer" includes an insurer  
3 that acquires or is acquired, is affiliated with an acquirer  
4 or acquired or is the result of a merger.

5 B. Except as provided in this subsection, this  
6 section applies to an acquisition in which there is a change  
7 of control of an insurer authorized to do business in New  
8 Mexico. This section does not apply to:

9 (1) a purchase of securities made solely  
10 for investment purposes if the securities are not used by  
11 voting or otherwise to cause or attempt to cause the  
12 substantial lessening of competition in an insurance market  
13 in New Mexico. If a purchase of securities results in a  
14 presumption of control as provided in Subsection C of Section  
15 59A-37-2 NMSA 1978, this section applies to the purchase  
16 unless the insurance supervisory official of the insurer's  
17 state of domicile accepts a disclaimer of control or  
18 affirmatively finds that control does not exist and the  
19 domiciliary insurance supervisory official communicates that  
20 disclaimer action or affirmative finding to the  
21 superintendent;

22 (2) the acquisition of a person by another  
23 person when both persons are neither directly nor through  
24 affiliates primarily engaged in the business of insurance, if  
25 the acquisition would otherwise not be excluded from this

1 section by the provisions of another paragraph of this  
2 subsection and if the acquiring party to the acquisition  
3 files with the superintendent a notification in accordance  
4 with Paragraph (1) of Subsection C of this section at least  
5 thirty days prior to the proposed effective date of the  
6 acquisition;

7 (3) the acquisition of an already  
8 affiliated person;

9 (4) where "market" means the direct written  
10 insurance premium in New Mexico for a line of business  
11 contained in the annual statement required to be filed by an  
12 insurer licensed to do business in New Mexico, an acquisition  
13 if, as an immediate result of the acquisition:

14 (a) the combined market share of the  
15 involved insurers would not exceed five percent of the total  
16 market in any market;

17 (b) no market share would increase; or

18 (c) the combined market share of the  
19 involved insurers would not exceed twelve percent, and the  
20 market share would not increase by more than two percent, of  
21 the total market in any market;

22 (5) an acquisition for which a pre-  
23 acquisition notification would be required by the provisions  
24 of this section solely because of its effect on the ocean  
25 marine insurance line of business; and

1                   (6) an acquisition of an insurer whose  
2 domiciliary insurance supervisory official finds that the  
3 insurer is in failing condition, that there is no feasible  
4 way to improve the condition and that the benefit to the  
5 public of improving the insurer's condition through the  
6 acquisition exceeds the benefit to the public that would  
7 arise from not lessening competition; provided that the  
8 findings are communicated to the superintendent by the  
9 domiciliary insurance supervisory official.

10                   C. An acquisition identified in Subsection B of  
11 this section may be subject to an order pursuant to  
12 Subsection E of this section, unless the acquiring person  
13 files a pre-acquisition notification and the waiting period  
14 has expired. The acquired person may file a pre-acquisition  
15 notification. The superintendent shall treat as confidential  
16 information submitted pursuant to this subsection in the same  
17 manner as provided in Section 59A-37-24 NMSA 1978.

18                   (1) Pre-acquisition notification shall  
19 contain the information and be in the form prescribed by the  
20 national association of insurance commissioners relating to  
21 the markets that, pursuant to Paragraph (4) of Subsection B  
22 of this section, subject the acquisition to the provisions of  
23 this section. The superintendent may require the submission  
24 of additional materials and information that the  
25 superintendent deems necessary to determine whether the

1 proposed acquisition, if consummated, would violate the  
2 competitive standard identified in Subsection D of this  
3 section. Among other materials, the superintendent may  
4 require the submission of an economist's opinion relating to  
5 the competitive impact of the acquisition in New Mexico along  
6 with an addendum addressing the economist's educational  
7 background, experience and ability to render an informed  
8 opinion.

9 (2) A waiting period shall begin on the  
10 date that the superintendent receives a pre-acquisition  
11 notification and shall end on the thirtieth day after the  
12 date of receipt or upon the superintendent's termination of  
13 the waiting period, whichever is earlier. Prior to the end  
14 of the waiting period, the superintendent, through one  
15 request, may require the submission of additional information  
16 relevant to the proposed acquisition. A request for the  
17 submission of additional information shall trigger a new  
18 waiting period that begins on the date of receipt of the  
19 additional information and ends on the thirtieth day after  
20 that receipt or upon the superintendent's termination of the  
21 waiting period, whichever is earlier.

22 D. The superintendent may enter an order pursuant  
23 to Subsection E of this section if there is substantial  
24 evidence that the acquisition may substantially lessen  
25 competition in a line of insurance in New Mexico or that the

1 acquisition would tend to create a monopoly or if the insurer  
2 fails to file adequate information in compliance with  
3 Subsection C of this section.

4 (1) In determining whether a proposed  
5 acquisition would violate the competitive standard identified  
6 in this subsection, the superintendent shall consider that:

7 (a) an acquisition identified in  
8 Subsection B of this section that involves two or more  
9 insurers competing in the same market is prima facie evidence  
10 of a violation of the competitive standard: 1) if the market  
11 is highly concentrated and the involved insurers possess the  
12 following shares of the market:

13	Insurer A	Insurer B
14	<hr/>	
15	4%	4% or more
16	10%	2% or more
17	15%	1% or more; or

18 2) if the market is not highly concentrated and the involved  
19 insurers possess the following shares of the market:

20	Insurer A	Insurer B
21	<hr/>	
22	5%	5% or more
23	10%	4% or more
24	15%	3% or more
25	19%	1% or more;

1 (b) for the purposes of Subparagraph  
2 (a) of this paragraph, a highly concentrated market is one in  
3 which the share of the four largest insurers is seventy-five  
4 percent or more of the market; the insurer with the largest  
5 share of the market shall be deemed to be Insurer A; a  
6 percentage not shown in a table is interpolated in proportion  
7 to the percentages shown; and if more than two insurers are  
8 involved in the acquisition, exceeding the total of the two  
9 columns in the table is prima facie evidence of a violation  
10 of the competitive standard of this subsection;

11 (c) there is a significant trend  
12 toward increased concentration when the aggregate market  
13 share of a grouping of the largest insurers in the market,  
14 from the two largest to the eight largest, has increased by  
15 seven or more percent of the market over a period of time  
16 extending from any base year five to ten years prior to the  
17 acquisition up to the time of the acquisition. An  
18 acquisition or a merger identified in Subsection B of this  
19 section that involves two or more insurers competing in the  
20 same market is prima facie evidence of a violation of the  
21 competitive standard of this subsection if: 1) there is a  
22 significant trend toward increased concentration in the  
23 market; 2) an involved insurer is in a grouping of large  
24 insurers showing the requisite increase in the market share;  
25 and 3) another involved insurer's market is two percent or

1 more;

2 (d) for the purposes of this  
3 subsection: 1) "insurer" includes a company and a group of  
4 companies under common management, ownership or control;  
5 2) "market" means the relevant product and geographical  
6 markets. In determining the relevant product and  
7 geographical markets, the superintendent shall give due  
8 consideration to, among other things, existing definitions or  
9 guidelines promulgated by the national association of  
10 insurance commissioners and information submitted by the  
11 parties to the acquisition. In the absence of sufficient  
12 information to the contrary, the relevant product market is  
13 assumed to be the direct written insurance premium for a line  
14 of business, such line being that used in the annual  
15 statement required to be filed by insurers doing business in  
16 New Mexico, and the relevant geographical market is assumed  
17 to be New Mexico; and 3) the superintendent bears the burden  
18 of showing prima facie evidence of a violation of the  
19 competitive standard; and

20 (e) an acquisition that is not prima  
21 facie evidence of a violation of the competitive standard  
22 pursuant to Subparagraphs (a) and (b) of this paragraph may  
23 establish the requisite anti-competitive effect based on  
24 other substantial evidence. Using other substantial  
25 evidence, a party may establish the absence of the requisite

1 anti-competitive effect for an acquisition that violates the  
2 competitive standard pursuant to Subparagraphs (a) and (b) of  
3 Paragraph (2) of this subsection. In making a determination  
4 pursuant to this subparagraph, the superintendent shall  
5 consider relevant factors, including: 1) market shares; 2)  
6 volatility of the ranking of market leaders; 3) the number of  
7 competitors; 4) concentration; 5) the trend of concentration  
8 in the industry; and 6) the ease of entry and exit into the  
9 market.

10 (2) An order shall not be entered pursuant  
11 to Subsection E of this section if:

12 (a) the acquisition would yield  
13 substantial economies of scale or economies in resource  
14 utilization that cannot be feasibly achieved in another way  
15 and the benefit to the public that would arise from those  
16 economies would exceed the benefits to the public that would  
17 arise from not lessening competition; or

18 (b) the acquisition would  
19 substantially increase the availability of insurance and the  
20 benefits to the public of the increase would exceed the  
21 benefits to the public that would arise from not lessening  
22 competition.

23 E. If an acquisition violates the standards of  
24 this section, the superintendent may enter an order requiring  
25 an involved insurer to cease and desist from doing business

1 in New Mexico with respect to the line or lines of insurance  
2 involved in the violation or an order denying the application  
3 of an acquired or acquiring insurer for a license to do  
4 business in New Mexico. The superintendent shall only enter  
5 an order if notice of a hearing was issued before the end of  
6 the waiting period, but not less than fifteen days prior to  
7 the hearing, and the hearing has concluded. The  
8 superintendent shall not enter an order more than sixty days  
9 after the insurer filed with the superintendent  
10 pre-acquisition notification. A written decision by the  
11 superintendent that sets forth findings of fact and  
12 conclusions of law shall accompany an order. An order is  
13 void if the acquisition is not consummated. After notice and  
14 a hearing, the superintendent may fine a person that violates  
15 a valid cease-and-desist order no more than ten thousand  
16 dollars (\$10,000) per day of the violation or suspend or  
17 revoke the person's license, or both. The superintendent may  
18 fine an insurer or other person that fails to make a filing  
19 required by this section and fails to demonstrate a good  
20 faith effort to comply with a filing requirement no more than  
21 fifty thousand dollars (\$50,000).

22 F. Subsections B and C of Section 59A-37-25  
23 NMSA 1978 and Subsection A of Section 59A-37-27 NMSA 1978 do  
24 not apply to an acquisition identified in Subsection B of  
25 this section."

1 SECTION 44. A new Section 59A-37-30 NMSA 1978 is  
2 enacted to read:

3 "59A-37-30. ENTERPRISE RISK FILING.--The person who  
4 predominantly controls an insurer that is subject to  
5 registration shall file an enterprise risk report each year.  
6 The report shall reflect that person's knowledge and belief  
7 of the material risks within the insurance holding company  
8 system that pose enterprise risk to the insurer. The report  
9 shall be filed with the lead state insurance supervisory  
10 official of the insurance holding company system and in  
11 compliance with the relevant procedures outlined in the  
12 financial analysis handbook adopted by the national  
13 association of insurance commissioners."

14 SECTION 45. A new Section 59A-37-31 NMSA 1978 is  
15 enacted to read:

16 "59A-37-31. MANAGEMENT OF DOMESTIC INSURERS SUBJECT TO  
17 REGISTRATION.--

18 A. The control of a domestic insurer by a person  
19 does not relieve the insurer's officers and directors of an  
20 obligation or a liability to which they are otherwise subject  
21 by law. An insurer shall be managed so that its separate  
22 operating identity is consistent with the Insurance Holding  
23 Company Law.

24 B. Nothing in this section precludes a domestic  
25 insurer from participating in a common management function, a

1 cooperative or the joint use of personnel if that  
2 participation meets the standards of Subsection A of Section  
3 59A-37-20 NMSA 1978.

4 C. At least two-thirds of the directors and  
5 two-thirds of the members of each committee of the board of  
6 directors of a domestic insurer shall not be officers or  
7 employees of the insurer or of an entity that controls, is  
8 controlled by or is under common control with the insurer and  
9 shall not be beneficial owners of a controlling interest in  
10 the voting stock of the insurer or entity. At least one  
11 person in that group of two-thirds of the directors shall be  
12 present prior to the transaction of business at a meeting of  
13 the board of directors or a committee of the board of  
14 directors.

15 D. The board of directors of a domestic insurer  
16 shall establish at least one committee composed solely of  
17 directors who are not officers or employees of the insurer or  
18 of an entity that controls, is controlled by or is under  
19 common control with the insurer and who are not beneficial  
20 owners of a controlling interest in the voting stock of the  
21 insurer or entity. The committee or committees shall:

22 (1) nominate the candidates for director,  
23 who shall be elected by the shareholders or policyholders;

24 (2) evaluate the performance of officers  
25 deemed to be principal officers of the insurer; and

1 (3) recommend to the board of directors the  
2 selection and compensation of the principal officers.

3 E. The provisions of Subsections C and D of this  
4 section do not apply to a domestic insurer if the person  
5 controlling the insurer, such as an insurer, a mutual  
6 insurance holding company or a publicly held corporation, has  
7 a board of directors and committees of the board of directors  
8 that meet the requirements of Subsections C and D of this  
9 section.

10 F. An insurer whose annual direct written and  
11 assumed premium, excluding premiums reinsured with the  
12 federal crop insurance corporation and the national flood  
13 insurance program, is less than three hundred million dollars  
14 (\$300,000,000) may apply to the superintendent for a waiver  
15 from the requirements of this section. An insurer whose  
16 circumstances are unusual may apply to the superintendent for  
17 a waiver from the requirements of this section. In  
18 determining whether the insurer qualifies for a waiver, the  
19 superintendent may consider, among other factors, the  
20 insurer's type of business entity, the volume of its business  
21 written, the availability of qualified board members and its  
22 ownership or organizational structure."

23 SECTION 46. A new Section 59A-37-32 NMSA 1978 is  
24 enacted to read:

25 "59A-37-32. SUPERVISORY COLLEGES.--

1           A. In order to determine compliance with the  
2 Insurance Holding Company Law by an insurer registered  
3 pursuant to Section 59A-37-11 NMSA 1978, the superintendent  
4 may participate in a supervisory college for a domestic  
5 insurer that is part of an insurance holding company system  
6 with international operations. Concerning a supervisory  
7 college, the superintendent may:

8                   (1) initiate its establishment;

9                   (2) clarify its membership and the  
10 participation of other supervisors;

11                  (3) clarify its functions and the role of  
12 other regulators, including the establishment of a group-wide  
13 supervisor;

14                  (4) coordinate its ongoing activities,  
15 including planning meetings, supervision and processes for  
16 information sharing; and

17                  (5) establish a crisis management plan.

18           B. A registered insurer subject to this section  
19 shall pay the reasonable expenses, including for travel,  
20 associated with the superintendent's participation in a  
21 supervisory college pursuant to Subsection C of this section.  
22 A supervisory college may be convened as a temporary or  
23 permanent forum for communication and cooperation between the  
24 regulators charged with the supervision of the insurer or its  
25 affiliates. The superintendent may establish a regular

1 assessment to the insurer for the payment of these expenses.

2 C. In order to assess the business strategy,  
3 financial position, legal and regulatory position, risk  
4 exposure, risk management and governance processes of an  
5 insurer, and as part of the examination of individual  
6 insurers pursuant to Section 59A-37-23 NMSA 1978, the  
7 superintendent may participate in a supervisory college with  
8 other regulators charged with the supervision of the insurer  
9 or its affiliates, including other state, federal and  
10 international regulatory agencies. The superintendent may  
11 enter into agreements in accordance with Subsection C of  
12 Section 59A-37-24 NMSA 1978 that provide the basis for  
13 cooperation between the superintendent and the other  
14 regulatory agencies and the activities of the supervisory  
15 college. Nothing in this section shall delegate to the  
16 supervisory college the authority of the superintendent to  
17 regulate or supervise the insurer or its affiliates within  
18 its jurisdiction."

19 SECTION 47. Section 59A-41-24 NMSA 1978 (being Laws  
20 1984, Chapter 127, Section 716, as amended) is amended to  
21 read:

22 "59A-41-24. HAZARDOUS FINANCIAL CONDITION--  
23 DETERMINATION.--

24 A. For the purposes of Sections 59A-41-25 and  
25 59A-41-26 NMSA 1978, an insurer may be deemed to be in a

1 hazardous financial condition when the superintendent has  
2 determined, after notice and hearing, that the loss  
3 experience of the insurer, when reviewed in conjunction with  
4 the kinds and characteristics of risks insured, or the  
5 insurer's financial condition, or its ownership, or the ratio  
6 of its annual premium volume in relation to its  
7 policyholders' surplus, would make further assumption of  
8 risks by the insurer hazardous to those persons doing  
9 business with the insurer or to the general public.

10 B. The following items may be considered by the  
11 superintendent to determine whether the continued operation  
12 of an insurer transacting an insurance business in New Mexico  
13 is hazardous to the policyholders, the creditors or the  
14 general public:

15 (1) adverse findings reported in financial  
16 condition and market conduct examination reports, audit  
17 reports and actuarial opinions, reports or summaries;

18 (2) the national association of insurance  
19 commissioners insurance regulatory information system and its  
20 other financial analysis solvency tools and reports;

21 (3) ratios of commission expense, general  
22 insurance expense, policy benefits and reserve increases to  
23 annual premium and net investment income;

24 (4) whether, according to currently  
25 accepted actuarial standards of practice, the insurer has

1 made adequate provision for the anticipated cash flows  
2 required by the insurer's contractual obligations and related  
3 expenses, when considered in light of the insurer's assets  
4 and investment earnings on assets held for reserves and  
5 related actuarial items and the considerations anticipated to  
6 be received and retained through the insurer's policies and  
7 contracts;

8 (5) the ability of an assuming reinsurer to  
9 perform and whether the insurer's reinsurance program  
10 provides sufficient protection for the insurer's remaining  
11 surplus after taking into account the insurer's cash flow and  
12 the classes of business written as well as the financial  
13 condition of the assuming reinsurer;

14 (6) whether the insurer's operating loss in  
15 the last twelve-month period or any shorter period of time,  
16 including net capital gain or loss, change in non-admitted  
17 assets and cash dividends paid to shareholders is greater  
18 than fifty percent of the insurer's remaining surplus as  
19 regards policyholders in excess of the minimum required;

20 (7) whether the insurer's operating loss,  
21 excluding net capital gains, in the last twelve months or a  
22 shorter period of time is greater than twenty percent of the  
23 insurer's remaining surplus as regards policyholders in  
24 excess of the minimum required;

25 (8) whether a reinsurer, an obligor or an

1 entity within the insurer's insurance holding company system  
2 is insolvent, threatened with insolvency or delinquent in  
3 payment of its monetary or other obligations and that, in the  
4 superintendent's opinion, might affect the solvency of the  
5 insurer;

6 (9) contingent liabilities, pledges or  
7 guaranties that individually or collectively involve a total  
8 amount that, in the superintendent's opinion, may affect the  
9 solvency of the insurer;

10 (10) whether any person having control of  
11 an insurer is delinquent in transmitting or paying net  
12 premiums to the insurer;

13 (11) the age and collectibility of  
14 receivables;

15 (12) whether the management of an insurer,  
16 including officers, directors or any other person who  
17 directly or indirectly controls the operation of the insurer,  
18 fails to possess and demonstrate the competence, fitness and  
19 reputation deemed necessary to serve the insurer in such  
20 position;

21 (13) whether management of an insurer has  
22 failed to respond to inquiries relative to the condition of  
23 the insurer or has furnished false or misleading information  
24 concerning an inquiry;

25 (14) whether the insurer, for a reason not

1 satisfactory to the superintendent, has failed to meet  
2 financial and holding company filing requirements;

3 (15) whether management of an insurer has  
4 filed with any regulatory authority or released to lending  
5 institutions or to the general public any false or misleading  
6 financial statements or has made a false or misleading entry  
7 or has omitted an entry of material amount in the books of  
8 the insurer;

9 (16) whether the insurer has grown so  
10 rapidly and to such an extent that it lacks adequate  
11 financial and administrative capacity to meet its obligations  
12 in a timely manner;

13 (17) whether the insurer has experienced or  
14 will experience in the foreseeable future cash flow or  
15 liquidity problems;

16 (18) whether management of the insurer has  
17 established reserves that do not meet the minimum standards  
18 established by New Mexico's insurance laws and rules and by  
19 statutory accounting standards, sound actuarial principles  
20 and standards of practice;

21 (19) whether management of the insurer  
22 persistently engages in material under-reserving that results  
23 in adverse development;

24 (20) whether transactions among affiliates,  
25 subsidiaries or controlling persons for which the insurer

1 receives assets or capital gains, or both, do not provide  
2 sufficient value, liquidity or diversity to ensure that the  
3 insurer can meet its outstanding obligations as they mature;

4 (21) risk-based capital reports and other  
5 information obtained pursuant to the Risk-Based Capital Act;  
6 or

7 (22) such other material information and  
8 data as the superintendent may deem relevant.

9 C. For the purposes of making a determination of  
10 an insurer's financial condition under this section, the  
11 superintendent may:

12 (1) disregard any credit or amount  
13 receivable resulting from transactions with a reinsurer that  
14 is insolvent, impaired or otherwise subject to a delinquency  
15 proceeding;

16 (2) make appropriate adjustments, including  
17 disallowance, to asset values attributable to investments in  
18 or transactions with parents, subsidiaries or affiliates that  
19 are consistent with the national association of insurance  
20 commissioners' accounting practices and procedures manual and  
21 with state laws and rules;

22 (3) refuse to recognize the stated value of  
23 accounts receivable if the ability to collect receivables is  
24 highly speculative in view of the age of the account or the  
25 financial condition of the debtor; or

1 (4) increase the insurer's liability in an  
2 amount equal to any contingent liability, pledge or guarantee  
3 not otherwise included if there is a substantial risk that  
4 the insurer will be called upon to meet the obligation  
5 undertaken within the next twelve-month period."

6 SECTION 48. Section 59A-41-25 NMSA 1978 (being Laws  
7 1984, Chapter 127, Section 717, as amended) is amended to  
8 read:

9 "59A-41-25. REQUIREMENTS OF INSURER IN HAZARDOUS  
10 FINANCIAL CONDITION.--

11 A. Whenever the superintendent finds an insurer  
12 authorized to transact insurance in New Mexico to be in  
13 hazardous financial condition, as referred to in Section  
14 59A-41-24 NMSA 1978, the superintendent may order the insurer  
15 to take such action as the superintendent deems reasonably  
16 necessary to rectify the hazardous condition, including  
17 requiring the insurer to:

18 (1) reduce, suspend or limit the volume of  
19 business being accepted or renewed;

20 (2) submit its reinsurance contracts for  
21 approval and make such further requirements as to the  
22 insurer's reinsurance arrangements as the superintendent  
23 deems necessary;

24 (3) bulk-reinsure all or any part of its  
25 New Mexico business with another insurer authorized to

1 transact such business in New Mexico;

2 (4) increase the insurer's capital and  
3 surplus on such terms, in such amount and in such manner as  
4 the superintendent deems necessary;

5 (5) maintain with the superintendent a  
6 special deposit in cash or securities eligible for investment  
7 of funds of a like domestic insurer under Chapter 59A,  
8 Article 9 NMSA 1978 and in amount not less than the lesser  
9 of:

10 (a) the amounts required to be  
11 maintained as: 1) reserves for losses and loss adjustment  
12 expenses on New Mexico business; and 2) reserves for unearned  
13 premiums on New Mexico business. In determining the amount  
14 of deposit required, the reserves for losses, loss adjustment  
15 expenses and unearned premiums shall be reduced only for  
16 reinsurance ceded to authorized or accredited reinsurers that  
17 maintain with an independent custodian cash or marketable  
18 securities in amount not less than the sum of the reinsurer's  
19 reserves for losses, loss adjustment expenses and unearned  
20 premiums as to reinsurance assumed; or

21 (b) five hundred thousand dollars  
22 (\$500,000).

23 Any deposit required by this paragraph shall be for the  
24 protection and benefit only of New Mexico policyholders or  
25 claimants, or both, and shall not be withdrawn until the

1 superintendent terminates the requirement of the deposit.

2 This paragraph shall not apply as to any domestic insurer,  
3 and Subparagraph (b) of this paragraph shall not apply as to  
4 any life insurer;

5 (6) reduce general insurance and commission  
6 expenses by specified methods;

7 (7) suspend or limit the declaration and  
8 payment of dividends to its stockholders or to its  
9 policyholders;

10 (8) file reports in a form acceptable to  
11 the superintendent concerning the market value of an  
12 insurer's assets;

13 (9) limit or withdraw from certain  
14 investments or discontinue certain investment practices to  
15 the extent the superintendent deems necessary;

16 (10) document the adequacy of premium rates  
17 in relation to the risks insured;

18 (11) file, in addition to regular annual  
19 statements, interim financial reports on the form adopted by  
20 the national association of insurance commissioners or on  
21 such format as required by the superintendent;

22 (12) correct corporate governance practice  
23 deficiencies and adopt and use governance practices  
24 acceptable to the superintendent;

25 (13) provide to the superintendent a

1 business plan in order to continue to transact business in  
2 the state; or

3 (14) notwithstanding another provision of  
4 law limiting the frequency or amount of premium rate  
5 adjustments, adjust rates for a non-life insurance product  
6 written by the insurer that the superintendent considers  
7 necessary to improve the financial condition of the insurer.

8 B. The insurer may request a hearing to review  
9 the order in accordance with Chapter 59A, Article 4 NMSA  
10 1978; however, the superintendent shall give written notice  
11 of the hearing not less than ten days in advance of the  
12 hearing, and the hearing shall be held privately unless the  
13 insurer requests a public hearing, in which case the hearing  
14 shall be public."

15 SECTION 49. Section 59A-42-3 NMSA 1978 (being Laws  
16 2012, Chapter 9, Section 6) is amended to read:

17 "59A-42-3. DEFINITIONS.--As used in the Life and  
18 Health Insurance Guaranty Association Act:

19 A. "account" means either of the two accounts  
20 maintained pursuant to Section 59A-42-5 NMSA 1978;

21 B. "association" means the life and health  
22 insurance guaranty association created pursuant to Section  
23 59A-42-5 NMSA 1978;

24 C. "authorized assessment", or the term  
25 "authorized" when used in the context of assessments, means

1 that a resolution by the board has been passed whereby an  
2 assessment will be called immediately or in the future from  
3 member insurers for a specified amount. An assessment is  
4 authorized when the resolution is passed;

5 D. "benefit plan" means a specific employee, a  
6 union or an association of natural persons benefit plan;

7 E. "board" means the board of directors organized  
8 pursuant to Section 59A-42-6 NMSA 1978;

9 F. "called assessment", or the term "called" when  
10 used in the context of assessments, means that a notice has  
11 been issued by the association to member insurers requiring  
12 that an authorized assessment be paid within the time frame  
13 set forth within the notice. An authorized assessment  
14 becomes a called assessment when notice is mailed by the  
15 association to member insurers;

16 G. "contractual obligation" means an obligation  
17 under a policy or contract or a certificate under a group  
18 policy or contract, or portion thereof, for which coverage is  
19 provided pursuant to Section 59A-42-4 NMSA 1978;

20 H. "covered policy" means a policy or contract or  
21 portion of a policy or contract for which coverage is  
22 provided pursuant to Section 59A-42-4 NMSA 1978;

23 I. "domiciliary state" means the state in which  
24 an insurer is incorporated or organized or, as to an alien  
25 insurer, the state in which at commencement of delinquency

1 proceedings the larger amount of the insurer's assets are  
2 held in trust or on deposit for the benefit of its  
3 policyholders and creditors in the United States;

4 J. "extra-contractual claims" includes claims  
5 relating to bad faith in the payment of claims, punitive or  
6 exemplary damages or attorney fees and costs;

7 K. "impaired insurer" means a member insurer  
8 that, after the effective date of the Life and Health  
9 Insurance Guaranty Association Act, is not an insolvent  
10 insurer and is placed under an order of rehabilitation or  
11 conservation by a court of competent jurisdiction;

12 L. "insolvent insurer" means a member insurer  
13 that, after the effective date of the Life and Health  
14 Insurance Guaranty Association Act, is placed under an order  
15 of liquidation by a court of competent jurisdiction with a  
16 finding of insolvency;

17 M. "member insurer" means an insurer that is  
18 licensed or that holds a certificate of authority to transact  
19 in this state insurance for which coverage is provided  
20 pursuant to Section 59A-42-4 NMSA 1978 and includes an  
21 insurer whose license or certificate of authority in this  
22 state may have been suspended, revoked, not renewed or  
23 voluntarily withdrawn, but does not include:

24 (1) a health care plan, whether profit or  
25 nonprofit;

- 1 (2) a health maintenance organization;
- 2 (3) a prepaid dental plan;
- 3 (4) a fraternal benefit society;
- 4 (5) a mandatory state pooling plan;
- 5 (6) a mutual assessment company or other
- 6 person that operates on an assessment basis;
- 7 (7) an insurance exchange;
- 8 (8) a charitable organization that is in
- 9 good standing with the superintendent pursuant to Section
- 10 59A-1-16.1 NMSA 1978;
- 11 (9) any insurer that was insolvent or
- 12 unable to fulfill its contractual obligations as of April 9,
- 13 1975; or
- 14 (10) an entity similar to any of the above;

15 N. "Moody's corporate bond yield average" means

16 the monthly average corporates as published by Moody's

17 investors service, incorporated, or its successor;

18 O. "owner" of a policy or contract, "policy

19 owner" and "contract owner" means the person who is

20 identified as the legal owner under the terms of the policy

21 or contract or who is otherwise vested with legal title to

22 the policy or contract through a valid assignment completed

23 in accordance with the terms of the policy or contract and

24 properly recorded as the owner on the books of the insurer.

25 The terms "owner", "policy owner" and "contract owner" do not

1 include persons with a mere beneficial interest in a policy  
2 or contract;

3 P. "plan sponsor" means:

4 (1) the employer in the case of a benefit  
5 plan established or maintained by a single employer;

6 (2) the employee organization in the case  
7 of a benefit plan established or maintained by an employee  
8 organization; or

9 (3) the association, committee, joint board  
10 of trustees or other similar group of representatives of the  
11 parties who establish or maintain the benefit plan in the  
12 case of a benefit plan established or maintained by two or  
13 more employers or jointly by one or more employers and one or  
14 more employee organizations;

15 Q. "premiums" means amounts or considerations, by  
16 whatever name used, received on covered policies or contracts  
17 less returned premiums, considerations and deposits and less  
18 dividends and experience credits. "Premiums" does not  
19 include:

20 (1) amounts or considerations received for  
21 policies or contracts or for the portions of policies or  
22 contracts for which coverage is not provided pursuant to  
23 Subsection E of Section 59A-42-4 NMSA 1978, except that  
24 assessable premiums shall not be reduced on account of  
25 Paragraph (3) of Subsection E of Section 59A-42-4 NMSA 1978,

1 relating to interest limitations, or Paragraph (2) of  
2 Subsection F of Section 59A-42-4 NMSA 1978, relating to  
3 limitations, with respect to one individual, one participant  
4 or one contract owner;

5 (2) premiums in excess of five million  
6 dollars (\$5,000,000) on an unallocated annuity contract not  
7 issued under a governmental retirement benefit plan, or its  
8 trustee, established pursuant to Section 401, 403(b) or 457  
9 of the federal Internal Revenue Code of 1986; or

10 (3) with respect to multiple non-group  
11 policies of life insurance owned by one owner, whether the  
12 policy owner is an individual, firm, corporation or other  
13 person, and whether the persons insured are officers,  
14 managers, employees or other persons, premiums in excess of  
15 five million dollars (\$5,000,000) with respect to these  
16 policies or contracts, regardless of the number of policies  
17 or contracts held by the owner;

18 R. "principal place of business" means:

19 (1) in the case of a plan sponsor or a  
20 person other than a natural person, the single state in which  
21 the natural person who establishes a policy for the  
22 direction, control and coordination of the operations of the  
23 entity as a whole primarily exercises that function, as  
24 determined by the association in its reasonable judgment by  
25 considering the following factors:

1 (a) the state in which the primary  
2 executive and administrative headquarters of the entity is  
3 located;

4 (b) the state in which the principal  
5 office of the chief executive officer of the entity is  
6 located;

7 (c) the state in which the board, or  
8 similar governing person or persons, of the entity conducts  
9 the majority of its meetings;

10 (d) the state in which the executive  
11 or management committee of the board, or similar governing  
12 person or persons, of the entity conducts the majority of its  
13 meetings;

14 (e) the state from which the  
15 management of the overall operations of the entity is  
16 directed; and

17 (f) in the case of a benefit plan  
18 sponsored by affiliated companies comprising a consolidated  
19 corporation, the state in which the holding company or  
20 controlling affiliate has its principal place of business as  
21 determined using the factors in this subsection; but

22 (g) in the case of a plan sponsor, if  
23 more than fifty percent of the participants in the benefit  
24 plan are employed in a single state, that state shall be  
25 deemed to be the principal place of business of the plan

1 sponsor; and

2 (2) in the case of a plan sponsor of a  
3 benefit plan described in Paragraph (3) of Subsection P of  
4 this section, the principal place of business of the  
5 association, committee, joint board of trustees or other  
6 similar group of representatives of the parties that  
7 establish or maintain the benefit plan that, in lieu of a  
8 specific or clear designation of a principal place of  
9 business, shall be deemed to be the principal place of  
10 business of the employer or employee organization that has  
11 the largest investment in the benefit plan in question;

12 S. "receivership court" means the court in the  
13 insolvent or impaired insurer's domiciliary state having  
14 jurisdiction over the conservation, rehabilitation or  
15 liquidation of the insurer;

16 T. "resident" means a person to whom a  
17 contractual obligation is owed and who resides in this state  
18 on the date of entry of a court order that determines a  
19 member insurer to be an impaired insurer or a court order  
20 that determines a member insurer to be an insolvent insurer.  
21 A person may be a resident of only one state, which, in the  
22 case of a person other than a natural person, shall be its  
23 principal place of business. Citizens of the United States  
24 that are either residents of foreign countries or residents  
25 of United States possessions, territories or protectorates

1 that do not have an association similar to the association  
2 created by the Life and Health Insurance Guaranty Association  
3 Act shall be deemed residents of the state of domicile of the  
4 insurer that issued the policies or contracts;

5 U. "structured settlement annuity" means an  
6 annuity purchased in order to fund periodic payments for a  
7 plaintiff or other claimant in payment for or with respect to  
8 personal injury suffered by the plaintiff or other claimant;

9 V. "supplemental contract" means a written  
10 agreement entered into for the distribution of proceeds under  
11 a life, health or annuity policy or contract; and

12 W. "unallocated annuity contract" means an  
13 annuity contract or group annuity certificate that is not  
14 issued to and owned by an individual, except to the extent of  
15 annuity benefits guaranteed to an individual by an insurer  
16 under the contract or certificate."

17 SECTION 50. Section 59A-42A-7 NMSA 1978 (being Laws  
18 1997, Chapter 107, Section 7) is amended to read:

19 "59A-42A-7. EXAMINATION--ANNUAL STATEMENT.--

20 A. The association is subject to and responsible  
21 to pay the cost of examination by the superintendent on a  
22 periodic basis, pursuant to Chapter 59A, Article 4 NMSA 1978.

23 B. Not later than March 1 of each year, the board  
24 shall submit to the superintendent an annual statement in  
25 accordance with the requirements of Section 59A-5-29 NMSA

1 1978 and a risk-based capital report in accordance with the  
2 requirements of Section 59A-5A-3 NMSA 1978."

3 SECTION 51. Section 59A-46-9 NMSA 1978 (being Laws  
4 1993, Chapter 266, Section 9) is amended to read:

5 "59A-46-9. ANNUAL REPORT.--

6 A. Every health maintenance organization shall  
7 annually, on or before the first day of March, file a report,  
8 verified by at least two principal officers, with the  
9 superintendent covering the preceding calendar year.

10 B. The report shall be on forms prescribed by the  
11 superintendent and shall include:

12 (1) a financial statement of the  
13 organization prepared pursuant to forms prescribed by the  
14 superintendent, including its balance sheet and receipts and  
15 disbursements for the preceding year;

16 (2) any material changes in the information  
17 submitted pursuant to Subsection C of Section 59A-46-3 NMSA  
18 1978;

19 (3) the number of persons enrolled during  
20 the year and the number of enrollees as of the end of the  
21 year; and

22 (4) such other reasonable information  
23 materially relating to the performance of the health  
24 maintenance organization as is necessary to enable the  
25 superintendent to carry out the superintendent's duties under

1 the Insurance Code.

2 C. In addition, the health maintenance  
3 organization shall file by the dates indicated:

4 (1) on or before March 1, an annual  
5 statement in accordance with the requirements of Section  
6 59A-5-29 NMSA 1978 and a risk-based capital report in  
7 accordance with the requirements of Section 59A-5A-3  
8 NMSA 1978;

9 (2) a list of the providers who have  
10 executed a contract that complies with Subsection E of  
11 Section 59A-46-13 NMSA 1978 on or before March 1; and

12 (3) a description of the grievance  
13 procedures and the total number of grievances handled through  
14 such procedures, a compilation of the causes underlying those  
15 grievances and a summary of the final disposition of those  
16 grievances, on or before March 1.

17 D. The superintendent may require such additional  
18 reports as are deemed necessary and appropriate to enable the  
19 superintendent to carry out the superintendent's duties under  
20 the Health Maintenance Organization Law."

21 SECTION 52. Section 59A-47-14 NMSA 1978 (being Laws  
22 1984, Chapter 127, Section 879.12) is amended to read:

23 "59A-47-14. ANNUAL STATEMENT.--As prerequisite to  
24 continuance of its certificate of authority, each health care  
25 plan shall on or before March 1 each year file with the

1 superintendent and with the national association of insurance  
2 commissioners an annual statement in accordance with the  
3 requirements of Section 59A-5-29 NMSA 1978 and a risk-based  
4 capital report in accordance with the requirements of Section  
5 59A-5A-3 NMSA 1978."

6 SECTION 53. Section 59A-48-10 NMSA 1978 (being Laws  
7 1984, Chapter 127, Section 889) is amended to read:

8 "59A-48-10. ANNUAL REPORT TO SUPERINTENDENT.--

9 A. Every prepaid dental plan organization  
10 annually on or before the first day of March shall file with  
11 the superintendent a report covering its activities for the  
12 preceding calendar year in form as prescribed by the  
13 superintendent, verified by at least two principal officers  
14 of the corporation. A copy of the report shall be sent by  
15 the prepaid dental plan organization to the department of  
16 health.

17 B. Such reports shall be on forms prescribed by  
18 the superintendent and shall include:

19 (1) an annual statement in accordance with  
20 the requirements of Section 59A-5-29 NMSA 1978 and a  
21 risk-based capital report in accordance with the requirements  
22 of Section 59A-5A-3 NMSA 1978;

23 (2) any material changes in the  
24 information;

25 (3) the number of persons who become

1 members during the year, the number of members as of the end  
2 of the year and the number of memberships terminated during  
3 the year;

4 (4) the costs of all care provided and the  
5 number of units of care provided; and

6 (5) such other information relating to the  
7 performance of the prepaid dental plan organization as is  
8 necessary to enable the superintendent to carry out the  
9 duties prescribed by The Prepaid Dental Plan Law.

10 C. The fee for filing the annual report shall be  
11 as specified in Section 59A-6-1 NMSA 1978."

12 SECTION 54. SEVERABILITY.--If any part or application  
13 of the provisions of this act is held invalid, the remainder  
14 or its application to other situations or persons shall not  
15 be affected.

16 SECTION 55. EFFECTIVE DATE--CONTINGENCIES--  
17 NOTIFICATION.--

18 A. The effective date of the provisions of  
19 Sections 15 through 27 of this act is the January 1 of the  
20 first calendar year following the first July 1 after which  
21 the superintendent of insurance certifies to the New Mexico  
22 compilation commission and the director of the legislative  
23 council service that:

24 (1) the most recent version of the manual  
25 of valuation instructions adopted by the national association

1 of insurance commissioners has been adopted by the national  
2 association of insurance commissioners by an affirmative vote  
3 of at least forty-two members or three-fourths of the members  
4 voting, whichever is greater;

5 (2) the Standard Valuation Law of the  
6 national association of insurance commissioners, as amended  
7 in 2009, or legislation including substantially similar terms  
8 and provisions, has been enacted by states that collectively  
9 represent more than seventy-five percent of written direct  
10 premiums, as reported in the life, accident and health annual  
11 statements, the health annual statements and the fraternal  
12 annual statements submitted for 2008; and

13 (3) the Standard Valuation Law of the  
14 national association of insurance commissioners, as amended  
15 in 2009, or legislation including substantially similar terms  
16 and provisions, has been enacted by at least forty-two of the  
17 following fifty-five jurisdictions:

18 (a) the fifty states of the United  
19 States;

20 (b) American Samoa;

21 (c) the Virgin Islands of the United  
22 States;

23 (d) the District of Columbia;

24 (e) Guam; and

25 (f) Puerto Rico.

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B. If the requirements of Subsection A of this section have not been met by January 1, 2020, then Sections 15 through 27 of this act shall not take effect.

C. The effective date of the provisions of Sections 1 through 14 and 28 through 54 of this act is July 1, 2014.