

1 SENATE BILL 443

2 **54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019**

3 INTRODUCED BY

4 John M. Sapien

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10 AN ACT

11 RELATING TO INSURANCE; ENACTING THE OWN RISK AND SOLVENCY
12 ASSESSMENT ACT; ESTABLISHING A RISK MANAGEMENT FRAMEWORK;
13 REQUIRING INSURERS TO CONDUCT OWN RISK AND SOLVENCY ASSESSMENTS
14 AND MAKE ANNUAL OWN RISK AND SOLVENCY ASSESSMENT SUMMARY
15 REPORTS; ESTABLISHING PENALTIES; AMENDING A SECTION OF THE NEW
16 MEXICO INSURANCE CODE TO ESTABLISH FILING FEES FOR OWN RISK AND
17 SOLVENCY ASSESSMENT SUMMARY REPORTS.

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

20 SECTION 1. A new section of the New Mexico Insurance Code
21 is enacted to read:

22 "[NEW MATERIAL] SHORT TITLE.--Sections 1 through 9 of this
23 act may be cited as the "Own Risk and Solvency Assessment
24 Act"."

25 SECTION 2. A new section of the New Mexico Insurance Code
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1 is enacted to read:

2 "[NEW MATERIAL] DEFINITIONS.--As used in the Own Risk and
3 Solvency Assessment Act:

4 A. "guidance manual" means the current version of
5 the own risk and solvency assessment guidance manual developed
6 and adopted by the national association of insurance
7 commissioners and as amended from time to time; provided that
8 a change in the guidance manual shall be effective on the
9 January 1 following the calendar year in which the changes have
10 been adopted by the national association of insurance
11 commissioners;

12 B. "insurance group" means two or more affiliated
13 persons, at least one of which is an insurer;

14 C. "insurer" means any person engaged as principal
15 and as indemnitor, surety or contractor entering into contracts
16 of insurance, except:

17 (1) any agency, authority or instrumentality
18 of the United States, its possessions and territories, the
19 Commonwealth of Puerto Rico or the District of Columbia; or

20 (2) any state or political subdivision of a
21 state;

22 D. "own risk and solvency assessment" means a
23 confidential internal assessment, appropriate to the nature,
24 scale and complexity of an insurer or insurance group,
25 conducted by that insurer or insurance group of the material

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1 and relevant risks associated with the insurer's or insurance
2 group's current business plan and the sufficiency of capital
3 resources to support those risks; and

4 E. "own risk and solvency assessment summary
5 report" means a high-level summary of an insurer or insurance
6 group's own risk and solvency assessment."

7 SECTION 3. A new section of the New Mexico Insurance Code
8 is enacted to read:

9 "[NEW MATERIAL] RISK MANAGEMENT FRAMEWORK.--An insurer
10 shall maintain a risk management framework to assist the
11 insurer with identifying, assessing, monitoring, managing and
12 reporting on its material and relevant risks. This requirement
13 may be satisfied if the insurance group of which an insurer is
14 a member maintains a risk management framework applicable to
15 the operations of the insurer."

16 SECTION 4. A new section of the New Mexico Insurance Code
17 is enacted to read:

18 "[NEW MATERIAL] OWN RISK AND SOLVENCY ASSESSMENT--
19 REQUIREMENT.--Except as provided pursuant to Section 6 of the
20 Own Risk and Solvency Assessment Act, an insurer, or the
21 insurance group of which the insurer is a member, shall
22 regularly conduct an own risk and solvency assessment
23 consistent with a process comparable to the guidance manual.
24 The own risk and solvency assessment shall be conducted no less
25 than annually but also at any time when there are significant

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1 changes to the risk profile of the insurer or the insurance
2 group of which the insurer is a member."

3 SECTION 5. A new section of the New Mexico Insurance Code
4 is enacted to read:

5 "[NEW MATERIAL] OWN RISK AND SOLVENCY ASSESSMENT SUMMARY
6 REPORT.--

7 A. Pursuant to Chapter 59A, Article 4 NMSA 1978, an
8 insurer shall submit to the superintendent an own risk and
9 solvency assessment summary report or any combination of
10 reports that together contain the information described in the
11 guidance manual applicable to the insurer and the insurance
12 group, if any, of which it is a member. The own risk and
13 solvency assessment summary report, if requested, shall be due
14 thirty days after the completion of the insurer's most recent
15 own risk and solvency assessment that has been performed in
16 accordance with the insurer's or the insurance group's internal
17 strategic planning process. Upon the superintendent's request,
18 the insurer shall advise the superintendent of the date, annual
19 or otherwise, that the insurer or the insurance group conducts
20 its internal strategic planning process. Notwithstanding any
21 request from the superintendent, if the insurer is a member of
22 an insurance group, the insurer shall submit the own risk and
23 solvency assessment summary report or own risk and solvency
24 assessment summary reports required by this subsection if the
25 superintendent is the lead state commissioner of the insurance

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1 group as determined by the procedures within the financial
2 analysis handbook adopted by the national association of
3 insurance commissioners.

4 B. Each own risk and solvency assessment summary
5 report shall include a signature of the insurer or insurance
6 group's chief risk officer or other executive having
7 responsibility for the oversight of the insurer's enterprise
8 risk management process attesting to the best of the signator's
9 belief and knowledge that the insurer applies the enterprise
10 risk management process described in the own risk and solvency
11 assessment summary report and that a copy of the own risk and
12 solvency assessment summary report has been provided to the
13 insurer's board of directors or the appropriate committee
14 thereof.

15 C. An insurer may comply with the provisions of
16 Subsection A of this section by providing the most recent and
17 substantially similar own risk and solvency assessment summary
18 report or own risk and solvency assessment summary reports
19 provided by the insurer or another member of the insurance
20 group of which the insurer is a member to the commissioner of
21 another state or to a supervisor or regulator of a foreign
22 jurisdiction, if that report provides information that is
23 comparable to the information described in the guidance manual.
24 Any such report in a language other than English shall be
25 accompanied by a translation of that report into the English

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1 language."

2 SECTION 6. A new section of the New Mexico Insurance Code
3 is enacted to read:

4 "[NEW MATERIAL] EXEMPTION.--

5 A. An insurer shall be exempt from the provisions
6 of the Own Risk and Solvency Assessment Act if:

7 (1) the insurer has an annual direct written
8 and unaffiliated assumed premium, including international
9 direct and assumed premiums but excluding premiums reinsured
10 with the federal crop insurance corporation and national flood
11 insurance program, of less than five hundred million dollars
12 (\$500,000,000); and

13 (2) the insurance group of which the insurer
14 is a member has an annual direct written and unaffiliated
15 assumed premium, including international direct and assumed
16 premiums but excluding premiums reinsured with the federal crop
17 insurance corporation and national flood insurance program, of
18 less than one billion dollars (\$1,000,000,000).

19 B. If an insurer qualifies for exemption pursuant
20 to Paragraph (1) of Subsection A of this section, but the
21 insurance group of which it is a member does not qualify for
22 exemption pursuant to Paragraph (2) of Subsection A of this
23 section, the own risk and solvency assessment summary report
24 that may be required pursuant to Section 5 of the Own Risk and
25 Solvency Assessment Act shall include every insurer within the

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1 insurance group. This requirement may be satisfied by the
2 submission of more than one own risk and solvency assessment
3 summary report for any combination of insurers; provided that
4 any combination of reports includes every insurer within the
5 insurance group.

6 C. If an insurer does not qualify for exemption
7 pursuant to the provisions of Paragraph (1) of Subsection A of
8 this section, but the insurance group of which it is a member
9 qualifies for exemption pursuant to Paragraph (2) of Subsection
10 A of this section, the only own risk and solvency assessment
11 summary report that may be required pursuant to Section 5 of
12 the Own Risk and Solvency Assessment Act shall be the report
13 applicable to that insurer.

14 D. An insurer that does not qualify for exemption
15 pursuant to Subsection A of this section may apply to the
16 superintendent for a waiver from the requirements of the Own
17 Risk and Solvency Assessment Act based upon unique
18 circumstances. In deciding whether to grant the insurer's
19 request for a waiver, the superintendent may consider the type
20 and volume of business written, ownership and organizational
21 structure and any other factor the superintendent considers
22 relevant to the insurer or insurance group of which it is a
23 member. If the insurer is part of an insurance group with
24 insurers domiciled in more than one state, the superintendent
25 shall coordinate with the lead state commissioner and with the

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1 other domiciliary commissioners in considering whether to grant
2 the insurer's request for a waiver.

3 E. Notwithstanding the exemptions stated in this
4 section, the superintendent may require that an insurer
5 maintain a risk management framework, conduct an own risk and
6 solvency assessment and file an own risk and solvency
7 assessment summary report pursuant to Section 5 of the Own Risk
8 and Solvency Assessment Act:

9 (1) based on unique circumstances, including
10 the type and volume of business written, ownership and
11 organizational structure, federal agency requests and
12 international supervisor requests; and

13 (2) if the insurer has risk-based capital for
14 a company action level event pursuant to the Risk-Based Capital
15 Act or otherwise exhibits qualities of a troubled insurer as
16 determined by the superintendent.

17 F. If an insurer that qualifies for an exemption
18 pursuant to Subsection A of this section subsequently no longer
19 qualifies for that exemption due to changes in premium as
20 reflected in the insurer's most recent annual statement or in
21 the most recent annual statements of the insurers within the
22 insurance group of which it is a member, the insurer shall have
23 one year following the year the threshold is exceeded to comply
24 with the requirements of the Own Risk and Solvency Assessment
25 Act."

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1 SECTION 7. A new section of the New Mexico Insurance Code
2 is enacted to read:

3 "[NEW MATERIAL] OWN RISK AND SOLVENCY ASSESSMENT SUMMARY
4 REPORTS--CONTENTS.--

5 A. An own risk and solvency assessment summary
6 report shall be prepared consistent with the guidance manual,
7 subject to the requirements of Subsection B of this section.
8 Documentation and supporting information shall be maintained
9 and made available upon examination or upon request of the
10 superintendent.

11 B. The review of the own risk and solvency
12 assessment summary report, and any additional requests for
13 information, shall be made using similar procedures currently
14 used in the analysis and examination of multistate or global
15 insurers and insurance groups."

16 SECTION 8. A new section of the New Mexico Insurance Code
17 is enacted to read:

18 "[NEW MATERIAL] CONFIDENTIALITY.--

19 A. Documents, materials or other information,
20 including the own risk and solvency assessment summary report,
21 in the possession or control of the superintendent that are
22 obtained by, created by or disclosed to the superintendent
23 pursuant to the Own Risk and Solvency Assessment Act shall be
24 kept pursuant to the provisions of Chapter 59A, Article 4 NMSA
25 1978. The superintendent is authorized to use the documents,

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1 materials or other information in the furtherance of any
2 regulatory or legal action brought as a part of the
3 superintendent's official duties. The superintendent may not
4 otherwise make the documents, materials or other information
5 public without prior written notice to the insurer.

6 B. In order to assist in the performance of the
7 superintendent's regulatory duties, the superintendent:

8 (1) may, upon request, share documents,
9 materials or other information related to an own risk and
10 solvency assessment, including the confidential documents,
11 materials or information pursuant to Section 5 of the Own Risk
12 and Solvency Assessment Act and including proprietary and
13 trade-secret documents and materials, with other state, federal
14 and international financial regulatory agencies, with the
15 national association of insurance commissioners and with any
16 third-party consultants designated by the superintendent;
17 provided that the recipient agrees in writing to maintain the
18 confidential status of the documents, materials or other
19 information related to an own risk and solvency assessment and
20 has verified in writing the legal authority to maintain
21 confidentiality;

22 (2) may receive documents, materials or other
23 information related to an own risk and solvency assessment,
24 including confidential documents, materials or information and
25 including proprietary and trade-secret information or

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1 documents, from regulatory officials of other foreign or
2 domestic jurisdictions and from the national association of
3 insurance commissioners, and shall maintain as confidential any
4 documents, materials or information received with notice or the
5 understanding that it is confidential under the laws of the
6 jurisdiction that is the source of the document, material or
7 information; and

8 (3) shall enter into a written agreement with
9 the national association of insurance commissioners or a third-
10 party consultant governing sharing and use of information
11 provided pursuant to the Own Risk and Solvency Assessment Act
12 consistent with this subsection that shall:

13 (a) specify procedures and protocols
14 regarding the confidentiality and security of information
15 shared with the national association of insurance commissioners
16 or a third-party consultant pursuant to the Own Risk and
17 Solvency Assessment Act, including procedures and protocols for
18 sharing by the national association of insurance commissioners
19 with other state regulators from states in which the insurance
20 group has domiciled insurers. The agreement shall provide that
21 the recipient agrees in writing to maintain the confidential
22 status of the documents, materials or other information related
23 to an own risk and solvency assessment and has verified in
24 writing the legal authority to maintain confidentiality;

25 (b) specify that ownership of

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1 information shared with the national association of insurance
2 commissioners or a third-party consultant pursuant to the Own
3 Risk and Solvency Assessment Act remains with the
4 superintendent and that the national association of insurance
5 commissioners' or a third-party consultant's use of the
6 information is subject to the direction of the superintendent;

7 (c) prohibit the national association of
8 insurance commissioners or third-party consultant from storing
9 the information shared pursuant to the Own Risk and Solvency
10 Assessment Act in a permanent database after the underlying
11 analysis is completed;

12 (d) require prompt notice to be given to
13 an insurer whose confidential information in the possession of
14 the national association of insurance commissioners or a third-
15 party consultant pursuant to the Own Risk and Solvency
16 Assessment Act when subject to a request or subpoena;

17 (e) require the national association of
18 insurance commissioners or a third-party consultant to consent
19 to intervention by an insurer in any judicial or administrative
20 action in which the national association of insurance
21 commissioners or a third-party consultant may be required to
22 disclose confidential information about the insurer that has
23 been shared with the national association of insurance
24 commissioners or a third-party consultant pursuant to the Own
25 Risk and Solvency Assessment Act; and

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1 (f) in the case of an agreement
2 involving a third-party consultant, provide for the insurer's
3 written consent.

4 C. The sharing of information and documents by the
5 superintendent pursuant to the Own Risk and Solvency Assessment
6 Act shall not constitute a delegation of regulatory authority
7 or rulemaking, and the superintendent is solely responsible for
8 the administration, execution and enforcement of the provisions
9 of the Own Risk and Solvency Assessment Act.

10 D. No waiver of any applicable privilege or claim
11 of confidentiality of documents, proprietary and trade-secret
12 materials or other information related to an own risk and
13 solvency assessment shall occur as a result of disclosure of
14 that related information, materials or documents to the
15 superintendent under this section or as a result of sharing as
16 authorized in the Own Risk and Solvency Assessment Act."

17 SECTION 9. A new section of the New Mexico Insurance Code
18 is enacted to read:

19 "[NEW MATERIAL] SANCTIONS.--Any insurer failing, without
20 just cause, to timely file the own risk and solvency assessment
21 summary report as required in the Own Risk and Solvency
22 Assessment Act shall be required, after notice and hearing, to
23 pay a penalty of one thousand dollars (\$1,000) for each day's
24 delay to be recovered by the superintendent, and the penalty so
25 recovered shall be paid into the general fund. The maximum

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1 penalty under this section is one hundred thousand dollars
2 (\$100,000). The superintendent may reduce the penalty if the
3 insurer demonstrates to the superintendent that the imposition
4 of the penalty would constitute a financial hardship to the
5 insurer."

6 SECTION 10. Section 59A-6-1 NMSA 1978 (being Laws 1984,
7 Chapter 127, Section 101, as amended) is amended to read:

8 "59A-6-1. FEE SCHEDULE.--The superintendent shall collect
9 the following fees:

- 10 A. insurer's certificate of authority -
 - 11 (1) filing application for certificate of
 - 12 authority, and issuance of certificate of authority, including
 - 13 filing of all charter documents, financial statements, service
 - 14 of process, power of attorney, examination reports and other
 - 15 documents included with and part of the application . \$1,000.00
 - 16 (2) annual continuation of certificate of
 - 17 authority, per kind of insurance 200.00
 - 18 (3) reinstatement of certificate of authority
 - 19 (Section 59A-5-23 NMSA 1978) 150.00
 - 20 (4) amendment to certificate of authority . .
 - 21 200.00
- 22 B. charter documents - filing amendment to any
- 23 charter document (as defined in Section 59A-5-3 NMSA 1978) 10.00
- 24 C. annual statement of insurer, filing . . 200.00
- 25 D. own risk and solvency assessment summary report

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1 filing 200.00

2 ~~[D-]~~ E. service of process, acceptance by
3 superintendent and issuance of certificate of service . . 10.00

4 ~~[E-]~~ F. producer licenses and appointments -

5 (1) filing application for original producer
6 license and issuance of license 30.00

7 (2) biennial continuation of license . 60.00

8 (3) appointment of producer -

9 (a) filing appointment, per kind of
10 insurance, each insurer 20.00

11 (b) annual continuation of appointment,
12 per kind of insurance, each insurer 20.00

13 (4) temporary license filing
14 application 30.00

15 ~~[F-]~~ G. agency business entity license and
16 affiliations -

17 (1) filing application for original agency
18 business entity license and issuance of license 30.00

19 (2) biennial continuation of license . 60.00

20 (3) filing of individual affiliation . 20.00

21 (4) annual continuation of individual
22 affiliation 20.00

23 ~~[G-]~~ H. insurance vending machine license -

24 (1) filing application for original license
25 and issuance of license, each machine 25.00

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1 (2) biennial continuation of license, each
2 machine 50.00

3 [~~H.~~] I. examination for license, application for
4 examination conducted directly by the superintendent, each
5 grouping of kinds of insurance to be covered by the examination
6 as provided by the superintendent's rules, and payable as to
7 each instance of examination 75.00

8 [~~F.~~] J. surplus lines insurer - filing application
9 for qualification as eligible surplus lines insurer . 1,000.00

10 [~~J.~~] K. surplus lines broker license -
11 (1) filing application for original license
12 and issuance of license 100.00

13 (2) biennial continuation of license 200.00

14 [~~K.~~] L. surplus lines brokerage business entity
15 license and affiliations -

16 (1) filing application for original surplus
17 lines brokerage business entity license and issuance of license
18 100.00

19 (2) filing of individual affiliation . 20.00

20 (3) annual continuation of individual
21 affiliation 20.00

22 [~~F.~~] M. adjuster license -

23 (1) filing application for original license
24 and issuance of license 30.00

25 (2) biennial continuation of

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1	license	60.00
2	[M-] <u>N.</u> insurance consultant license -	
3	(1) filing application for original license	
4	and issuance of license	50.00
5	(2) application examination	75.00
6	(3) biennial continuation of license	100.00
7	[N-] <u>O.</u> viatical settlements license -	
8	(1) providers -	
9	(a) filing application for original	
10	license and issuance of license	1,000.00
11	(b) biennial continuation of license . .	
12	400.00
13	(2) brokers -	
14	(a) filing application for original	
15	license and issuance of license	100.00
16	(b) biennial continuation of	
17	license	200.00
18	(3) brokerages -	
19	(a) filing application for original	
20	business entity license and issuance of license	100.00
21	(b) biennial continuation of	
22	license	200.00
23	(c) filing of individual	
24	affiliation	20.00
25	(d) annual continuation of individual	

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1 affiliation 20.00

2 ~~[Θ-]~~ P. advisory organization license -

3 (1) filing application for license and

4 issuance of license 100.00

5 (2) annual continuation of

6 license 100.00

7 ~~[P-]~~ Q. nonprofit health care plans -

8 (1) filing application for preliminary permit

9 and issuance of permit 100.00

10 (2) certificate of authority, application,

11 issuance, continuation, reinstatement, charter documents - same

12 as for insurers

13 (3) annual statement, filing 200.00

14 ~~[Q-]~~ R. prepaid dental plans -

15 (1) certificate of authority, application,

16 issuance, continuation, reinstatement, charter documents - same

17 as for insurers

18 (2) annual report, filing 200.00

19 ~~[R-]~~ S. prearranged funeral insurance - application

20 for certificate of authority, issuance, continuation,

21 reinstatement, charter documents, filing annual statement,

22 licensing of sales representatives - same as for insurers

23 ~~[S-]~~ T. premium finance companies -

24 (1) filing application for original license

25 and issuance of license 100.00

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1 (2) annual renewal of license 100.00

2 [~~T~~] U. motor clubs -

3 (1) certificate of authority -

4 (a) filing application for original
5 certificate of authority and issuance of certificate of
6 authority 200.00

7 (b) annual continuation of certificate
8 of authority 100.00

9 (2) sales representatives -

10 (a) filing application for registration
11 or license and issuance of registration or license, each
12 representative 30.00

13 (b) biennial continuation of
14 registration or license, each representative 60.00

15 [~~U~~] V. bail bondsmen -

16 (1) filing application for original license as
17 bail bondsman or solicitor, and issuance of license . . . 30.00

18 (2) examination for license, each instance of
19 examination 50.00

20 (3) biennial continuation of license . 60.00

21 [~~V~~] W. required filing of forms or rates - by all
22 lines of business other than property or casualty -

23 (1) rates 50.00

24 (2) major form - each new policy and each
25 package submission, which can include multiple policy forms,

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1 application forms, rider forms, endorsement forms or amendment
2 forms 30.00
3 (3) incidental forms and rates - forms filed
4 for informational purposes; riders, applications, endorsements
5 and amendments filed individually; rate service organization
6 reference filings; rates filed for informational
7 purposes 15.00
8 [~~W.~~] X. health maintenance organizations -
9 (1) filing an application for a certificate of
10 authority 1,000.00
11 (2) annual continuation of certificate of
12 authority 200.00
13 (3) filing each annual report 200.00
14 (4) filing an amendment to organizational
15 documents requiring approval 200.00
16 (5) filing informational amendments 50.00
17 [~~X.~~] Y. purchasing groups and foreign risk
18 retention groups -
19 (1) original registration 500.00
20 (2) annual continuation of registration . . .
21 200.00
22 (3) producer fees - same as for authorized
23 insurers
24 [~~Y.~~] Z. third party administrators -
25 (1) filing application for original business

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1	entity insurance administrator license	100.00
2	(2) biennial continuation or renewal	
3	of license	200.00
4	(3) examination for license, each	
5	examination	75.00
6	(4) filing of annual report	50.00
7	[Z.] <u>AA.</u> miscellaneous fees -	
8	(1) duplicate license	30.00
9	(2) name change	30.00
10	(3) for each signature and seal of	
11	superintendent affixed to any instrument	10.00
12	[AA.] <u>BB.</u> pharmacy benefits managers -	
13	(1) filing an application for a	
14	license	1,000.00
15	(2) annual continuation of license, each	
16	year continued	500.00
17	(3) filing each annual report	200.00
18	(4) filing an amendment to organizational	
19	documents requiring approval	200.00
20	(5) filing informational amendments	100.00
21	[BB.] <u>CC.</u> independent review organizations	
22	(1) filing an application for a license	
23	250.00
24	(2) biennial continuation of license	100.00
25	[GG.] <u>DD.</u> continuing education providers	

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- 1 (1) filing an application for a course of
- 2 instruction 80.00
- 3 (2) biennial continuation of course of
- 4 instruction 40.00.

5 An insurer shall be subject to additional fees or charges,
6 termed retaliatory or reciprocal requirements, whenever form or
7 rate-filing fees in excess of those imposed by state law are
8 charged to insurers in New Mexico doing business in another
9 state or whenever a condition precedent to the right to issue
10 policies in another state is imposed by the laws of that state
11 over and above the conditions imposed upon insurers by the laws
12 of New Mexico; in those cases, the same form or rate-filing
13 fees may be imposed upon an insurer from another state
14 transacting or applying to transact business in New Mexico so
15 long as the higher fees remain in force in the other state. If
16 an insurer does not comply with the additional retaliatory or
17 reciprocal requirement charges imposed under this subsection,
18 the superintendent may refuse to grant or may withdraw approval
19 of the tendered form or rate filing.

20 All fees are earned when paid and are not refundable."