

SENATE BILL 81

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

Peter Wirth and Harlan Vincent and Anita Gonzales

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO INSURANCE; CREATING THE NEW MEXICO PROPERTY INSURANCE PROGRAM ASSOCIATION BOARD TO ADMINISTER THE FAIR PLAN ACT; ESTABLISHING BOARD DUTIES AND RESPONSIBILITIES; CREATING NEW REQUIREMENTS FOR INSURANCE POLICIES OFFERED UNDER THE FAIR PLAN ACT; PRESCRIBING FEES; SFC→~~MAKING AN APPROPRIATION;~~←SFC DECLARING AN EMERGENCY.

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

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SECTION 1. A new section of the FAIR Plan Act, Section 59A-29-1.1 NMSA 1978, is enacted to read:

"59A-29-1.1. [NEW MATERIAL] DEFINITIONS.--As used in the FAIR Plan Act:

Sf11→A. "admitted insurer" means an insurer that possesses a subsisting certificate of authority issued by the superintendent;←Sf11

Sf11→A.←Sf11 Sf11→B.←Sf11 "board" means the New Mexico property insurance program association board;

Sf11→B.←Sf11 Sf11→C.←Sf11 "commercial property insurance" means insurance against direct loss to commercial property, including buildings and building contents, resulting from the perils of fire, perils covered under extended coverage, vandalism or malicious mischief. "Commercial property insurance" does not include commercial automobile insurance or farm risks;

Sf11→C.←Sf11 Sf11→D.←Sf11 "FAIR plan" means the fair access to insurance requirement plan established by the board pursuant to the FAIR Plan Act;

Sf11→D.←Sf11 Sf11→E.←Sf11 "member insurer" means an admitted insurer that offers or sells any property insurance, including commercial property insurance; and

Sf11→E.←Sf11 Sf11→F.←Sf11 "property insurance" means essential property insurance against direct loss to residential property, including buildings, building contents or builder's risk, resulting from the perils of fires, perils

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covered under extended coverage, vandalism or malicious mischief. "Property insurance" does not include automobile insurance or farm risks."

SECTION 2. A new section of the FAIR Plan Act, Section 59A-29-1.2 NMSA 1978, is enacted to read:

"59A-29-1.2. [NEW MATERIAL] NEW MEXICO PROPERTY INSURANCE PROGRAM ASSOCIATION BOARD--DUTIES.--

A. The "New Mexico property insurance program association board" is created as the governing body of the New Mexico property insurance program to administer the FAIR plan. The board consists of the following Sfl1→~~nine~~←Sfl1 Sfl1→~~eleven~~←Sfl1 members:

Sfl1→~~(1) one member with experience in actuarial science appointed by the superintendent representing property and casualty insurers writing property insurance in the state;~~

~~(2) one member appointed by the superintendent representing a reinsurance company with exposure to property and casualty insurance risk in the state;~~

~~(3) one member with expertise in climate science appointed by the governor;~~

~~(4) one member appointed by the governor representing the interests of consumers and, to the extent practicable, representing consumer advocacy organizations and diverse geographic areas of the state;~~

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~~(5) one member with experience in finance appointed by the president pro tempore of the senate representing property and casualty insurers writing property insurance in the state;~~

~~(6) one member with experience in product management appointed by the minority floor leader of the senate representing property and casualty insurers writing property insurance in the state;~~

~~(7) one member with experience in catastrophic risk management appointed by the speaker of the house of representatives representing property and casualty insurers writing property insurance in the state;~~

~~(8) one member appointed by the minority floor leader of the house of representatives representing a New Mexico-based property and casualty insurance trade association that represents independent insurance agents licensed to write property and casualty insurance in the state; and~~

~~(9) the superintendent or the superintendent's designee, who shall serve as the chair of the board.~~ ← Sf11

Sf11 → (1) the following three members, each appointed by one of the three member insurers with the largest proportion of direct written premiums out of all member insurers:

(a) one member representing admitted mutual insurers;

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(b) one member representing admitted stock insurers; and

(c) one member representing an insurance trade organization that represents insurers who are licensed to write property and casualty insurance in New Mexico;

(2) one member appointed by the minority floor leader of the senate representing a New Mexico-based insurance trade organization that represents independent insurance agents licensed to write property and casualty insurance in New Mexico;

(3) one member appointed by the minority floor leader of the house of representatives representing the interests of consumers or consumer advocacy organizations in New Mexico who is not a current or former employee of a member insurer;

(4) one member appointed by the attorney general who represents the interests of consumers, and to the extent practicable, represents consumer advocacy organizations in New Mexico;

(5) one member appointed by the president pro tempore of the senate with actuarial expertise who is not a current or former employee of a member insurer;

(6) one member appointed by the superintendent with catastrophic risk experience who is not a current or former employee of a member insurer;

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(7) one member appointed by the speaker of the house of representatives with finance or statutory accounting expertise who is not a current or former employee of a member insurer;

(8) the state fire marshal or the fire marshal's designee; and

(9) the superintendent or the superintendent's designee.←Sf11

Sf11→B. The board shall elect a chair from among its members.←Sf11

Sf11→B.←Sf11 Sf11→C.←Sf11 The term of office for appointed board members is three years; provided that:

(1) each appointed member serves at the pleasure of the authority who appointed the member;

(2) members initially appointed pursuant to Sf11→Paragraphs (1), (2), (6) and (7)←Sf11 Sf11→Subparagraphs (a) and (c) of Paragraph (1) and Paragraphs (3), (5) and (7)←Sf11 of Subsection A of this section shall serve an initial term of one year; and

(3) members initially appointed pursuant to Sf11→Paragraphs (3), (4), (5) and (8)←Sf11 Sf11→Subparagraph (b) of Paragraph (1) and Paragraphs (2), (4) and (6)←Sf11 of Subsection A of this section shall serve an initial term of two years.

Sf11→G.←Sf11 Sf11→D.←Sf11 Appointed board members

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may serve three terms.

Sf11→D.←Sf11 Sf11→E.←Sf11 If a vacancy occurs on the board, the original appointing authority shall appoint a new board member to complete the remainder of the board member's term.

Sf11→E.←Sf11 Sf11→F.←Sf11 Appointed board members may receive per diem and mileage pursuant to the Per Diem and Mileage Act, but shall receive no other compensation, perquisite or allowance.

Sf11→F.←Sf11 Sf11→G.←Sf11 The attorney general shall provide legal representation to the board as necessary."

SECTION 3. Section 59A-29-2 NMSA 1978 (being Laws 1985, Chapter 61, Section 2) is amended to read:

"59A-29-2. ORGANIZATION OF FAIR PLAN AND UNDERWRITING ASSOCIATION.--The superintendent shall direct all insurers licensed to write and writing essential property insurance, as defined by the superintendent [~~of insurance~~], in New Mexico on a direct basis [~~are authorized, subject to approval and regulation by the superintendent of insurance~~] to establish and maintain a FAIR plan and to establish and maintain an underwriting association and to formulate and from time to time amend the plan and articles of association and rules and regulations in connection therewith and to assess and share on a fair and equitable basis all expenses, income and losses incident to such FAIR plan and underwriting association in a manner consistent with the provisions of the FAIR Plan Act.

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Such underwriting association shall be known as the "New Mexico property insurance program".

SECTION 4. Section 59A-29-4 NMSA 1978 (being Laws 1985, Chapter 61, Section 4) is amended to read:

"59A-29-4. REQUIREMENTS OF PLAN AND AUTHORITY OF ASSOCIATION.--The FAIR plan and articles of association shall make provision for an underwriting association having authority on behalf of its members to cause to be issued property insurance policies and the authority to reinsure in whole or in part any such policies and to cede any such reinsurance. The plan and articles of association shall provide, among other things, for the perils to be covered, geographical area of coverage, compensation and commission, assessments of members, [the] sharing of expenses, income and losses on an equitable basis, [~~cumulative weighted voting for the governing committee of the association, the~~] administration of the plan and association and any other matter necessary or convenient for the purpose of assuring fair access to insurance requirements."

SECTION 5. A new section of the FAIR Plan Act, Section 59A-29-4.1 NMSA 1978, is enacted to read:

"59A-29-4.1. [NEW MATERIAL] FAIR PLAN REQUIREMENTS.--

A. The board shall establish a FAIR plan to provide property and commercial property insurance to persons who are unable to obtain insurance in the regular market.

B. The premium rates for the FAIR plan shall:

(1) not be excessive, inadequate or unfairly

discriminatory;

(2) be actuarially sound so that revenue generated from premiums is adequate to pay for expected losses, expenses and taxes;

(3) reflect the investment income of the plan; and

(4) reflect the cost of reinsurance or other capital risk transfer markets."

SECTION 6. A new section of the FAIR Plan Act, Section 59A-29-4.2 NMSA 1978, is enacted to read:

"59A-29-4.2. [NEW MATERIAL] PLAN OF OPERATION.--

A. The board shall establish and submit to the superintendent a plan of operation for the FAIR plan that provides for:

(1) the lines of insurance coverages to be written;

(2) coverage limits not to exceed \$11→~~one million dollars (\$1,000,000) for property and five million dollars (\$5,000,000) for each commercial property and a policy limit of ten million dollars (\$10,000,000) for commercial property~~←\$f11 \$f11→~~seven hundred fifty thousand dollars (\$750,000) for dwellings and two million dollars (\$2,000,000) for each commercial property and a maximum policy limit of five million dollars (\$5,000,000)~~←\$f11 ; provided that beginning in fiscal year 2027 and each fiscal year thereafter, the board may adjust the coverage limits by an amount that does not exceed

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the change between the penultimate calendar year and the immediately preceding calendar year of the consumer price index for housing published by the bureau of labor statistics of the United States department of labor;

(3) the policy forms to be used;

(4) the perils to be covered;

(5) the establishment of reasonable underwriting standards to determine the eligibility of a risk, including mitigation requirements and property inspections;

(6) the compensation and commissions to be paid to member insurers **STBTC→, and their licensed producers,**←STBTC offering the FAIR plan;

(7) the time frames for fees to be collected from member insurers;

(8) the administration of the plan of operation by the board; and

(9) any other matter necessary for the purpose of assuring fair access to a FAIR plan.

B. The plan of operation and any amendments to the plan of operation become effective upon written approval by the superintendent.

C. The board may, on its own initiative or at the request of the superintendent, amend the plan of operation, subject to approval by the superintendent.

D. If the board fails to submit a plan of operation that is approved by the superintendent by July 1, 2026, the

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superintendent shall promulgate rules to implement and administer the FAIR Plan Act.

E. If the superintendent determines that an approved plan of operation is insufficient to satisfy the requirements of the FAIR Plan Act, the superintendent shall provide notice to the board of the superintendent's intent to revoke approval of all or part of the plan of operation. Within thirty days of the superintendent's notice, the board may submit a revised plan of operation for the superintendent's review and approval. If the board fails to submit a revised plan of operation within thirty days, the superintendent may make specific changes to the existing plan of operation so that the plan satisfies the requirements of the FAIR Plan Act."

SECTION 7. Section 59A-29-5 NMSA 1978 (being Laws 1985, Chapter 61, Section 5) is amended to read:

"59A-29-5. CHANGES IN PLAN OR ARTICLES.--The ~~[governing committee of the New Mexico property insurance program may, on its own initiative or at the request of the superintendent of insurance, amend the plan and articles, subject to approval by the superintendent]~~ FAIR plan and articles of association may be amended by the board on its own initiative, subject to approval by the superintendent or at the direction of the superintendent."

SECTION 8. A new section of the FAIR Plan Act, Section 59A-29-6.1 NMSA 1978, is enacted to read:

"59A-29-6.1. [NEW MATERIAL] ENFORCEMENT.--

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A. After notice and hearing, the superintendent may suspend or revoke the certificate of authority to transact insurance business in this state of a member insurer that fails to timely pay an assessment or to comply with the plan of operation.

B. As an alternative to suspension or revocation of a certificate of authority, the superintendent may impose a fine on any member insurer that fails to timely pay an assessment or to comply with the plan of operation in an amount that is the greater of:

(1) the amount of the assessment plus interest and the superintendent's cost of enforcement; or

(2) five thousand dollars (\$5,000)."

SECTION 9. A new section of the FAIR Plan Act is enacted to read:

"[NEW MATERIAL] ENTITIES THAT CAN SELL FAIR PLAN POLICIES.--The board and the New Mexico property insurance program shall not sell a policy subject to the FAIR Plan Act directly to any person. A FAIR plan policy may only be issued through a member insurer that shall, on behalf of a person, include evidence of at least three declinations of coverage for the property as part of the submittal of an application for a policy with the New Mexico property insurance program."

SECTION 10. A new section of the FAIR Plan Act is enacted to read:

"[NEW MATERIAL] ASSESSMENT OF FEES.--

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A. The board may collect fees from member insurers as needed for the New Mexico property insurance program to remain solvent, subject to approval by the superintendent.

B. A member insurer assessed a fee pursuant to this section may recoup the fee directly from the member insurer's policyholders as a surcharge on the policyholders. The surcharge may be recouped over a three-year period.

C. A member insurer shall not increase premiums based on a fee assessed pursuant to this section.

D. If the superintendent determines that the New Mexico property insurance program is or may become insolvent, the superintendent shall direct the board to collect fees in accordance with this section.

E. The board may defer, in whole or in part, a fee assessed to a member insurer if, in the opinion of the board, payment of the fee would endanger the solvency of a member insurer."

SECTION 11. A new section of the FAIR Plan Act is enacted to read:

"[NEW MATERIAL] REPORTING REQUIREMENTS.--

A. On or before April 1, 2027, and each year thereafter, the board shall submit a report to the superintendent, in a form and manner prescribed by the superintendent, that provides information on the:

- (1) financial condition of the FAIR plan;
- (2) number of policies and the coverage

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available through the FAIR plan; and

(3) number and types of claims made under the FAIR plan.

B. In addition to the annual reporting requirement, the superintendent may require the board to submit quarterly reports if the superintendent determines that quarterly reporting is necessary to ensure the continued solvency of the FAIR plan."

~~SFC→SECTION 12. APPROPRIATION.--Fifty million dollars (\$50,000,000) is appropriated from the general fund to the office of superintendent of insurance for expenditure in fiscal SFC→STBTC→year 2026←STBTC STBTC→years 2026 and 2027←STBTC←SFC SFC→year 2026←SFC to administer the FAIR Plan Act and fire mitigation programs. Any unexpended or unencumbered balance remaining at the end of fiscal year SFC→STBTC→2026←STBTC STBTC→2027←STBTC←SFC SFC→2026←SFC shall revert to the general fund.←SFC~~

SECTION SFC→13.←SFC SFC→12.←SFC REPEAL.--Section 59A-29-9 NMSA 1978 (being Laws 1985, Chapter 61, Section 9) is repealed.

SECTION SFC→14.←SFC SFC→13.←SFC EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.