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SENATE BILL 81

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

INTRODUCED BY

Peter Wirth and Harlan Vincent and Anita Gonzales

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; MAKING AN APPROPRIATION; DECLARING
AN EMERGENCY.

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

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:

A. "board" means the New Mexico property insurance
program association board;

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

6 C. "FAIR plan" means the fair access to insurance
7 requirement plan established by the board pursuant to the FAIR
8 Plan Act;

9 D. "member insurer" means an admitted insurer that
10 offers or sells any property insurance, including commercial
11 property insurance; and

12 E. "property insurance" means essential property
13 insurance against direct loss to residential property,
14 including buildings, building contents or builder's risk,
15 resulting from the perils of fires, perils covered under
16 extended coverage, vandalism or malicious mischief. "Property
17 insurance" does not include automobile insurance or farm
18 risks."

19 SECTION 2. A new section of the FAIR Plan Act, Section
20 59A-29-1.2 NMSA 1978, is enacted to read:

21 "59A-29-1.2. [NEW MATERIAL] NEW MEXICO PROPERTY INSURANCE
22 PROGRAM ASSOCIATION BOARD--DUTIES.--

23 A. The "New Mexico property insurance program
24 association board" is created as the governing body of the New
25 Mexico property insurance program to administer the FAIR plan.

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1 The board consists of the following nine members:

2 (1) one member with experience in actuarial
3 science appointed by the superintendent representing property
4 and casualty insurers writing property insurance in the state;

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

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

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

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

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

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

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

6 (9) the superintendent or the superintendent's
7 designee, who shall serve as the chair of the board.

8 B. The term of office for appointed board members
9 is three years; provided that:

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

12 (2) members initially appointed pursuant to
13 Paragraphs (1), (2), (6) and (7) of Subsection A of this
14 section shall serve an initial term of one year; and

15 (3) members initially appointed pursuant to
16 Paragraphs (3), (4), (5) and (8) of Subsection A of this
17 section shall serve an initial term of two years.

18 C. Appointed board members may serve three terms.

19 D. If a vacancy occurs on the board, the original
20 appointing authority shall appoint a new board member to
21 complete the remainder of the board member's term.

22 E. Appointed board members may receive per diem and
23 mileage pursuant to the Per Diem and Mileage Act, but shall
24 receive no other compensation, perquisite or allowance.

25 F. The attorney general shall provide legal

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1 representation to the board as necessary."

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

4 "59A-29-2. ORGANIZATION OF FAIR PLAN AND UNDERWRITING
5 ASSOCIATION.--The superintendent shall direct all insurers
6 licensed to write and writing essential property insurance, as
7 defined by the superintendent [~~of insurance~~], in New Mexico on
8 a direct basis [~~are authorized, subject to approval and~~
9 ~~regulation by the superintendent of insurance~~] to establish and
10 maintain a FAIR plan and to establish and maintain an
11 underwriting association and to formulate and from time to time
12 amend the plan and articles of association and rules and
13 regulations in connection therewith and to assess and share on
14 a fair and equitable basis all expenses, income and losses
15 incident to such FAIR plan and underwriting association in a
16 manner consistent with the provisions of the FAIR Plan Act.
17 Such underwriting association shall be known as the "New Mexico
18 property insurance program"."

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

21 "59A-29-4. REQUIREMENTS OF PLAN AND AUTHORITY OF
22 ASSOCIATION.--The FAIR plan and articles of association shall
23 make provision for an underwriting association having authority
24 on behalf of its members to cause to be issued property
25 insurance policies and the authority to reinsure in whole or in

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1 part any such policies and to cede any such reinsurance. The
2 plan and articles of association shall provide, among other
3 things, for the perils to be covered, geographical area of
4 coverage, compensation and commission, assessments of members,
5 [the] sharing of expenses, income and losses on an equitable
6 basis, [~~cumulative weighted voting for the governing committee~~
7 ~~of the association, the~~] administration of the plan and
8 association and any other matter necessary or convenient for
9 the purpose of assuring fair access to insurance requirements."

10 SECTION 5. A new section of the FAIR Plan Act, Section
11 59A-29-4.1 NMSA 1978, is enacted to read:

12 "59A-29-4.1. [NEW MATERIAL] FAIR PLAN REQUIREMENTS.--

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

16 B. The premium rates for the FAIR plan shall:

17 (1) not be excessive, inadequate or unfairly
18 discriminatory;

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

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

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

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1 SECTION 6. A new section of the FAIR Plan Act, Section
2 59A-29-4.2 NMSA 1978, is enacted to read:

3 "59A-29-4.2. [NEW MATERIAL] PLAN OF OPERATION.--

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

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

9 (2) coverage limits not to exceed one million
10 dollars (\$1,000,000) for property and five million dollars
11 (\$5,000,000) for each commercial property and a policy limit of
12 ten million dollars (\$10,000,000) for commercial property;
13 provided that beginning in fiscal year 2027 and each fiscal
14 year thereafter, the board may adjust the coverage limits by an
15 amount that does not exceed the change between the penultimate
16 calendar year and the immediately preceding calendar year of
17 the consumer price index for housing published by the bureau of
18 labor statistics of the United States department of labor;

19 (3) the policy forms to be used;

20 (4) the perils to be covered;

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

24 (6) the compensation and commissions to be
25 paid to member insurers offering the FAIR plan;

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

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

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

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

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

13 D. If the board fails to submit a plan of operation
14 that is approved by the superintendent by July 1, 2026, the
15 superintendent shall promulgate rules to implement and
16 administer the FAIR Plan Act.

17 E. If the superintendent determines that an
18 approved plan of operation is insufficient to satisfy the
19 requirements of the FAIR Plan Act, the superintendent shall
20 provide notice to the board of the superintendent's intent to
21 revoke approval of all or part of the plan of operation.
22 Within thirty days of the superintendent's notice, the board
23 may submit a revised plan of operation for the superintendent's
24 review and approval. If the board fails to submit a revised
25 plan of operation within thirty days, the superintendent may

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1 make specific changes to the existing plan of operation so that
2 the plan satisfies the requirements of the FAIR Plan Act."

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

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

13 SECTION 8. A new section of the FAIR Plan Act, Section
14 59A-29-6.1 NMSA 1978, is enacted to read:

15 "59A-29-6.1. [NEW MATERIAL] ENFORCEMENT.--

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

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

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

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

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

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

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

16 "[NEW MATERIAL] ASSESSMENT OF FEES.--

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

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

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

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

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

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

11 "[NEW MATERIAL] REPORTING REQUIREMENTS.--

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

- 16 (1) financial condition of the FAIR plan;
17 (2) number of policies and the coverage
18 available through the FAIR plan; and
19 (3) number and types of claims made under the
20 FAIR plan.

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

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1 SECTION 12. APPROPRIATION.--Fifty million dollars
2 (\$50,000,000) is appropriated from the general fund to the
3 office of superintendent of insurance for expenditure in fiscal
4 year 2026 to administer the FAIR Plan Act and fire mitigation
5 programs. Any unexpended or unencumbered balance remaining at
6 the end of fiscal year 2026 shall revert to the general fund.

7 SECTION 13. REPEAL.--Section 59A-29-9 NMSA 1978 (being
8 Laws 1985, Chapter 61, Section 9) is repealed.

9 SECTION 14. EMERGENCY.--It is necessary for the public
10 peace, health and safety that this act take effect immediately.