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HOUSE BILL 141

43RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1998

INTRODUCED BY

MIMI STEWART

AN ACT

RELATING TO INSURANCE; ENACTING THE INSURANCE FRAUD ACT;  
PROVIDING FOR THE INVESTIGATION AND PROSECUTION OF INSURANCE  
FRAUD; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978;  
MAKING AN APPROPRIATION.

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

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

"[NEW MATERIAL] SHORT TITLE. -- This act may be cited as  
the "Insurance Fraud Act". "

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

"[NEW MATERIAL] FINDINGS-- PURPOSE. --

A. The legislature finds that insurance fraud is  
pervasive and expensive, and has the potential for increasing

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1 premium rates, placing businesses at risk, reducing the  
2 ability of consumers to raise their standard of living and  
3 decreasing the economic vitality of the state. Therefore, the  
4 legislature believes that the state must aggressively confront  
5 the problem of insurance fraud.

6 B. The purpose of the Insurance Fraud Act is to  
7 permit the full utilization of the expertise of the  
8 superintendent of insurance to investigate and detect  
9 insurance fraud more effectively, to halt insurance fraud and  
10 to work with state, local and federal law enforcement and  
11 regulatory agencies against the commission of insurance  
12 fraud. "

13 Section 3. A new section of the New Mexico Insurance  
14 Code is enacted to read:

15 "[NEW MATERIAL] DEFINITIONS. --As used in the Insurance  
16 Fraud Act:

- 17 A. "fund" means the insurance fraud fund;
- 18 B. "insurance fraud" means any act or practice in  
19 connection with an insurance transaction that constitutes a  
20 crime under the Criminal Code or the Insurance Code;
- 21 C. "insurance transaction" means any act or  
22 practice relating to insurance and includes complying with the  
23 Insurance Code or any rule adopted under its authority; and
- 24 D. "superintendent" means the superintendent of  
25 insurance. "

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1           Section 4. A new section of the New Mexico Insurance  
2 Code is enacted to read:

3           "[NEW MATERIAL] SUPERINTENDENT' S DUTIES. -- The  
4 superintendent shall:

5                   A. initiate inquiries and conduct investigations  
6 when the superintendent has reason to believe that insurance  
7 fraud may have been or is being committed;

8                   B. respond to notifications or complaints of  
9 suspected insurance fraud generated by state and local police  
10 or other law enforcement authorities and governmental units,  
11 including the federal government and any other person;

12                   C. review notices and reports of insurance fraud  
13 submitted by authorized insurers, their employees, agents or  
14 producers and select those incidents of alleged fraud that, in  
15 his judgment, require further investigation and conduct the  
16 investigations;

17                   D. conduct independent investigations and  
18 examinations of insurance transactions and alleged insurance  
19 fraud, conduct studies to determine the extent of insurance  
20 fraud, deceit or intentional misrepresentation of any kind in  
21 the insurance process and publish information and reports on  
22 its examinations and studies;

23                   E. report incidents of alleged insurance fraud  
24 supported by investigations and examinations to the  
25 appropriate district attorney and any other appropriate law

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1 enforcement, administrative, regulatory or licensing agency  
2 and assemble evidence, prepare charges and otherwise assist  
3 any prosecutorial authority having jurisdiction over insurance  
4 fraud enforcement;

5 F. assist any official or agency of this state,  
6 any other state or the federal government that requests  
7 assistance in investigating insurance fraud;

8 G. maintain records and information in order to  
9 produce an annual report of his activities undertaken in  
10 connection with carrying out the provisions of the Insurance  
11 Fraud Act; and

12 H. conduct, in cooperation with the attorney  
13 general and the department of public safety, public outreach  
14 and awareness programs on the costs of insurance fraud to the  
15 public and how members of the public can assist themselves,  
16 the superintendent and law enforcement officials in preventing  
17 and prosecuting insurance fraud. "

18 Section 5. A new section of the New Mexico Insurance  
19 Code is enacted to read:

20 "[NEW MATERIAL] SUPERINTENDENT' S AUTHORITY. -- The  
21 superintendent is authorized to select and contract with  
22 investigative personnel and prosecutors to discharge his  
23 duties pursuant to the provisions of the Insurance Fraud Act. "

24 Section 6. A new section of the New Mexico Insurance  
25 Code is enacted to read:

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1           " [NEW MATERIAL] NOTICE AND COOPERATION REQUIRED- - TOLLING  
2 PERIOD. --

3           A. Every insurer or licensed insurance  
4 professional that has a reasonable belief that an act of  
5 insurance fraud will be, is being or has been committed shall  
6 furnish and disclose knowledge and information about it to the  
7 superintendent and shall cooperate fully with any  
8 investigation conducted by the superintendent. Failure to  
9 comply with this subsection shall constitute grounds for the  
10 superintendent to impose an administrative penalty pursuant to  
11 Section 59A-1-18 NMSA 1978 in addition to any applicable  
12 suspension, revocation or denial of a license or certificate  
13 of authority.

14           B. A person who has a reasonable belief that an  
15 act of insurance fraud will be, is being or has been  
16 committed, or any person who collects, reviews or analyzes  
17 information concerning insurance fraud, may furnish and  
18 disclose any information in his possession concerning the  
19 insurance fraud to the superintendent or to an authorized  
20 representative of an insurer that requests the information for  
21 the purpose of detecting, prosecuting or preventing insurance  
22 fraud.

23           C. If an insurer has a reasonable belief or  
24 probable cause to believe that an insurance fraud has been  
25 committed and has properly notified the superintendent of its

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1 suspicion, that notification shall toll any applicable time  
2 period in any unfair claims proceeding based on the alleged  
3 fraud until thirty days after determination by the  
4 superintendent and notice to the insurer that the  
5 superintendent will not recommend action on the claim.

6 D. The superintendent, in cooperation with  
7 insurers or others, may establish a voluntary fund to reward  
8 persons not connected with the insurance industry who provide  
9 information or furnish evidence leading to the arrest and  
10 conviction of persons responsible for insurance fraud."

11 Section 7. A new section of the New Mexico Insurance  
12 Code is enacted to read:

13 "[NEW MATERIAL] IMMUNITY FROM CIVIL LIABILITY--PRIVATE  
14 INSURANCE FRAUD REPORTS AND ENFORCEMENT ACTIONS.--

15 A. The provisions of Section 59A-4-21 NMSA 1978  
16 regarding immunity from civil liability for enforcement  
17 actions performed in good faith by the superintendent, his  
18 authorized representatives and examiners shall apply to the  
19 Insurance Fraud Act.

20 B. A person acting without malice, fraudulent  
21 intent or bad faith shall not be subject to liability by  
22 virtue of reporting or furnishing, orally or in writing,  
23 information concerning suspected, anticipated or completed  
24 insurance fraud acts when the report or information is  
25 provided to:

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1 (1) the department of insurance, the  
2 superintendent or law enforcement agencies, their officials,  
3 agents or employees; or

4 (2) the national association of insurance  
5 commissioners, a federal or state governmental agency or  
6 office established to detect and prevent insurance fraud, any  
7 other organization established for the same purpose and their  
8 agents, employees or designees.

9 C. A person identified in Subsection B of this  
10 section or any of the person's officers, employees or agents  
11 when performing authorized activities, including the  
12 publication or dissemination of any related bulletin or  
13 reports, without malice, fraudulent intent or bad faith shall  
14 not be subject to civil liability for libel, slander or any  
15 other relevant tort and no civil cause of action of any nature  
16 shall exist against such persons.

17 D. This section shall not abrogate or modify in  
18 any way any privilege or immunity recognized by common law or  
19 statute.

20 E. The court shall award attorney fees and costs  
21 to any person identified in Subsection B of this section or  
22 any of that person's officers, employees or agents who is a  
23 prevailing party in a civil cause of action against him for  
24 libel, slander or any other relevant tort arising out of  
25 conduct pursuant to the Insurance Fraud Act if the party

. 120202. 3

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1 bringing the action was not substantially justified in  
2 bringing such action. For the purposes of this subsection,  
3 "substantially justified" means having a reasonable basis in  
4 law or fact at the time a proceeding was initiated.

5 F. The relief provided in this section is in  
6 addition to remedies otherwise available against the same  
7 conduct under the common law or other laws of this state."

8 Section 8. A new section of the New Mexico Insurance  
9 Code is enacted to read:

10 "[NEW MATERIAL] WARNING REQUIRED. -- Within six months of  
11 the effective date of the Insurance Fraud Act all claim forms  
12 and applications for insurance shall contain a statement  
13 permanently affixed to the application or claim form which  
14 states substantially as follows:

15 "ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT  
16 CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS  
17 FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF  
18 A CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL  
19 PENALTIES. "

20 The failure to include that statement shall not constitute a  
21 defense against prosecution for commission of insurance  
22 fraud. "

23 Section 9. A new section of the New Mexico Insurance  
24 Code is enacted to read:

25 "[NEW MATERIAL] REPORT OF CONVICTION. -- If any person

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1 licensed by any agency of any state or the federal government  
2 or holding credentials from any professional organization is  
3 convicted of insurance fraud in this state, the superintendent  
4 shall notify the appropriate licensing or credentialing  
5 authority of the judgment for appropriate disciplinary  
6 action. "

7 Section 10. A new section of the New Mexico Insurance  
8 Code is enacted to read:

9 "[NEW MATERIAL] INSURER ANTI-FRAUD INITIATIVES--SPECIAL  
10 INVESTIGATIVE UNITS.--

11 A. Within six months of the effective date of the  
12 Insurance Fraud Act and by July 1 of each succeeding year  
13 every insurer who in the previous calendar year reported ten  
14 million dollars (\$10,000,000) or more in direct written  
15 premiums in New Mexico shall establish, prepare, implement and  
16 submit to the superintendent an anti-fraud plan that is  
17 reasonably calculated to detect, prosecute and prevent  
18 insurance fraud. Any subsequent amendments to the plan shall  
19 be submitted to the superintendent at the time they are  
20 adopted.

21 B. Each insurer's anti-fraud plan shall outline,  
22 at a minimum, specific procedures, appropriate to the type of  
23 insurance the insurer writes, to:

24 (1) prevent, detect and investigate all forms  
25 of insurance fraud;

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1 (2) educate appropriate employees on fraud  
2 detection and the insurer's anti-fraud plan;

3 (3) provide for the hiring or contracting of  
4 fraud investigators;

5 (4) report insurance fraud to appropriate law  
6 enforcement and regulatory authorities; and

7 (5) pursue restitution, where appropriate,  
8 for financial loss caused by insurance fraud.

9 C. The superintendent may review each insurer's  
10 anti-fraud plan to determine if it adequately complies with  
11 the requirements of this section. The superintendent may  
12 examine the insurer to assure its compliance with anti-fraud  
13 plans submitted to the superintendent. The superintendent may  
14 require reasonable modifications to the insurer's anti-fraud  
15 plan or may require other reasonable remedial action if the  
16 review or examination reveals substantial noncompliance with  
17 the plan.

18 D. The superintendent may require each insurer to  
19 file a summary of the insurer's anti-fraud activities and  
20 results. Anti-fraud plans and summaries submitted to the  
21 superintendent shall be privileged and confidential, shall not  
22 be a public record and shall not be subject to discovery or  
23 subpoena in any civil or criminal action; provided, however,  
24 that the superintendent may make summaries of aggregate data  
25 available to the public.

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1                   E. This section confers no private right of  
2 action. "

3                   Section 11. A new section of the New Mexico Insurance  
4 Code is enacted to read:

5                   "[NEW MATERIAL] INVESTIGATORS' POWERS. -- The  
6 superintendent's investigators shall be peace officers  
7 pursuant to the provisions of Chapter 29, Article 1 NMSA 1978,  
8 except that they shall not be authorized to carry firearms. "

9                   Section 12. A new section of the New Mexico Insurance  
10 Code is enacted to read:

11                   "[NEW MATERIAL] ATTORNEY GENERAL' S DUTIES. -- When so  
12 requested by the superintendent, the attorney general shall  
13 commission as a special assistant attorney general an attorney  
14 selected by and contracted with by the superintendent and  
15 approved by the attorney general to assist the superintendent  
16 in carrying out his duties, including providing legal advice  
17 and prosecuting offenders. The actual costs associated with  
18 the assignment of assistant attorneys general to the  
19 superintendent shall be paid out of the fund. "

20                   Section 13. A new section of the New Mexico Insurance  
21 Code is enacted to read:

22                   "[NEW MATERIAL] INSURANCE FRAUD POLICY ADVISORY GROUP. --  
23 The superintendent may create an insurance fraud policy  
24 advisory group consisting of representatives of authorized  
25 insurers, consumers of insurance products not otherwise

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1 connected with the insurance industry and other appropriate  
2 persons. The superintendent shall appoint the members of the  
3 advisory group and shall provide by rule for the creation,  
4 governance, duties and termination of the advisory group. Any  
5 advisory group so created shall advise the superintendent with  
6 respect to the implementation of and other matters related to  
7 the Insurance Fraud Act when so requested by the  
8 superintendent. "

9 Section 14. A new section of the New Mexico Insurance  
10 Code is enacted to read:

11 "[NEW MATERIAL] INSURANCE FRAUD FUND CREATED--  
12 APPROPRIATION. --

13 A. There is hereby created an "insurance fraud  
14 fund" in the state treasury. All fees collected under the  
15 provisions of the Insurance Fraud Act shall be deposited in  
16 the fund and are subject to appropriation for use in paying  
17 the expenses incurred by the superintendent in carrying out  
18 the provisions of the Insurance Fraud Act. Interest on the  
19 fund shall be credited to the fund. The fund is a continuing,  
20 nonreverting fund.

21 B. To implement the provisions of the Insurance  
22 Fraud Act, upon the effective date of the Insurance Fraud Act,  
23 the superintendent shall determine a rate of assessment and  
24 collect a fee from authorized insurers in an amount not less  
25 than two hundred dollars (\$200) and not exceeding one-tenth of

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1 one percent of the correctly reported gross direct written  
2 premiums on policies written in New Mexico by the authorized  
3 insurers. The superintendent, after taking into account  
4 unexpended money produced by collection of the fee, shall  
5 adjust the rate of assessment each year to produce the amount  
6 of money that he estimates will be necessary to pay expenses  
7 incurred by the superintendent in carrying out the provisions  
8 of the Insurance Fraud Act.

9 C. In calculating the gross direct written  
10 premiums for an insurer pursuant to the provisions of this  
11 section, all gross direct written premiums for workers'  
12 compensation insurance shall be excluded from the calculation.

13 D. The fees required by this section are in  
14 addition to all other taxes and fees now imposed or that may  
15 be subsequently imposed. "

16 Section 15. A new section of the New Mexico Insurance  
17 Code is enacted to read:

18 "[NEW MATERIAL] APPLICATION OF ACT TO OTHER ACTS. --

19 A. No authority granted the superintendent under  
20 the Insurance Fraud Act shall be construed to abrogate or  
21 interfere with the authority of the safety and fraud division  
22 of the workers' compensation administration under the Workers'  
23 Compensation Act or of the medicaid fraud control unit under  
24 the Medicaid Fraud Act.

25 B. Nothing in the Insurance Fraud Act shall:

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1 (1) preempt the authority of or relieve the  
2 duty of any other law enforcement agencies to investigate and  
3 prosecute alleged violations of law;

4 (2) prevent or prohibit a person from  
5 voluntarily disclosing any information concerning insurance  
6 fraud to any law enforcement agency;

7 (3) limit any of the powers granted elsewhere  
8 by law to the superintendent to investigate alleged violations  
9 of law and take appropriate action; or

10 (4) interfere with the duties and authority  
11 of the workers' compensation administration. "

12 Section 16. A new section of the New Mexico Insurance  
13 Code is enacted to read:

14 "[NEW MATERIAL] RULES. --The superintendent may promulgate  
15 rules deemed necessary or appropriate by the superintendent  
16 for the administration of the Insurance Fraud Act. "

17 Section 17. APPROPRIATION. --

18 A. Five hundred thousand dollars (\$500,000) is  
19 appropriated from the insurance fraud fund to the  
20 superintendent of insurance for expenditure in fiscal year  
21 1999 for the purpose of carrying out the provisions of the  
22 Insurance Fraud Act. Any unexpended or unencumbered balance  
23 remaining at the end of fiscal year 1999 shall not revert to  
24 the general fund.

25 B. The superintendent of insurance is authorized

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1 to employ three additional full-time employees to carry out  
2 the provisions of the Insurance Fraud Act.

3 Section 18. REPEAL. -- Sections 59A-16A-1 through  
4 59A-16A-4 NMSA 1978 (being Laws 1991, Chapter 86, Sections 1  
5 through 4) are repealed.

6 Section 19. EFFECTIVE DATE. -- The effective date of the  
7 provisions of this act is July 1, 1998.

1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998  
3  
4  
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6 January 27, 1998  
7

8 Mr. Speaker:  
9

10 Your BUSINESS AND INDUSTRY COMMITTEE, to whom has  
11 been referred  
12

13 HOUSE BILL 141  
14

15 has had it under consideration and reports same with  
16 recommendation that it DO PASS, and thence referred to the  
17 JUDICIARY COMMITTEE.

18 Respectfully submitted,  
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22 \_\_\_\_\_  
23 Fred Luna, Chairman  
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1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998

3 HBI/HB 141

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4 Adopted \_\_\_\_\_ Not Adopted \_\_\_\_\_

5  
6 (Chief Clerk)

(Chief Clerk)

7  
8 Date \_\_\_\_\_

9  
10 The roll call vote was 10 For 0 Against

11 Yes: 10

12 Excused: Varela

13 Absent: Getty, Olguin

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1 **FORTY-THIRD LEGISLATURE**  
2 **SECOND SESSION, 1998**

3  
4 **February 4, 1998**

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7 **Mr. Speaker:**

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9 **Your JUDICIARY COMMITTEE, to whom has been referred**

10 **HOUSE BILL 141**

11  
12 **has had it under consideration and reports same with**  
13 **recommendation that it DO PASS, amended as follows:**

14  
15 1. On page 6, line 5, after the period insert "The  
16 determination by the superintendent shall not be admissible  
17 in any subsequent civil proceeding."

18 2. On page 6, lines 20 and 21, strike "A person acting  
19 without malice, fraudulent intent or bad faith" and insert  
20 in lieu thereof "Except when a person intentionally  
21 communicates false information he actually believes to be  
22 false, a person".

23  
24 3. On page 7, line 3, after the semicolon strike "or".

25 4. On page 7, line 8, strike the period and insert in

**. 120202. 3**

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1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998

3 HBIC/HJC/HB 141

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4 lieu thereof "; or".

5  
6 5. On page 7, between lines 8 and 9, insert the  
7 following new paragraph:

8  
9 "(3) the anti-fraud unit of an  
10 insurer."

11  
12 6. On page 7, line 13, strike "without malice,  
13 fraudulent intent or bad faith".

14  
15 7. On page 7, line 15, strike "and no" and insert in  
16 lieu thereof "or a".

17  
18 8. On page 7, line 16, strike "shall exist against  
19 such persons" and insert in lieu thereof ", except if the  
20 person, officer, employee or agent intentionally  
21 communicates false information he actually believes to be  
22 false".

23  
24 9. On page 9, line 22, strike "specific procedures,"  
25 and insert in lieu thereof "guidelines".

1 FORTY-THIRD LEGISLATURE  
2 SECOND SESSION, 1998

3 HBIC/HJC/HB 141

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4 10. On page 11, line 13, strike "an" and insert in  
5 lieu thereof "any".

6  
7 11. On page 11, line 14, strike "selected by and  
8 contracted" and insert in lieu thereof "employed by the  
9 superintendent or contracted".,

10 and thence referred to the APPROPRIATIONS AND FINANCE  
11 COMMI TTEE.

12  
13 **Respectfully submitted,**

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18 Thomas P. Foy, Chair man

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20 Adopted \_\_\_\_\_  
21 (Chi ef Clerk)

Not Adopted \_\_\_\_\_  
(Chi ef Clerk)

22  
23 Date \_\_\_\_\_

FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

3 HBIC/HJC/HB 141

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4 The roll call vote was 11 For 0 Against

5 Yes: 11

6 Excused: Alwin, Sanchez

7 Absent: None

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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February 14, 1998

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Mr. President:

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Your FINANCE COMMITTEE, to whom has been referred

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HOUSE BILL 141, as amended

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has had it under consideration and reports same with  
recommendation that it DO PASS.

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Respectfully submitted,

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Ben D. Altamirano, Chairman

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. 120202. 3

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

1 HBIC/HJC/HB 141

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2 Adopted \_\_\_\_\_ Not

3 Adopted \_\_\_\_\_

4 (Chief Clerk)

(Chief Clerk)

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Date \_\_\_\_\_

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The roll call vote was 6 For 0 Against

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Yes: 6

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No: None

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Excused: Aragon, Campos, Carraro, Eisenstadt, Lyons

14

Absent: None

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. 120202. 3

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

1 HBIC/HJC/HB 141

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

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February 14, 1998

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Mr. President:

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Your FINANCE COMMITTEE, to whom has been referred

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HOUSE BILL 141, as amended

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has had it under consideration and reports same with  
recommendation that it DO PASS.

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Respectfully submitted,

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Ben D. Altamirano, Chairman

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. 120202. 3

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FORTY-THIRD LEGISLATURE  
SECOND SESSION, 1998

1 HBIC/HJC/HB 141

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2 Adopted \_\_\_\_\_ Not

3 Adopted \_\_\_\_\_

4 (Chief Clerk)

(Chief Clerk)

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The roll call vote was 6 For 0 Against

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Yes: 6

12

No: None

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Excused: Aragon, Campos, Carraro, Eisenstadt, Lyons

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Absent: None

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