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SENATE BILL 467

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Joseph A. Fidel

AN ACT

RELATING TO INSURANCE; AMENDING PROVISIONS OF THE NEW MEXICO
INSURANCE CODE PERTAINING TO SURPLUS LINES INSURANCE.

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

Section 1. Section 59A-14-5 NMSA 1978 (being Laws 1984,
Chapter 127, Section 243, as amended) is amended to read:

"59A-14-5. SIGNATURE AND SPECIAL ENDORSEMENT OF SURPLUS
[LINE] LINES POLICY.--Every insurance contract procured and
delivered as surplus lines insurance pursuant to Chapter 59A,
Article 14 NMSA 1978 shall bear the name, address and
signature of the surplus [~~line~~] lines broker who procured it
and have stamped, printed or otherwise displayed [~~upon its~~
~~declarations page~~] prominently in boldface ten-point or larger
type either upon its declarations page or by attachment of an
endorsement, the form of which may be promulgated by the

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1 superintendent, the following: "This policy provides surplus
2 lines insurance by an insurer not otherwise authorized to
3 transact business in New Mexico. This policy is not subject to
4 supervision, review or approval by the superintendent of
5 insurance. The insurance so provided is not within the
6 protection of any guaranty fund law of New Mexico designed to
7 protect the public in the event of the insurer's
8 insolvency. ". "

9 Section 2. Section 59A-14-11 NMSA 1978 (being Laws 1991,
10 Chapter 125, Section 17) is amended to read:

11 "59A-14-11. DUTY TO FILE REPORTS AND AFFIDAVITS. --

12 [~~A. Within fifteen days after the placing of any~~
13 ~~surplus lines insurance, each producing broker shall complete,~~
14 ~~sign and provide to the surplus lines broker a written report~~
15 ~~including:~~

16 (1) ~~the name and address of the insured;~~

17 (2) ~~the identity of the insurer;~~

18 (3) ~~a description of the subject and location~~
19 ~~of the risk;~~

20 (4) ~~the type of coverage afforded, coverage~~
21 ~~limit, deductible amount and amount of premium charged for the~~
22 ~~insurance; and~~

23 (5) ~~such other pertinent information as the~~
24 ~~superintendent may reasonably require.~~

25 B. ~~At the time of completing each report pursuant~~

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1 ~~to Subsection A of this section]~~

2 A. The producing broker shall complete, execute
3 and provide to the surplus lines broker [~~a sworn, notarized~~]
4 an affidavit in substantially the form required by the
5 superintendent, as to the diligent efforts to place the
6 coverage with authorized insurers and the results thereof.
7 The affidavit shall affirm that the insured was expressly
8 advised prior to placement of the insurance and in the
9 insurance policy that:

10 (1) the surplus lines insurer with which the
11 insurance was to be placed is not an authorized insurer in
12 this state and is not subject to the superintendent's
13 supervision; and

14 (2) in the event the surplus lines insurer
15 becomes insolvent, claims will not be paid nor will unearned
16 premiums be returned by any New Mexico insurance guaranty
17 fund.

18 ~~[C.]~~ B. Within sixty days after the end of each
19 calendar quarter, the surplus lines broker shall file with the
20 superintendent a copy of each of the [~~reports and~~] producing
21 broker affidavits required by [~~Subsections~~] Subsection A [~~and~~
22 B] of this section and a copy of the policy declarations page
23 of all surplus lines insurance business transacted during the
24 calendar quarter. The surplus lines broker shall preserve the
25 original [~~reports and~~] producing broker affidavits in

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1 compliance with Section 59A-14-10 NMSA 1978. The ~~[reports and~~
2 ~~all copies]~~ declaration pages shall be confidential and shall
3 not be subject to public inspection. The superintendent's
4 copy of the affidavits shall be open to public inspection. If
5 the producing broker has failed to provide ~~[a report or]~~ the
6 producing broker affidavit, the surplus lines broker shall
7 ~~[complete and sign the report or affidavit in accordance with~~
8 ~~Subsection A or B of this section, as applicable, identifying~~
9 ~~therein the producing broker failing to complete the report or~~
10 ~~affidavit]~~ at the time of quarterly filing, notify the
11 superintendent of the producing broker's failure to comply.

12 ~~[D.]~~ C. Each surplus lines broker shall, within
13 sixty days after expiration of each calendar quarter, file
14 with the superintendent a statement under the surplus lines
15 broker's oath of all surplus lines insurance business
16 transacted during such calendar quarter. The statement shall
17 be on forms as prescribed and furnished by the superintendent
18 and shall contain such information relative to the surplus
19 lines insurance transaction as the superintendent may
20 reasonably require for the purposes of Chapter 59A, Article 14
21 NMSA 1978. "

22 Section 3. Section 59A-14-12 NMSA 1978 (being Laws 1984,
23 Chapter 127, Section 250) is amended to read:

24 "59A-14-12. PREMIUM TAX ON SURPLUS LINE INSURANCE. --

25 A. Within sixty ~~[(60)]~~ days after expiration of a

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1 calendar quarter the surplus line broker shall pay to the
2 superintendent for the use of the state of New Mexico a tax on
3 gross premiums received, less returned premiums, on surplus
4 line business transacted under the surplus line broker's
5 license during such calendar quarter as shown by the quarterly
6 statement filed with the superintendent as provided under
7 Section [~~249 of this article~~] 59A-14-11 NMSA 1978. The tax
8 shall be at the same rate as is applicable to premiums of
9 authorized insurers under Section [~~102 of the Insurance Code~~]
10 59A-6-2 NMSA 1978.

11 B. For purposes of this section "premiums" shall
12 include any additional amount charged the insured, including
13 policy fees, risk purchasing group fees and inspection fees;
14 but "premiums" shall not include any additional amount charged
15 the insured for local, state or federal tax; [~~and~~] regulatory
16 authority fee; or examination fee, if any.

17 C. If a surplus line policy covers risks or
18 exposures only partially in this state the tax payable shall
19 be computed upon the proportion of the premium properly
20 allocable to risks or exposures located in this state.

21 D. A penalty of ten percent of the amount of tax
22 originally due, plus one percent of such tax amount for each
23 month or fraction thereof of delinquency after the first
24 thirty [~~(30)~~] days of delinquency, shall be paid by the
25 surplus line broker for failure to pay the tax in full within

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1 sixty [~~60~~] days after expiration of the calendar quarter as
2 provided in Subsection A [~~above~~] of this section; except, that
3 the superintendent may waive or remit the penalty if he finds
4 that the failure or delay in payment arose from excusable
5 mistake or excusable inadvertence. "

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

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6 February 22, 1999

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8 Mr. President:

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10 Your CORPORATIONS & TRANSPORTATION COMMITTEE, to

11 whom has been referred

12
13 SENATE BILL 467

14
15 has had it under consideration and reports same with

16 recommendation that it DO PASS.

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19 Respectfully submitted,

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25 Roman M. Maes, Chairman

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1 Adopted _____ Not

2 Adopted _____

3 (Chief Clerk)

(Chief Clerk)

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7 Date _____

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10 The roll call vote was 6 For 1 Against

11 Yes: 6

12 No: McKibben

13 Excused: Aragon, Robinson, Maes

14 Absent: None

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1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 March 11, 1999
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8 Mr. Speaker:
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10 Your CONSUMER AND PUBLIC AFFAIRS COMMITTEE, to
11 whom has been referred
12

13 SENATE BILL 467
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15 has had it under consideration and reports same with
16 recommendation that it DO PASS.

17 Respectfully submitted,
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21 _____
22 Patsy Trujillo Knauer, Chairwoman
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 4 For 0 Against

Yes: 4

Excused: Hamilton, Hawkins, King

Absent: None

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