

underscoring material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 497

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Cisco McSorley

AN ACT

RELATING TO INSURANCE; REQUIRING THE SUPERINTENDENT OF
INSURANCE TO SET MAXIMUM TITLE INSURANCE PREMIUM RATES;
AUTHORIZING FREE-MARKET COMPETITION BELOW THE MAXIMUM RATES;
REPLACING THE ANNUAL TITLE INSURANCE PREMIUM HEARINGS WITH
BIENNIAL TITLE INSURANCE PREMIUM HEARINGS; REVISING REPORTING
DUTIES FOR TITLE INSURERS AND TITLE INSURANCE AGENTS; LIMITING
LIABILITY FOR NEGLIGENT TITLE SEARCHES TO TITLE INSURERS;
REDUCING THE MAINTENANCE ASSESSMENT; ADDING TITLE INSURANCE
INFORMATION TO CONSUMER INFORMATION SYSTEMS DEVELOPED BY THE
SUPERINTENDENT; SETTING THE INSURANCE PREMIUM SPLIT BETWEEN
TITLE INSURERS AND TITLE INSURANCE AGENTS; AMENDING, REPEALING
AND ENACTING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 59A-17-11.1 NMSA 1978 (being Laws
.170682.6

underscored material = new
[bracketed material] = delete

1 2007, Chapter 367, Section 6) is amended to read:

2 "59A-17-11.1. CONSUMER INFORMATION.--

3 A. The superintendent shall use, develop or cause
4 to be developed a consumer information system that will provide
5 and disseminate price and other relevant information on a
6 readily available basis to purchasers of homeowners, private
7 passenger non-fleet automobile or property insurance for
8 personal, family or household needs as well as for title
9 insurance and any other types of personal or commercial
10 insurance designated by the superintendent. To the extent
11 deemed necessary and appropriate by the superintendent,
12 insurers, advisory organizations and other persons or
13 organizations involved in conducting the business of insurance
14 in New Mexico, to which this section applies, shall cooperate
15 in the development and utilization of a consumer information
16 system.

17 B. An insurer writing homeowners insurance or
18 private passenger non-fleet automobile insurance in New Mexico
19 shall, upon renewal or upon the transfer of a policy to another
20 insurer under the same ownership or management as the
21 transferring insurer, provide its policyholders with written
22 notification of their right to obtain from the insurer a
23 detailed written explanation of the reasons why their policy
24 premium has changed or is about to change."

25 Section 2. Section 59A-30-2 NMSA 1978 (being Laws 1985,

.170682.6

underscored material = new
[bracketed material] = delete

1 Chapter 28, Section 2) is amended to read:

2 "59A-30-2. PURPOSE AND LEGISLATIVE INTENT OF ARTICLE.--

3 A. The purpose of the New Mexico Title Insurance
4 Law is to provide a comprehensive body of law for the effective
5 regulation and active supervision of the business of title
6 insurance transacted within this state in response to the
7 McCarran-Ferguson Act (P.L. 79-15, 15 U.S.C. Sections 1011-
8 1015).

9 B. The legislature intends [~~that the business of~~
10 ~~title insurance be totally regulated by the state to provide~~
11 ~~for the protection of consumers and purchasers of title~~
12 ~~insurance policies and the financial stability of the title~~
13 ~~insurance industry]~~ to promote the public welfare by regulating
14 title insurance. Nothing in the New Mexico Title Insurance Law
15 is intended to prohibit or discourage reasonable competition."

16 Section 3. Section 59A-30-3 NMSA 1978 (being Laws 1985,
17 Chapter 28, Section 3, as amended) is amended to read:

18 "59A-30-3. DEFINITIONS.--As used in the New Mexico Title
19 Insurance Law:

20 A. "agency agreement" means a document executed by
21 a title insurer and title insurance agent [~~which~~] that defines
22 the compensation of the title insurance agent and the scope of
23 the title insurance agent's authority;

24 B. "business of title insurance" means:

25 (1) issuing as title insurer or offering to

.170682.6

underscored material = new
[bracketed material] = delete

1 issue as title insurer a title insurance policy; or

2 (2) transacting or proposing to transact by a
3 title insurer or title insurance agent any of the following
4 activities when conducted or performed in contemplation of the
5 issuance of a title insurance policy:

6 (a) soliciting or negotiating the
7 issuance of a title insurance policy;

8 (b) guaranteeing, warranting or
9 otherwise insuring the correctness of title searches;

10 (c) executing [øf] title insurance
11 policies;

12 (d) effecting contracts of reinsurance;

13 (e) abstracting, searching or examining
14 titles; or

15 (f) doing or proposing to do any
16 business in substance equivalent to the business of title
17 insurance in a manner designed to evade the provisions of the
18 New Mexico Title Insurance Law or other laws applicable to the
19 business of title insurance;

20 C. [~~charge~~] "closing, settlement and escrow fees"
21 means any consideration, other than premiums billed by a title
22 insurance agent or title insurer or both, for the performance
23 of services, including but not necessarily limited to
24 consideration for the handling of escrows, settlements,
25 closings, preparation of abstracts, consideration for services

.170682.6

underscored material = new
[bracketed material] = delete

1 commenced but not completed and consideration for title
2 searches conducted for a purpose other than issuance of a title
3 insurance policy, but not including consideration collected by
4 a title insurer or title insurance agent when the consideration
5 is limited to the amount billed for services rendered by a
6 third party;

7 D. "escrow" means written instruments, money or
8 other items deposited by one party with a depository, escrow
9 agent or escrowee for delivery to another party upon the
10 performance of a specified condition or the happening of a
11 certain event;

12 [~~D-~~] E. "premium" means the consideration for
13 issuing a title insurance policy and includes the consideration
14 for searching and examining a title when conducted or performed
15 for the purpose of the issuance of a title insurance policy;

16 F. "referral" means the directing or the exercising
17 of any power or influence over the direction of title insurance
18 business, whether or not the consent or approval of any other
19 person is sought or obtained with respect to the referral;

20 [~~E-~~] G. "available funds" means funds subject to
21 immediate withdrawal by cash or check in a depository account
22 with a financial institution, held in the name of and subject
23 to the control of a title insurance agent, title insurer or
24 third party fiduciary, not including a person or entity that is
25 a party to the transaction, cooperating in the closing of a

.170682.6

underscoring material = new
[bracketed material] = delete

1 transaction with a title insurance agent or title insurer;

2 ~~[F.]~~ H. "title insurance agent" means a person
3 licensed as an agent under the Insurance Code and appointed by
4 a title insurer who:

5 (1) determines insurability and issues title
6 insurance reports or policies or both based on the performance
7 or review of a search or abstract of title; and

8 (2) performs one or more of the following
9 functions:

10 (a) collects or disburses premiums,
11 escrow or security deposits or other funds;

12 (b) handles escrows, settlements or
13 closings;

14 (c) solicits or negotiates title
15 insurance business; or

16 (d) records closing documents;

17 ~~[G.]~~ I. "title insurance policy" or "policy" means
18 a contract indemnifying against loss or damage arising from any
19 of the following ~~[which]~~ that exist on or before the effective
20 date of the policy:

21 (1) defects in the insured title;

22 (2) liens or encumbrances on the insured
23 title;

24 (3) unmarketability of the insured title; ~~[or]~~

25 (4) invalidity or unenforceability of liens or

.170682.6

underscored material = new
[bracketed material] = delete

1 encumbrances on the property [~~which~~] that is the subject of the
2 policy;

3 (5) lack of legal right of access to the
4 property; or

5 (6) unenforceability of rights in title to the
6 property.

7 "Title insurance policy" or "policy" does not include an
8 abstract; and

9 [~~H.~~] J. "title insurer" means [~~any person~~] an
10 association, company, partnership, trust or corporation
11 authorized under the laws of this state to transact as insurer
12 the business of title insurance."

13 Section 4. Section 59A-30-4 NMSA 1978 (being Laws 1985,
14 Chapter 28, Section 4) is amended to read:

15 "59A-30-4. CONTROL AND SUPERVISION BY SUPERINTENDENT.--

16 A. Title insurers and title insurance agents shall
17 operate in New Mexico under the control and supervision of the
18 superintendent. The superintendent shall promulgate such rules
19 and regulations as are necessary to carry out the provisions of
20 the New Mexico Title Insurance Law [~~including rules and~~
21 ~~regulations requiring uniform forms of policies and uniform~~
22 ~~premiums~~]. The superintendent may adopt uniform rules and
23 regulations as to underwriting standards and practices,
24 including but not limited to rules and regulations [~~which~~] that
25 prohibit title insurers from insuring specified risks [~~which~~]

.170682.6

underscored material = new
[bracketed material] = delete

1 that the superintendent determines may pose an unreasonable
2 risk to the financial stability of title insurers.

3 B. No title insurer or title insurance agent shall
4 collect any premium, issue any title insurance policy or agency
5 agreement or reinsure any portion of the risk assumed under any
6 title insurance policy other than in conformance with the New
7 Mexico Title Insurance Law and rules and regulations adopted by
8 the superintendent as authorized by the New Mexico Title
9 Insurance Law."

10 Section 5. Section 59A-30-6 NMSA 1978 (being Laws 1985,
11 Chapter 28, Section 6, as amended) is amended to read:

12 "59A-30-6. PREMIUMS [~~AGENCY AGREEMENTS~~]--DUTY TO [FIX] SET
13 MAXIMUM RATES--[EXCEPTION] ALLOWING FREE-MARKET COMPETITION.--

14 A. The superintendent shall promulgate [~~the~~
15 maximum premium rates [~~of title insurers and title insurance~~
16 ~~agents~~] for title insurance policies and [~~the percentage of~~
17 ~~premium to be retained by title insurers under agency~~
18 ~~agreements, except that premium rates for reinsurance as~~
19 ~~between title insurers shall not be promulgated by the~~
20 ~~superintendent~~] maximum charges for closing, settlement and
21 escrow fees. No premium that [~~has not been~~] exceeds the
22 maximum premium rate promulgated by the superintendent shall be
23 charged for [~~any~~] a title insurance policy. [~~The~~
24 ~~superintendent shall not promulgate charges of title insurers~~
25 ~~and title insurance agents other than premium rates for title~~

.170682.6

underscored material = new
[bracketed material] = delete

1 ~~insurance policies and the percentage of premium to be retained~~
2 ~~by title insurers under agency agreements.]~~ Charges for
3 closing, settlement and escrow fees shall not exceed the
4 maximum charge set by the superintendent.

5 B. The superintendent shall promulgate additional
6 maximum premium rates for searches or examinations of title
7 conducted or performed for the purpose of issuance of a title
8 insurance policy when the search or examination involves more
9 than one chain of title or other unusual complexity. No
10 additional premium that exceeds the maximum additional premium
11 rates promulgated by the superintendent shall be charged for a
12 title insurance policy.

13 C. Title insurers and title insurance agents may
14 engage in free-market competition and charge less than the
15 maximum premium rates promulgated by the superintendent.

16 [~~G.~~] D. Maximum premium rates and maximum charges
17 for closing, settlement and escrow fees promulgated by the
18 superintendent shall not be excessive, inadequate or unfairly
19 discriminatory and shall contain an allowance permitting a
20 profit that is not unreasonable in relation to the riskiness of
21 the business of title insurance. Premium rates may include an
22 allowance for recoupment of assessments made pursuant to the
23 Title Insurance Guaranty Act."

24 Section 6. Section 59A-30-7 NMSA 1978 (being Laws 1985,
25 Chapter 28, Section 7) is amended to read:

.170682.6

1 "59A-30-7. FILING OF RATES--REPORTING OF EXPERIENCE.--

2 ~~[The superintendent shall promulgate reasonable rules, including~~
3 ~~rules providing statistical plans, for use thereafter by all~~
4 ~~title insurers and title insurance agents in the recording and~~
5 ~~reporting of loss and expense experience, so that the experience~~
6 ~~of title insurers and title insurance agents may be made~~
7 ~~available to him at least annually in such form and detail as~~
8 ~~may be necessary to aid him in promulgating premium rates.]~~

9 A. Title insurers shall file rates and supplementary
10 rate information with the superintendent prior to their use in
11 New Mexico.

12 B. The superintendent shall disapprove a filed title
13 insurance rate if the superintendent finds that the rate is
14 inadequate or unfairly discriminatory under the rate standards
15 as set forth in Section 59A-17-6 NMSA 1978. The superintendent
16 may at any time disapprove a filed rate after giving notice of
17 hearing pursuant to the provisions of Subsection A of Section
18 59A-4-16 NMSA 1978 to every insurer and advisory organization
19 that adopted the rate. The superintendent's notice or order of
20 disapproval shall specify how the filed rate fails to meet the
21 standards as set forth in Section 59A-17-6 NMSA 1978. The
22 notice or order shall state an effective date no sooner than
23 thirty business days after the date of the notice or order when
24 the insurer shall discontinue the use of the filed rate. The
25 notice or order shall not affect any policy made before the

.170682.6

underscored material = new
[bracketed material] = delete

1 effective date of the notice or order.

2 C. Title insurers and title insurance agents shall
3 file with the superintendent on or before June 30 of each
4 calendar year experience reports in such form and detail as may
5 be prescribed by the superintendent."

6 Section 7. Section 59A-30-8 NMSA 1978 (being Laws 1985,
7 Chapter 28, Section 8, as amended) is amended to read:

8 "59A-30-8. HEARINGS--NOTICE.--

9 A. The superintendent shall hold [~~an annual~~] a
10 hearing during [~~November~~] December of each even-numbered
11 calendar year to consider promulgation of maximum premium rates
12 and maximum charges for closing, settlement and escrow fees and
13 any other matters related to the regulation of the business of
14 title insurance deemed necessary by the superintendent.

15 B. The superintendent may, in [~~his~~] the
16 superintendent's discretion, hold a public hearing at any time
17 to consider [~~promulgation of premium rates and such other~~
18 ~~matters and~~] subjects related to the regulation of the business
19 of title insurance as the superintendent shall determine
20 necessary or proper.

21 C. Notice of the public hearings provided for in
22 Subsections A and B of this section shall be as provided in
23 Subsection A of Section 59A-4-16 NMSA 1978.

24 D. The superintendent may promulgate maximum premium
25 rates and forms of title insurance policies only after a public

.170682.6

underscored material = new
[bracketed material] = delete

1 hearing as provided in [~~Subsections~~] Subsection A [~~and B~~] of
2 this section.

3 E. The superintendent shall issue [~~his~~] a decision
4 within sixty days following the conclusion of a public hearing
5 provided for in [~~Subsections~~] Subsection A [~~and B~~] of this
6 section. However, if the superintendent determines that the
7 data and information presented to the superintendent pursuant to
8 Section 59A-30-7 NMSA 1978 [~~is~~] are incomplete, inaccurate or
9 otherwise insufficient to determine whether the change in
10 maximum rates is warranted, the superintendent shall require the
11 title insurers or the title insurance agents or both to furnish
12 the additional necessary data and information, and, in such
13 event, the period of time allowed for the superintendent to
14 issue [~~his~~] a decision shall commence from the date such
15 additional data and information [~~is~~] are furnished."

16 Section 8. Section 59A-30-11 NMSA 1978 (being Laws 1985,
17 Chapter 28, Section 11, as amended) is amended to read:

18 "59A-30-11. UNDERWRITING STANDARDS AND RECORD
19 RETENTION.--

20 A. No title insurance policy may be written unless
21 the title insurer or its title insurance agent has caused to be
22 conducted a reasonable search and examination of the title using
23 an abstract plant meeting the requirements of Section 59A-12-13
24 NMSA 1978 and has caused to be made a determination of
25 insurability of title in accordance with sound underwriting

.170682.6

underscored material = new
[bracketed material] = delete

1 practices. [~~The duty to search and examine imposed by this~~
2 ~~section is solely for the purpose of enhancing the financial~~
3 ~~stability of title insurers for the benefit of insureds under~~
4 ~~title insurance policies. The New Mexico Title Insurance Law is~~
5 ~~not intended and should not be construed to create any duty to~~
6 ~~search and examine that runs to the benefit of, or to create any~~
7 ~~right or cause of action in favor of, any person other than a~~
8 ~~title insurer.] Provided that a title insurance policy has been
9 issued, only the title insurer, and not its agent or the agent's
10 employees, shall be liable for damages caused to the insured or
11 any other party by a negligent search and examination required
12 by this section. An award of damages caused by a negligent
13 search and examination shall not exceed the fair market value of
14 the property as of the date of the search and examination. The
15 title insurance agent and the agent's employees shall not be
16 named as parties in any action for negligent search and
17 examination.~~

18 B. Evidence of the examination of title and
19 determination of insurability shall be preserved and retained in
20 the files of the title insurer or its title insurance agent for
21 a period of not less than fifteen years after the title
22 insurance policy has been issued. Instead of retaining the
23 original evidence, the title insurer or title insurance agent
24 may in the regular course of business establish a system whereby
25 all or part of the evidence is recorded, copied or reproduced by

.170682.6

underscored material = new
[bracketed material] = delete

1 any process that accurately and legibly reproduces or forms a
2 durable medium for reproducing the contents of the original.

3 This subsection shall not apply to:

4 (1) a title insurer assuming liability through
5 a contract of reinsurance; or

6 (2) a title insurer acting as coinsurer if one
7 of the other coinsuring title insurers has complied with this
8 section."

9 Section 9. Section 59A-30-12 NMSA 1978 (being Laws 1985,
10 Chapter 28, Section 12) is amended to read:

11 "59A-30-12. MAINTENANCE ASSESSMENT.--The superintendent
12 shall determine a rate of assessment and collect a maintenance
13 fee in an amount not to exceed [~~one~~] one-half percent of the
14 correctly reported gross title insurance premiums on policies
15 written in New Mexico of all authorized title insurers. The fee
16 required by this section is in addition to all other taxes and
17 fees now imposed or that may be subsequently imposed and that
18 are not in conflict with this article. The superintendent,
19 after taking into account the unexpended funds produced by this
20 fee, if any, shall adjust the rate of assessment each year to
21 produce the amount of funds that [~~he~~] the superintendent
22 estimates will be necessary to pay all the expenses of
23 regulating the business of title insurance during the succeeding
24 year. The superintendent in promulgating premium rates shall
25 take into account assessments made under this section."

.170682.6

underscored material = new
[bracketed material] = delete

1 Section 10. Section 59A-30-14 NMSA 1978 (being Laws 1985,
2 Chapter 28, Section 14, as amended) is amended to read:

3 "59A-30-14. OTHER PROVISIONS APPLICABLE.--To the extent
4 not in conflict with the New Mexico Title Insurance Law, the
5 following articles and provisions of the Insurance Code shall
6 also apply to title insurers, title insurance agents and the
7 business of title insurance:

- 8 A. Chapter 59A, Article 1 NMSA 1978;
- 9 B. Chapter 59A, Article 2 NMSA 1978;
- 10 C. Chapter 59A, Article 4 NMSA 1978;
- 11 D. Chapter 59A, Article 5 NMSA 1978;
- 12 E. Chapter 59A, Article 6 NMSA 1978;
- 13 F. Chapter 59A, Article 7 NMSA 1978;
- 14 G. Chapter 59A, Article 8 NMSA 1978;
- 15 H. Chapter 59A, Article 9 NMSA 1978;
- 16 I. Chapter 59A, Article 10 NMSA 1978;
- 17 J. Chapter 59A, Article 11 NMSA 1978;
- 18 K. Chapter 59A, Article 12 NMSA 1978;
- 19 L. the Unauthorized Insurers Law;
- 20 M. Chapter 59A, Article 16 NMSA 1978;
- 21 N. the Insurance Fraud Act;
- 22 O. Chapter 59A, Article 17 NMSA 1978;
- 23 P. Chapter 59A, Article 18 NMSA 1978;
- 24 [~~Q.~~] Q. Chapter 59A, Article 34 NMSA 1978; and
- 25 [~~R.~~] R. The Insurance Holding Company Law."

underscored material = new
[bracketed material] = delete

1 Section 11. A new section of the New Mexico Title
2 Insurance Law is enacted to read:

3 "[NEW MATERIAL] PROHIBITED PRACTICES.--

4 A. A title insurer, title insurance agent or other
5 person shall not give or receive, directly or indirectly, any
6 consideration or thing of value for the referral of title
7 insurance business or escrow or other service provided by a
8 title insurer or title insurance agent.

9 B. A title insurer shall not enter into a
10 reinsurance agreement with a referrer of title insurance
11 business or an affiliate of a referrer of title insurance
12 business without the prior written approval of the
13 superintendent.

14 C. A title insurer or title insurance agent doing
15 business in the same county as a title insurer or title
16 insurance agent who may be in violation of the prohibitions or
17 limitations of this section shall have a cause of action against
18 the violating title insurer or title insurance agent or
19 recipient and, upon establishing the existence of a violation,
20 shall be entitled to injunctive relief as the court deems
21 necessary or desirable to prevent future violations of this
22 section. The court may award court costs and reasonable
23 attorney fees to the prevailing party in any action under this
24 subsection."

25 Section 12. A new section of the New Mexico Title

.170682.6

underscored material = new
[bracketed material] = delete

1 Insurance Law is enacted to read:

2 "[NEW MATERIAL] PORTION OF PREMIUM ALLOCATED TO TITLE
3 INSURANCE AGENT.--Title insurance agents are entitled to retain
4 eighty-nine percent of the gross premium paid on title insurance
5 commitments, binders, policies and endorsements and shall remit
6 eleven percent of the gross premium to the title insurer."

7 Section 13. A new section of the New Mexico Title
8 Insurance Law is enacted to read:

9 "[NEW MATERIAL] REQUIRED INSURANCE COVERAGE
10 PROVISIONS.--In addition to standard title insurance coverage
11 and any other coverage contracted for by the parties, title
12 insurance policies issued in New Mexico shall provide coverage
13 against claims based on:

14 A. rights or claims of parties in possession not
15 shown by the public records; or

16 B. easements, or claims of easements, not shown by
17 the public records."

18 Section 14. TEMPORARY PROVISION.--Until the
19 superintendent of insurance promulgates maximum premium rates,
20 the premium rates promulgated by the superintendent of insurance
21 prior to the effective date of this act are deemed to be the
22 equivalent of maximum premium rates.

23 Section 15. REPEAL.--Sections 59A-30-5 and 59A-30-15 NMSA
24 1978 (being Laws 1985, Chapter 28, Sections 5 and 16) are
25 repealed.

.170682.6

