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HOUSE BILL 468

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Antonio "Moe" Maestas

AN ACT

RELATING TO INSURANCE; INCREASING GENERAL ADMINISTRATIVE PENALTIES; ELIMINATING THE DISTINCTION BETWEEN VIOLATIONS OF STATUTES AND RULES; ADOPTING GENERAL AUTHORITY TO ISSUE ADMINISTRATIVE COMPLIANCE ORDERS; INCREASING ADMINISTRATIVE FINES FOR INSURANCE AGENTS; AMENDING AND REPEALING SECTIONS OF THE NMSA 1978.

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

Section 1. Section 59A-1-18 NMSA 1978 (being Laws 1984, Chapter 127, Section 18, as amended) is amended to read:

"59A-1-18. GENERAL PENALTY.--

A. Unless the same is defined as a felony under any other law of this state or punishment therefor classifies it otherwise, every violation of the Insurance Code is a petty misdemeanor punishable by a fine not to exceed five hundred

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1 dollars (\$500).

2 B. Where other monetary penalty is not expressly
3 provided for, an administrative penalty may be assessed for
4 violations of the Insurance Code. The administrative penalty
5 shall be not over [~~five thousand dollars (\$5,000)~~] ten thousand
6 dollars (\$10,000) for each violation, except that if the
7 violation is to be found willful and intentional, the penalty
8 may be up to [~~ten thousand dollars (\$10,000)~~] twenty-five
9 thousand dollars (\$25,000) for each violation. Every
10 administrative penalty shall be imposed by written order of the
11 superintendent made after hearing held as provided in Chapter
12 59A, Article 4 NMSA 1978.

13 C. A monetary penalty imposed may be [~~additional~~]
14 in addition to any applicable suspension, revocation or denial
15 of a license or certificate of authority.

16 D. In addition to the authority of the insurance
17 department to bring an action to recover [~~statutory fines~~]
18 administrative penalties and assessments, the insurance
19 department may bring civil actions for penalties in sums not to
20 exceed the [~~criminal fine~~] administrative penalties for each
21 violation of the Insurance Code. [~~in lieu of criminal~~
22 prosecution

23 ~~E. The penalties contained in Subsections A through~~
24 ~~D of this section shall be in addition to any other penalty~~
25 ~~provided by law.]"~~

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1 Section 2. Section 59A-2-9 NMSA 1978 (being Laws 1984,
2 Chapter 127, Section 27, as amended) is amended to read:

3 "59A-2-9. RULES AND REGULATIONS--PROMULGATION--
4 VIOLATION.--

5 A. The superintendent, after a hearing thereon, may
6 make reasonable rules and regulations necessary for or as an
7 aid to administration or effectuation of any provision of the
8 Insurance Code administered by the superintendent, and from
9 time to time withdraw, modify or amend any such rule or
10 regulation.

11 B. No such rule or regulation shall extend, modify
12 or conflict with any such provision or other laws of New
13 Mexico.

14 C. The superintendent shall file all new rules,
15 amendments of rules or repeals of rules in accordance with the
16 State Rules Act not later than the submittal deadline for
17 publication in the New Mexico register on or before the
18 effective date of any such rule, amendment or repeal.

19 D. Willful violation of any such rule or regulation
20 shall subject the violator to such penalty as may be applicable
21 under the Insurance Code for violation of the provision to
22 which the rule or regulation relates [~~but no penalty shall~~
23 ~~apply to any act done or omitted in good faith in conformity~~
24 ~~with any such rule or regulation, notwithstanding that the rule~~
25 ~~or regulation may, after such act or omission, be amended or~~

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1 ~~rescinded or determined by judicial or other authority to be~~
2 ~~invalid for any reason]."~~

3 Section 3. Section 59A-2-11 NMSA 1978 (being Laws 1984,
4 Chapter 127, Section 29) is amended to read:

5 "59A-2-11. ENFORCEMENT.--

6 ~~[A. The superintendent may invoke the aid of any~~
7 ~~court of competent jurisdiction through injunction, mandamus or~~
8 ~~other appropriate process to enjoin any existing or threatened~~
9 ~~violation of any provision of the Insurance Code, or to enforce~~
10 ~~any order made or action taken by him in pursuance of law.~~

11 ~~B. If the superintendent has reason to believe that~~
12 ~~any person has violated any provision of the Insurance Code or~~
13 ~~other law applicable to insurance operations, for which~~
14 ~~criminal prosecution in his opinion would be in order, he shall~~
15 ~~give the information relative thereto to the attorney general~~
16 ~~or other appropriate public law enforcement officials. The~~
17 ~~attorney general or such other law enforcement official shall~~
18 ~~promptly institute or cause to be instituted such action or~~
19 ~~proceedings against such person as in his opinion the~~
20 ~~information may require or justify.~~

21 ~~C. The superintendent may enforce civil penalties~~
22 ~~provided under the Insurance Code, and for the purpose use~~
23 ~~services of attorneys of the insurance department.]~~

24 A. Whenever, on the basis of any information, the
25 superintendent determines that any person has violated, is

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1 violating or threatens to violate any requirement of the
2 Insurance Code, any regulation promulgated pursuant to the
3 Insurance Code, any order of the superintendent or any
4 condition of a license, certificate of authority or
5 registration issued pursuant to the Insurance Code, the
6 superintendent may:

7 (1) issue a compliance order stating with
8 reasonable specificity the nature of the violation or
9 threatened violation and requiring compliance immediately or
10 within a specified time period or assessing a civil penalty, in
11 an amount provided by the Insurance Code, for any past or
12 current violation, or both;

13 (2) issue a cease and desist order; or

14 (3) commence a civil action in district court
15 for appropriate relief, including a temporary or permanent
16 injunction.

17 B. Any order issued pursuant to Subsection A of
18 this section may include a suspension or revocation of any
19 license, certificate of authority or registration issued by the
20 superintendent. In assessing such penalty, the superintendent
21 shall take into account the seriousness of the violation, any
22 good faith efforts to comply with the applicable requirements
23 and other relevant factors.

24 C. If a violator fails to take corrective action
25 within the time specified in a compliance order, the

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1 superintendent may:

2 (1) assess a civil penalty of not more than
3 twenty-five thousand dollars (\$25,000) for each day of
4 continued noncompliance with the order; and

5 (2) suspend or revoke a license or certificate
6 of authority or registration issued to the violator pursuant to
7 the Insurance Code.

8 D. Any compliance order issued pursuant to this
9 section shall become final unless, no later than thirty days
10 after the order is served, the person or persons named therein
11 submit a written request to the superintendent for a public
12 hearing. Upon such request, the superintendent shall promptly
13 conduct a public hearing. The superintendent may appoint an
14 independent hearing officer to preside over the public hearing.
15 That hearing officer shall make and preserve a complete record
16 of the proceedings and forward the hearing officer's
17 recommendation based thereon to the superintendent, who shall
18 make the final decision.

19 E. Any cease and desist order issued pursuant to
20 this section shall provide notice of a hearing before the
21 superintendent to be held not less than twenty days after
22 service of the notice and requiring the person to show cause
23 why the superintendent should not order the person to cease and
24 desist from the violation. The superintendent may appoint an
25 independent hearing officer to preside over the public hearing.

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1 That hearing officer shall make and preserve a complete record
2 of the proceedings and forward a recommendation based thereon
3 to the superintendent, who shall make the final decision.

4 F. In connection with any administrative proceeding
5 under this section, the superintendent may issue subpoenas for
6 the attendance and testimony of witnesses and the production of
7 relevant papers, books and documents.

8 G. The superintendent shall adopt rules of
9 procedure for conducting such hearings.

10 H. Penalties collected pursuant to an
11 administrative order shall be deposited in the state treasury
12 to be credited to the general fund."

13 Section 4. Section 59A-5-26 NMSA 1978 (being Laws 1984,
14 Chapter 127, Section 93, as amended) is amended to read:

15 "59A-5-26. SUSPENSION, LIMITATION OR REVOCATION OF
16 AUTHORITY--DISCRETIONARY AND SPECIAL GROUNDS.--

17 ~~[A. The superintendent may, at his discretion,~~
18 ~~suspend, limit or revoke an insurer's certificate of authority~~
19 ~~if he finds after a hearing thereon, or upon waiver of hearing~~
20 ~~by the insurer, that the insurer has:~~

21 ~~(1) violated or failed to comply with any~~
22 ~~lawful order of the superintendent;~~

23 ~~(2) willfully violated or willfully failed to~~
24 ~~comply with any lawful regulation of the superintendent;~~

25 ~~(3) violated any provision of the Insurance~~

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1 ~~Code other than those for violation of which suspension or~~
2 ~~revocation is mandatory; or~~

3 ~~(4) reinsured all or substantially all of its~~
4 ~~risks, or all or substantially all of its risks in a particular~~
5 ~~kind of insurance, in another insurer.~~

6 ~~B. In lieu of suspension, or revocation of~~
7 ~~certificate of authority as provided in Subsection A of this~~
8 ~~section, the superintendent may, at his discretion, levy upon~~
9 ~~the insurer and the insurer shall forthwith pay to the~~
10 ~~superintendent, an administrative fine of not more than five~~
11 ~~thousand dollars (\$5,000). The superintendent shall promptly~~
12 ~~deposit with the state treasurer to the credit of the general~~
13 ~~fund all money received under this subsection.~~

14 ~~G.]~~ A. The superintendent shall suspend or revoke
15 an insurer's certificate of authority on [~~any of~~] the following
16 grounds, if found after a hearing thereon that the insurer:

17 (1) is in unsound condition, or its business
18 is being fraudulently conducted, or is in such condition or is
19 using [~~such~~] methods and practices in the conduct of its
20 business as to render its further transaction of insurance in
21 this state currently or prospectively hazardous or injurious to
22 policyholders or the public;

23 (2) with such frequency as to indicate its
24 general business practice in this state:

25 (a) has without just cause failed to

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1 pay, or delayed payment of, claims arising under its policies,
2 whether the claim is in favor of an insured or in favor of a
3 third person with respect to the liability of an insured to
4 [~~such~~] the third person; or

5 (b) without just cause compels insureds
6 or claimants to accept less than the amount due them or to
7 employ an attorney or to bring suit against the insurer or such
8 an insured to secure full payment or settlement of a claim;

9 (3) refuses to be examined, or if its
10 directors, officers, employees or representatives refuse to
11 submit to examination relative to its affairs, or to produce
12 books, papers, records, contracts, correspondence or other
13 documents for examination by the superintendent when required,
14 or refuses or fails to pay expenses of the examination or to
15 perform any other legal obligation relative to the examination;
16 [~~or~~]

17 (4) has failed to pay [~~any~~] a final judgment
18 rendered against it in this state upon any policy, bond,
19 recognizance or undertaking as issued or guaranteed by it,
20 within thirty days after the judgment becomes final; or

21 (5) reinsured all or substantially all of its
22 risks, or all or substantially all of its risks in a particular
23 kind of insurance, in another insurer.

24 [~~D.~~] B. The superintendent may, at [~~his~~] the
25 superintendent's discretion and without advance notice or

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1 hearing thereon, immediately suspend the certificate of
2 authority of an insurer as to which proceedings for
3 receivership, conservation, rehabilitation or other delinquency
4 proceedings have been commenced in [~~any~~] a state by the public
5 insurance supervisory officer of that state."

6 Section 5. Section 59A-5-30 NMSA 1978 (being Laws 1984,
7 Chapter 127, Section 97) is amended to read:

8 "59A-5-30. PENALTIES FOR [~~LATE~~] FALSE ANNUAL
9 STATEMENTS.--

10 ~~[A. Any insurer failing without just cause~~
11 ~~reasonably beyond control of the insurer, to file its annual~~
12 ~~statement as required in Section 96 of this article, shall be~~
13 ~~required to pay a penalty of one hundred dollars (\$100) for~~
14 ~~each day's delay, but not to exceed five thousand dollars~~
15 ~~(\$5,000) in aggregate amount, to be recovered in a civil action~~
16 ~~brought against the insurer in the name of the State of New~~
17 ~~Mexico by the attorney general. Such penalty may be in~~
18 ~~addition to any refusal to continue, or suspension or~~
19 ~~revocation of, the insurer's certificate of authority for such~~
20 ~~failure.~~

21 ~~B.]~~ Any director, officer, agent or employee of any
22 insurer who subscribes to, makes or concurs in making or
23 publishing, any annual or other statement of the insurer
24 required by law, knowing the same to contain any material
25 statement [~~which~~] that is false, shall upon conviction thereof

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1 be guilty of a misdemeanor and upon conviction shall be
2 sentenced to a fine of not more than one thousand dollars
3 (\$1,000), unless by its extent and nature the offense is
4 punishable under other statutes as a felony."

5 Section 6. Section 59A-11-17 NMSA 1978 (being Laws 1984,
6 Chapter 127, Section 196) is amended to read:

7 "59A-11-17. ADMINISTRATIVE FINE.--~~[IN LIEU.--In lieu of~~
8 ~~suspension, revocation, or refusal to continue a license issued~~
9 ~~under this article, the superintendent may levy an~~
10 ~~administrative fine upon the licensee in amount of not less~~
11 ~~than one hundred dollars (\$100) nor more than five hundred~~
12 ~~dollars (\$500). In the order levying the fine, the~~
13 ~~superintendent shall specify the grounds therefor and the~~
14 ~~period, not to exceed sixty (60) days, within which the~~
15 ~~licensee shall pay. If at the end of payment period so allowed~~
16 ~~the licensee has not paid to the superintendent the amount of~~
17 ~~the fine, the license shall stand suspended, revoked or renewal~~
18 ~~refused, as the case may be, as at the end of the period and~~
19 ~~without further order.] The superintendent may levy an~~
20 administrative fine upon the licensee in an amount not less
21 than five hundred dollars (\$500) but not more than one thousand
22 dollars (\$1,000) per violation for violations of any
23 requirement of the Insurance Code, any regulation promulgated
24 pursuant to the Insurance Code, any order of the superintendent
25 or any condition of a license."

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1 Section 7. Section 59A-16C-12 NMSA 1978 (being Laws
2 1998, Chapter 115, Section 12) is amended to read:

3 "59A-16C-12. ATTORNEY GENERAL'S DUTIES.--

4 A. If the superintendent has reason to believe that
5 any person has violated any provision of the Insurance Code or
6 other law applicable to insurance operations, for which
7 criminal prosecution in the superintendent's opinion would be
8 in order, the superintendent shall give the information
9 relative thereto to the attorney general or to other
10 appropriate public law enforcement officials. The attorney
11 general or such other law enforcement official shall promptly
12 institute or cause to be instituted such action or proceeding
13 against such person as in the attorney general's or such other
14 law enforcement official's opinion the information may require
15 or justify.

16 B. When so requested by the superintendent, the
17 attorney general shall commission as a special assistant
18 attorney general any attorney employed by the superintendent or
19 contracted with by the superintendent and approved by the
20 attorney general to assist the superintendent in carrying out
21 [his] the superintendent's duties, including providing legal
22 advice and prosecuting offenders. The actual costs associated
23 with the assignment of assistant attorneys general to the
24 superintendent shall be paid out of the fund."

25 Section 8. Section 59A-17-33 NMSA 1978 (being Laws 1984,
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1 Chapter 127, Section 328, as amended) is amended to read:

2 "59A-17-33. ENFORCEMENT--PENALTIES.--~~[A.]~~ The
3 superintendent shall enforce compliance with the provisions of
4 the Insurance Rate Regulation Law. ~~[Whenever the~~
5 ~~superintendent believes that there is a violation of the~~
6 ~~Insurance Rate Regulation Law and that such violation is~~
7 ~~continuing, the superintendent shall serve upon the advisory,~~
8 ~~joint underwriting, joint reinsurance pool, residual market~~
9 ~~mechanism or insurer or other person violating, as the case may~~
10 ~~be, notice of a hearing before the superintendent to be held~~
11 ~~not less than twenty days after service of the notice, and~~
12 ~~requiring the organization or person to show cause why the~~
13 ~~superintendent should not order the organization or person to~~
14 ~~cease and desist from the violation.~~

15 B. ~~The superintendent, through the attorney~~
16 ~~general, may maintain an action to enjoin a continuing~~
17 ~~violation of the Insurance Rate Regulation Law.~~

18 C. ~~After hearing, the superintendent may suspend~~
19 ~~the license of an advisory organization or insurer that fails~~
20 ~~to comply with the superintendent's order within the time~~
21 ~~limited by the order or an extension of time that the~~
22 ~~superintendent may grant. The suspension shall not become~~
23 ~~effective until the time prescribed for an appeal has expired,~~
24 ~~or if an appeal has been taken, until the order has been~~
25 ~~affirmed; otherwise, the superintendent may determine when the~~

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1 ~~suspension shall become effective, and the suspension shall~~
2 ~~remain in effect for the period fixed unless the superintendent~~
3 ~~modifies or rescinds the suspension, or until the order on~~
4 ~~which suspension is based is modified, rescinded or reversed.~~

5 ~~D. If the superintendent finds that a person has~~
6 ~~violated any provision of the Insurance Rate Regulation Law,~~
7 ~~the superintendent may impose a penalty of not more than ten~~
8 ~~thousand dollars (\$10,000) for each violation; but if the~~
9 ~~superintendent finds the violation to be willful, the~~
10 ~~superintendent may impose a penalty of not more than~~
11 ~~twenty-five thousand dollars (\$25,000) for each violation.~~
12 ~~Such penalties may be in addition to any other penalty provided~~
13 ~~by law, and, if not paid voluntarily by the violator, may be~~
14 ~~collected through civil action in the district court of Santa~~
15 ~~Fe county in the name of the state of New Mexico on the~~
16 ~~relation of the insurance board.~~

17 ~~E. For the purposes of this section]~~ An insurer using
18 a rate for which the insurer has failed to file the rate,
19 supplementary rate information or supporting information, if
20 Section 59A-17-9 NMSA 1978 requires the materials to be filed,
21 shall have committed a separate violation for each day the
22 failure continues."

23 Section 9. REPEAL.--Sections 59A-15-10 and 59A-15-13 NMSA
24 1978 (being Laws 1984, Chapter 127, Section 265 and Laws 1984,
25 Chapter 127, Section 268) are repealed.

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