

1 SENATE BILL 164

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2016**

3 INTRODUCED BY

4 Stuart Ingle

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9  
10 AN ACT

11 RELATING TO INSURANCE; AMENDING SECTIONS OF THE NEW MEXICO  
12 INSURANCE CODE TO CHANGE PENALTY ENFORCEMENT PROVISIONS AND TO  
13 INCLUDE STUDENT POLICIES WITHIN PROVISIONS RELATING TO  
14 INDIVIDUAL HEALTH INSURANCE; AMENDING SECTIONS OF THE NEW  
15 MEXICO INSURANCE CODE TO ENACT CHANGES IN PROVISIONS RELATING  
16 TO PREMIUM TAXES, PREMIUM SURTAXES, THE ISSUANCE OF REFUNDS AND  
17 ELECTRONIC TRANSFERS; AMENDING THE INSURANCE FRAUD ACT TO  
18 ESTABLISH A FEE PAYMENT DEADLINE AND LATE PAYMENT PENALTY;  
19 ENACTING A SEVERABILITY SECTION TO THE RISK-BASED CAPITAL ACT;  
20 AMENDING A SECTION OF THE NEW MEXICO INSURANCE CODE REGARDING  
21 PENALTIES FOR FAILING TO REPORT OR PAY TAXES OR FEES; AMENDING  
22 SECTIONS OF THE NEW MEXICO INSURANCE CODE RELATING TO  
23 EXAMINATION REPORTS; REMOVING HIGHER EDUCATION INSTITUTIONAL  
24 POLICIES AND CONTRACTS FROM NEW MEXICO INSURANCE CODE  
25 PROVISIONS RELATING TO BLANKET HEALTH INSURANCE; AMENDING A

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1 SECTION OF THE MINIMUM HEALTHCARE PROTECTION ACT TO PROVIDE THE  
2 SUPERINTENDENT OF INSURANCE WITH EXTENDED TIME TO REVIEW  
3 INSURER MARKETING PROPOSALS; AMENDING A SECTION OF THE LAW FOR  
4 REGULATION OF CREDIT LIFE INSURANCE AND CREDIT HEALTH INSURANCE  
5 TO PROVIDE THE SUPERINTENDENT OF INSURANCE WITH EXTENDED TIME  
6 TO REVIEW INSURER FORMS.

7  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

9 SECTION 1. Section 59A-4-9 NMSA 1978 (being Laws 1984,  
10 Chapter 127, Section 53, as amended) is amended to read:

11 "59A-4-9. EXAMINATION REPORT--CONTENTS.--~~Upon~~ No later  
12 than sixty days following completion of an examination, the  
13 examiner in charge shall ~~make a true~~ file with the office of  
14 superintendent of insurance a verified, written examination  
15 report [thereof comprising]. The examination report shall  
16 comprise only facts appearing upon the books, records or other  
17 documents of the person examined, or from information provided  
18 to the examiner during the course of the examination by the  
19 examinee's officers or agents and other individuals examined  
20 concerning its affairs, together with such conclusions and  
21 recommendations of the examiners as may reasonably be warranted  
22 from such facts. The report of examination shall be verified  
23 by the oath of the examiner in charge of the examination."

24 SECTION 2. Section 59A-4-10 NMSA 1978 (being Laws 1984,  
25 Chapter 127, Section 54, as amended) is amended to read:

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1 "59A-4-10. EXAMINATION REPORT--~~[DISTRIBUTION]~~ CONFERENCE  
2 ~~[AND HEARING--ADOPTING]~~--ADOPTION ORDERS--INVESTIGATORY  
3 HEARINGS.--

4 A. Upon completion of the examination and receipt  
5 of the examination report, the superintendent shall ~~[furnish~~  
6 ~~two copies thereof]~~ transmit the report to the person examined  
7 and shall allow the person a reasonable period, but not to  
8 exceed twenty days, within which to review the report and to  
9 file with the superintendent in writing requested corrections  
10 or modifications, with the reasons therefor. For good ~~[cause]~~  
11 reason shown, the superintendent may grant reasonable extension  
12 of the review period.

13 B. ~~[As soon as reasonably possible]~~ Within twenty  
14 days after the superintendent's receipt of such request, the  
15 person examined shall confer with the superintendent and  
16 examiner relative to requested corrections and modification.  
17 ~~[If through such conference the report is acceptable to the~~  
18 ~~person examined with such changes as the superintendent~~  
19 ~~approves, the superintendent shall adopt the report as so~~  
20 ~~changed. If the report is not acceptable, the superintendent~~  
21 ~~shall hold a hearing with respect to the report and adopt the~~  
22 ~~report with such changes as result with the superintendent's~~  
23 ~~approval from the conference and hearing.~~

24 C. ~~If no changes are requested, upon expiration of~~  
25 ~~the period allowed by the superintendent for review of the~~

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1 ~~report, the superintendent may adopt the report.~~

2 ~~D. At any point prior to adoption of the~~  
3 ~~examination report, the superintendent may reject the report~~  
4 ~~with directions to the examiners to reopen the examination for~~  
5 ~~purposes of obtaining additional data, documentation or~~  
6 ~~information, and the examiner in charge shall subsequently~~  
7 ~~report in accordance with Section 59A-4-9 NMSA 1978.]~~

8 C. Within thirty days of the end of the period  
9 allowed for the receipt of written submissions or rebuttals,  
10 the superintendent shall fully consider and review the report,  
11 together with any written submission or rebuttal, any  
12 conference and any relevant portion of the examiner's work  
13 papers and shall enter an order. An order entered pursuant to  
14 this subsection shall be accompanied by findings of fact and  
15 conclusions of law resulting from the superintendent's  
16 consideration and review of the examination report, any written  
17 submission or rebuttal, any conferences and any relevant  
18 portion of the examiner's work papers. An order shall be  
19 considered a final administrative decision that may be appealed  
20 pursuant to Section 59A-4-20 NMSA 1978. An order shall be  
21 served upon all parties by certified mail, together with a copy  
22 of the adopted examination report. An order issued pursuant to  
23 this subsection shall:

24 (1) adopt the examination report as filed or  
25 with modification or correction. If the examination report

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1 reveals that the person is operating in violation of statute,  
2 rule or prior order of the superintendent, the superintendent  
3 may order the person to take any action the superintendent  
4 considers necessary and appropriate to cure the violation;

5 (2) reject the examination report with  
6 directions to the examiners to reopen the examination for  
7 purposes of obtaining additional data, documentation or  
8 information and refiling pursuant to Section 59A-4-9 NMSA 1978;  
9 or

10 (3) call for an investigatory hearing with no  
11 less than twenty days' notice to the person for purposes of  
12 obtaining additional documentation, data, information or  
13 testimony.

14 D. An investigatory hearing held pursuant to  
15 Paragraph (3) of Subsection C of this section:

16 (1) may be conducted by the superintendent, or  
17 the superintendent may authorize a representative to conduct  
18 the hearing; provided that the superintendent shall not  
19 authorize an examiner to conduct the hearing;

20 (2) shall be conducted as a non-adversarial,  
21 confidential investigatory proceeding, as necessary for the  
22 resolution of any inconsistency, discrepancy or disputed issue  
23 apparent upon the face of the examination report or raised by  
24 or as a result of the superintendent's review of work papers  
25 and conferences or by the written submission or rebuttal of the

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1 person; and

2 (3) shall proceed expeditiously with discovery  
3 by the person limited to those work papers of the examiner that  
4 tend to substantiate any assertions set forth in any written  
5 submission or rebuttal.

6 E. Relating to an investigatory hearing held  
7 pursuant to Paragraph (3) of Subsection C of this section, the  
8 superintendent or the superintendent's representative may issue  
9 a subpoena to compel the attendance of any witness or the  
10 production of any document that the superintendent or the  
11 superintendent's representative deems relevant to the  
12 investigation, whether the document is under the control of the  
13 office of superintendent of insurance, the person being  
14 examined or any other person. Documents produced shall be  
15 included in the record and testimony taken by the  
16 superintendent or the superintendent's representative shall be  
17 made under oath and preserved for the record. The  
18 superintendent or the superintendent's representative shall  
19 pose questions to any person subpoenaed. Thereafter, the  
20 person being examined and the office of superintendent of  
21 insurance may present testimony relevant to the investigation.  
22 Only the superintendent or the superintendent's representative  
23 shall conduct cross-examination. The person being examined and  
24 the office of superintendent of insurance shall be permitted to  
25 make closing statements and may be represented by counsel of

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1 the person's choice. Nothing in this section shall be  
2 construed to require the office of superintendent of insurance  
3 to disclose any information or record that would indicate or  
4 demonstrate the existence or content of any investigation or  
5 activity of a criminal justice agency.

6 F. Within twenty days of the conclusion of an  
7 investigatory hearing pursuant to Paragraph (3) of Subsection C  
8 of this section, the superintendent shall enter an order in  
9 accordance with Paragraph (1) of Subsection C of this section."

10 SECTION 3. Section 59A-4-12 NMSA 1978 (being Laws 1984,  
11 Chapter 127, Section 56) is amended to read:

12 "59A-4-12. EXAMINATION REPORT--INFORMATION TO MANAGEMENT  
13 OF DOMESTIC ENTITIES.--If the examination is of a domestic  
14 insurer or other person domiciled in New Mexico, when the  
15 examination report has been filed for public inspection the  
16 chief executive officer of the insurer or person shall cause to  
17 be delivered to each member of the examinee's board of  
18 directors or other similar governing body, a copy of the  
19 report, or summary thereof and of its recommendations approved  
20 by the superintendent [~~and the officer's certificate to the~~  
21 ~~effect that the report or summary has been so delivered shall~~  
22 ~~be deemed to constitute proof that the contents of the report~~  
23 ~~or summary are known to each such member]. Within thirty days  
24 of the issuance of the adopted report, the insurer shall file  
25 affidavits executed by each of its directors stating under oath~~

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1 that they have received a copy of the adopted report and  
2 related orders."

3 SECTION 4. Section 59A-5-30 NMSA 1978 (being Laws 1984,  
4 Chapter 127, Section 97) is amended to read:

5 "59A-5-30. PENALTIES FOR LATE, FALSE ANNUAL STATEMENTS.--

6 A. Any insurer failing, without just cause  
7 reasonably beyond control of the insurer, to file its annual  
8 statement as required in Section [~~96 of this article~~] 59A-5-29  
9 NMSA 1978 shall be required to pay a penalty of one hundred  
10 dollars (\$100) for each day's delay, but not to exceed five  
11 thousand dollars (\$5,000) in aggregate amount [~~to be recovered~~  
12 ~~in a civil action brought against the insurer in the name of~~  
13 ~~the State of New Mexico by the attorney general. Such~~]. This  
14 penalty may be in addition to any refusal to continue, or  
15 suspension or revocation of, the insurer's certificate of  
16 authority for such failure.

17 B. Any director, officer, agent or employee of any  
18 insurer who subscribes to, makes or concurs in making or  
19 publishing any annual or other statement of the insurer  
20 required by law, knowing the same to contain any material  
21 statement [~~which~~] that is false, shall upon conviction thereof  
22 be guilty of a misdemeanor and upon conviction shall be  
23 sentenced to a fine of not more than one thousand dollars  
24 (\$1,000), unless by its extent and nature the offense is  
25 punishable under other statutes as a felony."

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1           SECTION 5. A new section of the Risk-Based Capital Act is  
2 enacted to read:

3           "[NEW MATERIAL] SEVERABILITY.--If any part or application  
4 of the Risk-Based Capital Act is held invalid, the remainder or  
5 its application to other situations or persons shall not be  
6 affected."

7           SECTION 6. Section 59A-6-2 NMSA 1978 (being Laws 1984,  
8 Chapter 127, Section 102, as amended) is amended to read:

9           "59A-6-2. PREMIUM TAX--HEALTH INSURANCE PREMIUM SURTAX.--

10           A. The premium tax provided for in this section  
11 shall apply as to the following taxpayers:

12                       (1) each insurer authorized to transact  
13 insurance in New Mexico;

14                       (2) each insurer formerly authorized to  
15 transact insurance in New Mexico and receiving premiums on  
16 policies remaining in force in New Mexico, except that this  
17 provision shall not apply as to an insurer that withdrew from  
18 New Mexico prior to March 26, 1955;

19                       (3) each plan operating under provisions of  
20 Chapter 59A, Articles 46 through 49 NMSA 1978;

21                       (4) each property bondsman, as that person is  
22 defined in Section 59A-51-2 NMSA 1978, as to any consideration  
23 received as security or surety for a bail bond in connection  
24 with a judicial proceeding, which consideration shall be  
25 considered "gross premiums" for the purposes of this section;

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1 and

2 (5) each unauthorized insurer that has assumed  
3 a contract or policy of insurance directly or indirectly from  
4 an authorized or formerly authorized insurer and is receiving  
5 premiums on such policies remaining in force in New Mexico,  
6 except that this provision shall not apply if a ceding insurer  
7 continues to pay the tax provided in this section as to such  
8 policy or contract.

9 B. Each ~~[such]~~ taxpayer described in Subsection A  
10 of this section shall ~~[pay in accordance with this subsection]~~  
11 report in Schedule T and supporting schedules of its annual  
12 financial statement on insurance or contracts covering risk  
13 within the state during the preceding calendar year and pay a  
14 premium tax of three and three-thousandths percent of the gross  
15 premiums and membership and policy fees ~~[received or]~~ written  
16 by it, ~~[as reported in Schedule T and supporting schedules of~~  
17 ~~its annual financial statement on insurance or contracts~~  
18 ~~covering risks within this state during the preceding calendar~~  
19 ~~year]~~ less ~~[all return premiums, including]~~ dividends paid or  
20 credited to policyholders or contract holders ~~[and premiums~~  
21 ~~received for reinsurance on New Mexico risks]~~.

22 C. In addition to the premium tax imposed pursuant  
23 to Subsection B of this section, each taxpayer described in  
24 Subsection A of this section that transacts health insurance in  
25 New Mexico or is a plan described in Chapter 59A, Article 46 or

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1 47 NMSA 1978 shall pay a health insurance premium surtax of one  
2 percent of the [~~gross~~] direct health insurance premiums and  
3 membership and policy fees [~~received~~] written by it on hospital  
4 and medical expense incurred insurance or contracts; on  
5 nonprofit health care service plan contracts, excluding dental  
6 or vision only contracts; and on health maintenance  
7 organization subscriber contracts covering health risks within  
8 this state during the preceding calendar year, less all return  
9 health insurance premiums, including dividends paid or credited  
10 to health insurance policyholders or contract holders [~~and~~  
11 ~~health insurance premiums received for reinsurance on New~~  
12 ~~Mexico risks~~]. Except as provided in this section, all  
13 references in the Insurance Code to the premium tax shall  
14 include both the premium tax and the health insurance premium  
15 surtax.

16 D. For each calendar quarter, [~~an estimated~~] a  
17 report and payment of the premium tax and the health insurance  
18 premium surtax shall be made on April 15, July 15, October 15  
19 and the following January 15. The [~~estimated~~] payments shall  
20 be equal to [~~at least one-fourth of the payment made during the~~  
21 ~~previous calendar year or one-fifth of the actual payment due~~  
22 ~~for the current calendar year, whichever is greater~~] the  
23 current actual tax due for the calendar quarter preceding the  
24 premium tax due date. The premium tax paid for each calendar  
25 quarter shall be based on all premiums written during that

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1 calendar quarter and shall not include any New Mexico medical  
2 insurance pool credits. The New Mexico medical insurance pool  
3 credits shall be granted only on the final annual premium tax  
4 return and shall be granted only after the New Mexico medical  
5 insurance pool final assessments have been issued for the prior  
6 calendar year. The credits granted for the New Mexico medical  
7 insurance pool shall not exceed the annual premium tax due on  
8 the final annual premium tax return. The final adjustment for  
9 payments due for the prior year shall be made with the final  
10 premium tax return, which shall be filed on April 15 of each  
11 year, at which time all taxes for that year are due.

12 ~~[Dividends paid or credited to policyholders or contract~~  
13 ~~holders and refunds, savings, savings coupons and similar~~  
14 ~~returns or credits applied or credited to payment of premiums~~  
15 ~~for existing, new or additional insurance shall, in the amount~~  
16 ~~so used, constitute premiums subject to tax under this section~~  
17 ~~for the year in which so applied or credited.]~~

18 E. Exempted from the taxes imposed by this section  
19 are:

20 (1) premiums attributable to insurance or  
21 contracts purchased by the state or a political subdivision for  
22 the state's or political subdivision's active or retired  
23 employees; and

24 (2) payments received by a health maintenance  
25 organization from the federal secretary of health and human

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1 services pursuant to a contract issued under the provisions of  
2 42 U.S.C. Section 1395 mm(g)."

3 SECTION 7. Section 59A-6-2 NMSA 1978 (being Laws 1984,  
4 Chapter 127, Section 102, as amended by Section 6 of this act)  
5 is repealed and a new Section 59A-6-2 NMSA 1978 is enacted to  
6 read:

7 "59A-6-2. [NEW MATERIAL] PREMIUM TAX--HEALTH INSURANCE  
8 PREMIUM SURTAX.--

9 A. The premium tax provided for in this section  
10 shall apply as to the following taxpayers:

11 (1) each insurer authorized to transact  
12 insurance in New Mexico;

13 (2) each insurer formerly authorized to  
14 transact insurance in New Mexico and receiving premiums on  
15 policies remaining in force in New Mexico, except that this  
16 provision shall not apply as to an insurer that withdrew from  
17 New Mexico prior to March 26, 1955;

18 (3) each plan operating under provisions of  
19 Chapter 59A, Articles 46 through 49 NMSA 1978;

20 (4) each property bondsman, as that person is  
21 defined in Section 59A-51-2 NMSA 1978, as to any consideration  
22 received as security or surety for a bail bond in connection  
23 with a judicial proceeding, which consideration shall be  
24 considered "gross premiums" for the purposes of this section;  
25 and

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1                   (5) each unauthorized insurer that has assumed  
2 a contract or policy of insurance directly or indirectly from  
3 an authorized or formerly authorized insurer and is receiving  
4 premiums on such policies remaining in force in New Mexico,  
5 except that this provision shall not apply if a ceding insurer  
6 continues to pay the tax provided in this section as to such  
7 policy or contract.

8                   B. Each taxpayer described in Subsection A of this  
9 section shall report in Schedule T and supporting schedules of  
10 its annual financial statement on insurance or contracts  
11 covering risk within the state during the preceding calendar  
12 year and pay a premium tax of three and three-thousandths  
13 percent of the gross premiums and membership and policy fees  
14 written by it, less dividends paid or credited to policyholders  
15 or contract holders.

16                   C. In addition to the premium tax imposed pursuant  
17 to Subsection B of this section, each taxpayer described in  
18 Subsection A of this section that transacts health insurance in  
19 New Mexico or is a plan described in Chapter 59A, Article 46 or  
20 47 NMSA 1978 shall:

21                   (1) report the direct premiums written by it  
22 on health insurance or on health contracts covering risk within  
23 the state during the preceding calendar year for the following  
24 lines of business as defined by the instructions to the exhibit  
25 of premiums, enrollment and utilization of a health insurer's

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1 annual financial statement:

- 2 (a) comprehensive hospital and medical;
- 3 (b) medicare supplement; and
- 4 (c) medicaid, under Title 19 of the
- 5 federal Social Security Act; and

6 (2) pay a health insurance premium surtax of  
7 one percent of the direct health premiums for the lines of  
8 business listed in Paragraph (1) of this subsection that are  
9 written by it during the preceding calendar year. Except as  
10 provided in this section, all references in the Insurance Code  
11 to the premium tax shall include both the premium tax and the  
12 health insurance premium surtax.

13 D. For each calendar quarter, a report and payment  
14 of the premium tax and the health insurance premium surtax  
15 shall be made on April 15, July 15, October 15 and the  
16 following January 15. The payments shall be equal to the  
17 current actual tax due for the calendar quarter preceding the  
18 premium tax due date. The premium tax paid for each calendar  
19 quarter shall be based on all premiums written during that  
20 calendar quarter and shall not include any New Mexico medical  
21 insurance pool credits. The New Mexico medical insurance pool  
22 credits shall be granted only on the final annual premium tax  
23 return and shall be granted only after the New Mexico medical  
24 insurance pool final assessments have been issued for the prior  
25 calendar year. The credits granted for the New Mexico medical

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1 insurance pool shall not exceed the annual premium tax due on  
2 the final annual premium tax return. The final adjustment for  
3 payments due for the prior year shall be made with the final  
4 premium tax return, which shall be filed on April 15 of each  
5 year, at which time all taxes for that year are due.

6 E. Exempted from the taxes imposed by this section  
7 are:

8 (1) premiums attributable to insurance or  
9 contracts purchased by the state or a political subdivision for  
10 the state's or political subdivision's active or retired  
11 employees; and

12 (2) payments received by a health maintenance  
13 organization from the federal secretary of health and human  
14 services pursuant to a contract issued under the provisions of  
15 42 U.S.C. Section 1395 mm(g)."

16 SECTION 8. Section 59A-6-4 NMSA 1978 (being Laws 1984,  
17 Chapter 127, Section 104, as amended) is amended to read:

18 "59A-6-4. PENALTY FOR FAILURE TO REPORT OR PAY TAX OR  
19 FEES.--

20 A. Every insurer, bail bondsman, nonprofit health  
21 care plan, health maintenance organization, prepaid dental plan  
22 or prearranged funeral plan transacting business in New Mexico  
23 that fails to file when due any report for taxation, regardless  
24 of whether tax is due, or to pay when due any tax or fees as  
25 required in this article shall be liable to the state for the

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1 amount thereof [~~and for penalty of one thousand dollars~~  
2 ~~(\$1,000) for each month or part thereof it has failed to file~~  
3 ~~the report or pay the tax or fees]~~ after demand therefor.  
4 [~~Services of process in any action against a person to recover~~  
5 ~~the tax, fee or penalty may be made upon the superintendent as~~  
6 ~~attorney for service of process as provided in Section 59A-5-32~~  
7 ~~NMSA 1978.~~]

8 B. The penalty accrues the day after failure:

9 (1) to file a complete report upon the due  
10 date as required pursuant to Section 59A-6-2 NMSA 1978 and the  
11 New Mexico premium tax instructions promulgated by the office  
12 of superintendent of insurance;

13 (2) to pay in full a fee required pursuant to  
14 the Insurance Code; or

15 (3) to pay in full the amount owed as required  
16 pursuant to Section 59A-6-2 NMSA 1978 and the New Mexico  
17 premium tax instructions promulgated by the office of  
18 superintendent of insurance.

19 C. For failure to file a complete report or to pay  
20 in full a fee upon the due date pursuant to Paragraph (1) or  
21 (2) of Subsection B of this section, the penalty shall be one  
22 thousand dollars (\$1,000) for each thirty-day period in which  
23 the report remains unfiled or the full fee unpaid.

24 D. In a finding of a determination of underpayment  
25 pursuant to Paragraph (3) of Subsection B of this section, the

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1 penalty shall be:

2 (1) two hundred fifty dollars (\$250) for each  
3 thirty-day period in which the underpayment exists, accruing  
4 upon the date after the tax was due, when the amount of  
5 underpayment is less than two hundred fifty dollars (\$250);

6 (2) five hundred dollars (\$500) for each  
7 thirty-day period in which the underpayment exists, accruing  
8 upon the date after the tax was due, when the amount of  
9 underpayment is two hundred fifty dollars (\$250) or greater,  
10 but less than five hundred dollars (\$500); or

11 (3) one thousand dollars (\$1,000) for each  
12 thirty-day period in which the underpayment exists, accruing  
13 upon the date after the tax was due, when the amount of  
14 underpayment is five hundred dollars (\$500) or greater.

15 E. Service of process in any action against a  
16 person to recover the tax, fee or penalty may be made upon the  
17 superintendent as attorney for service of process, as provided  
18 in Section 59A-5-32 NMSA 1978.

19 F. As used in this section, "determination of  
20 underpayment" means a finding of underpayment made pursuant to  
21 an audit or review by the financial audit bureau of the office  
22 of superintendent of insurance, or other entity, that may occur  
23 at any time."

24 SECTION 9. Section 59A-6-5 NMSA 1978 (being Laws 1984,  
25 Chapter 127, Section 105, as amended) is amended to read:

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1 "59A-6-5. DISTRIBUTION OF ~~[DIVISION]~~ OFFICE OF  
2 SUPERINTENDENT OF INSURANCE COLLECTIONS.--

3 A. All money received by the ~~[division]~~ office of  
4 superintendent of insurance for fees, licenses, penalties and  
5 taxes shall be paid daily by the superintendent to the state  
6 treasurer and credited to the "insurance department suspense  
7 fund" except as provided by:

- 8 (1) the Law Enforcement Protection Fund Act;  
9 and  
10 (2) Section 59A-6-1.1 NMSA 1978.

11 B. The superintendent may authorize refund of money  
12 ~~[erroneously]~~ paid ~~[as]~~ in excess of liability for fees,  
13 licenses, penalties or taxes from the insurance department  
14 suspense fund under request for refund made within three years  
15 after the ~~[erroneous]~~ excess payment. In the case of premium  
16 taxes ~~[erroneously]~~ paid or overpaid in accordance with law,  
17 refund may also be requested as a credit against premium taxes  
18 due in any annual or quarterly premium tax return filed within  
19 three years of the ~~[erroneous or]~~ excess payment.

20 C. If required by a compact to which New Mexico has  
21 joined pursuant to law, the superintendent shall authorize the  
22 allocation of premiums collected pursuant to Section 59A-14-12  
23 NMSA 1978 to other states that have joined the compact pursuant  
24 to an allocation formula agreed upon by the compacting states.

25 D. The "insurance operations fund" is created in

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1 the state treasury. The fund shall consist of the  
2 distributions made to it pursuant to Subsection E of this  
3 section. The legislature shall annually appropriate from the  
4 fund to the [~~division~~] office of superintendent of insurance  
5 those amounts necessary for the [~~division~~] office of  
6 superintendent of insurance to carry out its responsibilities  
7 pursuant to the Insurance Code and other laws. Any balance in  
8 the fund at the end of a fiscal year greater than one-half of  
9 that fiscal year's appropriation shall revert to the general  
10 fund.

11 E. At the end of every month, after applicable  
12 refunds are made pursuant to Subsection B of this section and  
13 after any allocations have been made pursuant to Subsection C  
14 of this section, the treasurer shall make the following  
15 transfers from the balance remaining in the insurance  
16 department suspense fund:

17 (1) to the "fire protection fund", that part  
18 of the balance derived from property and vehicle insurance  
19 business;

20 (2) to the insurance operations fund, that  
21 part of the balance derived from the fees imposed pursuant to  
22 Subsections A and E of Section 59A-6-1 NMSA 1978 other than  
23 fees derived from property and vehicle insurance business; and

24 (3) to the general fund, the balance remaining  
25 in the insurance department suspense fund derived from all

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1 other kinds of insurance business."

2 SECTION 10. Section 59A-16-21 NMSA 1978 (being Laws 1984,  
3 Chapter 127, Section 287, as amended) is amended to read:

4 "59A-16-21. PAYMENT OF CLAIM BY CHECK, [~~OR~~] DRAFT OR  
5 ELECTRONIC TRANSFER--FAILURE TO PAY--INTEREST.--

6 A. An insurer shall pay claims arising under its  
7 policies with checks or drafts, [~~which~~] or by electronic  
8 transfer if a claimant requests, that are promptly paid.  
9 Without amending other statutes dealing with checks, [~~and~~]  
10 drafts and electronic transfers of funds, a resident of New  
11 Mexico is granted a cause of action for ten percent of the  
12 amount of any check, [~~or~~] draft or electronic transfer of funds  
13 that is not paid or lawfully rejected within ten days of  
14 forwarding by a New Mexico financial institution, but in no  
15 case to be less than five hundred dollars (\$500) plus costs of  
16 suit and [~~attorneys'~~] attorney fees. The insurer shall not be  
17 required to pay such civil damages for delay if it proves that  
18 the delay in processing and payment was caused by a financial  
19 institution or postal or delivery service and the check, [~~or~~]  
20 draft or electronic transfer of funds was paid or lawfully  
21 rejected within forty-eight hours of actual receipt of the  
22 draft, [~~or~~] check or electronic transfer of funds by the person  
23 on whom drawn.

24 B. Notwithstanding any provision of the Insurance  
25 Code, any insurer issuing any policy, certificate or contract

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1 of insurance, surety, guaranty or indemnity of any kind or  
2 nature [~~which~~] that fails for a period of forty-five days,  
3 after required proof of loss has been furnished, to pay to the  
4 person entitled the amount justly due shall be liable for the  
5 amount due and unpaid with interest on that amount at the rate  
6 of one and one-half times the prime lending rate, as determined  
7 by the superintendent, for New Mexico banks per year during the  
8 period the claim is unpaid.

9 C. Subsection B of this section shall not apply to  
10 any claims in arbitration or litigation."

11 SECTION 11. Section 59A-16C-14 NMSA 1978 (being Laws  
12 1998, Chapter 115, Section 14, as amended) is amended to read:

13 "59A-16C-14. INSURANCE FRAUD FUND CREATED--  
14 APPROPRIATION.--

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

23 B. To implement the provisions of the Insurance Fraud  
24 Act, the superintendent shall determine a rate of assessment  
25 and collect a fee from authorized insurers in an amount not

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1 less than two hundred dollars (\$200) and not exceeding one-  
2 tenth of one percent of the correctly reported direct written  
3 premiums on policies written in New Mexico by the authorized  
4 insurers. The fee shall be due each October 1. The failure of  
5 an insurer to pay this fee when due shall subject the insurer  
6 to a penalty of one thousand dollars (\$1,000) per month or part  
7 thereof, after notice and demand therefor. The superintendent,  
8 after taking into account unexpended money produced by  
9 collection of the fee, shall adjust the rate of assessment each  
10 year to produce the amount of money that ~~he~~ the  
11 superintendent estimates will be necessary to pay expenses  
12 incurred by the superintendent in carrying out the provisions  
13 of the Insurance Fraud Act. The assessment for a title  
14 insurer, as defined in Section 59A-30-3 NMSA 1978, shall be  
15 determined by the superintendent at the annual hearing  
16 conducted pursuant to Section 59A-30-8 NMSA 1978.

17 C. In calculating the direct written premiums for an  
18 insurer pursuant to the provisions of this section, all direct  
19 written premiums for workers' compensation insurance shall be  
20 excluded from the calculation.

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

24 SECTION 12. Section 59A-22-1 NMSA 1978 (being Laws 1984,  
25 Chapter 127, Section 422) is amended to read:

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1 "59A-22-1. SCOPE OF ARTICLE.--~~[This article]~~ Chapter 59A,  
2 Article 22 NMSA 1978 applies generally to policies of  
3 individual health insurance, including student policies.

4 Nothing in ~~[this]~~ that article shall apply to or affect:

5 A. any policy of ~~[workmen's]~~ workers' compensation  
6 insurance or any policy of liability insurance with or without  
7 supplementary expense coverage therein; ~~[or]~~

8 B. life insurance, endowment or annuity contracts or  
9 contracts supplemental thereto ~~[which]~~ that contain only such  
10 provisions relating to health insurance as:

11 (1) provide additional benefits in case of death  
12 by accident; and

13 (2) operate to safeguard such contracts against  
14 lapse or to give a special surrender value or special benefit  
15 or annuity in event the insured or annuitant becomes totally  
16 and permanently disabled, as defined by the contract or  
17 supplemental contract;

18 C. group or blanket health insurance, except as  
19 stated in Chapter 59A, Article 23 ~~[of the Insurance Code]~~ NMSA  
20 1978; or

21 D. reinsurance."

22 SECTION 13. Section 59A-23-2 NMSA 1978 (being Laws 1984,  
23 Chapter 127, Section 461) is amended to read:

24 "59A-23-2. BLANKET HEALTH INSURANCE.--

25 A. Blanket health insurance is ~~[hereby]~~ declared to

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1 be that form of health insurance covering special groups of not  
2 less than ten [~~(10)~~] persons as enumerated in one of the  
3 following paragraphs [~~(1) to (5) inclusive~~]:

4 (1) under a policy or contract issued to [~~any~~] a  
5 common carrier, which shall be deemed the policyholder,  
6 covering a group defined as all persons who may become  
7 passengers on [~~such~~] the common carrier;

8 (2) under a policy or contract issued to an  
9 employer, who shall be deemed the policyholder, covering [~~any~~]  
10 a group of employees defined by reference to exceptional  
11 hazards incident to [~~such~~] employment;

12 [~~(3) under a policy or contract issued to a~~  
13 ~~college, school or other institution of learning or to the head~~  
14 ~~or principal thereof, who or which shall be deemed the~~  
15 ~~policyholder, covering students and teachers;~~

16 [~~(4)~~] (3) under a policy or contract issued in  
17 the name of [~~any~~] a volunteer fire department or first aid or  
18 other such volunteer group, which shall be deemed the  
19 policyholder, covering all of the members of [~~such~~] the  
20 department or group; or

21 [~~(5)~~] (4) under a policy or contract issued to  
22 any other substantially similar group [~~which~~] that, in the  
23 discretion of the superintendent, may be subject to the  
24 issuance of a blanket health policy or contract.

25 B. An individual application shall not be required

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1 from a person covered under a blanket sickness or accident  
2 policy or contract.

3 C. All benefits under any blanket sickness and  
4 accident policy shall be payable to the person insured or [~~his~~]  
5 the person's agent, or to [~~his~~] the person's designated  
6 beneficiary or beneficiaries, or to [~~his~~] the person's estate,  
7 except that if the person insured [~~be~~] is a minor, such  
8 benefits may be made payable to [~~his~~] the minor's parent,  
9 guardian or other person actually supporting [~~him~~] the minor.

10 D. A blanket sickness or accident policy or contract  
11 issued to a college, school or other institution of learning or  
12 to the head or principal thereof shall not be identified or  
13 sold as a student health plan."

14 SECTION 14. Section 59A-23B-5 NMSA 1978 (being Laws 1991,  
15 Chapter 111, Section 5) is amended to read:

16 "59A-23B-5. POLICY OR PLAN DISCLOSURE REQUIREMENTS.--

17 A. Upon offering coverage under a policy or plan for  
18 any individual, family or group member, an insurer, fraternal  
19 benefit society, health maintenance organization or nonprofit  
20 healthcare plan shall provide the individual, family or group  
21 member with a written disclosure statement containing at least  
22 the following:

23 (1) a general explanation of those mandated  
24 benefits and providers not covered by the policy or plan;

25 (2) an explanation of the managed care and cost

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1 control features of the policy or plan, along with all  
2 appropriate mailing addresses and telephone numbers to be  
3 utilized by the insured or enrollees seeking information or  
4 authorization; and

5 (3) an explanation of the primary and preventive  
6 care features of the policy or plan.

7 B. Any disclosure statement provided pursuant to  
8 Subsection A of this section shall be written in a clear and  
9 understandable form and format and shall be separate from the  
10 insurance policy or certificate or other evidence of coverage  
11 provided to the individual, family and group member.

12 C. Before any insurer, fraternal benefit society,  
13 health maintenance organization or nonprofit healthcare plan  
14 issues a policy or plan contract, the insurer, fraternal  
15 benefit society, health maintenance organization or nonprofit  
16 healthcare plan shall obtain from the prospective policyholder,  
17 contract holder or member a signed written statement in which  
18 the prospective policyholder, contract holder or member:

19 (1) certifies as to the eligibility of the  
20 individual, family or group for coverage under the policy or  
21 plan;

22 (2) acknowledges the limited nature of the  
23 coverage, including the managed care and cost control features  
24 of the policy or plan;

25 (3) acknowledges that if misrepresentations are

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1 made regarding eligibility for coverage under a policy or plan,  
2 the person making such misrepresentations shall forfeit  
3 coverage provided by the policy or plan if the insurer,  
4 fraternal benefit society, health maintenance organization or  
5 nonprofit healthcare plan relied upon the misrepresentation to  
6 its detriment; and

7 (4) acknowledges that the prospective  
8 policyholder, contract holder or member had, at the time of  
9 application for the policy or plan, been offered the  
10 opportunity to purchase coverage that included all applicable  
11 mandated benefits and the prospective policyholder, contract  
12 holder or member rejected such coverage.

13 D. A copy of the written statement required by  
14 Subsection C of this section shall be provided to the  
15 prospective policyholder, contract holder or member no later  
16 than at the time of delivery of the policy or plan and the  
17 original signed written statement shall be retained in the  
18 files of the insurer, fraternal benefit society, health  
19 maintenance organization or nonprofit healthcare plan while the  
20 policy or plan remains in effect or for three years, whichever  
21 is less.

22 E. Any material statement made by an applicant for  
23 coverage under a policy or plan that falsely certifies to the  
24 applicant's eligibility for coverage shall serve as the basis  
25 for termination of coverage under the policy or plan if the

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1 insurer, fraternal benefit society, health maintenance  
2 organization or nonprofit healthcare plan detrimentally relied  
3 upon the misrepresentation.

4 F. All printed, radio or television communication  
5 intended to be used for marketing a policy or plan in the state  
6 and the disclosures required by Subsection A of this section  
7 shall be submitted for review and approval by the  
8 superintendent of insurance prior to use. The superintendent  
9 of insurance shall complete the review within [~~thirty~~] sixty  
10 days or else the materials submitted shall be deemed approved  
11 for use."

12 SECTION 15. Section 59A-25-8 NMSA 1978 (being Laws 1984,  
13 Chapter 127, Section 479) is amended to read:

14 "59A-25-8. FILING, APPROVAL AND WITHDRAWAL OF FORMS.--

15 A. All policies, certificates of insurance, notice of  
16 proposed insurance, applications for insurance, endorsements  
17 and riders delivered or issued for delivery in this state and  
18 the schedules of premium rates pertaining [~~thereto~~] to them  
19 shall be filed by the insurer with the superintendent.

20 B. The superintendent shall, within [~~thirty (30)~~]  
21 sixty days after the filing of any such policies, certificates  
22 of insurance, notice of proposed insurance, applications for  
23 insurance, endorsements and riders, disapprove any [~~such~~] form  
24 if the benefits provided therein are not reasonable in relation  
25 to the premium charge or if it contains provisions [~~which~~] that

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1 are unjust, unfair, inequitable, misleading, deceptive or  
2 encourage misrepresentation of the coverage or that are  
3 contrary to [~~any~~] a provision of the Insurance Code or of [~~any~~]  
4 a rule or regulation promulgated thereunder.

5 C. If the superintendent notifies the insurer that  
6 the form is disapproved, it is unlawful thereafter for the  
7 insurer to issue or use [~~such~~] the form. In [~~such~~] the notice,  
8 the superintendent shall specify the reason for disapproval and  
9 state that a hearing will be granted within twenty [~~(20)~~] days  
10 after request in writing by the insurer. No such policy,  
11 certificate of insurance, notice of proposed insurance, nor any  
12 application, endorsement or rider shall be issued or used until  
13 the expiration of thirty [~~(30)~~] days after it has been [~~so~~]  
14 filed, unless the superintendent gives [~~his~~] prior written  
15 approval thereto.

16 D. The superintendent may, at any time after a  
17 hearing held not less than twenty [~~(20)~~] days after written  
18 notice to the insurer, withdraw [~~his~~] approval of [~~any such~~] a  
19 form on any ground set forth in Subsection B [~~above~~] of this  
20 section. The written notice of hearing shall state the reason  
21 for the proposed withdrawal.

22 E. The insurer shall not issue [~~such~~] the forms or  
23 use them after the effective date of [~~such~~] withdrawal.

24 F. If a group policy of credit life insurance or  
25 credit health insurance has been or is delivered in another

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1 state, the insurer shall be required to file only the group  
2 certificate and notice of proposed insurance delivered or  
3 issued for delivery in this state as specified in Subsections B  
4 and D of Section [~~478 of this article~~] 59A-25-7 NMSA 1978, and  
5 [~~such~~] the forms shall be approved by the superintendent if  
6 they conform with the requirements specified in such  
7 subsections and if the schedules of premium rates applicable to  
8 the insurance evidenced by [~~such~~] the certificate or notice are  
9 not in excess of the insurer's schedules of premium rates filed  
10 with the superintendent."

11 SECTION 16. Section 59A-57-3 NMSA 1978 (being Laws 1998,  
12 Chapter 107, Section 3) is amended to read:

13 "59A-57-3. DEFINITIONS.--As used in the Patient  
14 Protection Act:

15 A. "continuous quality improvement" means an ongoing  
16 and systematic effort to measure, evaluate and improve a  
17 managed health care plan's process in order to improve  
18 continually the quality of health care services provided to  
19 enrollees;

20 B. "covered person", "enrollee", "patient" or  
21 "consumer" means an individual who is entitled to receive  
22 health care benefits provided by a managed health care plan;

23 C. "department" means the office of superintendent of  
24 insurance [~~department~~];

25 D. "emergency care" means health care procedures,

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1 treatments or services delivered to a covered person after the  
2 sudden onset of what reasonably appears to be a medical  
3 condition that manifests itself by symptoms of sufficient  
4 severity, including severe pain, that the absence of immediate  
5 medical attention could be reasonably expected by a reasonable  
6 layperson to result in jeopardy to a person's health, serious  
7 impairment of bodily functions, serious dysfunction of a bodily  
8 organ or part or disfigurement to a person;

9 E. "health care facility" means an institution  
10 providing health care services, including a hospital or other  
11 licensed inpatient center; an ambulatory surgical or treatment  
12 center; a skilled nursing center; a residential treatment  
13 center; a home health agency; a diagnostic, laboratory or  
14 imaging center; and a rehabilitation or other therapeutic  
15 health setting;

16 F. "health care insurer" means a person that has a  
17 valid certificate of authority in good standing under the  
18 Insurance Code to act as an insurer, health maintenance  
19 organization, nonprofit health care plan or prepaid dental  
20 plan;

21 G. "health care professional" means a physician or  
22 other health care practitioner, including a pharmacist, who is  
23 licensed, certified or otherwise authorized by the state to  
24 provide health care services consistent with state law;

25 H. "health care provider" or "provider" means a

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1 person that is licensed or otherwise authorized by the state to  
2 furnish health care services and includes health care  
3 professionals and health care facilities;

4 I. "health care services" includes, to the extent  
5 offered by the plan, physical health or community-based mental  
6 health or developmental disability services, including services  
7 for developmental delay;

8 J. "managed health care plan" or "plan" means a  
9 health care insurer or a provider service network when offering  
10 a benefit that either requires a covered person to use, or  
11 creates incentives, including financial incentives, for a  
12 covered person to use, health care providers managed, owned,  
13 under contract with or employed by the health care insurer or  
14 provider service network. "Managed health care plan" or "plan"  
15 does not include a health care insurer or provider service  
16 network offering a traditional fee-for-service indemnity  
17 benefit or a benefit that covers only short-term travel,  
18 accident-only, limited benefit [~~student health plan~~] or  
19 specified disease policies;

20 K. "person" means an individual or other legal  
21 entity;

22 L. "point-of-service plan" or "open plan" means a  
23 managed health care plan that allows enrollees to use health  
24 care providers other than providers under direct contract with  
25 or employed by the plan, even if the plan provides incentives,

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1 including financial incentives, for covered persons to use the  
2 plan's designated participating providers;

3 M. "provider service network" means two or more  
4 health care providers affiliated for the purpose of providing  
5 health care services to covered persons on a capitated or  
6 similar prepaid flat-rate basis that hold a certificate of  
7 authority pursuant to the Provider Service Network Act;

8 N. "superintendent" means the superintendent of  
9 insurance; and

10 O. "utilization review" means a system for reviewing  
11 the appropriate and efficient allocation of health care  
12 services given or proposed to be given to a patient or group of  
13 patients."

14 SECTION 17. DELAYED EFFECTIVE DATE.--The effective date  
15 of the provisions of Section 7 of this act is January 1, 2018.