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HOUSE BILL 942

43RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1997

INTRODUCED BY

MIMI STEWART

FOR THE COURTS, CORRECTIONS AND CRIMINAL JUSTICE COMMITTEE

AN ACT

RELATING TO INSURANCE; ENACTING THE INSURANCE FRAUD ACT;
CREATING AN INSURANCE FRAUD BUREAU WITHIN THE DEPARTMENT OF
INSURANCE; MAKING AN APPROPRIATION; REPEALING AND ENACTING
SECTIONS OF THE NMSA 1978.

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

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

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

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

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

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

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

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

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

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

17 A. "bureau" means the insurance fraud bureau;
18 B. "fund" means the insurance fraud fund;
19 C. "insurance fraud" means any act or practice in
20 connection with an insurance transaction that constitutes a
21 crime under the Criminal Code or the Insurance Code; and

22 D. "insurance transaction" means any act or practice
23 relating to insurance and includes complying with the Insurance
24 Code or any rule or regulation adopted under its authority. "

25 Section 4. A new section of the New Mexico Insurance Code

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Underscored material = new
[bracketed material] = delete

1 is enacted to read:

2 " [NEW MATERIAL] INSURANCE FRAUD BUREAU-- CREATION. -- There
3 is created within the department of insurance an "insurance
4 fraud bureau". The purpose of the bureau includes investigating
5 suspected insurance fraud. The superintendent shall appoint the
6 full-time supervisory and investigative personnel of the bureau,
7 who shall be qualified by training and experience to perform the
8 duties of their positions. The superintendent shall also
9 appoint clerical and other staff necessary for the bureau to
10 carry out its duties and responsibilities under the Insurance
11 Fraud Act. "

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

14 " [NEW MATERIAL] INSURANCE FRAUD BUREAU-- DUTIES. -- The
15 bureau shall:

16 A. initiate inquiries and conduct investigations
17 when the bureau has reason to believe that insurance fraud may
18 have been or is being committed;

19 B. respond to notifications or complaints of
20 suspected insurance fraud generated by state and local police,
21 other law enforcement authorities and governmental units,
22 including the federal government and any other person;

23 C. review notices and reports of insurance fraud
24 submitted by authorized insurers, their employees, agents or
25 producers and select those incidents of alleged fraud that, in

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Underscored material = new
[bracketed material] = delete

1 its judgment, require further investigation and conduct the
2 investigation;

3 D. conduct independent investigations and
4 examinations of insurance transactions and alleged insurance
5 fraud, conduct studies to determine the extent of insurance
6 fraud, deceit or intentional misrepresentation of any kind in
7 the insurance process and publish information and reports on its
8 examinations and studies;

9 E. report incidents of alleged insurance fraud
10 supported by its investigations and examinations to the
11 appropriate district attorney and any other appropriate law
12 enforcement, administrative, regulatory or licensing agency and
13 assemble evidence, prepare charges and otherwise assist any
14 prosecutorial authority having jurisdiction over insurance fraud
15 enforcement;

16 F. assist any official or agency of this state, any
17 other state or the federal government that requests assistance
18 in investigating insurance fraud;

19 G. maintain records and information in order to
20 produce an annual report of its activities as may be prescribed
21 by the superintendent; and

22 H. conduct, in cooperation with the attorney general
23 and the department of public safety, public outreach and
24 awareness programs on the costs of insurance fraud to the public
25 and how members of the public can assist themselves, the bureau

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Underscored material = new
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1 and law enforcement officials in preventing and prosecuting
2 insurance fraud."

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

5 "[NEW MATERIAL] NOTICE AND COOPERATION REQUIRED--TOLLING
6 PERIOD.--

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

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

25 C. If an insurer has a reasonable belief or

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Underscored material = new
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1 probable cause to believe that an insurance fraud has been
2 committed, and has properly notified the bureau of its
3 suspicion, that notification shall toll any applicable time
4 period in any unfair claims proceeding based on the alleged
5 fraud until thirty days after determination by the bureau and
6 notice to the insurer that the bureau will not recommend action
7 on the claim.

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

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

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

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

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

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Underscored material = new
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1 acts when the report or information is provided to:

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

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

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

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

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

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

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

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

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

15 "ANY PERSON WHO KNOWINGLY PRESENTS A FALSE OR FRAUDULENT
16 CLAIM FOR PAYMENT OF A LOSS OR BENEFIT OR KNOWINGLY PRESENTS
17 FALSE INFORMATION IN AN APPLICATION FOR INSURANCE IS GUILTY OF A
18 CRIME AND MAY BE SUBJECT TO CIVIL FINES AND CRIMINAL PENALTIES. "
19 The failure to include that statement shall not constitute a
20 defense against prosecution for commission of insurance fraud."

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

23 "[NEW MATERIAL] REPORT OF CONVICTION. -- If any person
24 licensed by any agency of any state or the federal government,
25 or holding credentials from any professional organization, is

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Underscored material = new
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1 convicted of insurance fraud in this state, the bureau shall
2 notify the appropriate licensing or credentialing authority of
3 the judgment for appropriate disciplinary action. "

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

6 " [NEW MATERIAL] INSURER ANTI - FRAUD INITIATIVES - - SPECIAL
7 INVESTIGATIVE UNITS. - -

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

17 B. Each insurer's anti-fraud plan shall outline, at
18 a minimum, specific procedures, appropriate to the type of
19 insurance the insurer writes in this state, to:

20 (1) prevent, detect and investigate all forms
21 of insurance fraud;

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

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

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1 (4) report insurance fraud to appropriate law
2 enforcement and regulatory authorities; and

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

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

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

21 E. This section confers no private right of action. "

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

24 " [NEW MATERIAL] INSURANCE FRAUD BUREAU--INVESTIGATORS. --
25 The bureau's investigators shall be peace officers pursuant to

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1 the provisions of Chapter 29, Article 1 NMSA 1978. "

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

4 " [NEW MATERIAL] ATTORNEY GENERAL DUTIES. -- When so
5 requested by the superintendent, the attorney general shall
6 assign one or more full-time assistant attorneys general to
7 assist the bureau in carrying out its duties, including
8 providing legal advice and prosecuting offenders. The actual
9 costs associated with the assignment of assistant attorneys
10 general to the bureau shall be paid out of the fund. "

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

13 " [NEW MATERIAL] INSURANCE FRAUD POLICY ADVISORY GROUP. --
14 The superintendent may create an insurance fraud policy advisory
15 group consisting of representatives of authorized insurers in
16 this state, consumers of insurance products not otherwise
17 connected with the insurance industry and other appropriate
18 persons. The superintendent shall appoint the members and shall
19 provide by regulation for the creation, membership, governance,
20 duties and termination of any member. Any advisory group so
21 created shall advise the superintendent with respect to the
22 implementation of and other matters related to the Insurance
23 Fraud Act when so requested by the superintendent. "

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

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1 " [NEW MATERIAL] INSURANCE FRAUD FUND CREATED--
2 APPROPRIATION. --

3 A. There is hereby created an "insurance fraud fund"
4 in the state treasury. All fees collected under the provisions
5 of the Insurance Fraud Act shall be deposited in the fund and
6 are appropriated to the superintendent for use in paying the
7 expenses of the bureau and the personnel costs of the attorney
8 general and other agencies providing services to the bureau.
9 Interest on the fund shall be credited to the fund. The fund is
10 a continuing, non-reverting fund.

11 B. To implement the provisions of the Insurance
12 Fraud Act, upon the effective date of the Insurance Fraud Act,
13 and in May of each subsequent year, the superintendent shall
14 assess each authorized insurer an annual fee in accordance with
15 the following schedule or such other similar schedule as the
16 superintendent may adopt in order to adequately fund the
17 operations of the bureau:

18 (1) two hundred dollars (\$200) for an insurer
19 with reported gross direct written premiums in New Mexico in the
20 preceding calendar year of one million dollars (\$1,000,000) or
21 less;

22 (2) four hundred dollars (\$400) for an insurer
23 with reported gross direct written premiums in New Mexico in the
24 preceding calendar year of two million five hundred thousand
25 dollars (\$2,500,000) or less but more than one million dollars

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1 (\$1, 000, 000);

2 (3) seven hundred dollars (\$700) for an insurer
3 with reported gross direct written premiums in New Mexico in the
4 preceding calendar year of five million dollars (\$5, 000, 000) or
5 less but more than two million five hundred thousand dollars
6 (\$2, 500, 000);

7 (4) one thousand five hundred dollars (\$1, 500)
8 for an insurer with reported gross direct written premiums in
9 New Mexico in the preceding calendar year of ten million dollars
10 (\$10, 000, 000) or less but more than five million dollars
11 (\$5, 000, 000);

12 (5) four thousand dollars (\$4, 000) for an
13 insurer with reported gross direct written premiums in New
14 Mexico in the preceding calendar year of fifty million dollars
15 (\$50, 000, 000) or less but more than ten million dollars
16 (\$10, 000, 000); and

17 (6) seven thousand dollars (\$7, 000) for an
18 insurer with reported gross direct written premiums in New
19 Mexico in the preceding calendar year of more than fifty million
20 dollars (\$50, 000, 000).

21 C. In no event shall the aggregate annual assessment
22 exceed one-half of one percent of the preceding annual aggregate
23 gross direct written premiums in New Mexico of all authorized
24 insurers.

25 D. The fees required by this section are in addition

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1 to all other taxes and fees now imposed or that may be
2 subsequently imposed. "

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

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

6 A. No authority granted the superintendent under the
7 Insurance Fraud Act shall be construed to abrogate or interfere
8 with the authority of the safety and fraud division of the
9 workers' compensation administration under the Workers'
10 Compensation Act or of the medicaid fraud unit under the
11 Medicaid Fraud Act.

12 B. Nothing in the Insurance Fraud Act shall:

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

16 (2) prevent or prohibit a person from
17 voluntarily disclosing any information concerning insurance
18 fraud to any law enforcement agency other than the bureau;

19 (3) limit any of the powers granted elsewhere
20 by the laws of this state to the superintendent to investigate
21 alleged violations of law and take appropriate action; or

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

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

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Underscored material = new
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1 " [NEW MATERIAL] REGULATIONS. -- The superintendent may
2 promulgate regulations deemed necessary or appropriate by the
3 superintendent for the administration of the Insurance Fraud
4 Act. "

5 Section 18. APPROPRIATION. --

6 A. Five hundred sixty thousand dollars (\$560,000) is
7 appropriated from the insurance fraud fund to the superintendent
8 of insurance for expenditure in fiscal year 1998 for the purpose
9 of carrying out the provisions of the Insurance Fraud Act. Any
10 unexpended or unencumbered balance remaining at the end of
11 fiscal year 1998 shall not revert to the general fund.

12 B. The superintendent of insurance is authorized to
13 employ five additional full-time permanent employees to carry
14 out the purposes of the Insurance Fraud Act; the attorney
15 general is authorized to employ one additional full-time
16 permanent assistant attorney general to carry out the purposes
17 of the Insurance Fraud Act.

18 Section 19. REPEAL. -- Sections 59A-16A-1 through 59A-16A-4
19 NMSA 1978 (being Laws 1991, Chapter 86, Sections 1 through 4)
20 are repealed.

**State of New Mexico
House of Representatives**

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 5, 1997

Mr. Speaker:

Your JUDICIARY COMMITTEE, to whom has been referred

HOUSE BILL 942

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

1. On page 13, line 22, after "exceed" strike "one-
half" and insert in lieu thereof "five-hundredths".,

and thence referred to the APPROPRIATIONS AND FINANCE
COMMITTEE.

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Respectfully submitted,

Thomas P. Foy, Chairman

Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

Excused: Mallory, Rios, Sanchez

Absent: None

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Underscored material = new
[bracketed material] = delete

State of New Mexico House of Representatives

FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 8, 1997

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to
whom has been referred

HOUSE BILL 942, as amended

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

1. On page 12, line 6, strike "are appropriated" and
insert in lieu thereof "subject to appropriation by law".

Respectfully submitted,

Max Coll, Chairman

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 14 For 1 Against

Yes: 14

No: Bird

Excused: Buffett, Wallace

Absent: None

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Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE

FIRST SESSION

March 14, 1997

HOUSE FLOOR AMENDMENT number ___1___ to HOUSE BILL 942, as amended

Amendment sponsored by Representative Mimi Stewart

1. On page 11, line 1, before the period insert ", except the bureau's investigators shall not be authorized to carry firearms".

2. On page 13, between lines 24 and 25, insert the following new subsection:

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

3. Reletter the succeeding subsection accordingly.

4. On page 15, line 6, strike "Five hundred sixty thousand dollars (\$560,000)" and insert in lieu thereof "Five hundred three thousand four hundred nineteen dollars (\$503,419)".

5. On page 15, line 13, strike "five" and insert in lieu thereof

FORTY-THIRD LEGISLATURE
FIRST SESSION

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HF/HB 942, aa

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"four".

Mimi Stewart

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

Date _____

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[bracketed material] = delete

FORTY-THIRD LEGISLATURE
FIRST SESSION

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 18, 1997

Mr. President:

Your CORPORATIONS & TRANSPORTATION COMMITTEE, to whom
has been referred

HOUSE BILL 942, as amended

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

Respectfully submitted,

Roman M. Maes, III, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Underscored material = new
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FORTY-THIRD LEGISLATURE
FIRST SESSION

HF/HB 942, aa

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Date _____

The roll call vote was 7 For 0 Against

Yes: 7

No: 0

Excused: Fidel, Howes, Robinson

Absent: None

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Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
FIRST SESSION

HF/HB 942, aa

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FORTY-THIRD LEGISLATURE
FIRST SESSION, 1997

March 21, 1997

Mr. President:

Your FINANCE COMMITTEE, to whom has been referred

HOUSE BILL 942, as amended

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

Respectfully submitted,

Ben D. Altamirano, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Underscored material = new
[bracketed material] = delete

FORTY-THIRD LEGISLATURE
FIRST SESSION

HF/HB 942, aa

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Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: None

Excused: Aragon, Eisenstadt, Ingle, Lyons, McKibben

Absent: None

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Underscored material = new
[bracketed material] = delete