

AN ACT

RELATING TO INSURANCE; AMENDING CERTAIN SECTIONS OF THE NEW MEXICO INSURANCE CODE.

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

Section 1. Section 59A-5-21 NMSA 1978 (being Laws 1984, Chapter 127, Section 88) is amended to read:

"59A-5-21. APPLICATION FOR CERTIFICATE OF AUTHORITY.--

A. To apply for an original certificate of authority in this state the insurer shall file with the superintendent its written application therefor on forms as prescribed and furnished by the superintendent, accompanied by the applicable fees as specified or referred to in Section 59A-6-1 NMSA 1978, stating under the oath of the president or vice president or other chief officer and the secretary of the insurer, or of the attorney-in-fact (if a reciprocal insurer or Lloyds insurer), the insurer's name, location of its home office, or principal office, in the United States (if an alien insurer), the kinds of insurance to be transacted, date of organization or incorporation, form of organization, state or country of domicile, and such additional or other information as the superintendent may reasonably require, together with the following documents:

(1) if a corporation, a copy of its charter or certificate or articles of incorporation, together with all amendments thereto, or as restated and amended under the laws of its state or country of domicile, currently certified by the public officer with whom the originals are on file in such state or country;

(2) if a domestic incorporated insurer of a

mutual insurer, a copy of its bylaws, certified by its corporate secretary;

(3) if a reciprocal insurer or Lloyds insurer, a copy of the power of attorney of its attorney-in-fact, certified by the attorney-in-fact; and if a domestic reciprocal insurer or a Lloyds insurer, additional documentation showing that it has been properly formed and is lawfully existing under applicable laws;

(4) a complete copy of its financial statement as of not earlier than the December 31 next preceding, in form as customarily used in the United States by like insurers, sworn to by at least two executive officers of the insurer or certified by the public insurance supervisory officer of the insurer's state of domicile, or of entry into the United States if an alien insurer;

(5) a copy of the report of last examination made of the insurer certified by the public insurance supervisory officer of its state of domicile, or of entry into the United States if an alien insurer;

(6) appointment of the superintendent pursuant to Section 59A-5-31 NMSA 1978 as its attorney to receive service of legal process;

(7) if a foreign or alien insurer, a certificate of the public insurance supervisory officer of its state or country of domicile showing that it is authorized or qualified for authority to transact in such state or country the kinds of insurance proposed to be transacted in this state;

(8) if a foreign insurer, a certificate as to a deposit elsewhere if to be tendered pursuant to Section

59A-5-18 or 59A-5-20 NMSA 1978;

(9) if an alien insurer, a copy of the appointment and authority of its United States manager, certified by its officer having custody of its records; and

(10) designation by the insurer of its officer or representative authorized to appoint and remove its agents in this state.

B. If the superintendent so requests, the applicant insurer shall supplement the documents and information above required with true biographical information concerning the members of the insurer's board of directors or other governing body and its principal operating officers, together with proof of identity of each such individual."

Section 2. Section 59A-6-1 NMSA 1978 (being Laws 1984, Chapter 127, Section 101, as amended) is amended to read:

"59A-6-1. FEE SCHEDULE.--The superintendent shall collect and receipt for, and persons so served shall pay to the superintendent, fees, licenses and miscellaneous charges as follows:

A. insurer's certificate of authority -

(1) filing application for certificate of authority, and issuance of certificate of authority, if issued, including filing of all charter documents, financial statements, service of process, power of attorney, examination reports and other documents included with and part of the application \$1,000.00

(2) annual continuation of certificate of authority, per kind of insurance, each year continued. .200.00

(3) reinstatement of certificate of

authority (Section 59A-5-23 NMSA 1978)	150.00
(4) amendment to certificate of authority	200.00
B. charter documents - filing amendment to any charter document (as defined in Section 59A-5-3 NMSA 1978)	10.00
C. annual statement of insurer, filing .	200.00
D. service of process, acceptance by superintendent and issuance of certificate of service, where issued	10.00
E. agents' licenses and appointments -	
(1) filing application for original agent license and issuance of license, if issued	30.00
(2) appointment of agent -	
(a) filing appointment, per kind of insurance, each insurer	20.00
(b) continuation of appointment, each insurer, each year continued	20.00
(3) variable annuity agent's license -	
(a) filing application for license and issuance of license, if issued	30.00
(b) continuation of appointment each year	20.00
(4) temporary license as to life and health insurance or both	30.00
(a) as to property insurance .	30.00
(b) as to casualty/surety insurance	30.00
(c) as to vehicle insurance .	30.00
F. solicitor license -	

(1) filing application for original license and issuance of license, if issued 30.00

(2) continuation of appointment, per kind of insurance, each year 20.00

G. broker license -

(1) filing application for license and issuance of original license, if issued 30.00

(2) annual continuation of license 30.00

H. insurance vending machine license -

(1) filing application for original license and issuance of license, if issued, each machine . . 25.00

(2) annual continuation of license, each machine 25.00

I. examination for license, application for examination conducted directly by superintendent, each grouping of kinds of insurance to be covered by the examination as provided by the superintendent's rules and regulations, and payable as to each instance of examination 50.00

J. surplus line broker license -

(1) filing application for original license and issuance of license, if issued 100.00

(2) annual continuation of license . .100.00

K. adjuster license -

(1) filing application for original license and issuance of license, if issued 30.00

(2) annual continuation of license 30.00

L. rating organization or rating advisory organization license -

(1) filing application for license and

issuance of license, if issued	100.00
(2) annual continuation of license	100.00
M. nonprofit health care plans -	
(1) filing application for preliminary permit and issuance of permit, if issued	100.00
(2) certificate of authority, application, issuance, continuation, reinstatement, charter documents - same as for insurers	
(3) annual statement, filing	200.00
(4) agents and solicitors -	
(a) filing application for original license and issuance of license, if issued	30.00
(b) examination for license conducted directly by superintendent, each instance of examination	50.00
(c) annual continuation of appointment	20.00
N. prepaid dental plans -	
(1) certificate of authority, application, issuance, continuation, reinstatement, charter documents - same as for insurers	
(2) annual report, filing	200.00
(3) agents and solicitors -	
(a) filing application for original license and issuance of license, if issued	30.00
(b) examination for license conducted directly by superintendent, each instance of examination	50.00
(c) continuation of license, each year	20.00

O. prearranged funeral insurance - application for certificate of authority, issuance, continuation, reinstatement, charter documents, filing annual statement, licensing of sales representatives - same as for insurers

P. premium finance companies -

(1) filing application for original license and issuance of license, if issued 100.00
(2) annual renewal of license 100.00

Q. motor clubs -

(1) certificate of authority -
(a) filing application for original certificate of authority and issuance of certificate of authority, if issued 200.00
(b) annual continuation of certificate of authority 100.00
(2) sales representatives -
(a) filing application for registration or license and issuance of registration or license, if issued, each representative 20.00
(b) annual continuation of registration or license, each representative 20.00

R. bail bondsmen -

(1) filing application for original license as bail bondsman or solicitor, and issuance of license, if issued 30.00
(2) examination for license conducted directly by superintendent, each instance of examination 50.00
(3) continuation of appointment, each year 20.00

S. securities salesperson license -	
(1) filing application for license and issuance of license, if issued	25.00
(2) renewal of license, each year	25.00
T. for each signature and seal of the superintendent affixed to any instrument	10.00
U. required filing of forms or rates -	
(1) rates	50.00
(2) major form - each new policy and each package submission which can include multiple policy forms, application forms, rider forms, endorsement forms or amendment forms	30.00
(3) incidental forms and rates - forms filed for informational purposes; riders, applications, endorsements and amendments filed individually; rate service organization reference filings; rates filed for informational purposes	15.00
V. health maintenance organizations -	
(1) filing an application for a certificate of authority	1,000.00
(2) annual continuation of certificate of authority, each year continued	200.00
(3) filing each annual report	200.00
(4) filing an amendment to organizational documents requiring approval	200.00
(5) filing informational amendments	50.00
(6) agents and solicitors -	
(a) filing application for original license and issuance of license, if issued	30.00
(b) examination for license, each	

instance of examination	50.00
(c) annual continuation of appointment	20.00
W. purchasing groups and foreign risk retention groups -	
(1) original registration	500.00
(2) annual continuation of registration	200.00
(3) agent or broker fees same as for authorized insurers.	

Notwithstanding the fees required in this subsection, an insurer shall be subject to additional fees or charges, termed retaliatory or reciprocal requirements, or both, whenever any form or rate-filing fees in excess of those imposed by the laws of this state are charged to insurers in New Mexico doing business in another state or whenever any condition precedent to the right to issue policies in another state is imposed by the laws of that state over and above the conditions imposed upon insurers by the laws of New Mexico; in those cases, the same form or rate-filing fees shall be imposed upon every insurer from every other state transacting or applying to transact business in New Mexico so long as the higher fees remain in force in the other state. If an insurer fails to comply with the additional retaliatory or reciprocal requirement charges imposed under this subsection, the superintendent shall refuse to grant or shall withdraw approval of the tendered form or rate filing.

Except as to certain appointment fees as specified in Section 59A-11-8 NMSA 1978, all fees are deemed earned when

paid and are not refundable."

Section 3. Section 59A-6-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 105, as amended) is amended to read:

"59A-6-5. DISTRIBUTION OF INSURANCE DEPARTMENT COLLECTIONS.--

A. All money received by the insurance department for fees, licenses, penalties and taxes shall be paid daily by the superintendent to the state treasurer and by him credited to the "insurance department suspense fund" except as provided by:

(1) the Law Enforcement Protection Fund Act; and

(2) Section 59A-6-1.1 NMSA 1978.

B. The superintendent may authorize refund of money erroneously paid as fees, licenses, penalties or taxes from the insurance department suspense fund under request for refund made within three years after the erroneous payment.

C. At the end of every month, the treasurer shall transfer to the "fire protection fund" the balance remaining in the insurance department suspense fund after applicable refunds made pursuant to Subsection B of this section, and derived from property and vehicle insurance business, and transfer to the general fund the balance remaining in the insurance department suspense fund derived from all other kinds of insurance business."

Section 4. Section 59A-11-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 181) is amended to read:

"59A-11-2. APPLICATION FOR LICENSE--INDIVIDUAL.--

A. Where a license is required under the

Insurance Code for categories referred to in Section 59A-11-1 NMSA 1978, application by an individual shall be filed with, and on a form prescribed and furnished by, the superintendent. The application shall be signed by the applicant, under oath if required by the form, and by or on behalf of the proposed principal where expressly required in the form.

B. The application form may require information about applicant as to:

- (1) name, date of birth, social security number, residence and business address if applicable;
- (2) personal history, business experience in general;
- (3) experience or special training or education in the kind of business to be transacted under the license applied for;
- (4) previous licensing;
- (5) type of license applied for and kinds of insurance or transactions to be covered thereby;
- (6) proof of applicant's identity; and
- (7) such other pertinent information and matters as the superintendent may reasonably require.

C. Application for license as insurance agent shall be accompanied by appointment of the applicant as agent by at least one insurer, conditioned upon issuance of the license. Application for license as insurance solicitor or as agent or solicitor as to dental and health care plan, motor club, bail bondsman, and other principals shall be accompanied by appointment of the applicant by the proposed principal as solicitor or agent, as the case may be, subject

to issuance of the license applied for.

D. In all such appointments the principal or principal's representative if so required by the superintendent shall certify in writing as to his knowledge of the applicant, as to applicant's residence, experience had or special training received or to be given as to business to be transacted under the license, applicant's business and personal reputation, whether applicant is trustworthy and worthy of licensing, and whether satisfied that applicant intends in good faith to engage in the business to be covered by the license, and appointment of applicant is not to enable applicant to evade the intent or spirit of any controlled business, anti-rebate or anti-discrimination law or other law.

E. The application form shall also require information as to additional matters expressly required to be included therein in articles of the Insurance Code relating to particular licenses.

F. The application shall be accompanied by the applicable license application filing fee specified in Section 59A-6-1 NMSA 1978, by bond where expressly required under other provisions of the Insurance Code, and by the fee specified in such fee schedule for any examination required under the Insurance Code to be taken and passed by the applicant prior to licensing."

Section 5. Section 59A-11-10 NMSA 1978 (being Laws 1984, Chapter 127, Section 189) is amended to read:

"59A-11-10. CONTINUATION, EXPIRATION OF LICENSE.--

A. Each license, other than insurance agent, issued under this article shall continue in force until it

is suspended, revoked or otherwise terminated, but except as may be provided pursuant to Section 59A-11-11 NMSA 1978, subject to payment to the superintendent annually on or before April 1, or December 31 as to motor club representatives, of the applicable continuation fee specified in Section 59A-6-1 NMSA 1978 accompanied by request for such continuation:

(1) for broker, surplus line broker, independent adjuster, bail bondsman license and similar other independent licensees, request shall be made and signed by the licensee;

(2) for agent (other than insurance agent) or staff adjuster, or solicitor license, request shall be made and signed by the employer or other principal, as applicable; or

(3) for vending machine, request shall be made and signed by the supervisory agent thereof.

B. Subject to Section 59A-11-11 NMSA 1978, any license referred to in Subsection A of this section, not so continued shall be deemed to have terminated as of midnight on April 30, or December 31 as to motor club representatives, then current; except that the superintendent may effectuate a request for continuation received within thirty days thereafter if accompanied by annual continuation fee equal to one hundred fifty percent of the continuation fee otherwise required.

C. An insurance agent's license shall continue in force while there is in effect as to the licensee as shown by the superintendent's records an appointment or appointments as agent of authorized insurers covering

collectively all of the kinds of insurance included in the agent's license. Upon termination of all the licensee's agent appointments as to a particular kind of insurance and failure to replace such appointment within sixty days thereafter, the license shall expire and terminate as to such kind of insurance; and the licensee shall promptly deliver the license to the superintendent for reissuance, without fee or charge, as to the kinds of insurance covered by the licensee's remaining agent appointments. Upon termination of all of the licensee's agent appointments under the license, the license shall forthwith terminate.

D. If the superintendent has reason to believe that the competence of any licensee, or individual designated to exercise license powers, is questionable, the superintendent may require as condition to continuation of the license or license powers that the licensee or individual take and pass to the superintendent's satisfaction a written examination as required under the Insurance Code of new individual applicants for similar license.

E. This section shall not apply as to temporary licenses, which shall be for such duration and subject to extension as provided in the respective sections of the Insurance Code by which such licenses are authorized.

F. All licenses and appointments as to an insurer or other principal which ceases to be authorized to transact business in this state shall automatically terminate without notice as of date of such cessation.

G. A license shall also terminate upon death of the licensee, if an individual, or dissolution if a

corporation, or change in partnership members if a firm; subject, in case of a firm, to continuation of the license for a reasonable period while application for new license is being made or pending, under reasonable conditions provided in regulations of the superintendent."

Section 6. Section 59A-12-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 205) is amended to read:

"59A-12-4. "SOLICITOR" DEFINED.--For the purposes of Chapter 59A, Article 12 NMSA 1978 a "solicitor" is an individual employed by a licensed agent to solicit insurance and perform such other duties in handling the agent's business as the agent may authorize."

Section 7. Section 59A-12-8 NMSA 1978 (being Laws 1984, Chapter 127, Section 209) is amended to read:

"59A-12-8. CONTROLLED BUSINESS.--

A. The superintendent shall not issue or permit to remain in force a license as agent, solicitor, or broker or if the superintendent finds or has cause to believe that the license has been or probably will be used chiefly for the purpose of writing insurance on the lives, property or risks of the licensee or proposed licensee, or of his family members, employees, employer, business associates, or directors, officers, employees or principal stockholders of a corporation by which he is employed or retained, or of which he is an officer, director or principal stockholder, or members or employees of any firm or other business entity with which he is associated or by which he is employed or retained.

B. A license shall be deemed used or to be used for writing of such controlled business if the

superintendent finds that in any calendar year commissions or other compensation earned with respect to such business exceeded, or probably would exceed, fifty percent of all commissions and compensation earned, or probably to be earned, in such calendar year as to all business written or likely to be written under the license during the same such year."

Section 8. Section 59A-12-10 NMSA 1978 (being Laws 1997, Chapter 48, Section 1) is amended to read:

"59A-12-10. LICENSING OF LENDING INSTITUTION--
DEFINITIONS AND EXCEPTIONS.--

A. As used in this section:

(1) "lending institution" means an institution, including its holding company, subsidiary or insurance agent, solicitor or broker affiliate, whose business includes accepting deposits or lending money in New Mexico, including banks, savings and loan associations and credit unions; "lending institution" does not include insurance companies;

(2) "holding company", "subsidiary" and "affiliate" mean those terms as defined in regulations adopted by the superintendent, except "bank holding company" means that term as defined in Section 2 of the federal Bank Holding Company Act of 1956;

(3) "public utility" means a private employer subject to the jurisdiction of the commission that is engaged in the business of providing telecommunications, electric, gas, water or steam heat services to the public;

(4) "sell" means to engage in the solicitation, sale and placement of insurance and such other

related activities conducted by an agent, solicitor or broker pursuant to the Insurance Code;

(5) "service contract" means a contract issued on consumer products pursuant to which the vendor or manufacturer bears the cost of the repair or replacement of the consumer product;

(6) "insurance premium finance agreement" means an agreement by which an insured or a prospective insured promises to pay to any person engaged in the business of premium financing, the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance contract; and

(7) "loan transaction" and any other reference to lending or extension of credit does not include loans made by broker-dealers registered in accordance with applicable state and federal securities laws that are wholly collateralized by securities.

B. A lending institution may be licensed to sell:

(1) any insurance except title insurance in accordance with the Insurance Code and to the extent authorized by federal and state lending institution regulators; and

(2) annuities to the extent authorized by law and federal and state lending institution regulators, but nothing in this paragraph shall affect the rights and obligations of nationally chartered lending institutions.

C. A public utility or its holding company, subsidiary or affiliate shall not be licensed to sell insurance or act as a broker for insurance in New Mexico.

D. As used in Subsections E through Y of this section, "insurance" means all products defined or regulated as insurance under the Insurance Code except:

(1) credit life, credit accident and health, credit involuntary unemployment, credit casualty and credit property insurance, and when providing insurance coverage to a borrower or co-borrower or both, the following insurance products: accidental death and dismemberment, accidental disability and any other accidental casualty insurance product;

(2) insurance placed by a lending institution on the collateral pledged as security for a loan when the debtor breaches the contractual obligation to provide that insurance;

(3) private mortgage insurance and financial guarantee insurance;

(4) annuities;

(5) service contracts;

(6) insurance premium finance agreements;

and

(7) travel accident or baggage insurance.

E. A lending institution shall not require as a condition precedent to the extension of credit, or any subsequent renewal thereof, or the procurement of other bank services that the customer purchase insurance through a particular insurer, agent, solicitor or broker.

F. A lending institution shall not extend credit, lease or sell property or furnish any other service or fix or vary the consideration for any of the foregoing on the condition or requirement that the customer obtain insurance

from that lending institution or from a particular insurer, agent, solicitor or broker.

G. A lending institution shall not impose a requirement on an insurance agent, solicitor or broker who is not associated with the lending institution that is not imposed on an insurance agent, solicitor or broker who is associated with that institution or, unless otherwise authorized by applicable federal or state law, require a debtor, insurer, agent, solicitor or broker to pay a separate charge in connection with the handling of insurance that is required under a contract.

H. A lending institution, except an institution that does not accept deposits that are federally insured, that sells insurance on its premises shall:

(1) conspicuously post a notice that is clearly visible to anyone who may purchase insurance that insurance is not a deposit account insured by a federal deposit insuring agency;

(2) orally inform a prospective purchaser of insurance that insurance is not a deposit account insured by a federal deposit insuring agency; and

(3) provide a written disclosure to the customer containing the following statements before the sale of insurance is complete:

(a) insurance is not a lending institution deposit account and is not insured by its federal deposit insuring agency;

(b) insurance is not an obligation of or guaranteed by the lending institution;

(c) the customer is not required to

obtain insurance from a particular lending institution, agent, solicitor or broker; and

(d) where applicable, insurance involves investment risk, including potential loss of principal.

I. The sale of insurance by a lending institution, except an institution that does not accept deposits that are federally insured, shall be effectuated in such a manner so as to avoid confusion between federally insured deposit products offered by a lending institution and the nonfederally insured insurance sold. Insurance advertisements and other sales material shall be accurate and not misleading or deceptive. Insurance advertising and other sales materials regarding insurance shall include disclosures that contain language that is the same or substantially similar to the following:

(1) insurance is not a lending institution deposit and is not insured by its federal deposit insuring agency;

(2) insurance is not an obligation of or guaranteed by the lending institution; and

(3) where applicable, insurance involves investment risk, including potential loss of principal.

J. Insurance operations may be conducted by the lending institution, its holding company, an affiliate or subsidiary of either or through a separate corporate entity or partnership.

K. A lending institution shall not provide nonpublic customer information to a third party for the purpose of another's sale of insurance without written

authorization from the customer. As used in this subsection, "nonpublic customer information" means information regarding a person that has been derived from a record of a financial institution. "Nonpublic customer information" does not include customer names and addresses and telephone numbers or information about an individual that could be obtained from an unaffiliated credit bureau that is subject to the federal Fair Credit Reporting Act by a third party that is not entering into a credit relationship with the individual but has a legitimate need for the information in connection with a business transaction with the individual, except that "nonpublic customer information" includes information concerning insurance premiums, the terms and conditions of insurance coverage, insurance expirations, insurance claims and insurance history of an individual. Notwithstanding any provision in this section to the contrary, compliance with Section 603 of the federal Fair Credit Reporting Act by a lending institution shall be deemed to be full compliance with this subsection. "Nonpublic customer information" does not include material excluded from the definition of "consumer report" by Section 603(d)(2)(A) of the federal Fair Credit Reporting Act.

L. Records relating to the insurance sales of a lending institution, including files relating to and reflecting customer complaints, shall be kept separate and apart from all records relating to the banking transactions of the lending institution. Records pertaining to insurance activities of the lending institution or copies of those records shall be subject to the inspection and audit by the

insurance division. If the division determines to inspect and audit the records relating to the insurance activities of a lending institution, that institution shall make available to the division, at a location in New Mexico the lending institution's records and knowledgeable personnel to assist in the interpretation of the lending institution's records.

M. A lending institution, or officer, director or employee acting on behalf of the institution, who qualifies for issuance of an agent's, solicitor's or broker's license pursuant to the Insurance Code may be issued an agent or broker license authorizing the sale of insurance.

N. A lending institution shall not pay a commission or other valuable consideration to a person for services of an insurance agent, solicitor or broker unless the person performing the service holds a valid insurance license for the class of insurance for which the service is rendered or performed at the time the service is performed. No person, other than a person properly licensed in accordance with the Insurance Code, shall accept any commission or valuable consideration for those services.

O. A lending institution shall not offer an inducement to a customer to purchase insurance from the institution other than as plainly expressed in the insurance policy. Investment programs, memberships or other programs designed or represented to waive, reduce, pay, produce or provide funds to pay all or part of the cost on insurance are an illegal inducement.

P. A lending institution may not in the same transaction solicit the purchase of insurance from a

customer who has applied for a loan from the institution before the time the customer has received a written commitment from the lending institution with respect to that loan, or, in the event that no written commitment has been or will be issued in connection with the loan, a lending institution shall not solicit the purchase of insurance before the time the customer receives notification of approval of the loan by the lending institution and the institution creates a written record of the loan approval. This subsection shall not apply when a lending institution contacts a customer in the course of direct or mass marketing to a group of persons in a manner that bears no relation to the customer's loan application or credit decision.

Q. The sale of insurance by a lending institution, credit union, sales finance company, insurance company, insurance agent, an institution that grants or arranges consumer credit or an institution that solicits or makes loans in New Mexico may be conducted by a person whose responsibilities include loan transactions or other transactions involving the extension of credit so long as the person who is primarily responsible for making the specific loan or extension of credit is not the same person engaged in the sale of insurance for that same transaction; provided, however, that the provisions of this subsection shall not apply to:

(1) a broker or dealer registered under the federal Securities Exchange Act of 1934; or

(2) a lending institution location that has three or fewer persons with lending authority.

R. If insurance is required as a condition of obtaining a loan, the credit and insurance transactions shall be completed independently and through separate documents.

S. A loan for premiums on required insurance shall not be included in the primary credit without the written consent of the customer, which may be evidenced by compliance with the federal Truth in Lending Act.

T. A person who engages in loan transactions at any office of, or on behalf of, a lending institution or any other agent, employee, director or officer of the lending institution may refer a customer who seeks to purchase, or seeks an opinion or advice on any insurance product, to a person, or may give the phone number of a person, who sells or provides opinions or advice on such products only if the customer expressly requests the referral; the person who engages in loan transactions does not solicit the customer request; and the person who engages in the loan transaction does not receive any compensation for the referral.

U. The location for the sale of insurance on the premises of a lending institution, except an institution that does not accept deposits that are federally insured, to the extent practicable shall be:

(1) physically located to be distinct from the lending activities of the institution; and

(2) clearly and conspicuously signed to be easily distinguishable by the public as separate and distinct from the lending activities of the institution.

V. Signs and other informational material concerning the availability of insurance products from the

lending institution or third party soliciting the purchase of or selling insurance on the premises of the lending institution shall not be displayed to the extent practicable in an area where application for loans or other extensions of credit are being taken or closed.

W. Nothing in this section grants a lending institution, including its holding company, subsidiary or affiliate, except those enumerated in this section, the power to sell insurance that was not allowed prior to July 1, 1997.

X. Nothing in this section precludes the superintendent from adopting reasonable rules and regulations for the purposes of the administration of the provisions of this section, including rules and regulations for written disclosures.

Y. If any of the provisions of this section are preempted by federal law, then those preempted provisions shall not apply to any person or lending institution subject to the provisions of this section."

Section 9. Section 59A-12-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 213) is amended to read:

"59A-12-12. GENERAL QUALIFICATIONS FOR INDIVIDUAL AGENT, BROKER OR SOLICITOR LICENSE.--For the protection of the public in New Mexico, the superintendent shall not issue, continue or permit to exist a license to an individual as agent, broker or solicitor except as to an individual qualified as follows:

- A. must be eighteen years of age or older;
- B. must have passed any examination required for licensing;

C. must be competent, trustworthy and financially responsible;

D. if for license as an agent, must be appointed as an agent by an authorized insurer, subject to issuance of a license;

E. if for license as a solicitor, must be employed as a solicitor by a licensed agent, subject to issuance of the license; and

F. must be in compliance with other applicable qualifications and requirements of the Insurance Code."

Section 10. Section 59A-12-15 NMSA 1978 (being Laws 1984, Chapter 127, Section 216) is amended to read:

"59A-12-15. LICENSING FIRMS, CORPORATIONS.--

A. The superintendent shall license a firm or corporation only as an agent or broker.

B. For license as agent each general partner and each individual to act for the firm, or each individual to act for the corporation, shall be named in the license or registered with the superintendent, and shall qualify as though for license as an individual."

Section 11. Section 59A-12-16 NMSA 1978 (being Laws 1984, Chapter 127, Section 217) is amended to read:

"59A-12-16. EXAMINATION FOR LICENSE.--

A. Each applicant for license as agent, solicitor or broker or shall, prior to issuance of license, personally take and pass an examination authorized by the superintendent to establish the applicant's competence, knowledge and understanding of attendant responsibility and duties as to the insurance business to be transacted under the license applied for; except, that no such examination

shall be required:

(1) for renewal or continuance of an existing license, except as provided in Subsection D of Section 59A-11-10 NMSA 1978;

(2) of an applicant for limited license as provided in Section 59A-12-18 NMSA 1978;

(3) of applicants with respect to life and health, or life or health, insurances who hold the chartered life underwriter (C.L.U.) designation by the American college of life underwriters;

(4) of applicants with respect to property, casualty, surety, marine and transportation, and vehicle insurances, or any of them, who hold the designation of chartered property and casualty underwriter (C.P.C.U.) designation by the American institute of property and casualty underwriters;

(5) of applicants for temporary license as provided for in Section 59A-12-19 NMSA 1978;

(6) of an applicant for a license covering the same kind or kinds of insurance as to which licensed in this state under a similar license within five years preceding date of application for the new license, unless the previous license was suspended, revoked or continuation thereof refused by the superintendent;

(7) of an applicant for solicitor license who held license as agent in this state as to the same kind or kinds of insurance within five years preceding date of application for the new license, unless the previous license was suspended, revoked or continuation thereof refused by the superintendent;

(8) of an applicant for broker or agent license, if the superintendent is satisfied that the applicant took and passed a similar examination in a state in which already licensed, subject to Section 59A-5-33 NMSA 1978; or

(9) of applicant for license only as title insurance agent.

B. The superintendent shall conduct examinations as provided for in Chapter 59A, Article 11 NMSA 1978."

Section 12. Section 59A-12-17 NMSA 1978 (being Laws 1984, Chapter 127, Section 218) is amended to read:

"59A-12-17. SCOPE OF LICENSE.--

A. Except as to limited licenses identified in Section 59A-12-18 NMSA 1978, an agent's or broker's license shall cover the kind of insurance, or major subdivisions of life or health insurance, for which the applicant has applied and qualified, including of the following:

(1) life insurance, or any or all of the following subdivisions thereof:

- (a) industrial life insurance;
- (b) debit insurance;
- (c) credit life insurance; or
- (d) variable annuity contracts;

(2) health insurance, credit health insurance, or industrial health insurance, or other subdivisions thereof;

- (3) property insurance;
- (4) casualty insurance;
- (5) surety insurance;
- (6) marine and transportation insurance;

- (7) vehicle insurance; or
- (8) title insurance.

B. The scope of a solicitor's license is subject to Section 59A-12-14 NMSA 1978.

C. License of a broker shall cover the kind or kinds of insurance applied and qualified for, within the classifications stated in Subsection A of this section.

D. A licensee as to variable annuities or similar contracts deemed to constitute also securities, shall also possess license as a security salesman under other applicable state laws."

Section 13. Section 59A-12-20 NMSA 1978 (being Laws 1984, Chapter 127, Section 221) is amended to read:

"59A-12-20. PLACE OF BUSINESS--DISPLAY OF LICENSE.--

A. Every general lines agent shall have and maintain a place of business accessible to the public, wherein the licensee conducts transactions under the license. The address of the place of business shall appear upon the application for license when issued, and the licensee shall promptly notify the superintendent in writing of any change of address. Nothing in this section shall prohibit maintenance of the place of business in the licensee's residence.

B. The licenses of the licensee and those of solicitors employed by him shall be conspicuously displayed in the place of business in a part customarily open to the public.

C. This section does not apply to life insurance, annuity contracts or health insurance."

Section 14. Section 59A-12-23 NMSA 1978 (being Laws

1984, Chapter 127, Section 224) is amended to read:

"59A-12-23. INSURANCE VENDING MACHINES.--

A. A licensed agent may solicit for and issue personal travel accident insurance policies of an authorized insurer by means of mechanical vending machines supervised by the agent and placed at airports and other places of convenience to the traveling public, if the superintendent finds that:

(1) the policy provides reasonable coverage and benefits, is suitable for sale and issuance by vending machine and use of such a machine in a proposed location would be of material convenience to the public;

(2) the type of machine proposed to be used is reasonably suitable for the purpose;

(3) reasonable means are provided for informing prospective purchasers of policy coverages and restrictions;

(4) reasonable means are provided for refund of money inserted in defective machines and for which insurance so paid for is not received; and

(5) the cost of maintaining such a machine at a particular location is reasonable.

B. For each machine to be used the superintendent shall issue to the applicant a special vending machine license. The license shall state the name and address of the insurer and agent, name of the policy to be sold and serial number and operating location of the machine. The license shall be subject to annual continuation, to expiration, suspension or revocation coincidentally with that of the agent. The superintendent shall also revoke the

license as to any machine as to which he finds that license qualifications no longer exist. Proof of existence of a subsisting license shall be displayed on or about each machine in use in such manner as the superintendent reasonably requires."

Section 15. Section 59A-12-24 NMSA 1978 (being Laws 1984, Chapter 127, Section 225) is amended to read:

"59A-12-24. SHARING OF COMMISSIONS.--

A. An agent or broker shall share a commission or compensation for or on account of the solicitation or negotiation in this state of insurance on individuals or property or risks in this state only with the agent's duly licensed solicitor, or duly licensed agent of the insurer with which the insurance was placed, or duly licensed broker.

B. No such licensee shall share in commission or compensation as to a kind of insurance for which not licensed.

C. Such sharing in commissions and compensation between the same such licensees shall be infrequently only, and shall not unduly obviate the general necessity of appointment of the agent by the insurer with which the insurance is placed.

D. Nothing in the Insurance Code shall be deemed to prohibit payment, to or for the account of a former owner of an insurance agency or brokerage, of commissions or part thereof currently accruing on business of the agency or brokerage, as part of the purchase price of the agency or brokerage, whether or not such former owner is currently licensed as agent, solicitor or broker."

Section 16. Section 59A-12-25 NMSA 1978 (being Laws 1984, Chapter 127, Section 226) is amended to read:

"59A-12-25. NONRESIDENT BROKERS, NONRESIDENT AGENTS AND NONRESIDENT SOLICITORS--RETALIATION.--

A. The superintendent may refuse to issue a license as a broker, agent or solicitor to a resident of another state or country, who is otherwise qualified under this article for license as a broker, agent or solicitor in New Mexico, if under the laws of the other state or country licensed residents of this state are prohibited or prevented from acting as broker, agent or solicitor because of their residence.

B. As part of an application for a license, the nonresident applicant shall appoint the superintendent, on a form prescribed and furnished by the superintendent, as agent on whom may be served all legal process issued by a court in this state in any action against or involving the licensee as to transactions under the license. The appointment shall be irrevocable and continue for so long as an action could arise or exist. Duplicate copies of process shall be served upon the superintendent or other individual in apparent charge of the insurance division during the superintendent's absence, accompanied by payment of the process service fee specified in Section 59A-6-1 NMSA 1978. Upon service the superintendent shall promptly forward a copy by certified mail, return receipt requested, to the licensee at his last address of record with the superintendent. Process served and copy forwarded as so provided shall for all purposes constitute personal service upon the licensee.

C. The licensee shall likewise file with the superintendent written agreement to appear before the superintendent pursuant to notice of hearing, show cause order or subpoena issued by the superintendent and deposited, postage paid, by certified mail in a letter depository of the United States post office, addressed to the licensee at his last address of record with the superintendent, and that upon failure of the licensee to appear the licensee thereby consents to any subsequent suspension, revocation or refusal of the superintendent to continue the license."

Section 17. Section 59A-12-26 NMSA 1978 (being Laws 1984, Chapter 127, Section 227, as amended) is amended to read:

"59A-12-26. CONTINUED EDUCATION.--

A. For protection of the public and to preserve and improve competence of licensees, the superintendent may in his sole discretion require as a condition to continuation of license as agent, solicitor or broker under this article that during the twelve months next preceding expiration of the current license period the licensee has attended the minimum number of hours of formal class instruction, lectures or seminars required and approved by the superintendent covering the kinds of insurance for which licensed.

B. Such instruction shall be designed to refresh the licensee's understanding of basic principles and coverages involved, recent and prospective changes therein, applicable laws and rules and regulations of the superintendent, proper conduct of the licensee's business

and duties and responsibilities of the licensee.

C. The superintendent may permit licensees who because of remoteness of residence or business cannot with reasonable convenience attend such formal instruction sessions to take and successfully complete an equivalent course of study and instruction by mail.

D. The superintendent shall promulgate rules and regulations for effectuation of the purposes and requirements of this section and may impose a penalty not to exceed fifty dollars (\$50.00) for a licensee's failure to timely report continuing education credits.

E. For the purposes of this section, the superintendent shall charge, at the time of certifying each licensee's continuing education credits as a condition of continuation of license, a fee of five dollars (\$5.00).

F. This section shall not apply to holders of limited license issued under Section 59A-12-18 NMSA 1978."

Section 18. Section 59A-12A-14 NMSA 1978 (being Laws 1989, Chapter 374, Section 14) is amended to read:

"59A-12A-14. CONFIDENTIALITY.--

A. An administrator shall provide for the confidentiality of personal data identifying an individual covered by a plan or insurance carrier or data concerning a person that self insures. An administrator shall not disclose records containing personal information that may be associated with an identifiable individual covered by a plan or insurance carrier or data relating to a person that self insures to a person other than the individual to whom the information pertains, except as necessary to comply with the superintendent's inquiry or a court order. Other than to

comply with the superintendent's inquiry or a court order, an administrator shall not disclose personal data without the prior consent of the covered individual or person that self insures.

B. Subsection A of this section does not apply to information disclosed for any of the following reasons or to an indicated entity:

- (1) claims adjudication;
- (2) claims verification;
- (3) other proper plan or insurance carrier administration;
- (4) an audit conducted pursuant to ERISA;
- (5) an insurer or plan for the purchase of excess loss insurance and for claims under the excess loss insurance, provided, an insurer obtaining information under this paragraph shall be subject to the requirements of Subsection A of this section;
- (6) the plan, insurance carrier, person that self insures or a fiduciary of the plan;
- (7) the superintendent or the superintendent's designees; provided the information obtained by the superintendent under this subsection is confidential, except that the superintendent may use the information in any proceeding instituted against the administrator; or
- (8) as required by law."

Section 19. Section 59A-12B-3 NMSA 1978 (being Laws 1993, Chapter 320, Section 29) is amended to read:

"59A-12B-3. LICENSURE.--

A. No person, firm, association or corporation

shall act in the capacity of a managing general agent with respect to risks located in this state for an insurer authorized in this state unless such person is a licensed agent or broker in this state.

B. No person, firm, association or corporation shall act in the capacity of a managing general agent representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed as an agent or broker in this state pursuant to the provisions of the Managing General Agents Law.

C. The superintendent may require a bond in an amount acceptable to him for the protection of the insurer.

D. The superintendent may require the managing general agent to maintain an errors and omissions policy."

Section 20. Section 59A-12D-3 NMSA 1978 (being Laws 1993, Chapter 320, Section 44) is amended to read:

"59A-12D-3. LICENSURE.--

A. No person, firm, association or corporation shall act as a reinsurance intermediary-broker in this state if it maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation:

(1) in this state, unless such reinsurance intermediary-broker is a licensed producer in this state; or

(2) in another state, unless such reinsurance intermediary-broker is a licensed producer in this state or another state having a law substantially similar to this law or such reinsurance intermediary-broker is licensed in this state as a reinsurance intermediary.

B. No person, firm, association or corporation

shall act as a reinsurance intermediary-manager:

(1) for a reinsurer domiciled in this state, unless such reinsurance intermediary-manager is a licensed producer in this state;

(2) in this state, if the reinsurance intermediary-manager maintains an office either directly or as a member or employee of a firm or association, or an officer, director or employee of a corporation in this state, unless such reinsurance intermediary-manager is a licensed producer in this state;

(3) in another state for a nondomestic insurer, unless such reinsurance intermediary-manager is a licensed producer in this state or another state having a law substantially similar to this law or such person is licensed in this state as a reinsurance intermediary.

C. The superintendent may require a reinsurance intermediary-manager subject to the provisions of Subsection B to:

(1) file a bond in an amount from an insurer acceptable to the superintendent for the protection of the reinsurer; and

(2) maintain an errors and omissions policy in an amount acceptable to the superintendent.

D.

(1) The superintendent may issue a reinsurance intermediary license to any person, firm, association or corporation who has complied with the requirements of the Reinsurance Intermediary Law. Any such license issued to a firm or association will authorize all the members of such firm or association and any designated

employees to act as reinsurance intermediaries under the license, and all such persons shall be named in the application and any supplements thereto. Any such license issued to a corporation shall authorize all of the officers and any designated employees and directors thereof to act as reinsurance intermediaries on behalf of such corporation, and all such persons shall be named in the application and any supplements thereto.

(2) If the applicant for a reinsurance intermediary license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the superintendent as agent for service of process in the manner, and with the same legal effect, provided for by the Reinsurance Intermediary Law for designation of service of process upon unauthorized insurers; and also shall furnish the superintendent with the name and address of a resident of this state upon whom notices or orders of the superintendent or process affecting such nonresident reinsurance intermediary may be served. Such licensee shall promptly notify the superintendent in writing of every change in its designated agent for service of process and such change shall not become effective until acknowledged by the superintendent.

E. The superintendent may refuse to issue a reinsurance intermediary license if, in his judgment, the applicant, anyone named on the application, or any member, principal, officer or director of the applicant, is not trustworthy, or that any controlling person of such applicant is not trustworthy to act as a reinsurance intermediary, or that any of the foregoing has given cause

for revocation or suspension of such license or has failed to comply with any prerequisite for the issuance of such license. Upon written request by the applicant, the superintendent will furnish a summary of the basis for refusal to issue a license, which document shall be subject to the provisions of Section 59A-11-20 NMSA 1978.

F. Licensed attorneys at law of this state when acting in their professional capacity as such shall be exempt from this section."

Section 21. Section 59A-14-7 NMSA 1978 (being Laws 1984, Chapter 127, Section 245) is amended to read:

"59A-14-7. SURPLUS LINE BROKER LICENSE REQUIRED--
QUALIFICATIONS FOR LICENSE.--

A. No person shall in New Mexico be, act as or hold out to be, a surplus line broker, or place insurance of risks resident, located or to be performed in New Mexico in any unauthorized insurer on behalf of others and for compensation as an independent contractor in any form, unless licensed as a surplus line broker under Chapter 59A, Article 14 NMSA 1978.

B. The superintendent shall, upon due application and payment of the license fee, issue a license as surplus line broker to a person qualified as follows:

(1) must be currently licensed as an insurance agent in this state as to the kinds of insurance to be exported under the surplus line broker license applied for, and have had experience or special training or education sufficient in duration and character as such an agent as to render the applicant, in the opinion of the superintendent, reasonably competent to engage in business

as a surplus line broker;

(2) if applicant is a firm or corporation, all individuals to represent it in this state must be licensed agents. Each such individual shall be qualified as for an individual license as surplus line broker, and an additional license fee shall be paid as to each individual, in excess of one, who is to exercise the surplus line broker license powers; and

(3) must file with the application the bond provided for in Section 59A-14-8 NMSA 1978.

C. Licensing procedure, duration and related matters are as provided in Chapter 59A, Article 11 NMSA 1978, and license fee is as specified in Section 59A-6-1 NMSA 1978."

Section 22. Section 59A-16-13.1 NMSA 1978 (being Laws 1989, Chapter 304, Section 1) is amended to read:

"59A-16-13.1. CRANIOMANDIBULAR AND TEMPOROMANDIBULAR JOINT DISORDERS.--No insurer or other provider of health care benefits regulated under Articles 22, 23, 24A, 44, 46, 47 or 54 of the Insurance Code shall, after July 1, 1989, issue, deliver or execute in this state any policy, plan, contract or certificate of health, medical, hospitalization, accident or sickness coverage unless the policy, plan, contract, certificate or other evidence of coverage provides for surgical and nonsurgical treatment of temporomandibular joint disorders and craniomandibular disorders, subject to the same conditions, limitations, prior review and referral procedures as are applicable to treatment of any other joint in the body and treatable by any practitioner of the healing arts as defined in Section 59A-22-32 NMSA 1978. The health

care coverage for craniomandibular and temporomandibular joint disorders required by this section may be subject to reasonable copayments or coinsurance provisions and need not include coverage for orthodontic appliances and treatment, crowns, bridges and dentures unless the disorder is trauma related."

Section 23. Section 59A-17-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 301) is amended to read:

"59A-17-5. ADMINISTRATION OF INSURANCE RATE REGULATORY LAW.--The provisions of Chapter 59A, Article 17 NMSA 1978 shall be administered by the superintendent."

Section 24. Section 59A-17-25 NMSA 1978 (being Laws 1984, Chapter 127, Section 320) is amended to read:

"59A-17-25. JOINT UNDERWRITING OR JOINT REINSURANCE ORGANIZATIONS.--

A. Every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance through such group, association or organization or by standing agreement among the members thereof, shall file with the superintendent:

(1) a copy of its constitution, its articles of incorporation, agreement or association, and of its bylaws, rules and regulations governing its activities, all duly certified by the custodian of the originals thereof;

(2) a list of its members; and

(3) the name and address of a resident of this state upon whom notices or orders of the superintendent or process affecting such group, association or organization may be served.

B. Every such group, association or other

organization shall notify the superintendent promptly in writing of every change in its constitution, its articles of incorporation, agreement or association, in its bylaws, rules and regulations governing conduct of its business, its list of members, or of the name and address of its process agent referred to in Paragraph (3) of Subsection A of this section.

C. Every such group, association or organization shall be subject to regulation as herein provided, subject, however, as to joint underwriting to applicable provisions of Chapter 59A, Article 17 NMSA 1978, and as to joint reinsurance to Sections 59A-17-13, 59A-17-14, 59A-17-32, 59A-17-34 and 59A-17-35 NMSA 1978.

D. No such group, association or organization shall engage in any unfair or unreasonable practice with respect to its activities. If, after a hearing, the superintendent finds that any activity or practice of any such group, association or organization is unfair or unreasonable or otherwise inconsistent with the provisions of Chapter 59A, Article 17 NMSA 1978, he may issue his order specifying the respects in which the activity or practice is unfair or unreasonable or otherwise inconsistent with the provisions of that article, and requiring discontinuance of such activity or practice."

Section 25. Section 59A-17-34 NMSA 1978 (being Laws 1984, Chapter 127, Section 329, as amended) is amended to read:

"59A-17-34. HEARING AND REVIEW AS TO SUPERINTENDENT'S ACTIONS.--

A. Any person aggrieved by any action, threatened

action, or failure to act of the superintendent or otherwise under Chapter 59A, Article 17 NMSA 1978 shall have the same right to a hearing before the superintendent with respect thereto as provided for in general under Section 59A-4-15 NMSA 1978. Notice of hearing shall be given, the hearing conducted, rights and powers exercised and the superintendent's order on hearing made and given as provided as to hearings in general under the applicable provisions of Chapter 59A, Article 4 NMSA 1978.

B. Any person aggrieved by the superintendent's order on such hearing or by the superintendent's refusal to hold the hearing may request a review by the public regulation commission in the manner set forth by rule of the commission."

Section 26. Section 59A-17-35 NMSA 1978 (being Laws 1984, Chapter 127, Section 330, as amended) is amended to read:

"59A-17-35. APPEALS FROM COMMISSION.--Any order made by the public regulation commission pursuant to Section 59A-17-34 NMSA 1978 shall be subject to review by appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978. Upon institution of the appeal and for good cause shown upon motion and hearing, the court may, in the following cases, stay operation of the commission's order:

A. where, pursuant to Chapter 59A, Article 17 NMSA 1978, a rate service organization has been refused a license or an insurer has been refused a certificate of authority or had its license or certificate of authority suspended, it may, with leave of court, be allowed to continue to engage

in business, subject to the provisions of that article, pending final disposition of its application for review; or

B. where any order of the commission shall provide for, or sustain the superintendent's order for, a change in any rate or rating system that results in an increase or decrease in rates, any insurer affected may, with leave of court pending final disposition of the proceedings in the district court, continue to charge rates that existed prior to such order, on condition that the difference in the rates be deposited in a special escrow or trust account with a reputable financial institution by the insurer affected, to be held in trust by such insurer and to be retained by the insurer or paid to the holders of policies issued after the order of the court, as the court may determine."

Section 27. Section 59A-30-14 NMSA 1978 (being Laws 1985, Chapter 28, Section 14) is amended to read:

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

Article 1. Scope of Code; Initial Definitions; General Penalty.

Article 2. Department of Insurance.

Article 4. Examinations, Hearings and Appeals.

Article 5. Authorization of Insurers and General Requirements.

Article 6. Fees and Taxes.

Article 7. Kinds of Insurance; Limits of Risk; Reinsurance.

Article 8. Assets and Liabilities.

Article 9. Investments.

Article 10. Administration of Deposits; Trusteed Assets of Alien Insurer.

Article 11. Licensing Procedures, Agents, Solicitors, Brokers, Adjusters and Others.

Article 12. Insurance Agents, Brokers and Solicitors.

Article 15. Unauthorized Insurers.

Article 16. Trade Practices and Frauds."

Section 28. Section 59A-35-12 NMSA 1978 (being Laws 1984, Chapter 127, Section 601) is amended to read:

"59A-35-12. PERMIT AS INDUCEMENT.--

A. The granting of a securities permit is permissive only, and shall not constitute an endorsement or approval by the superintendent, public regulation commission or any other agency or department of the state of New Mexico of any person or thing related to the offering of securities, or constitute evidence of the completeness or accuracy of information presented in any prospectus or other sales publicity or literature, or a recommendation of purchase of any securities offered. The existence of the permit shall not be advertised or used as an inducement in any solicitation.

B. Each permit issued by the superintendent shall state conspicuously in boldface type the substance of Subsection A of this section in terminology prescribed by the superintendent."

Section 29. Section 59A-35-17 NMSA 1978 (being Laws 1984, Chapter 127, Section 606, as amended) is amended to read:

"59A-35-17. QUALIFICATIONS, PROCEDURE FOR SECURITY SALESPERSON LICENSE.--

A. Applicants for license as securities salesperson shall be qualified as follows:

(1) be an individual not less than twenty-one years of age;

(2) be honest and trustworthy, of good personal and business reputation and financially responsible;

(3) take and pass an examination as given by the superintendent, reasonably testing the knowledge of the applicant of the securities to be sold, the responsibilities of a salesperson relative thereto and competence of the applicant to act as a securities salesperson; and

(4) file with the superintendent along with application for license and thereafter maintain in force while so licensed, a surety bond issued by an authorized surety insurer or deposit of cash or cash-equivalent in lieu of the bond, in reasonable penal sum fixed by the superintendent but not less than ten thousand dollars (\$10,000), for protection of the registrant, persons purchasing securities through the salesperson and the state of New Mexico and to assure compliance with law and the applicable regulations of the superintendent.

B. Procedure for application for license, examination of applicant, issuance, terms, duration and suspension or revocation of license and related matters shall be as provided by applicable provisions of Chapter 59A, Article 11 NMSA 1978. Fee for license and examination shall be as fixed in Section 59A-6-1 NMSA 1978.

C. This section shall not apply as to securities broker-dealers registered as such under the Securities Exchange Act of 1934, as amended, or as to securities the sale of which is underwritten (other than on a best efforts basis) by such a broker-dealer."

Section 30. Section 59A-37-2 NMSA 1978 (being Laws 1984, Chapter 127, Section 617, as amended) is amended to read:

"59A-37-2. DEFINITIONS.--As used in Chapter 59A, Article 37 NMSA 1978:

A. "acquire" means to come into possession or control of, and "acquisition" means any agreement, arrangement or activity the consummation of which results in a person acquiring directly or indirectly the control of another person and includes the acquisition of voting securities or assets, bulk reinsurance and mergers;

B. "affiliate" means a person that directly or indirectly is controlled by, is under common control with or controls another person;

C. "control" means the possession of the power to direct or cause the direction of the management and policies of a person, whether directly or indirectly, through the ownership of voting securities, through licensing or franchise agreements, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by an individual. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote or holds ten or more percent of the voting securities of any other person.

This presumption may be rebutted by a showing, in the manner provided by Section 59A-37-19 NMSA 1978, that control does not in fact exist. The superintendent may determine, after furnishing all persons in interest notice and an opportunity to be heard, that control exists in fact, notwithstanding the absence of a presumption to that effect, provided the determination is based on specific findings of fact in its support;

D. "insurance holding company" is a person that controls an insurer; "insurance holding company system" means a combination of two or more affiliated persons, at least one of which is an insurer;

E. "insurer" means a person that undertakes, under contract, to indemnify a person against loss, damage or liability arising from an unknown or contingent future event. The term does not include agencies, authorities or instrumentalities of the United States, its possessions or territories, the commonwealth of Puerto Rico, the District of Columbia, a state or any of its political subdivisions or a fraternal benefit society;

F. "person" means an individual, corporation, association, partnership, joint stock company, trust, unincorporated organization or any similar entity or combination of entities;

G. "securityholder" means the owner of any security of a person, including common stock, preferred stock, debt obligations and any other security convertible into or evidencing the right to acquire any of the foregoing;

H. "subsidiary" means an affiliate of a person

controlled by the person either directly or indirectly through one or more intermediaries;

I. "voting security" means a certificate evidencing the ownership or indebtedness of a person, to which is attached a right to vote on the management or policymaking of that person and includes any security convertible into or evidencing a right to acquire such a voting security; and

J. "health maintenance organization" means any person that undertakes to provide or arrange for the delivery of basic health care services to enrollees on a prepaid basis, except for enrollee responsibility for co-payments or deductibles."

Section 31. Section 59A-40-9 NMSA 1978 (being Laws 1984, Chapter 127, Section 692) is amended to read:

"59A-40-9. LICENSED AGENTS REQUIRED.--The insurer shall write business in New Mexico only through its resident United States agents duly appointed by it in writing and duly licensed by the superintendent under provisions of the Insurance Code applicable to insurance agents of authorized insurers. The appointment of agents shall specifically authorize the licensee to write for the Mexican insurer the insurance coverages as specified in Chapter 59A, Article 40 NMSA 1978."

Section 32. Section 59A-44-33 NMSA 1978 (being Laws 1989, Chapter 388, Section 33, as amended) is amended to read:

"59A-44-33. LICENSING OF AGENTS.--

A. Agents of societies shall be licensed in accordance with the applicable provisions of Chapter 59A,

Articles 11 and 12 NMSA 1978 regulating the licensing, revocation, suspension or termination of license of agents, but shall not be subject to the provisions of Section 59A-12-26 NMSA 1978.

B. No examination or license shall be required of any regular salaried officer, employee or member of a licensed society who devotes or intends to devote fifty percent or more of his services to activities other than the solicitation of fraternal insurance contracts from the public and who receives for the solicitation of such contracts no commission or other compensation directly dependent upon the amount of business obtained.

C. Any person who in the preceding calendar year has solicited and procured life insurance contracts on behalf of any society in an amount of insurance in excess of fifty thousand dollars (\$50,000) or, in the case of any other kind of insurance that the society might write, on the persons of more than twenty-five individuals and who has received or will receive a commission or other compensation therefor shall be presumed to be devoting or intending to devote fifty percent of his time to the solicitation or procurement of insurance contracts for such society."

Section 33. Section 59A-44-41 NMSA 1978 (being Laws 1989, Chapter 388, Section 41) is amended to read:

"59A-44-41. APPLICABILITY OF INSURANCE CODE.--To the extent not in conflict with the express provisions of Chapter 59A, Article 44 NMSA 1978 and the reasonable implications thereof, the following provisions of the Insurance Code shall also apply as to fraternal benefit societies, and for such purpose a society may therein be

referred to as an "insurer":

- A. Chapter 59A, Article 1 NMSA 1978;
- B. Chapter 59A, Article 2 NMSA 1978;
- C. Chapter 59A, Article 4 NMSA 1978;
- D. Sections 59A-8-1 and 59A-8-2 NMSA 1978;
- E. Section 59A-12-22 NMSA 1978;
- F. Chapter 59A, Article 18 NMSA 1978;
- G. Chapter 59A, Article 19 NMSA 1978;
- H. Chapter 59A, Article 24A NMSA 1978;
- I. Chapter 59A, Articles 20 and 22 NMSA 1978; and
- J. Chapter 59A, Article 41 NMSA 1978."

Section 34. Section 59A-46-30 NMSA 1978 (being Laws 1993, Chapter 266, Section 29, as amended) is amended to read:

"59A-46-30. STATUTORY CONSTRUCTION AND RELATIONSHIP TO OTHER LAWS.--

A. The provisions of the Insurance Code other than Chapter 59A, Article 46 NMSA 1978 shall not apply to health maintenance organizations except as expressly provided in the Insurance Code and that article. To the extent reasonable and not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health maintenance organizations and their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives. For the purposes of such applicability, a health maintenance organization may therein be referred to as an "insurer":

- (1) Chapter 59A, Article 1 NMSA 1978;
- (2) Chapter 59A, Article 2 NMSA 1978;

- (3) Chapter 59A, Article 4 NMSA 1978;
- (4) Subsection C of Section 59A-5-22 NMSA 1978;
- (5) Sections 59A-6-2 through 59A-6-4 and 59A-6-6 NMSA 1978;
- (6) Chapter 59A, Article 8 NMSA 1978;
- (7) Chapter 59A, Article 10 NMSA 1978;
- (8) Section 59A-12-22 NMSA 1978;
- (9) Chapter 59A, Article 16 NMSA 1978;
- (10) Chapter 59A, Article 18 NMSA 1978;
- (11) Chapter 59A, Article 19 NMSA 1978;
- (12) Section 59A-22-2.1 NMSA 1978;
- (13) Section 59A-22-14 NMSA 1978;
- (14) Chapter 59A, Article 23B NMSA 1978;
- (15) Sections 59A-34-2, 59A-34-7 through 59A-34-13, 59A-34-17, 59A-34-23, 59A-34-33, 59A-34-36, 59A-34-37, 59A-34-40 through 59A-34-42 and 59A-34-44 through 59A-34-46 NMSA 1978;
- (16) Chapter 59A, Article 37 NMSA 1978; and
- (17) the Patient Protection Act.

B. Solicitation of enrollees by a health maintenance organization granted a certificate of authority, or its representatives, shall not be construed as violating any provision of law relating to solicitation or advertising by health professionals, but health professionals shall be individually subject to the laws, rules, regulations and ethical provisions governing their individual professions.

C. Any health maintenance organization authorized under the provisions of the Health Maintenance Organization Law shall not be deemed to be practicing medicine and shall

be exempt from the provisions of laws relating to the practice of medicine."

Section 35. Section 59A-47-30 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.29) is amended to read:

"59A-47-30. LICENSED AGENTS OR SOLICITORS REQUIRED-- QUALIFICATIONS, LICENSING PROCEDURES AND CONDITIONS.--

A. Solicitation of subscriberships for a health care plan shall be made only by agents of such plan or solicitors of such agents, who are duly qualified, appointed and licensed as such under the Insurance Code. This provision shall not apply as to salaried officers or employees of health care plans who are visiting or instructing their licensed agents, and who do not receive any part of the commission for any business written by such agents with their assistance.

B. No person shall be appointed or licensed as a health care plan agent or solicitor unless qualified therefor as follows:

- (1) is an individual at least eighteen years of age;
- (2) has had, or will receive, reasonable experience or instruction in the health care plan for which license is applied;
- (3) is be trustworthy and of good business reputation;
- (4) intends to engage in a bona fide way in the business of the health care plan; and
- (5) passes to the superintendent's satisfaction an examination for license as given by or under authorization of the superintendent.

C. A health care plan agent shall be appointed by and at any one time represent only one such plan.

D. Subject to the other provisions of this section, procedures for appointment and licensing such agents and solicitors, examination, issuance or denial of license, continuation or expiration, suspension, revocation or refusal to continue license and other applicable matters relating to such licensing and licenses shall be as provided as to licenses of agents and solicitors as to health insurance under Chapter 59A, Article 11 NMSA 1978. Fee for application for license and continuation of license shall be as specified in Section 59A-6-1 NMSA 1978, and neither fee shall be refundable."

Section 36. Section 59A-47-33 NMSA 1978 (being Laws 1984, Chapter 127, Section 879.32, as amended) is amended to read:

"59A-47-33. OTHER PROVISIONS APPLICABLE.--The provisions of the Insurance Code other than Chapter 59A, Article 47 NMSA 1978 shall not apply to health care plans except as expressly provided in the Insurance Code and that article. To the extent reasonable and not inconsistent with the provisions of that article, the following articles and provisions of the Insurance Code shall also apply to health care plans, their promoters, sponsors, directors, officers, employees, agents, solicitors and other representatives; and, for the purposes of such applicability, a health care plan may therein be referred to as an "insurer":

- A. Chapter 59A, Article 1 NMSA 1978;
- B. Chapter 59A, Article 2 NMSA 1978;
- C. Chapter 59A, Article 4 NMSA 1978;

- D. Subsection C of Section 59A-5-22 NMSA 1978;
- E. Sections 59A-6-2 through 59A-6-4 and
59A-6-6 NMSA 1978;
- F. Section 59A-7-11 NMSA 1978;
- G. Chapter 59A, Article 8 NMSA 1978;
- H. Chapter 59A, Article 10 NMSA 1978;
- I. Section 59A-12-22 NMSA 1978;
- J. Chapter 59A, Article 16 NMSA 1978;
- K. Chapter 59A, Article 18 NMSA 1978;
- L. Chapter 59A, Article 19 NMSA 1978;
- M. Section 59A-22-2.1 NMSA 1978;
- N. Subsections B through E of Section 59A-22-5
NMSA 1978;
- O. Section 59A-22-14 NMSA 1978;
- P. Section 59A-22-34.1 NMSA 1978;
- Q. Section 59A-22-39 NMSA 1978;
- R. Section 59A-22-40 NMSA 1978;
- S. Section 59A-22-41 NMSA 1978;
- T. Sections 59A-34-7 through 59A-34-13, 59A-34-17,
59A-34-23, 59A-34-33, 59A-34-40 through 59A-34-42 and
59A-34-44 through 59A-34-46 NMSA 1978;
- U. Chapter 59A, Article 37 NMSA 1978, except
Section 59A-37-7 NMSA 1978;
- V. Section 59A-46-15 NMSA 1978; and
- W. the Patient Protection Act."

Section 37. Section 59A-50-13 NMSA 1978 (being Laws 1984, Chapter 127, Section 919) is amended to read:

"59A-50-13. REGISTERED REPRESENTATIVES REQUIRED--
QUALIFICATIONS FOR REGISTRATION.--

- A. No person shall be, act as or purport to be a

representative of a motor club in this state unless then registered as such with the superintendent by the motor club.

B. To qualify for registration the applicant shall:

(1) be an individual not less than eighteen years of age;

(2) be of good personal and business reputation;

(3) not previously have been refused registration or had registration revoked;

(4) be suitable and competent to act as such representative; and

(5) intend in good faith to act and hold himself out as such a representative.

C. As part of an application for registration, a nonresident applicant shall appoint the superintendent, on a form prescribed and furnished by the superintendent, as agent on whom may be served all legal process issued by a court in this state in any action involving the nonresident registrant. The appointment is irrevocable and continues for so long as an action involving the nonresident registrant could arise. Duplicate copies of process shall be served upon the superintendent or other person in apparent charge of the insurance division during the superintendent's absence, accompanied by payment of the process service fee specified in Section 59A-6-1 NMSA 1978. Upon service the superintendent shall promptly forward a copy by certified mail, return receipt requested, to the nonresident registrant at his last address of record with

the superintendent. Process served and copy forwarded as so provided constitutes personal service upon the nonresident registrant.

D. A nonresident registrant shall also file with the superintendent a written agreement to appear before the superintendent pursuant to a notice of hearing, show cause order or subpoena issued by the superintendent and deposited, postage paid, by certified mail in a letter depository of the United States post office, addressed to the nonresident registrant at his last address of record with the superintendent, and that upon failure of the nonresident registrant to appear, the nonresident registrant consents to subsequent suspension, revocation or refusal of the superintendent to continue the license."

Section 38. Section 59A-51-4 NMSA 1978 (being Laws 1984, Chapter 127, Section 931) is amended to read:

"59A-51-4. QUALIFICATIONS FOR LICENSE.--Applicants for license as bail bondsman or solicitor pursuant to the provisions of Chapter 59A, Article 51 NMSA 1978 must not be law enforcement, adjudication or prosecution officials or their employees, attorneys-at-law, officials authorized to admit to bail, or state or county officers, and must be qualified as follows:

A. is an individual not less than eighteen years of age;

B. is a citizen of the United States;

C. if for license as bondsman must take and pass to the superintendent's satisfaction a written examination testing his knowledge and competence to engage in the bail bondsman business;

D. is of good personal and business reputation;

E. if to act as a property bondsman, must be financially responsible and provide the surety bond or deposit in lieu thereof as required in accordance with Section 59A-51-8 NMSA 1978;

F. if to act as a limited surety agent, must be appointed by an authorized surety insurer, subject to issuance of a license, and meet all applicable qualifications as for licensing as an agent of an insurer as stated in Section 59A-12-12 NMSA 1978; and

G. if for license as a solicitor, must have been so appointed by a licensed bail bondsman subject to issuance of the solicitor license."

Section 39. Section 59A-51-5 NMSA 1978 (being Laws 1984, Chapter 127, Section 932) is amended to read:

"59A-51-5. APPLICATION FOR LICENSE.--

A. An individual desiring to be licensed as bail bondsman or solicitor under Chapter 59A, Article 51 NMSA 1978 shall file with the superintendent written application on a form as prescribed and furnished by the superintendent, together with application for qualifying examination if for bail bondsman license.

B. With application for license to act as property bondsman the applicant shall file with the superintendent his detailed financial statement under oath and a schedule of charges and the rating plan proposed to be used in writing bail bonds. The schedule shall conform to rules and regulations promulgated by the superintendent.

C. Application for a solicitor's license must be endorsed by the appointing bail bondsman, who shall therein

obligate himself to supervise the solicitor's activities in the bondsman's behalf.

D. The application shall be accompanied by a recent credential-sized full-face photograph of the applicant together with such additional proof of identity as the superintendent may reasonably require.

E. As part of an application for a license, a nonresident applicant shall appoint the superintendent, on a form prescribed and furnished by the superintendent, as agent on whom may be served all legal process issued by a court in this state in any action involving the nonresident licensee. The appointment is irrevocable and continues for so long as an action involving the nonresident licensee could arise. Duplicate copies of process shall be served upon the superintendent or other person in apparent charge of the insurance division during the superintendent's absence, accompanied by payment of the process service fee specified in Section 59A-6-1 NMSA 1978. Upon service the superintendent shall promptly forward a copy by certified mail, return receipt requested, to the nonresident licensee at his last address of record with the superintendent. Process served and copy forward as so provided constitutes personal service upon the nonresident licensee.

F. A nonresident licensee shall also file with the superintendent a written agreement to appear before the superintendent pursuant to a notice of hearing, show cause order or subpoena issued by the superintendent and deposited, postage paid, by certified mail in a letter depository of the United States post office, addressed to the nonresident licensee at his last address of record with

the superintendent, and that upon failure of the nonresident licensee to appear, the nonresident licensee consents to subsequent suspension, revocation or refusal of the superintendent to continue the license."

Section 40. Section 59A-55-20 NMSA 1978 (being Laws 1988, Chapter 125, Section 20) is amended to read:

"59A-55-20. RESTRICTIONS ON INSURANCE PURCHASED BY PURCHASING GROUPS.--

A. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of the state.

B. A purchasing group may purchase insurance for its members in this state or covering its members' risks resident or located in this state only from insurers admitted in this state, from insurers that are eligible surplus lines insurers in this state or from risk retention groups that have registered in this state.

C. A purchasing group which obtains liability insurance from an insurer not admitted in this state or a risk retention group shall inform each of the members of such group that have a risk resident or located in this state that such risk is not protected by an insurance insolvency guaranty fund in this state and that such risk retention group or such insurer may not be subject to all insurance laws and regulations of this state.

D. No purchasing group may purchase insurance providing for a deductible or self-insured retention unless

the deductible or self-insured retention is the sole responsibility of each individual member of the purchasing group."

Section 41. Section 59A-55-24 NMSA 1978 (being Laws 1988, Chapter 125, Section 24) is amended to read:

"59A-55-24. DUTY OF AGENTS OR BROKERS TO OBTAIN LICENSE.--

A. No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance in New Mexico from a risk retention group unless such person, firm, association or corporation is licensed as an insurance agent or broker pursuant to the provisions of the New Mexico Insurance Code.

B. No person, firm, association or corporation shall act or aid in any manner in soliciting, negotiating or procuring liability insurance:

(1) in New Mexico for a purchasing group from an authorized insurer or a risk retention group chartered in a state, unless such person, firm, association or corporation is licensed as an insurance agent or broker pursuant to the provisions of the New Mexico Insurance Code;

(2) in New Mexico for any members of a purchasing group under a purchasing group's policy, unless such person, firm, association or corporation is licensed as an insurance agent or broker pursuant to the provisions of the New Mexico Insurance Code; or

(3) from an insurer not authorized to do business in New Mexico on behalf of a purchasing group located in this state, unless such person, firm, association or corporation is licensed as a surplus lines agent or

excess line broker pursuant to the provisions of the New Mexico Insurance Code.

C. Every person, firm, association or corporation licensed pursuant to the provisions of the New Mexico Insurance Code on business placed with risk retention groups or written through a purchasing group shall inform each prospective insured of the provisions of the notice required by Section 59A-55-10 NMSA 1978 in the case of a purchasing group."

Section 42. Section 59A-56-11 NMSA 1978 (being Laws 1994, Chapter 75, Section 11, as amended) is amended to read:

"59A-56-11. ASSESSMENTS.--

A. After the completion of each calendar year, the alliance shall assess all its members for the net reinsurance loss in the previous calendar year and for the net administrative loss that occurred in the previous calendar year, taking into account investment income for the period and other appropriate gains and losses using the following definitions:

(1) net reinsurance losses shall be the amount determined for the previous calendar year in accordance with Subsection A of Section 59A-56-9 NMSA 1978 for all members offering an approved health plan reduced by reinsurance premiums charged by the alliance in the previous calendar year. Net reinsurance losses shall be calculated separately for group and individual coverage. If the reinsurance premiums for either category of coverage exceed the amount calculated in accordance with Subsection A of Section 59A-56-9 NMSA 1978, the premiums shall be applied first to

offset the net reinsurance losses incurred in the other category of coverage and second to offset administrative losses; and

(2) net administrative losses shall be the administrative expenses incurred by the alliance in the previous calendar year and projected for the current calendar year less the sum of administrative allowances received by the alliance, but in the event of an administrative gain, net administrative losses for the purpose of assessments shall be considered zero and the gain shall be carried forward to the administrative fund for the next calendar year as an additional allowance.

B. The assessment for each member shall be determined by multiplying the total losses of the alliance's operation, as defined in Subsection A of this section, by a fraction, the numerator of which is an amount equal to that member's total premiums, or the equivalent, exclusive of premiums received by the member for an approved health plan for health insurance written in the state during the preceding calendar year and the denominator of which equals the total premiums of all health insurance written in the state during the preceding calendar year exclusive of premiums for approved health plans; provided that total premiums shall not include payments by the secretary of human services pursuant to a contract issued under Section 1876 of the federal Social Security Act, total premiums exempted by the federal Employee Retirement Income Security Act of 1974 or federal government programs.

C. If assessments exceed actual reinsurance losses and administrative losses of the alliance, the excess shall

be held at interest by the board to offset future losses.

D. To enable the board to properly determine the net reinsurance amount and its responsibility for reinsurance to each member:

(1) by April 15 of each year, each member offering an approved health plan shall submit a listing of all incurred claims for the previous year; and

(2) by April 15 of each year, each member shall submit a report that includes the total earned premiums received during the prior year less the total earned premiums exempted by federal government programs.

E. The alliance shall notify each member of the amount of its assessment due by May 15 of each year. The assessment shall be paid by the member by June 15 of each year.

F. The proportion of participation of each member in the alliance shall be determined annually by the board, based on annual statements filed by each member and other reports deemed necessary by the board. Any deficit incurred by the alliance shall be recouped by assessments apportioned among the members pursuant to the formula provided in Subsection B of this section; provided that thirty percent of the assessment paid for any member shall be allowed as a credit on the following annual premium tax return for that member.

G. The board may defer, in whole or in part, the payment of an assessment of a member if, in the opinion of the board, after approval of the superintendent, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. In the event payment

of an assessment against a member is deferred, the amount deferred may be assessed against the other members in a manner consistent with the basis for assessments set forth in Subsection A of this section. The member receiving the deferment shall pay the assessment in full plus interest at the prevailing rate as determined by regulation of the superintendent within four years from the date payment is deferred. After four years but within five years of the date of the deferment, the board may sue to recover the amount of the deferred payment plus interest and costs. Board actions to recover deferred payments brought after five years of the date of deferment are barred. Any amount received shall be deducted from future assessments or reimbursed pro rata to the members paying the deferred assessment."

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