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SENATE BILL 56

**51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014**

INTRODUCED BY

Carrol H. Leavell

AN ACT

RELATING TO INSURANCE; ENACTING A PRINCIPLE-BASED VERSION OF  
THE STANDARD VALUATION LAW; REVISING STANDARD NONFORFEITURE  
PROVISIONS TO COMPLY WITH THE PRINCIPLE-BASED VERSION OF THE  
STANDARD VALUATION LAW; CLARIFYING THE PROVISIONS OF THE  
RISK-BASED CAPITAL ACT AS THEY APPLY TO CERTAIN INSURERS;  
SUBJECTING HEALTH ORGANIZATIONS TO THE RISK-BASED CAPITAL ACT;  
INCORPORATING TREND TESTS FOR CERTAIN INSURERS IN THE  
RISK-BASED CAPITAL ACT; REVISING CERTAIN TRIGGERS FOR  
REGULATORY INTERVENTION IN THE RISK-BASED CAPITAL ACT;  
CLARIFYING THAT FRATERNAL BENEFIT ORGANIZATIONS ARE SUBJECT TO  
THE RISK-BASED CAPITAL ACT; PROVIDING ADDITIONAL TERMS FOR THE  
ALLOWANCE OF CREDIT FOR REINSURANCE; CLARIFYING THE  
SUPERINTENDENT OF INSURANCE'S ROLE IN RELATIONSHIP WITH VARIOUS  
REGULATORY, ENFORCEMENT AND RELATED ENTITIES IN STATE, FEDERAL  
AND INTERNATIONAL JURISDICTIONS; CLARIFYING TERMS OF

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1 CONFIDENTIALITY OF CERTAIN INFORMATION UNDER THE CONTROL OF THE  
2 SUPERINTENDENT; INCLUDING ENTERPRISE RISK IN THE INSURANCE  
3 HOLDING COMPANY LAW; REMOVING RESTRICTIONS ON THE TYPE OF  
4 SUBSIDIARIES A DOMESTIC INSURER MAY ORGANIZE OR ACQUIRE;  
5 EXPANDING REGULATORY REQUIREMENTS INVOLVED IN HOLDING COMPANY  
6 TRANSACTIONS; PROVIDING STANDARDS FOR DETERMINING WHEN AN  
7 ACQUISITION WOULD LESSEN COMPETITION; EXPANDING FACTORS THAT  
8 THE SUPERINTENDENT MAY CONSIDER IN DETERMINING A HAZARDOUS  
9 FINANCIAL CONDITION; EXPANDING REQUIREMENTS THAT THE  
10 SUPERINTENDENT MAY PLACE ON AN INSURER IN A HAZARDOUS FINANCIAL  
11 CONDITION; REVISING THE DEFINITION OF "MEMBER INSURER" IN THE  
12 LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT; CLARIFYING  
13 THE PROVISIONS OF REQUIRED PREMIUM TAX PAYMENTS; PROVIDING  
14 PENALTIES.

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

17 SECTION 1. Section 59A-2-15 NMSA 1978 (being Laws 1984,  
18 Chapter 127, Section 34, as amended) is amended to read:

19 "59A-2-15. INTERSTATE, FEDERAL AND INTERNATIONAL  
20 COOPERATION.--

21 A. On request of the insurance supervisory official  
22 of any other state, province or country; [~~or~~] of the national  
23 association of insurance commissioners or similar association  
24 of insurance regulatory officials; or of a federal agency, the  
25 superintendent shall communicate to [~~such~~] the official, [~~or~~]

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1 association [~~any~~] or agency information that it is [~~his~~] the  
2 superintendent's duty by law to ascertain respecting [~~any~~] an  
3 insurer or other person transacting insurance in this state or  
4 otherwise subject to the superintendent's supervision.

5 B. The superintendent may be a member of the  
6 national association of insurance commissioners or any  
7 successor organization and may participate in and support  
8 cooperative activities of public agencies having supervision of  
9 the insurance business."

10 SECTION 2. Section 59A-5A-2 NMSA 1978 (being Laws 1995,  
11 Chapter 149, Section 2) is amended to read:

12 "59A-5A-2. DEFINITIONS.--As used in the Risk-Based  
13 Capital Act:

14 A. "adjusted risk-based capital report" means a  
15 risk-based capital report adjusted in accordance with  
16 Subsection E of Section 59A-5A-3 NMSA 1978;

17 B. "authorized control level risk-based capital"  
18 means the number determined under the risk-based capital  
19 formula in accordance with the risk-based capital instructions  
20 bearing the same designation;

21 C. "company action level risk-based capital" means  
22 an amount equal to two hundred percent of an insurer's or  
23 health organization's authorized control level risk-based  
24 capital;

25 D. "corrective order" means an order issued by the

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1 superintendent specifying required corrective actions;

2 E. "domestic insurer or health organization" means  
3 an insurer, fraternal benefit society or health organization  
4 domiciled in New Mexico;

5 F. "foreign insurer or health organization" means  
6 an insurer, fraternal benefit society or health organization  
7 that is authorized to do business in New Mexico but is not  
8 domiciled in New Mexico;

9 G. "fraternal benefit society" means an  
10 incorporated society, order or supreme lodge, without capital  
11 stock, including one exempted pursuant to the provisions of  
12 Paragraph (2) of Subsection A of Section 59A-44-40 NMSA 1978,  
13 whether incorporated or not, conducted solely for the benefit  
14 of its members and their beneficiaries and not for profit,  
15 operated on a lodge system with ritualistic form of work,  
16 having a representative form of government and that provides  
17 benefits in accordance with Chapter 59A, Article 44 NMSA 1978;

18 H. "health organization" means a health maintenance  
19 organization; nonprofit health care plan; limited health  
20 service organization; dental or vision plan; hospital, medical  
21 and dental indemnity or service corporation; or other managed  
22 care organization, but does not mean an organization that is  
23 licensed as either a life or health insurer or as a property  
24 and casualty insurer and that is otherwise subject to either  
25 the life or property and casualty risk-based capital

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1 requirements;

2 ~~[E.]~~ I. "life or health insurer" means any  
3 authorized life insurer, health insurer or property and  
4 casualty insurer writing only health insurance; ~~[or nonprofit~~  
5 ~~health care plan;~~

6 ~~F.]~~ J. "mandatory control level risk-based capital"  
7 means an amount equal to seventy percent of an insurer's or  
8 health organization's authorized control level risk-based  
9 capital;

10 ~~[G.]~~ K. "property ~~[or]~~ and casualty insurer" means  
11 any insurer authorized to write property, marine and  
12 transportation, casualty, vehicle or surety insurance, but does  
13 not include any insurer writing only one of the following:

- 14 (1) mortgage guaranty insurance;
- 15 (2) financial guaranty insurance;
- 16 (3) title insurance; or
- 17 (4) health insurance;

18 ~~[H.]~~ L. "negative trend" means, with respect to a  
19 life or health insurer or a fraternal benefit society, a  
20 negative trend over a period of time, as determined in  
21 accordance with the trend test calculation included in the life  
22 or fraternal risk-based capital instructions;

23 ~~[I.]~~ M. "regulatory action level risk-based  
24 capital" means an amount equal to one hundred fifty percent of  
25 an insurer's or health organization's authorized control level

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1 risk-based capital;

2 [J-] N. "revised risk-based capital plan" means a  
3 risk-based capital plan that has been rejected by the  
4 superintendent and revised by the insurer or health  
5 organization, with or without the superintendent's  
6 recommendation;

7 [K-] O. "risk-based capital instructions" means the  
8 risk-based capital report, including risk-based capital  
9 instructions, adopted by the national association of insurance  
10 commissioners, as they may be amended by the national  
11 association of insurance commissioners from time to time, and  
12 not disapproved by the superintendent;

13 [L-] P. "risk-based capital level" means an  
14 insurer's or health organization's company action level  
15 risk-based capital, regulatory action level risk-based capital,  
16 authorized control level risk-based capital or mandatory  
17 control level risk-based capital;

18 [M-] Q. "risk-based capital plan" means a  
19 comprehensive financial plan as specified in Subsection B of  
20 Section 59A-5A-4 NMSA 1978;

21 [N-] R. "risk-based capital report" means the  
22 report specified in Section 59A-5A-3 NMSA 1978; and

23 [O-] S. "total adjusted capital" means the sum of:

24 (1) an insurer's or health organization's  
25 capital and surplus as determined in accordance with statutory

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1 accounting principles applicable to annual financial statements  
2 required to be filed under Section 59A-5-29 NMSA 1978; and

3 (2) such other items, if any, as the  
4 risk-based capital instructions may provide."

5 SECTION 3. Section 59A-5A-3 NMSA 1978 (being Laws 1995,  
6 Chapter 149, Section 3) is amended to read:

7 "59A-5A-3. RISK-BASED CAPITAL REPORTS.--

8 A. On or before March 1 each year, every domestic  
9 insurer and health organization shall prepare and submit to the  
10 superintendent a report of its risk-based capital levels as of  
11 December 31 of the immediately preceding calendar year, in a  
12 form and containing such information as is required by the  
13 risk-based capital instructions. In addition, every domestic  
14 insurer and health organization shall file its risk-based  
15 capital report with:

16 (1) the national association of insurance  
17 commissioners in accordance with the risk-based capital  
18 instructions; and

19 (2) the insurance commissioner of each state  
20 in which the insurer or health organization is authorized to do  
21 business, if the insurance commissioner for that state has  
22 notified the insurer or health organization of [~~his~~] the  
23 request in writing. The insurer or health organization shall  
24 file a copy of its risk-based capital report with each [~~such~~]  
25 commissioner not later than March 1 each year or fifteen days

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1 from receipt of the notice, whichever is later.

2 B. A life or health insurer's or a fraternal  
3 benefit society's risk-based capital shall be determined in  
4 accordance with the formula in the risk-based capital  
5 instructions. The formula shall take into account and may  
6 adjust for the covariance among the following factors:

- 7 (1) asset risk;
- 8 (2) the risk of adverse insurance experience  
9 with respect to the insurer's liabilities and obligations;
- 10 (3) the interest rate risk with respect to the  
11 insurer's business; and
- 12 (4) all other business risks and other  
13 relevant risks set forth in the risk-based capital  
14 instructions.

15 C. A health organization's or property ~~[or]~~ and  
16 casualty insurer's risk-based capital shall be determined in  
17 accordance with the appropriate formula in the risk-based  
18 capital instructions. The formula shall take into account and  
19 may adjust for the covariance among the following factors:

- 20 (1) asset risk;
- 21 (2) credit risk;
- 22 (3) underwriting risk; and
- 23 (4) all other business risks and other  
24 relevant risks set forth in the risk-based capital  
25 instructions.

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1           D. [~~An excess of~~] Capital [~~over~~] in excess of the  
2 amount [~~calculated~~] produced by the risk-based capital  
3 requirements contained in the Risk-Based Capital Act and  
4 formulas, schedules and instructions referenced in the  
5 Risk-Based Capital Act is desirable in the business of  
6 insurance. Additional capital is used and useful in the  
7 insurance business and helps to secure an insurer or health  
8 organization against various risks inherent in, or affecting,  
9 the business of insurance and not accounted for or only  
10 partially measured by the risk-based capital requirements  
11 contained in the Risk-Based Capital Act. Accordingly, insurers  
12 and health organizations should seek to maintain capital above  
13 the risk-based capital levels required by that act.

14           E. If a domestic insurer or health organization  
15 files a risk-based capital report [~~which~~] that in the  
16 superintendent's judgment is inaccurate, then the  
17 superintendent shall adjust the risk-based capital report to  
18 correct the inaccuracy and shall notify the insurer or health  
19 organization of the adjustment. The notice shall contain a  
20 statement of the reason for the adjustment."

21           SECTION 4. Section 59A-5A-4 NMSA 1978 (being Laws 1995,  
22 Chapter 149, Section 4) is amended to read:

23           "59A-5A-4. COMPANY ACTION LEVEL EVENT.--

24           A. As used in the Risk-Based Capital Act, a  
25 "company action level event" means any [~~one or more~~] of the

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1 following events:

2 (1) the filing of a risk-based capital report  
3 by an insurer ~~[which]~~ or health organization that indicates  
4 ~~[that]~~:

5 (a) that the insurer or health  
6 organization has total adjusted capital greater than or equal  
7 to its regulatory action level risk-based capital but less than  
8 its company action level risk-based capital; ~~[or]~~

9 (b) in the case of a life or health  
10 insurer or fraternal benefit society, that the insurer has  
11 total adjusted capital greater than or equal to its company  
12 action level risk-based capital but less than ~~[two hundred~~  
13 ~~fifty]~~ three hundred percent of its authorized control level  
14 risk-based capital and has a negative trend;

15 (c) in the case of a property and  
16 casualty insurer, that the insurer has total adjusted capital  
17 greater than or equal to its company action level risk-based  
18 capital but less than three hundred percent of its authorized  
19 control level risk-based capital and triggers the trend test  
20 determined in accordance with the trend test calculation  
21 included in the property and casualty risk-based capital  
22 instructions; or

23 (d) in the case of a health  
24 organization, that the health organization has total adjusted  
25 capital greater than or equal to its company action level risk-

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1 based capital but less than three hundred percent of its  
2 authorized control level risk-based capital and triggers the  
3 trend test determined in accordance with the trend test  
4 calculation included in the health risk-based capital  
5 instructions;

6 (2) the superintendent's notification to an  
7 insurer or health organization that its adjusted risk-based  
8 capital report indicates the existence of an event described in  
9 Paragraph (1) of this subsection, unless the insurer or health  
10 organization challenges the adjusted report pursuant to Section  
11 59A-5A-8 NMSA 1978; or

12 (3) if an insurer or health organization  
13 challenges the adjusted risk-based capital report, notification  
14 to the insurer or health organization that the superintendent  
15 has, after hearing, rejected the challenge.

16 B. In the event of a company action level event,  
17 the insurer or health organization shall prepare and submit to  
18 the superintendent a risk-based capital plan, which shall:

19 (1) identify the conditions [~~which~~] that  
20 contribute to the company action level event;

21 (2) contain proposals of corrective actions  
22 [~~which~~] that the insurer or health organization intends to take  
23 to eliminate the company action level event;

24 (3) provide projections of the insurer's or  
25 health organization's expected financial results in the current

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1 year and at least the four succeeding years, both in the  
2 absence of and giving effect to the proposed corrective  
3 actions, including projections of statutory operating income,  
4 net income, capital and surplus. Projections for new and  
5 renewal business may, if appropriate, include separate  
6 projections for each major line of business and separately  
7 identify each significant income, expense and benefit  
8 component;

9 (4) identify the key assumptions impacting the  
10 insurer's or health organization's projections and the  
11 sensitivity of the projections to the assumptions; and

12 (5) identify the quality of, and problems  
13 associated with, the insurer's or health organization's  
14 business, including [~~but not limited to~~] its assets,  
15 anticipated business growth and associated surplus strain,  
16 extraordinary exposure to risk, mix of business and use of  
17 reinsurance, if any, in each case.

18 C. The risk-based capital plan shall be submitted  
19 on or before the later of the following dates:

20 (1) forty-five days after the company action  
21 level event; or

22 (2) if the insurer or health organization  
23 challenges the adjusted risk-based capital report pursuant to  
24 Section 59A-5A-8 NMSA 1978, forty-five days after the date of  
25 the notification to the insurer or health organization that the

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1 superintendent has, after hearing, rejected the insurer's or  
2 health organization's challenge.

3 D. Within sixty days after the submission of an  
4 insurer's or health organization's risk-based capital plan, the  
5 superintendent shall notify the insurer or health organization  
6 whether the plan shall be implemented or is, in the  
7 superintendent's judgment, unsatisfactory. If the  
8 superintendent determines that the risk-based capital plan is  
9 unsatisfactory, the notification to the insurer or health  
10 organization shall set forth the reasons for the determination  
11 and may set forth proposed revisions that will render the plan  
12 satisfactory. Upon notification, the insurer or health  
13 organization shall prepare a revised risk-based capital plan,  
14 which may incorporate by reference any revisions proposed by  
15 the superintendent, and shall submit the revised plan to the  
16 superintendent. The revised plan shall be submitted on or  
17 before the last of the following dates:

18 (1) forty-five days after the date of the  
19 superintendent's notification; or

20 (2) if the insurer or health organization  
21 challenges the notification pursuant to Section 59A-5A-8 NMSA  
22 1978, forty-five days after the date of the notification to the  
23 insurer or health organization that the superintendent has,  
24 after hearing, rejected the insurer's or health organization's  
25 challenge.

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1           E. A notification that the insurer's or health  
2 organization's risk-based capital plan or revised risk-based  
3 capital plan is unsatisfactory may include a statement that the  
4 notification constitutes a regulatory action level event,  
5 subject to the insurer's or health organization's right to a  
6 hearing pursuant to Section 59A-5A-8 NMSA 1978.

7           F. Every domestic insurer [~~which~~] or health  
8 organization that files a risk-based capital plan or revised  
9 risk-based capital plan with the superintendent shall file a  
10 copy of the risk-based capital plan and any revised risk-based  
11 capital plan with the insurance commissioner of each state in  
12 which the insurer or health organization is authorized to do  
13 business if:

14                   (1) the state has confidentiality provisions  
15 substantially similar to those in Subsection A of Section  
16 59A-5A-9 NMSA 1978; and

17                   (2) the insurance commissioner for that state  
18 has notified the insurer or health organization of [~~his~~] the  
19 request in writing. The insurer or health organization shall  
20 file a copy of the risk-based capital plan or revised  
21 risk-based capital plan with each [~~such~~] commissioner on or  
22 before the later of the following dates:

23                           (a) fifteen days after the receipt of  
24 notice to file a copy of its risk-based capital plan or revised  
25 risk-based capital plan with the state; or

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1 (b) the date that the risk-based capital  
2 plan or revised risk-based capital plan is filed under  
3 Subsections C and D of this section."

4 SECTION 5. Section 59A-5A-5 NMSA 1978 (being Laws 1995,  
5 Chapter 149, Section 5) is amended to read:

6 "59A-5A-5. REGULATORY ACTION LEVEL EVENT.--

7 A. For purposes of the Risk-Based Capital Act,  
8 "regulatory action level event" means any of the following  
9 events:

10 (1) the filing of a risk-based capital report  
11 by an insurer [~~which~~] or health organization that indicates  
12 that the insurer's or health organization's total adjusted  
13 capital is greater than or equal to its authorized control  
14 level risk-based capital but less than its regulatory action  
15 level risk-based capital;

16 (2) the superintendent's notification to an  
17 insurer or health organization that its adjusted risk-based  
18 capital report indicates the existence of an event described in  
19 Paragraph (1) of this subsection, unless the insurer or health  
20 organization challenges the adjusted report pursuant to Section  
21 59A-5A-8 NMSA 1978;

22 (3) if an insurer or health organization  
23 challenges the adjusted risk-based capital report, notification  
24 to the insurer or health organization that the superintendent  
25 has, after hearing, rejected the challenge;

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1 (4) an insurer's or health organization's  
2 failure to file a risk-based capital report by the filing date,  
3 unless the insurer or health organization has provided an  
4 explanation satisfactory to the superintendent and has cured  
5 the failure within ten days after the filing date;

6 (5) an insurer's or health organization's  
7 failure to submit a risk-based capital plan to the  
8 superintendent by the date specified in Subsection C of Section  
9 59A-5A-4 NMSA 1978;

10 (6) the superintendent's notification to an  
11 insurer or health organization that:

12 (a) the risk-based capital plan or  
13 revised risk-based capital plan submitted by the insurer or  
14 health organization is, in the superintendent's judgment,  
15 unsatisfactory; and

16 (b) the notification constitutes a  
17 regulatory action level event with respect to the insurer or  
18 health organization, unless the insurer or health organization  
19 has challenged the determination pursuant to Section 59A-5A-8  
20 NMSA 1978;

21 (7) if an insurer or health organization  
22 challenges the superintendent's determination made pursuant to  
23 Paragraph (6) of this subsection, notification to the insurer  
24 or health organization that the superintendent has, after  
25 hearing, rejected the challenge;

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1 (8) the superintendent's notification to an  
2 insurer or health organization that the insurer or health  
3 organization has failed to adhere to its risk-based capital  
4 plan or revised risk-based capital plan and that the failure  
5 has had or will have a substantial adverse effect on the  
6 ability of the insurer or health organization to eliminate the  
7 company action level event, unless the insurer or health  
8 organization has challenged the determination pursuant to  
9 Section 59A-5A-8 NMSA 1978; or

10 (9) if an insurer or health organization  
11 challenges the superintendent's determination made pursuant to  
12 Paragraph (8) of this subsection, notification to the insurer  
13 or health organization that the superintendent has, after  
14 hearing, rejected the challenge.

15 B. In the event of a regulatory action level event,  
16 the superintendent shall:

17 (1) require the insurer or health organization  
18 to prepare and submit a risk-based capital plan or, if  
19 applicable, a revised risk-based capital plan;

20 (2) perform such examination or analysis as  
21 the superintendent deems necessary of the assets, liabilities  
22 and operations of the insurer or health organization, including  
23 a review of its risk-based capital plan or revised risk-based  
24 capital plan; and

25 (3) subsequent to the examination or analysis,

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1 issue an order specifying such corrective actions as the  
2 superintendent determines are required.

3 C. In determining corrective actions, the  
4 superintendent may take into account such factors as are deemed  
5 relevant based upon the superintendent's examination or  
6 analysis of the assets, liabilities and operations of the  
7 insurer or health organization, including ~~[but not limited to]~~  
8 the results of any sensitivity tests undertaken pursuant to the  
9 risk-based capital instructions. The risk-based capital plan  
10 or revised risk-based capital plan shall be submitted on or  
11 before the later of the following dates:

12 (1) forty-five days after the occurrence of  
13 the regulatory action level event; or

14 (2) if the insurer or health organization  
15 challenges an adjusted or revised risk-based capital report or  
16 plan pursuant to Section 59A-5A-8 NMSA 1978 and the challenge  
17 is not frivolous in the superintendent's judgment, forty-five  
18 days after notification to the insurer or health organization  
19 that the superintendent has, after hearing, rejected the  
20 insurer's or health organization's challenge.

21 D. The superintendent may retain actuaries and  
22 investment experts and other consultants as ~~[he may deem]~~ the  
23 superintendent deems necessary to review the insurer's or  
24 health organization's risk-based capital plan or revised  
25 risk-based capital plan, examine or analyze the assets,

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1 liabilities and operations of the insurer or health  
2 organization and formulate the corrective order with respect to  
3 the insurer or health organization. The fees, costs and  
4 expenses incurred by consultants shall be paid by the affected  
5 insurer or health organization or such other party as the  
6 superintendent directs."

7 SECTION 6. Section 59A-5A-6 NMSA 1978 (being Laws 1995,  
8 Chapter 149, Section 6) is amended to read:

9 "59A-5A-6. AUTHORIZED CONTROL LEVEL EVENT.--

10 A. As used in the Risk-Based Capital Act,  
11 "authorized control level event" means any of the following  
12 events:

13 (1) the filing of a risk-based capital report  
14 by an insurer [~~which~~] or health organization that indicates  
15 that the insurer's or health organization's total adjusted  
16 capital is greater than or equal to its mandatory control level  
17 risk-based capital but less than its authorized control level  
18 risk-based capital;

19 (2) the superintendent's notification to an  
20 insurer or health organization that its adjusted risk-based  
21 capital report indicates the existence of an event described in  
22 Paragraph (1) of this subsection, unless the insurer or health  
23 organization challenges the adjusted report pursuant to Section  
24 59A-5A-8 NMSA 1978;

25 (3) if an insurer or health organization

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1 challenges the adjusted risk-based capital report, notification  
2 to the insurer or health organization that the superintendent  
3 has, after hearing, rejected the challenge;

4 (4) an insurer's or health organization's  
5 failure to respond, in a manner satisfactory to the  
6 superintendent, to a corrective order unless the insurer or  
7 health organization has challenged the order pursuant to  
8 Section 59A-5A-8 NMSA 1978; or

9 (5) if an insurer or health organization has  
10 challenged a corrective order and the superintendent has, after  
11 hearing, rejected the challenge or modified the corrective  
12 order, the failure of the insurer or health organization to  
13 respond, in a manner satisfactory to the superintendent, to the  
14 corrective order subsequent to rejection or modification.

15 B. In the event of an authorized control level  
16 event with respect to an insurer or health organization, the  
17 superintendent shall:

18 (1) take such actions as are required pursuant  
19 to Section 59A-5A-5 NMSA 1978 regarding an insurer or health  
20 organization with respect to which a regulatory action level  
21 event has occurred; or

22 (2) if the superintendent deems it to be in  
23 the best interests of the insurer's or health organization's  
24 policyholders and creditors and of the public, take such  
25 actions as are necessary to cause the insurer or health

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1 organization to be placed under regulatory control pursuant to  
2 Chapter 59A, Article 41 NMSA 1978. The authorized control  
3 level event [~~shall constitute~~] constitutes sufficient grounds  
4 for the superintendent to take action pursuant to Chapter 59A,  
5 Article 41 NMSA 1978, and the superintendent [~~shall have~~] has  
6 the rights, powers and duties with respect to the insurer or  
7 health organization set forth in Chapter 59A, Article 41 NMSA  
8 1978."

9 SECTION 7. Section 59A-5A-7 NMSA 1978 (being Laws 1995,  
10 Chapter 149, Section 7) is amended to read:

11 "59A-5A-7. MANDATORY CONTROL LEVEL EVENT.--

12 A. As used in the Risk-Based Capital Act,  
13 "mandatory control level event" means any of the following  
14 events:

15 (1) the filing of a risk-based capital report  
16 [~~which~~] that indicates that an insurer's or health  
17 organization's total adjusted capital is less than its  
18 mandatory control level risk-based capital;

19 (2) the superintendent's notification to an  
20 insurer or health organization that its adjusted risk-based  
21 capital report indicates the existence of an event described in  
22 Paragraph (1) of this subsection, unless the insurer or health  
23 organization challenges the adjusted report pursuant to Section  
24 59A-5A-8 NMSA 1978; or

25 (3) if the insurer or health organization

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1 challenges the adjusted risk-based capital report, notification  
2 to the insurer or health organization that the superintendent  
3 has, after hearing, rejected the insurer's or health  
4 organization's challenge.

5 B. In the event of a mandatory control level event,  
6 the superintendent shall:

7 (1) with respect to a life or health insurer,  
8 fraternal benefit society or health organization, take such  
9 actions as are necessary to place the life or health insurer,  
10 fraternal benefit society or health organization under  
11 regulatory control pursuant to Chapter 59A, Article 41 NMSA  
12 1978. In that event, the mandatory control level event [~~shall~~  
13 ~~constitute~~] constitutes sufficient grounds for the  
14 superintendent to take action pursuant to Chapter 59A, Article  
15 41 NMSA 1978, and the superintendent [~~shall have~~] has the  
16 rights, powers and duties with respect to the insurer set forth  
17 in Chapter 59A, Article 41 NMSA 1978. Notwithstanding the  
18 foregoing provisions of this paragraph, the superintendent may  
19 [~~forego~~] forgo action for up to ninety days after the mandatory  
20 control level event if the superintendent finds that there is a  
21 reasonable expectation that the mandatory control level event  
22 can be eliminated within the ninety-day period; or

23 (2) with respect to a property [~~or~~] and  
24 casualty insurer, take such actions as are necessary to place  
25 the insurer under regulatory control pursuant to Chapter 59A,

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1 Article 41 NMSA 1978, or, in the case of an insurer that is  
2 writing no business and that is running off its existing  
3 business, may allow the insurer to continue its run off under  
4 the superintendent's supervision. In either event, the  
5 mandatory control level event [~~shall constitute~~] constitutes  
6 sufficient grounds for the superintendent to take action  
7 pursuant to Chapter 59A, Article 41 NMSA 1978, and the  
8 superintendent [~~shall have~~] has the rights, powers and duties  
9 with respect to the insurer as are set forth in Chapter 59A,  
10 Article 41 NMSA 1978. Notwithstanding the foregoing provisions  
11 of this paragraph, the superintendent may [~~forego~~] forgo action  
12 for up to ninety days after the mandatory control level event  
13 if the superintendent finds that there is a reasonable  
14 expectation that the mandatory control level event can be  
15 eliminated within the ninety-day period."

16 SECTION 8. Section 59A-5A-8 NMSA 1978 (being Laws 1995,  
17 Chapter 149, Section 8) is amended to read:

18 "59A-5A-8. CHALLENGE HEARINGS.--Any insurer or health  
19 organization has the right to a confidential administrative  
20 hearing of record in accordance with Chapter 59A, Article 4  
21 NMSA 1978 at which the insurer or health organization may  
22 challenge any determination or action by the superintendent  
23 pursuant to the Risk-Based Capital Act.

24 A. The insurer or health organization shall file  
25 and serve on the superintendent its request for hearing within

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1 five days after any of the following events:

2 (1) the superintendent's notification to the  
3 insurer or health organization of an adjusted risk-based  
4 capital report;

5 (2) the superintendent's notification to the  
6 insurer or health organization that:

7 (a) the insurer's or health  
8 organization's risk-based capital plan or revised risk-based  
9 capital plan is unsatisfactory; and

10 (b) such notification constitutes a  
11 regulatory action level event with respect to [~~such~~] the  
12 insurer or health organization;

13 (3) the superintendent's notification to the  
14 insurer or health organization that the insurer or health  
15 organization has failed to adhere to its risk-based capital  
16 plan or revised risk-based capital plan and that such failure  
17 has had or will have a substantial adverse effect on the  
18 ability of the insurer or health organization to eliminate the  
19 company action level event; or

20 (4) the superintendent's notification to an  
21 insurer or health organization of a corrective order with  
22 respect to the insurer or health organization.

23 B. Upon receipt of the insurer's or health  
24 organization's request for hearing, the superintendent shall  
25 set a hearing date, which shall be not less than ten nor more

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1 than thirty days after the date of the insurer's or health  
2 organization's request."

3 SECTION 9. Section 59A-5A-9 NMSA 1978 (being Laws 1995,  
4 Chapter 149, Section 9) is amended to read:

5 "59A-5A-9. CONFIDENTIALITY--PROHIBITION ON  
6 ANNOUNCEMENTS--PROHIBITION ON USE IN RATEMAKING.--

7 A. To the extent not set forth in any other form  
8 accessible to the public, all information in risk-based capital  
9 reports, risk-based capital plans, results or reports of any  
10 examination or analysis of an insurer or health organization  
11 performed [~~pursuant to~~] exclusively for the purposes required  
12 by the Risk-Based Capital Act and all corrective orders issued  
13 by the superintendent pursuant to such examination or analysis  
14 [is] are and shall be kept confidential by the superintendent.  
15 This information shall not be made public. [~~or be subject to~~  
16 ~~subpoena, other than by the superintendent and then only for~~  
17 ~~the purpose of enforcement actions taken by the superintendent~~  
18 ~~pursuant to the Insurance Code.~~]

19 B. To assist in the performance of the  
20 superintendent's duties, the superintendent may:

21 (1) share documents, materials or other  
22 information, including the confidential and privileged  
23 documents, materials or information identified in Subsection A  
24 of this section, with other state, federal and international  
25 regulatory agencies, with the national association of insurance

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1 commissioners, its affiliates or its subsidiaries and with  
2 state, federal and international law enforcement authorities if  
3 the recipient agrees in writing to maintain the confidentiality  
4 and privilege of the documents, materials or other information;

5 (2) receive documents, materials or  
6 information, including otherwise confidential and privileged  
7 documents, materials or information, from the national  
8 association of insurance commissioners, its affiliates or its  
9 subsidiaries and from regulatory and law enforcement officials  
10 of foreign or domestic jurisdictions, except that the  
11 superintendent shall maintain as confidential or privileged  
12 documents, materials or other information received with notice  
13 or the understanding that the content is confidential or  
14 privileged pursuant to the laws of the jurisdiction from which  
15 the information originates; and

16 (3) enter into agreements governing the  
17 sharing and use of information that are consistent with this  
18 subsection.

19 [B-] C. The comparison of an insurer's or health  
20 organization's total adjusted capital to any of its risk-based  
21 capital levels is a regulatory tool that may indicate the need  
22 for possible corrective action by the superintendent with  
23 respect to the insurer or health organization and is not  
24 intended as a means to rank insurers or health organizations  
25 generally or to compare insurers or health organizations for

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1 marketing purposes. Use of such comparisons for such purposes  
2 is inherently misleading and deceptive. Except as otherwise  
3 required under the provisions of the Risk-Based Capital Act or  
4 applicable law, no insurer, health organization, agent, broker  
5 or other person engaged in any manner in the business of  
6 insurance shall make, publish, disseminate, circulate or place  
7 before the public, or cause, directly or indirectly, to be  
8 made, published, disseminated, circulated or placed before the  
9 public in a newspaper, magazine or other publication, or in the  
10 form of a notice, circular, pamphlet, letter or poster, or over  
11 any radio or television station, or in any other way, an  
12 advertisement, announcement or statement containing an  
13 assertion, representation or statement with regard to the  
14 risk-based capital levels of any insurer or health  
15 organization, or of any component derived in their calculation;  
16 provided, however, that if any materially false statement with  
17 respect to the comparison regarding an insurer's or health  
18 organization's total adjusted capital to its risk-based capital  
19 levels or an inappropriate comparison of any other amount to  
20 the insurer's or health organization's risk-based capital  
21 levels is published in any written publication and the insurer  
22 or health organization is able to demonstrate to the  
23 superintendent's satisfaction the falsity or inappropriateness  
24 of the statement, then the insurer or health organization may  
25 publish an announcement approved in advance by the

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1 superintendent in a written publication whose sole purpose is  
2 to rebut the materially false statement.

3 ~~[G.]~~ D. The risk-based capital instructions,  
4 risk-based capital reports, adjusted risk-based capital  
5 reports, risk-based capital plans and revised risk-based  
6 capital plans are intended solely for use by the superintendent  
7 in monitoring the solvency of insurers and health organizations  
8 and the need for possible corrective action with respect to  
9 insurers and health organizations. They shall not be used by  
10 the superintendent for ratemaking, considered or introduced as  
11 evidence in any rate proceeding or used to calculate or derive  
12 any elements of an appropriate premium level or rate of return  
13 for any line of insurance ~~[which]~~ that an insurer, health  
14 organization or any affiliate is authorized to write."

15 **SECTION 10.** Section 59A-5A-11 NMSA 1978 (being Laws 1995,  
16 Chapter 149, Section 11) is amended to read:

17 "59A-5A-11. FOREIGN INSURERS.--

18 A. Any foreign insurer or health organization  
19 shall, upon the superintendent's written request, submit to the  
20 superintendent a risk-based capital report, as of the end of  
21 the most recent calendar year, on the same date risk-based  
22 capital reports are required to be filed by domestic insurers  
23 and health organizations under the Risk-Based Capital Act or  
24 fifteen days after the request is received by the foreign  
25 insurer or health organization, whichever is later. Any

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1 foreign insurer or health organization shall, upon the  
2 superintendent's written request, promptly submit to the  
3 superintendent a copy of any risk-based capital plan filed with  
4 the insurance commissioner of any other state.

5 B. In the event of a company action level event,  
6 regulatory action level event or authorized control level event  
7 with respect to any foreign insurer or health organization as  
8 determined pursuant to the risk-based capital statute  
9 applicable in an insurer's or health organization's state of  
10 domicile, or, if no risk-based capital requirements are in  
11 force in that state, under the provisions of the Risk-Based  
12 Capital Act, the superintendent may require the foreign insurer  
13 or health organization to file a risk-based capital plan with  
14 the superintendent unless the insurance commissioner of the  
15 insurer's or health organization's state of domicile has  
16 previously so required. The failure of the foreign insurer or  
17 health organization to timely file a risk-based capital plan  
18 with the superintendent shall be grounds to order the insurer  
19 or health organization to cease and desist from writing new  
20 insurance business in this state or to suspend or revoke its  
21 certificate of authority.

22 C. In the event of a mandatory control level event  
23 with respect to any foreign insurer or health organization, the  
24 superintendent may proceed in accordance with Subsection B of  
25 Section 59A-5A-7 NMSA 1978."

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1           SECTION 11. Section 59A-5A-13 NMSA 1978 (being Laws 1995,  
2 Chapter 149, Section 13) is amended to read:

3           "59A-5A-13. NOTICES.--The superintendent's notices to an  
4 insurer or health organization pursuant to the Risk-Based  
5 Capital Act shall be effective upon mailing by certified mail  
6 or, in the case of any other mode of transmission, shall be  
7 effective upon the insurer's or health organization's receipt."

8           SECTION 12. A new section of the Risk-Based Capital Act  
9 is enacted to read:

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

14          SECTION 13. Section 59A-6-2 NMSA 1978 (being Laws 1984,  
15 Chapter 127, Section 102, as amended) is amended to read:

16          "59A-6-2. PREMIUM TAX--HEALTH INSURANCE PREMIUM SURTAX.--

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

- 19                   (1) each insurer authorized to transact  
20 insurance in New Mexico;
- 21                   (2) each insurer formerly authorized to  
22 transact insurance in New Mexico and receiving premiums on  
23 policies remaining in force in New Mexico, except that this  
24 provision shall not apply as to an insurer that withdrew from  
25 New Mexico prior to March 26, 1955;

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

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

9 (5) each unauthorized insurer that has assumed  
10 a contract or policy of insurance directly or indirectly from  
11 an authorized or formerly authorized insurer and is receiving  
12 premiums on such policies remaining in force in New Mexico,  
13 except that this provision shall not apply if a ceding insurer  
14 continues to pay the tax provided in this section as to such  
15 policy or contract.

16 B. Each such taxpayer shall pay in accordance with  
17 this subsection a premium tax of three and three-thousandths  
18 percent of the gross premiums and membership and policy fees  
19 received or written by it, as reported in Schedule T and  
20 supporting schedules of its annual financial statement on  
21 insurance or contracts covering risks within this state during  
22 the preceding calendar year, less all return premiums,  
23 including dividends paid or credited to policyholders or  
24 contract holders and premiums received for reinsurance on New  
25 Mexico risks.

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1 C. In addition to the premium tax imposed pursuant  
2 to Subsection B of this section, each taxpayer described in  
3 Subsection A of this section that transacts health insurance in  
4 New Mexico or is a plan described in Chapter 59A, Article 46 or  
5 47 NMSA 1978 shall pay a health insurance premium surtax of one  
6 percent of the gross health insurance premiums and membership  
7 and policy fees received by it on hospital and medical expense  
8 incurred insurance or contracts; nonprofit health care service  
9 plan contracts, excluding dental or vision only contracts; and  
10 health maintenance organization subscriber contracts covering  
11 health risks within this state during the preceding calendar  
12 year, less all return health insurance premiums, including  
13 dividends paid or credited to policyholders or contract holders  
14 and health insurance premiums received for reinsurance on New  
15 Mexico risks. Except as provided in this section, all  
16 references in the Insurance Code to the premium tax shall  
17 include both the premium tax and the health insurance premium  
18 surtax.

19 D. For each calendar quarter, an estimated payment  
20 of the premium tax and the health insurance premium surtax  
21 shall be made on April 15, July 15, October 15 and the  
22 following January 15. The estimated payments shall be equal to  
23 at least one-fourth of [~~either~~] the payment made during the  
24 previous calendar year or [~~eighty percent~~] one-fifth of the  
25 actual payment due for the current calendar year, whichever is

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1 greater. The final adjustment for payments due for the prior  
2 year shall be made with the return, which shall be filed on  
3 April 15 of each year, at which time all taxes for that year  
4 are due. Dividends paid or credited to policyholders or  
5 contract holders and refunds, savings, savings coupons and  
6 similar returns or credits applied or credited to payment of  
7 premiums for existing, new or additional insurance shall, in  
8 the amount so used, constitute premiums subject to tax under  
9 this section for the year in which so applied or credited.

10 E. Exempted from the taxes imposed by this section  
11 are:

12 (1) premiums attributable to insurance or  
13 contracts purchased by the state or a political subdivision for  
14 the state's or political subdivision's active or retired  
15 employees; and

16 (2) payments received by a health maintenance  
17 organization from the federal secretary of health and human  
18 services pursuant to a contract issued under the provisions of  
19 42 U.S.C. Section 1395 mm(g)."

20 SECTION 14. Section 59A-7-11 NMSA 1978 (being Laws 1984,  
21 Chapter 127, Section 117, as amended) is amended to read:

22 "59A-7-11. REINSURANCE.--

23 A. An insurer may reinsure all or any part of a  
24 particular risk or of a particular class of risks in another  
25 insurer, or accept such reinsurance from another insurer. No

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1 domestic insurer shall so reinsure with an insurer not  
2 authorized to transact insurance in [~~this state~~] New Mexico  
3 unless the unauthorized insurer is authorized to transact  
4 insurance in another state and conforms to the same standards  
5 of solvency as would be required if at the time such  
6 reinsurance is effected the reinsurer was so authorized in  
7 [~~this state~~] New Mexico or unless, in the case of a group that  
8 includes incorporated and individual, unincorporated alien  
9 insurers, it has assets held in trust for the benefit of its  
10 United States policyholders in an amount not less than one  
11 hundred million dollars (\$100,000,000) and is authorized to  
12 transact insurance in at least one state or unless with the  
13 superintendent's approval in advance. With the  
14 superintendent's approval, a domestic insurer may reinsure all  
15 or substantially all of its risks in another insurer, or  
16 similarly reinsure the risks of another insurer, as provided in  
17 Section 59A-34-40 NMSA 1978.

18 B. Credit for reinsurance shall be allowed as an  
19 asset or as a deduction from liability to any ceding insurer  
20 for reinsurance lawfully ceded only when the reinsurance is  
21 payable by the assuming insurer on the basis of the liability  
22 of the ceding insurer under the contracts reinsured without  
23 diminution because of the insolvency of the ceding insurer  
24 directly to the ceding insurer or to its domiciliary liquidator  
25 or receiver, except where the assuming insurer with the consent

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1 of the direct insured or insureds has assumed such policy  
2 obligations of the ceding insurer as direct obligations of the  
3 assuming insurer to the payees under such policies and in  
4 substitution for the obligations of the ceding insurer to such  
5 payees, and the reinsurer meets the requirements of Paragraph  
6 (1), (2), (3), ~~(4)~~, (5) or (6) of this subsection. If  
7 meeting the requirements of Paragraph (3) or (4) of this  
8 subsection, the requirements of Paragraph ~~(5)~~ (7) of this  
9 subsection ~~must~~ shall also be met. Credit shall be allowed  
10 pursuant to Paragraph (1), (2) or (3) of this subsection only  
11 for cessions of those kinds or classes of business that the  
12 assuming insurer is licensed or otherwise permitted to write or  
13 assume in its state of domicile or, in the case of a United  
14 States branch of an alien assuming insurer, in the state  
15 through which it is entered and licensed to transact insurance  
16 or reinsurance.

17 (1) Credit shall be allowed when the  
18 reinsurance is ceded to an assuming insurer ~~[which is]~~  
19 authorized to transact insurance or reinsurance in ~~[this state]~~  
20 New Mexico.

21 (2) Credit shall be allowed when the  
22 reinsurance is ceded to an assuming insurer ~~[which is]~~  
23 accredited as a reinsurer in ~~[this state]~~ New Mexico. An  
24 accredited reinsurer is one ~~[which]~~ that:

25 (a) files with the superintendent

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1 evidence of its submission to [~~this state~~] New Mexico's  
2 jurisdiction;

3 (b) submits to [~~this state's~~] New  
4 Mexico's authority to examine its books and records;

5 (c) is licensed to transact insurance or  
6 reinsurance in at least one state or, in the case of a United  
7 States branch of an alien assuming insurer, is entered through  
8 and licensed to transact insurance or reinsurance in at least  
9 one state; and

10 (d) files annually with the  
11 superintendent a copy of its annual statement filed with the  
12 insurance department of its state of domicile and a copy of its  
13 most recent audited financial statement and [~~either 1)~~  
14 ~~maintains a surplus as regards policyholders in an amount which~~  
15 ~~is not less than twenty million dollars (\$20,000,000) and whose~~  
16 ~~accreditation has not been denied by the superintendent within~~  
17 ~~ninety days of its submission or 2) maintains a surplus as~~  
18 ~~regards policyholders in an amount less than twenty million~~  
19 ~~dollars (\$20,000,000) and whose accreditation has been approved~~  
20 ~~by the superintendent.~~

21 (~~e) No credit shall be allowed a ceding~~  
22 ~~insurer, if the assuming insurer's accreditation has been~~  
23 ~~revoked by the superintendent after notice and hearing]~~  
24 demonstrates to the satisfaction of the superintendent that it  
25 has adequate financial capacity to meet its reinsurance

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1 obligations and is otherwise qualified to assume reinsurance  
2 from domestic insurers. An assuming insurer is deemed to meet  
3 this requirement at the time of its application if it maintains  
4 a surplus for policyholders in an amount not less than twenty  
5 million dollars (\$20,000,000) and its accreditation has not  
6 been denied by the superintendent within ninety days after the  
7 submission of its application.

8 (3) Credit shall be allowed when the  
9 reinsurance is ceded to an assuming insurer domiciled in or, in  
10 the case of a United States branch of an alien assuming  
11 insurer, is entered through, a state that employs standards for  
12 credit for reinsurance substantially similar to those provided  
13 in this section if the assuming insurer or United States branch  
14 of an alien assuming insurer:

15 (a) maintains a surplus as regards  
16 policyholders in an amount not less than twenty million dollars  
17 (\$20,000,000), unless the reinsurance is ceded and assumed  
18 pursuant to pooling arrangements among insurers in the same  
19 holding company system; and

20 (b) submits to New Mexico's authority to  
21 examine the insurer's books and records.

22 [~~(3)~~] (4) Credit shall be allowed when [~~the~~  
23 ~~following requirements are met:~~

24 [~~(a)~~] the reinsurance is ceded to an  
25 assuming insurer [~~which~~] that maintains a trust [~~fund~~] in a

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1 qualified United States financial institution, as defined in  
2 Paragraph (2) of Subsection D of this section, for the payment  
3 of the valid claims of its United States policyholders and  
4 ceding insurers, their assigns and successors in interest. The  
5 assuming insurer shall report annually to the superintendent  
6 information substantially the same as that required to be  
7 reported on the national association of insurance commissioners  
8 annual statement form by licensed insurers to enable the  
9 superintendent to determine the sufficiency of the trust [~~fund.~~  
10 ~~In the case of~~] and shall submit to and bear the expense of the  
11 examination of its books and records by the superintendent.  
12 Credit for reinsurance shall not be granted pursuant to this  
13 paragraph unless the trust and amendments to the trust have  
14 been approved by the insurance supervisory official of the  
15 state in which the trust is domiciled or the insurance  
16 supervisory official of another state who, pursuant to the  
17 terms of the trust, has accepted principal regulatory oversight  
18 of the trust. The trust and every trust amendment shall be  
19 filed with the superintendent and with the insurance  
20 supervisory official of every state in which the ceding insurer  
21 beneficiaries of the trust are domiciled. The trust shall  
22 provide that contested claims be valid and enforceable upon the  
23 final order of a court of competent jurisdiction in the United  
24 States. The trust shall vest legal title to its assets in its  
25 trustees for the benefit of the assuming insurer's United

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1 States ceding insurers, their assigns and successors in  
2 interest and shall remain in effect for as long as the assuming  
3 insurer has an outstanding obligation due pursuant to the  
4 reinsurance agreements subject to the trust. The  
5 superintendent may examine the trust and the assuming insurer.  
6 No later than February 28 of each year, the trustee of the  
7 trust shall report in writing to the superintendent the balance  
8 of the trust and a list of the trust's investments at the  
9 preceding year's end and certify the date of termination of the  
10 trust, if planned, or that the trust will not expire prior to  
11 the following December 31.

12 (a) For a single assuming insurer, the  
13 trust shall consist of a trustee account representing the  
14 assuming insurer's liabilities attributable to business written  
15 in the United States, and, in addition, the assuming insurer  
16 shall maintain a trustee surplus of not less than twenty  
17 million dollars (\$20,000,000). [~~In the case of~~]

18 (b) At any time after a single assuming  
19 insurer has permanently discontinued underwriting new business  
20 secured by the trust for at least three years and after a  
21 finding based on an assessment of the risk that the new  
22 required surplus level, in light of reasonably foreseeable  
23 adverse loss development, is adequate for the protection of  
24 United States ceding insurers, policyholders and claimants, the  
25 insurance supervisory official with principal regulatory

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1 oversight of the trust may authorize a reduction in the  
2 required trustee surplus. The risk assessment may involve an  
3 actuarial review, including an independent analysis of reserves  
4 and cash flows, and shall consider all material risk factors,  
5 including when applicable the lines of business involved, the  
6 stability of the incurred loss estimates and the effect of the  
7 surplus requirements on the assuming insurer's liquidity or  
8 solvency. The minimum required trustee surplus shall not be  
9 reduced to less than thirty percent of the assuming insurer's  
10 liabilities attributable to reinsurance ceded by United States  
11 ceding insurers covered by the trust.

12 (c) For a group that includes  
13 incorporated and individual unincorporated underwriters, the  
14 trust shall consist of a trustee account representing the  
15 group's liabilities attributable to business written in the  
16 United States and, in addition, the group shall maintain a  
17 trustee surplus of which one hundred million dollars  
18 (\$100,000,000) shall be held jointly for the benefit of United  
19 States ceding insurers of any member of the group for all years  
20 of account; provided that the group shall make available to the  
21 superintendent an annual certification of the solvency of each  
22 underwriter by the group's domiciliary regulator and its  
23 independent public accounts; and provided further that the  
24 incorporated members of the group shall not engage in any  
25 business other than underwriting as a member of the group and

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1 shall be subject to the same level of solvency regulation and  
2 control by the group's domiciliary regulator as are the  
3 unincorporated members.

4 ~~[(b) in the case of]~~ (d) A group of  
5 incorporated insurers under common administration ~~[which~~  
6 ~~complies with the filing requirements contained in Subparagraph~~  
7 ~~(a) of this paragraph and which has]~~ shall: 1) have  
8 continuously transacted an insurance business outside the  
9 United States for at least three years immediately prior to  
10 making application for accreditation ~~[and submits to this~~  
11 ~~state's authority to examine its books and records and bears~~  
12 ~~the expense of the examination, and which has]~~; 2) maintain  
13 aggregate policyholders' surplus of at least ten billion  
14 dollars (\$10,000,000,000) ~~[the trust shall be]~~; 3) maintain a  
15 trust fund in an amount ~~[equal to]~~ not less than the group's  
16 several liabilities attributable to business ceded by United  
17 States ceding insurers to any member of the group pursuant to  
18 reinsurance contracts issued in the name of such group ~~[plus~~  
19 ~~the group shall]~~; and 4) maintain a joint trusteed surplus of  
20 which one hundred million dollars (\$100,000,000) ~~[shall be]~~ is  
21 held jointly and exclusively for the benefit of the United  
22 States ceding insurers of any member of the group as additional  
23 security for any such liabilities ~~[and]~~. Each member of the  
24 group shall make available to the superintendent an annual  
25 certification of the member's solvency by the member's

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1 domiciliary regulator and its independent public accountant.

2 ~~[(c) such trust shall be established in~~  
3 ~~a form approved by the superintendent. The trust instrument~~  
4 ~~shall provide that contested claims shall be valid and~~  
5 ~~enforceable upon the final order of any court of competent~~  
6 ~~jurisdiction in the United States. The trust shall vest legal~~  
7 ~~title to its assets in the trustees of the trust for its United~~  
8 ~~States policyholders and ceding insurers, their assigns and~~  
9 ~~successors in interest. The trust and the assuming insurer~~  
10 ~~shall be subject to examination as determined by the~~  
11 ~~superintendent. The trust described herein must remain in~~  
12 ~~effect for as long as the assuming insurer shall have~~  
13 ~~outstanding obligations due under the reinsurance agreements~~  
14 ~~subject to the trust; and~~

15 ~~(d) no later than February 28 of each~~  
16 ~~year, the trustees of the trust shall report to the~~  
17 ~~superintendent in writing setting forth the balance of the~~  
18 ~~trust and listing the trust's investments at the preceding year~~  
19 ~~end and shall certify the date of termination of the trust, if~~  
20 ~~so planned, or certify that the trust shall not expire prior to~~  
21 ~~the next following December 31.]~~

22 (5) Credit shall be allowed when the  
23 reinsurance is ceded to an assuming insurer that has been  
24 certified by the superintendent as a reinsurer in New Mexico  
25 and that secures its obligations in accordance with the

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1 requirements of this paragraph.

2 (a) To be eligible for certification, an  
3 assuming insurer shall: 1) be domiciled and licensed to  
4 transact insurance or reinsurance in a qualified jurisdiction,  
5 pursuant to Subparagraph (c) of this paragraph; 2) maintain  
6 minimum capital and surplus, or its equivalent, in an amount to  
7 be determined by the superintendent pursuant to rule; 3)  
8 maintain financial strength ratings from two or more rating  
9 agencies deemed acceptable by the superintendent pursuant to  
10 rule; 4) agree to submit to the jurisdiction of New Mexico,  
11 appoint the superintendent as its agent for service of process  
12 in New Mexico and agree to provide security for one hundred  
13 percent of the assuming insurer's liabilities attributable to  
14 reinsurance ceded by United States ceding insurers if it  
15 resists enforcement of a final United States judgment; 5) in an  
16 initial application for certification and on an ongoing basis,  
17 agree to meet applicable information-filing requirements, as  
18 determined by the superintendent; and 6) satisfy other  
19 requirements for certification that the superintendent deems  
20 relevant.

21 (b) To be eligible for certification, an  
22 association that includes incorporated and individual  
23 unincorporated underwriters shall: 1) satisfy the requirements  
24 of Subparagraph (a) of this paragraph; 2) satisfy its minimum  
25 capital and surplus requirements through the capital and

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1 surplus equivalents, net of liabilities, of the association and  
2 its members, which shall include a joint central fund that may  
3 be applied to an unsatisfied obligation of the association or  
4 any of its members, in an amount determined by the  
5 superintendent to provide adequate protection; 3) not have  
6 incorporated members who engage in a business other than  
7 underwriting as a member of the association and who are subject  
8 to the same level of regulation and solvency control by the  
9 association's domiciliary regulator as the unincorporated  
10 members; and 4) within ninety days after its financial  
11 statements must be filed with the association's domiciliary  
12 regulator, provide to the superintendent an annual  
13 certification by the association's domiciliary regulator of the  
14 solvency of each underwriter member or if a certification is  
15 unavailable, provide to the superintendent financial  
16 statements, prepared by independent public accountants, of each  
17 underwriter member of the association.

18 (c) The superintendent shall create and  
19 publish a list of qualified jurisdictions in which an assuming  
20 insurer licensed and domiciled in the jurisdiction is eligible  
21 to be considered by the superintendent for certification as a  
22 reinsurer. 1) In creating the list of qualified jurisdictions,  
23 the superintendent shall evaluate the appropriateness and  
24 effectiveness of the reinsurance supervisory system of the  
25 jurisdiction, initially and on an ongoing basis, and the

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1 rights, benefits and extent of reciprocal recognition afforded  
2 by the alien jurisdiction to reinsurers licensed and domiciled  
3 in the United States. The superintendent may consider  
4 additional factors. A jurisdiction shall not be recognized as  
5 a qualified jurisdiction if it does not agree to share  
6 information and cooperate with the superintendent with respect  
7 to all certified reinsurers domiciled within that jurisdiction.  
8 A jurisdiction shall not be recognized as a qualified  
9 jurisdiction if the superintendent has determined that a  
10 jurisdiction does not adequately and promptly enforce final  
11 United States judgments and arbitration awards. 2) The  
12 superintendent shall consider the list of qualified  
13 jurisdictions published through the national association of  
14 insurance commissioners' committee process in determining  
15 qualified jurisdictions. If the superintendent recognizes as  
16 qualified a jurisdiction that does not appear on the list of  
17 qualified jurisdictions, the superintendent shall provide  
18 thoroughly documented justification in accordance with criteria  
19 developed by rule. 3) United States jurisdictions that meet  
20 the requirement for accreditation pursuant to the national  
21 association of insurance commissioners' financial standards and  
22 accreditation program shall be recognized as qualified  
23 jurisdictions. 4) If a certified reinsurer's domiciliary  
24 jurisdiction ceases to be a qualified jurisdiction, the  
25 superintendent may suspend the reinsurer's certification

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1 indefinitely in lieu of revocation.

2 (d) The superintendent shall consider  
3 the financial strength ratings that have been assigned by  
4 rating agencies deemed acceptable to the superintendent  
5 pursuant to rule and assign a rating to each certified  
6 reinsurer. The superintendent shall publish a list of all  
7 certified reinsurers and their ratings.

8 (e) A certified reinsurer shall secure  
9 obligations assumed from United States ceding insurers pursuant  
10 to this subsection at a level consistent with its rating, as  
11 specified in rules promulgated by the superintendent. 1) In  
12 order for a domestic ceding insurer to qualify for full  
13 financial statement credit for reinsurance ceded to a certified  
14 reinsurer, the certified reinsurer shall maintain security in a  
15 form acceptable to the superintendent and consistent with the  
16 provisions of Subsection C of this section, or in a multi-  
17 beneficiary trust in accordance with Paragraph (4) of this  
18 subsection, except as otherwise provided in this subsection.  
19 2) If a certified reinsurer maintains a trust to fully secure  
20 its obligations pursuant to Paragraph (4) of this subsection  
21 and secures its obligations incurred as a certified reinsurer  
22 in the form of a multi-beneficiary trust, the certified  
23 reinsurer shall maintain separate trust accounts for its  
24 obligations incurred pursuant to reinsurance agreements issued  
25 or renewed as a certified reinsurer with reduced security as

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1 permitted by this subsection or comparable laws of other United  
2 States jurisdictions and for its obligations pursuant to  
3 Paragraph (4) of this subsection. To be certified pursuant to  
4 Paragraph (5) of this subsection, a certified reinsurer shall  
5 have bound itself, by the language of the trust and by  
6 agreement with the insurance supervisory official with  
7 principal regulatory oversight of each such trust account, to  
8 fund, upon termination of that trust account, out of the  
9 remaining surplus of the trust any deficiency of any other such  
10 trust account. 3) The minimum trustee surplus requirements  
11 provided in Paragraph (4) of this subsection do not apply to a  
12 multi-beneficiary trust maintained by a certified reinsurer for  
13 the purpose of securing obligations incurred pursuant to this  
14 subsection if that multi-beneficiary trust maintains a minimum  
15 trustee surplus of ten million dollars (\$10,000,000). 4) If  
16 the security for obligations incurred by a certified reinsurer  
17 pursuant to this subsection is insufficient, the superintendent  
18 shall reduce the allowable credit by an amount proportionate to  
19 the deficiency and may, upon a finding of material risk that  
20 the certified reinsurer's obligations will not be paid in full  
21 when due, impose further reductions in allowable credit. 5)  
22 For the purposes of this paragraph, a certified reinsurer whose  
23 certification has been terminated for any reason shall be  
24 treated as a certified reinsurer required to secure one hundred  
25 percent of its obligations. If the superintendent continues to

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1 assign a higher rating as permitted by other provisions of this  
2 section, this requirement does not apply to a certified  
3 reinsurer in inactive status or to a reinsurer whose  
4 certification has been suspended. As used in this  
5 subparagraph, "terminated" means revocation, suspension,  
6 voluntary surrender or inactive status.

7 (f) If an applicant for certification  
8 has been certified as a reinsurer in a jurisdiction accredited  
9 by the national association of insurance commissioners, the  
10 superintendent may defer to that jurisdiction's certification  
11 and to the rating assigned by that jurisdiction, and the  
12 assuming insurer shall be considered a certified reinsurer in  
13 New Mexico.

14 (g) To continue to qualify for a  
15 reduction in security for its in-force business, a certified  
16 reinsurer that ceases to assume new business in New Mexico may  
17 request that it maintain its certification in inactive status.  
18 An inactive, certified reinsurer shall comply with all  
19 applicable requirements of this subsection, and the  
20 superintendent shall assign a rating that reflects, if  
21 relevant, the reason that the reinsurer is not assuming new  
22 business.

23 [~~4~~] (6) Credit shall be allowed when the  
24 reinsurance is ceded to an assuming insurer not meeting the  
25 requirements of Paragraph (1), (2), [~~or~~] (3), (4) or (5) of

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1 this subsection but only with respect to the insurance of risks  
2 located in jurisdictions where such reinsurance is required by  
3 applicable law or regulation of that jurisdiction.

4 [~~(5)~~] (7) If the assuming insurer is not  
5 licensed, [~~or~~] accredited or certified to transact insurance or  
6 reinsurance in [~~this state~~] New Mexico, the credit permitted by  
7 [~~Paragraph~~] Paragraphs (3) and (4) of this subsection shall not  
8 be allowed unless the assuming insurer agrees in the  
9 reinsurance agreements:

10 (a) that in the event of the failure of  
11 the assuming insurer to perform its obligations under the terms  
12 of the reinsurance agreement, the assuming insurer, at the  
13 request of the ceding insurer, shall submit to the jurisdiction  
14 of any court of competent jurisdiction in any state of the  
15 United States, will comply with all requirements necessary to  
16 give such court jurisdiction and will abide by the final  
17 decision of such court or of any appellate court in the event  
18 of an appeal; and

19 (b) to designate the superintendent or a  
20 designated attorney as its true and lawful attorney upon whom  
21 may be served any lawful process in any action, suit or  
22 proceeding instituted by or on behalf of the ceding company.  
23 This provision is not intended to conflict with or override the  
24 obligation of the parties to a reinsurance agreement to  
25 arbitrate their disputes, if such an obligation is created in

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1 the agreement.

2 (8) If an assuming insurer does not meet the  
3 requirements of Paragraph (1), (2) or (3) of this subsection,  
4 the insurer shall not receive the credit permitted by Paragraph  
5 (4) or (5) of this subsection unless the assuming insurer  
6 agrees in the trust to the following conditions:

7 (a) notwithstanding any other provision  
8 in the trust, if the trust is inadequate because it contains an  
9 amount less than the amount required by Paragraph (4) of this  
10 subsection, or if the grantor of the trust has been declared  
11 insolvent or placed into receivership, rehabilitation,  
12 liquidation or similar proceeding pursuant to the laws of its  
13 state or country of domicile, the trustee shall comply with an  
14 order of either the superintendent or the insurance supervisory  
15 official with regulatory oversight over the trust or of a court  
16 of competent jurisdiction directing the trustee to transfer to  
17 the superintendent or the insurance supervisory official with  
18 regulatory oversight all of the assets of the trust fund;

19 (b) in accordance with the laws of the  
20 state in which the trust is domiciled that apply to the  
21 liquidation of domestic insurance companies, claims are filed  
22 with the superintendent or the insurance supervisory official  
23 with regulatory oversight, who will value the claim and  
24 distribute the assets;

25 (c) if the superintendent or the

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1 insurance supervisory official with regulatory oversight  
2 determines that the assets of the trust fund or any part of the  
3 trust fund are not necessary to satisfy the claims of the  
4 United States ceding insurers of the grantor of the trust, the  
5 assets or a part thereof will be returned by the superintendent  
6 or the insurance supervisory official with regulatory oversight  
7 to the trustee for distribution in accordance with the trust;  
8 and

9 (d) the grantor will waive any right  
10 otherwise available to it pursuant to federal law that is  
11 inconsistent with the provisions of this paragraph.

12 (9) If an accredited or certified reinsurer  
13 ceases to meet the requirements for accreditation or  
14 certification, the superintendent may suspend or revoke the  
15 reinsurer's accreditation or certification.

16 (a) The superintendent shall give the  
17 reinsurer notice and the opportunity for a hearing. The  
18 suspension or revocation shall not take effect until after the  
19 superintendent delivers an order on the hearing, unless: 1)  
20 the reinsurer waives its right to a hearing; 2) the  
21 superintendent's order is based on regulatory action by the  
22 reinsurer's domiciliary jurisdiction or the voluntary surrender  
23 or termination of the reinsurer's eligibility to transact  
24 insurance or reinsurance business in its domiciliary  
25 jurisdiction or in the primary certifying state of the

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1 reinsurer pursuant to Subparagraph (f) of Paragraph (5) of this  
2 subsection; or 3) the superintendent finds that an emergency  
3 requires immediate action and a court of competent jurisdiction  
4 has not stayed the superintendent's action.

5 (b) While a reinsurer's accreditation or  
6 certification is suspended, no reinsurance contract issued or  
7 renewed after the effective date of the suspension shall  
8 qualify for credit except to the extent that the reinsurer's  
9 obligations pursuant to the contract are secured in accordance  
10 with Subsection C of this section. If a reinsurer's  
11 accreditation or certification is revoked, no credit for  
12 reinsurance shall be granted after the effective date of the  
13 revocation except to the extent that the reinsurer's  
14 obligations pursuant to the contract are secured in accordance  
15 with either Subparagraph (e) of Paragraph (5) of this  
16 subsection or Subsection C of this section.

17 (10) A ceding insurer shall attempt to manage  
18 its reinsurance recoverables in proportion to its book of  
19 business. Within thirty days after one of the following  
20 events, a domestic ceding insurer shall notify the  
21 superintendent of the event and, in the notification,  
22 demonstrate that the domestic ceding insurer is safely managing  
23 the exposure:

24 (a) reinsurance recoverables from any  
25 single assuming insurer or group of affiliated assuming

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1 insurers exceed fifty percent of the domestic ceding insurer's  
2 last reported surplus to policyholders; or

3 (b) reinsurance recoverables from any  
4 single assuming insurer, or group of affiliated assuming  
5 insurers, are likely to exceed fifty percent of the domestic  
6 ceding insurer's last reported surplus to policyholders.

7 (11) A ceding insurer shall attempt to  
8 diversify its reinsurance program. Within thirty days after  
9 one of the following events, a domestic ceding insurer shall  
10 notify the superintendent of the event and, in the  
11 notification, demonstrate that the domestic ceding insurer is  
12 safely managing the exposure:

13 (a) ceding to any single assuming  
14 insurer or group of affiliated assuming insurers more than  
15 twenty percent of the ceding insurer's gross written premium in  
16 the prior calendar year; or

17 (b) reinsurance ceded to a single  
18 assuming insurer or group of affiliated assuming insurers is  
19 likely to exceed twenty percent of the ceding insurer's gross  
20 written premium in the prior calendar year.

21 C. An asset or a reduction from liability for the  
22 reinsurance ceded by an insurer to an assuming insurer not  
23 meeting the requirements of Subsection B of this section shall  
24 be allowed in an amount not exceeding the liabilities carried  
25 by the ceding insurer and such reduction shall be in the amount

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1 of funds held by or on behalf of the ceding insurer, including  
2 funds held in trust for the ceding insurer, under a reinsurance  
3 contract with such assuming insurer as security for the payment  
4 of obligations thereunder, if such security is held in the  
5 United States subject to withdrawal solely by, and under the  
6 exclusive control of, the ceding insurer; or, in the case of a  
7 trust, held in a qualified United States financial institution,  
8 as defined in Paragraph (2) of Subsection D of this section.

9 This security may be in the form of:

10 (1) cash;

11 (2) securities listed by the securities  
12 valuation office of the national association of insurance  
13 commissioners, including those deemed exempt from filing as  
14 defined by the purposes and procedures manual of the securities  
15 valuation office, and qualifying as admitted assets;

16 (3) clean, irrevocable, unconditional letters  
17 of credit, issued or confirmed by a qualified United States  
18 financial institution, as defined in Paragraph (1) of  
19 Subsection D of this section, no later than December 31 in  
20 respect of the year for which filing is being made, and in the  
21 possession of the ceding company on or before the filing date  
22 of its annual statement. Letters of credit meeting applicable  
23 standards of issuer acceptability as of the dates of their  
24 issuance or confirmation shall, notwithstanding the issuing or  
25 confirming institution's subsequent failure to meet applicable

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1 standards of issuer acceptability, continue to be acceptable as  
2 security until their expiration, extension, renewal,  
3 modification or amendment, whichever first occurs; or

4 (4) any other form of security acceptable to  
5 the superintendent.

6 D. A "qualified United States financial  
7 institution" means:

8 (1) for purposes of Paragraph (3) of  
9 Subsection C of this section, an institution that:

10 (a) is organized or, in the case of a  
11 United States office of a foreign banking organization,  
12 licensed under the laws of the United States or any state  
13 thereof;

14 (b) is regulated, supervised and  
15 examined by United States federal or state authorities having  
16 regulatory authority over banks and trust companies; and

17 (c) has been determined by either the  
18 superintendent or the securities valuation office of the  
19 national association of insurance commissioners to meet such  
20 standards of financial condition and standing as are considered  
21 necessary and appropriate to regulate the quality of financial  
22 institutions whose letters of credit are acceptable to the  
23 superintendent; and

24 (2) for purposes of those provisions of this  
25 section specifying those institutions that are eligible to act

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1 as a fiduciary of a trust, an institution that:

2 (a) is organized or, in the case of a  
3 United States branch or agency office of a foreign banking  
4 organization, licensed under the laws of the United States or  
5 any state thereof and has been granted authority to operate  
6 with fiduciary powers; and

7 (b) is regulated, supervised and  
8 examined by federal or state authorities having regulatory  
9 authority over banks and trust companies.

10 E. No insurer shall accept reinsurance of risk of  
11 any kind of insurance that it is not authorized to transact  
12 directly in [~~this state~~] New Mexico, if an authorized insurer,  
13 or in another state if the insurer does not hold a certificate  
14 of authority in [~~this state~~] New Mexico.

15 F. Upon the superintendent's request, an insurer  
16 shall furnish the superintendent with copies of its reinsurance  
17 treaties then in effect and promptly inform the superintendent  
18 in writing of cancellation or other material change in its  
19 reinsurance treaties or arrangements.

20 G. No person shall have any rights against the  
21 reinsurer [~~which~~] that are not expressly stated in the  
22 reinsurance contract or in a written agreement between such  
23 person and the reinsurer.

24 H. This section does not apply to wet marine and  
25 transportation insurance."



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1           SECTION 15. A new Section 59A-8A-1 NMSA 1978 is enacted  
2 to read:

3           "59A-8A-1. [NEW MATERIAL] SHORT TITLE.--Chapter 59A,  
4 Article 8A NMSA 1978 may be cited as the "Standard Valuation  
5 Law"."

6           SECTION 16. A new Section 59A-8A-2 NMSA 1978 is enacted  
7 to read:

8           "59A-8A-2. [NEW MATERIAL] DEFINITIONS.--As used in the  
9 Standard Valuation Law:

10           A. "accident and health insurance" means a policy  
11 that reflects morbidity risk and provides protection against  
12 economic loss resulting from an accident, a sickness or a  
13 medical condition and includes policies identified by the  
14 valuation manual as accident and health insurance;

15           B. "appointed actuary" means a qualified actuary  
16 who is appointed pursuant to the valuation manual to prepare  
17 the actuarial opinion required by Section 59A-8A-4 NMSA 1978;

18           C. "company" means an entity that has written,  
19 issued or reinsured life insurance contracts, accident and  
20 health insurance contracts or deposit-type contracts in New  
21 Mexico and has at least one contract for a life insurance,  
22 accident and health insurance or deposit-type policy in force  
23 or on claim or an entity that has written, issued or reinsured  
24 life insurance contracts, accident and health insurance  
25 contracts or deposit-type contracts in any state and is

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1 required to hold a certificate of authority to write life  
2 insurance, accident and health insurance or deposit-type  
3 contracts in New Mexico;

4 D. "deposit-type contract" means a contract that  
5 does not reflect mortality or morbidity risks and includes  
6 contracts identified by the valuation manual as deposit-type  
7 contracts;

8 E. "life insurance" means a policy that reflects  
9 mortality risk and includes annuity policies, pure endowment  
10 policies and policies identified by the valuation manual as  
11 life insurance;

12 F. "operative date of the valuation manual" means  
13 the January 1 of the first calendar year following the first  
14 July 1 after which the following have occurred:

15 (1) the valuation manual has been adopted by  
16 the national association of insurance commissioners by an  
17 affirmative vote of at least forty-two members or three-fourths  
18 of the members voting, whichever is greater;

19 (2) the Standard Valuation Law of the national  
20 association of insurance commissioners, as amended in 2009, or  
21 legislation including substantially similar terms and  
22 provisions, has been enacted by states that collectively  
23 represent more than seventy-five percent of written direct  
24 premiums, as reported in the life, accident and health annual  
25 statements, the health annual statements and the fraternal

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1 annual statements submitted for 2008; and

2 (3) the Standard Valuation Law of the national  
3 association of insurance commissioners, as amended in 2009, or  
4 legislation including substantially similar terms and  
5 provisions, has been enacted by at least forty-two of the  
6 following fifty-five jurisdictions:

7 (a) the fifty states of the United  
8 States;

9 (b) American Samoa;

10 (c) the Virgin Islands of the United  
11 States;

12 (d) the District of Columbia;

13 (e) Guam; and

14 (f) Puerto Rico;

15 G. "policyholder behavior" means an action that a  
16 policyholder, a contract holder or a person who has the right  
17 to elect options, such as a certificate holder, may take  
18 pursuant to a policy or contract that is subject to the  
19 Standard Valuation Law and, if allowed pursuant to the policy  
20 or contract, includes lapses, withdrawals, transfers, deposits,  
21 premium payments, loans and annuitization and benefit  
22 elections, but excludes events of mortality or morbidity that  
23 result in benefits prescribed in their essential aspects by the  
24 terms of the policy or contract;

25 H. "principle-based valuation" means a reserve

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1 valuation that uses one or more methods or one or more  
2 assumptions determined by the insurer and that is required to  
3 comply with Section 59A-8A-9 NMSA 1978;

4 I. "qualified actuary" means an individual who,  
5 according to the applicable qualification standards of the  
6 American academy of actuaries, is qualified to sign the  
7 applicable statement of actuarial opinion and who meets the  
8 applicable requirements indicated by the valuation manual;

9 J. "tail risk" means a risk that occurs either when  
10 the frequency of low-probability events is higher than expected  
11 under a normal probability distribution or when events of very  
12 significant magnitude are observed; and

13 K. "valuation manual" means the most recent version  
14 of the manual of valuation instructions adopted by the national  
15 association of insurance commissioners."

16 SECTION 17. Section 59A-8-6 NMSA 1978 (being Laws 1984,  
17 Chapter 127, Section 123, as amended) is recompiled as Section  
18 59A-8A-3 NMSA 1978 and is amended to read:

19 "59A-8A-3. ~~[ANNUAL]~~ RESERVE VALUATION ~~[RESERVES]~~.--

20 A. For policies and contracts issued prior to the  
21 operative date of the valuation manual:

22 (1) the superintendent shall annually value,  
23 or cause to be valued, the reserve liabilities (hereinafter  
24 called reserves) for all outstanding life insurance policies  
25 and annuity and pure endowment contracts of every life insurer

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1 authorized to do business in [~~this state, except that as to an~~  
2 ~~alien insurer the valuation shall be limited to its United~~  
3 ~~States business. The superintendent may certify the amount of~~  
4 ~~any such reserves, specifying the mortality table or tables,~~  
5 ~~rate or rates of interest and methods (net level premium method~~  
6 ~~or other) used in calculation of such reserves.~~

7 B.] New Mexico and that are issued on or after the  
8 operative date of Section 59A-20-31 NMSA 1978, except that, for  
9 an alien insurer, the value is limited to the alien insurer's  
10 United States business. In calculating such reserves the  
11 superintendent may use group methods and approximate averages  
12 for fractions of a year or otherwise. In lieu of valuation of  
13 reserves herein required of a foreign or alien insurer, the  
14 superintendent may accept any valuation made, or caused to be  
15 made, by the insurance supervisory official of any state or  
16 other jurisdiction when such valuation complies with the  
17 minimum standard [herein] provided [~~and if the official of such~~  
18 ~~state or jurisdiction accepts as sufficient and valid for all~~  
19 ~~legal purposes the certificate of valuation of the~~  
20 ~~superintendent when such certificate states the valuation to~~  
21 ~~have been made in a specified manner according to which the~~  
22 ~~aggregate reserves would be at least as large as if they had~~  
23 ~~been computed in the manner prescribed by the law of that state~~  
24 ~~or jurisdiction~~

25 G. ~~The insurer may increase the standards of~~

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1 ~~mortality in particular cases of invalid lives and other extra~~  
2 ~~hazards.~~

3 ~~D. For all health insurance policies the insurer~~  
4 ~~shall maintain an active life reserve which shall place a sound~~  
5 ~~value on its liabilities under such policies and be not less~~  
6 ~~than the reserve according to appropriate standards set forth~~  
7 ~~in regulations issued by the superintendent and in no event~~  
8 ~~less in the aggregate than the pro rata gross unearned premiums~~  
9 ~~for such policies] by the Standard Valuation Law;~~

10 (2) the provisions of Sections 59A-8A-6 and  
11 59A-8A-7 NMSA 1978 apply, as appropriate, to a policy or  
12 contract that is subject to the provisions of the Standard  
13 Valuation Law and that is issued on or after the operative date  
14 of Section 59A-20-31 NMSA 1978 but prior to the operative date  
15 of the valuation manual. The provisions of Sections 59A-8A-8  
16 and 59A-8A-9 NMSA 1978 do not apply to a policy or contract  
17 that is subject to the provisions of the Standard Valuation Law  
18 and that is issued on or after the operative date of Section  
19 59A-20-31 NMSA 1978 but prior to the operative date of the  
20 valuation manual; and

21 (3) the minimum standard for the valuation of  
22 a policy or contract that is issued prior to the operative date  
23 of Section 59A-20-31 NMSA 1978 is the minimum standard provided  
24 in the laws in effect immediately prior to that date.

25 B. For a policy or contract that is issued on or

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1 after the operative date of the valuation manual:

2 (1) the superintendent shall annually value,  
3 or cause to be valued, the reserve liabilities, hereinafter  
4 called reserves, of all outstanding life insurance, annuity and  
5 pure endowment, accident and health and deposit-type contracts  
6 of a life insurer authorized to do business in New Mexico that  
7 are issued on or after the operative date of the valuation  
8 manual. In the case of a foreign or alien insurer, the  
9 superintendent may, in the alternative, accept a valuation  
10 made, or caused to be made, by the insurance supervisory  
11 official of a state or other jurisdiction if that valuation  
12 complies with the minimum standard provided in the Standard  
13 Valuation Law; and

14 (2) the provisions of Sections 59A-8A-8 and  
15 59A-8A-9 NMSA 1978 apply to all policies and contracts issued  
16 on or after the operative date of the valuation manual.

17 ~~[E-]~~ C. In no event shall the aggregate reserves  
18 for all ~~[policies]~~ policies, contracts and benefits be less than  
19 the aggregate reserves determined by the qualified actuary to  
20 be necessary to render the opinion required by Section  
21 ~~[59A-8-7]~~ 59A-8A-4 NMSA 1978."

22 **SECTION 18.** Section 59A-8-7 NMSA 1978 (being Laws 1993,  
23 Chapter 320, Section 22) is recompiled as Section 59A-8A-4 NMSA  
24 1978 and is amended to read:

25 "59A-8A-4. ACTUARIAL OPINION ~~[OF RESERVES]~~ PRIOR TO

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1 OPERATIVE DATE OF VALUATION MANUAL.--

2           A. This section [~~shall become operative on January~~  
3 ~~1, 1995 for calendar years 1994 and thereafter~~] applies to  
4 actuarial opinions issued prior to the operative date of the  
5 valuation manual.

6           B. Every life insurer doing business in [~~this~~  
7 ~~state~~] New Mexico shall annually submit the opinion of a  
8 qualified actuary as to whether the reserves and related  
9 actuarial items held in support of the policies and contracts  
10 specified by the superintendent by regulation are computed  
11 appropriately, are based on assumptions [~~which~~] that satisfy  
12 contractual provisions, are consistent with prior reported  
13 amounts and comply with applicable laws of [~~this state~~] New  
14 Mexico. The superintendent by regulation shall define the  
15 specifics of this opinion and add any other items deemed to be  
16 necessary to its scope.

17           C. Every life insurer, except as exempted by or  
18 pursuant to regulation, shall also annually include in the  
19 opinion required by Subsection B of this section, an opinion of  
20 the same qualified actuary as to whether the reserves and  
21 related actuarial items held in support of the policies and  
22 contracts specified by the superintendent by regulation, when  
23 considered in light of the assets held by the insurer with  
24 respect to the reserves and related actuarial items, including  
25 but not limited to the investment earnings on the assets and

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1 the considerations anticipated to be received and retained  
2 under the policies and contracts, make adequate provision for  
3 the insurer's obligations under the policies and contracts,  
4 including but not limited to the benefits under and expenses  
5 associated with the policies and contracts. The superintendent  
6 may provide by regulation for a transition period for  
7 establishing any higher reserves [~~which~~] that the qualified  
8 actuary may deem necessary in order to render the opinion  
9 required by this section.

10 D. Every opinion required by Subsection C of this  
11 section shall be governed by the following provisions:

12 (1) a memorandum, in form and substance  
13 acceptable to the superintendent as specified by regulation,  
14 shall be prepared to support each actuarial opinion; and

15 (2) if the insurer fails to provide a  
16 supporting memorandum at the request of the superintendent  
17 within a period specified by rule or if the superintendent  
18 determines that the supporting memorandum provided by the  
19 insurer fails to meet the standards prescribed by the  
20 regulations or is otherwise unacceptable to the superintendent,  
21 the superintendent may engage a qualified actuary at the  
22 expense of the insurer to review the opinion and the basis for  
23 the opinion and prepare such supporting memorandum as is  
24 required by the superintendent.

25 E. Every opinion required by this section shall be

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1 governed by the following provisions:

2 (1) the opinion shall be submitted with the  
3 annual statement reflecting the valuation of such reserve  
4 liabilities for each year ending on or after December 31, 1994;

5 (2) the opinion shall apply to all business in  
6 force, including individual and group health insurance plans in  
7 form and substance acceptable to the superintendent as  
8 specified by regulation;

9 (3) the opinion shall be based on standards  
10 adopted from time to time by the actuarial standards board and  
11 on such additional standards as the superintendent may by  
12 regulation prescribe;

13 (4) in the case of an opinion required to be  
14 submitted by a foreign or alien insurer, the superintendent may  
15 accept the opinion filed by that insurer with the insurance  
16 supervisory official of another state if the superintendent  
17 determines that the opinion reasonably meets the requirements  
18 applicable to an insurer domiciled in [~~this state~~] New Mexico;

19 (5) for the purposes of this section,  
20 "qualified actuary" means a member in good standing of the  
21 American academy of actuaries who meets the requirements set  
22 forth in such regulations;

23 (6) except in cases of fraud or willful  
24 misconduct, the qualified actuary shall not be liable for  
25 damages to any person, other than the insurer and the

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1 superintendent, for any act, error, omission, decision or  
2 conduct with respect to the actuary's opinion;

3 (7) disciplinary action by the superintendent  
4 against the insurer or the qualified actuary shall be defined  
5 in regulations by the superintendent; ~~and~~

6 (8) except as provided in Paragraph (12) of  
7 this subsection, the documents, materials and other information  
8 that constitute a memorandum in support of the opinion and that  
9 are in the possession or control of the office of  
10 superintendent of insurance, and other materials provided by  
11 the company to the superintendent in connection with the  
12 memorandum, are confidential and privileged, not subject to the  
13 Inspection of Public Records Act, not subject to subpoena and,  
14 in a private civil action, not subject to discovery or  
15 admissible in evidence; but the superintendent may use the  
16 documents, materials or other information in the furtherance of  
17 a regulatory or legal action brought in the course of the  
18 superintendent's official duties;

19 (9) neither the superintendent nor any person  
20 who receives documents, materials or other information while  
21 acting pursuant to the authority of the superintendent shall be  
22 permitted or required in a private civil action to testify on  
23 the confidential documents, materials or information subject to  
24 Paragraph (8) of this subsection;

25 (10) to assist in the performance of the

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1 superintendent's duties, the superintendent may:

2 (a) if the recipient agrees to maintain  
3 the confidentiality and privilege of the document, material or  
4 other information, share documents, materials or other  
5 information, including the confidential and privileged  
6 documents, with a state, federal or international regulatory  
7 agency, with the national association of insurance  
8 commissioners, its affiliates or its subsidiaries and with  
9 state, federal and international law enforcement authorities;

10 (b) receive documents, materials or  
11 information, including that which is otherwise confidential and  
12 privileged, from the national association of insurance  
13 commissioners, its affiliates or its subsidiaries and from  
14 regulatory and law enforcement officials of other foreign or  
15 domestic jurisdictions if the superintendent maintains as  
16 confidential or privileged a document, material or other  
17 information received with notice or the understanding that the  
18 content is confidential or privileged pursuant to the laws of  
19 the jurisdiction from which the information originates; and

20 (c) consistent with Paragraphs (8)  
21 through (10) of this subsection, enter into agreements  
22 governing sharing and the use of information;

23 (11) a disclosure to or a sharing by the  
24 superintendent pursuant to this section does not constitute a  
25 waiver of an applicable privilege or claim of confidentiality

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1 in the documents, materials or information; and

2 [~~(8) any~~] (12) a memorandum in support of the  
3 opinion and any other material provided by the insurer to the  
4 superintendent in connection therewith [~~shall be kept~~  
5 ~~confidential by the superintendent and shall not be made public~~  
6 ~~and shall not~~] may be subject to subpoena [~~other than~~] for the  
7 purpose of defending an action seeking damages from [~~any~~  
8 ~~person~~] the actuary who submitted the memorandum by reason of  
9 any action required by this section or by regulations  
10 promulgated hereunder; provided, however, that the memorandum  
11 or other material may otherwise be released by the  
12 superintendent, with the written consent of the insurer, or to  
13 the American academy of actuaries upon request stating that the  
14 memorandum or other material is required for the purpose of  
15 professional disciplinary proceedings and setting forth  
16 procedures satisfactory to the superintendent for preserving  
17 the confidentiality of the memorandum or other material. Once  
18 any portion of the confidential memorandum is cited by the  
19 insurer in its marketing or is cited before any governmental  
20 agency other than a state insurance department or is released  
21 by the insurer to the news media, all portions of the  
22 confidential memorandum shall be no longer confidential."

23 SECTION 19. A new Section 59A-8A-5 NMSA 1978 is enacted  
24 to read:

25 "59A-8A-5. [NEW MATERIAL] ACTUARIAL OPINION AFTER

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1 OPERATIVE DATE OF VALUATION MANUAL.--

2 A. This section applies to actuarial opinions  
3 issued after the operative date of the valuation manual.

4 B. A company with outstanding life insurance,  
5 accident and health insurance or deposit-type contracts in New  
6 Mexico and that is subject to regulation by the superintendent  
7 shall annually submit the opinion of the appointed actuary on  
8 whether the reserves and related actuarial items held in  
9 support of the policies and contracts are computed  
10 appropriately, based on assumptions that satisfy contractual  
11 provisions, consistent with prior reported amounts and comply  
12 with the laws of New Mexico. The opinion shall comport with  
13 related provisions of the valuation manual.

14 C. Except as excluded by the provisions of the  
15 valuation manual, a company with outstanding life insurance,  
16 accident and health insurance or deposit-type contracts in New  
17 Mexico and that is subject to regulation by the superintendent  
18 shall include in the opinion required by Subsection B of this  
19 section an assessment of whether, when considering the assets  
20 held by the company with respect to the reserves and related  
21 actuarial items, including the investment earnings on the  
22 assets and the anticipated considerations to be received and  
23 retained pursuant to the policies and contracts, the reserves  
24 and related actuarial items that are held in support of the  
25 policies and contracts that are specified in the valuation

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1 manual make adequate provision for the company's obligations  
2 pursuant to the policies and contracts, including the benefits  
3 pursuant to and expenses associated with the policies and  
4 contracts.

5 D. An opinion required by Subsection B of this  
6 section shall be accompanied by a memorandum of support, whose  
7 form and substance comply with the provisions of the valuation  
8 manual and are acceptable to the superintendent. If, within a  
9 period of time specified by the provisions of the valuation  
10 manual and upon the request of the superintendent, an insurance  
11 company fails to provide a memorandum of support, the  
12 superintendent may engage, at the insurance company's expense,  
13 a qualified actuary to review the opinion and the basis for it  
14 and prepare a memorandum of support. If the superintendent  
15 determines that an insurance company's memorandum of support  
16 fails to meet the standards provided in the valuation manual or  
17 is otherwise unacceptable, the superintendent may engage the  
18 services of a qualified actuary to review the opinion and the  
19 basis for it and prepare a memorandum of support.

20 E. An opinion required by this section shall:

21 (1) conform in form and substance to the  
22 provisions of the valuation manual and be acceptable to the  
23 superintendent;

24 (2) accompany an annual statement that  
25 indicates the valuation of reserve liabilities for each year

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1 ending on or after the operative date of the valuation manual;

2 (3) apply to all policies and contracts  
3 subject to Subsection B of this section and other actuarial  
4 liabilities specified by the provisions of the valuation  
5 manual; and

6 (4) meet the standards adopted by the  
7 actuarial standards board or its successor and the relevant  
8 standards provided in the valuation manual.

9 F. In the case of a foreign or alien company, the  
10 superintendent may accept, instead of an opinion filed pursuant  
11 to Subsection B of this section, an opinion filed by the  
12 company with the insurance supervisory official of another  
13 state if the superintendent determines that the opinion  
14 reasonably meets the requirements applicable to a company  
15 domiciled in New Mexico.

16 G. Except in cases of fraud or willful misconduct,  
17 an appointed actuary is not liable for damages to a person,  
18 except the insurance company that appointed the actuary or the  
19 superintendent, resulting from an act, error, omission,  
20 decision or conduct related to the appointed actuary's opinion.

21 H. Disciplinary action by the superintendent  
22 against a company or its appointed actuary shall be defined by  
23 rules promulgated by the superintendent."

24 SECTION 20. Section 59A-8-5 NMSA 1978 (being Laws 1984,  
25 Chapter 127, Section 122, as amended) is recompiled as Section  
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1 59A-8A-6 NMSA 1978 and is amended to read:

2 "59A-8A-6. [~~STANDARD VALUATION LAW, LIFE INSURANCE AND~~  
3 ~~ANNUITIES]~~ RULE-BASED RESERVE VALUATION METHODS.--

4 A. This subsection shall apply to only those  
5 policies and contracts issued prior to the operative date of  
6 Section 59A-20-31 NMSA 1978.

7 The legal minimum standard for valuation of life insurance  
8 contracts issued before the first day of January 1926 shall be  
9 the method and basis of valuation heretofore applied by the  
10 insurer in the valuation of such contracts, and for life  
11 insurance contracts issued on or after this date shall be the  
12 American experience table of mortality, with interest at the  
13 rate of three and one-half percent a year; or any other basis  
14 not producing a lower net value; provided, however, that the  
15 insurer may provide for not more than one-year preliminary term  
16 insurance by incorporating in the contracts a clause plainly  
17 showing that the first year's insurance under such policies is  
18 term insurance.

19 Except as otherwise provided in Paragraphs (2), (3), (4)  
20 and (5) of Subsection B of this section and in Subsections C, D  
21 and E of this section for group annuity and pure endowment  
22 contracts, the legal minimum standard for the valuation of  
23 annuities shall be the American experience table of mortality,  
24 with interest at the rate of five percent a year for group  
25 annuity and pure endowment contracts and four percent a year

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1 for other annuities.

2 B. Subsections B, C, D and E of this section shall  
3 apply to only those policies and contracts issued on and after  
4 the operative date of Section 59A-20-31 NMSA 1978, except as  
5 otherwise provided in Paragraphs (2), (3), (4) and (5) of this  
6 subsection and in Subsections C, D and E of this section for  
7 group annuity and pure endowment contracts issued prior to such  
8 operative date.

9 (1) Except as otherwise provided in Paragraphs  
10 (2), (3), (4) and (5) of this subsection and Subsections C, D  
11 and E of this section, the minimum standard for the valuation  
12 of all such policies and contracts shall be the commissioners  
13 reserve valuation methods defined in Paragraphs (1) and (2) of  
14 Subsection E of this section, five percent interest for group  
15 annuity and pure endowment contracts and three and one-half  
16 percent interest for all other such policies and contracts, or  
17 in the case of life insurance policies and contracts, other  
18 than annuity and pure endowment contracts, issued on or after  
19 July 1, 1973, four percent interest for such policies issued  
20 prior to July 1, 1977, five and one-half percent interest for  
21 single premium life insurance policies and four and one-half  
22 percent interest for all other such policies issued on or after  
23 July 1, 1977, and the following tables:

24 (a) for ~~[all]~~ ordinary policies of life  
25 insurance issued on the standard basis, excluding any

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1 disability and accidental death benefits in such policies, the  
2 commissioners 1941 standard ordinary mortality table for such  
3 policies issued prior to the operative date of Paragraph (1) of  
4 Subsection D of Section 59A-20-31 NMSA 1978 and the  
5 commissioners 1958 standard ordinary mortality table for such  
6 policies issued on or after the operative date of Paragraph (1)  
7 of Subsection D of Section 59A-20-31 NMSA 1978 and prior to the  
8 operative date of Subsection F of Section 59A-20-31 NMSA 1978,  
9 provided that for any category of such policies issued on  
10 female risks, all modified net premiums and present values  
11 referred to in Subsections B, C, D and E of this section may be  
12 calculated according to an age not more than six years younger  
13 than the actual age of the insured; and for such policies  
14 issued on or after the operative date of Subsection F of  
15 Section 59A-20-31 NMSA 1978: 1) the commissioners 1980  
16 standard ordinary mortality table; or 2) at the election of the  
17 insurer for any one or more specified plans of life insurance,  
18 the commissioners 1980 standard ordinary mortality table with  
19 ten-year select mortality factors; or 3) any ordinary mortality  
20 table, adopted after 1980 by the national association of  
21 insurance commissioners, that is approved by regulation  
22 promulgated by the superintendent for use in determining the  
23 minimum standard of valuation for such policies;

24 (b) for ~~[all]~~ industrial life insurance  
25 policies issued on the standard basis, excluding any disability

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1 and accidental death benefits in such policies, the 1941  
2 standard industrial mortality table for such policies issued  
3 prior to the operative date of Subsection E of Section  
4 59A-20-31 NMSA 1978, and for such policies issued on or after  
5 such operative date, the commissioners 1961 standard industrial  
6 mortality table or any industrial mortality table, adopted  
7 after 1980 by the national association of insurance  
8 commissioners, that is approved by regulation promulgated by  
9 the superintendent for use in determining the minimum standard  
10 of valuation for such policies;

11 (c) for individual annuity and pure  
12 endowment contracts, excluding any disability and accidental  
13 death benefits in such policies, the 1937 standard annuity  
14 mortality table or, at the option of the insurer, the annuity  
15 mortality table for 1949, ultimate, or any modification of  
16 either of these tables approved by the superintendent;

17 (d) for group annuity and pure endowment  
18 contracts, excluding any disability and accidental death  
19 benefits in such policies, the group annuity mortality table  
20 for 1951, any modification of such table approved by the  
21 superintendent, or, at the option of the insurer, any of the  
22 tables or modifications of tables specified for individual  
23 annuity and pure endowment contracts;

24 (e) for total and permanent disability  
25 benefits in or supplementary to ordinary policies or contracts:

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1 1) for policies or contracts issued on or after January 1,  
2 1966, the tables of period 2 disablement rates and the 1930 to  
3 1950 termination rates of the 1952 disability study of the  
4 society of actuaries, with due regard to the type of benefit or  
5 any tables of disablement rates and termination rates, adopted  
6 after 1980 by the national association of insurance  
7 commissioners, that are approved by regulation promulgated by  
8 the superintendent for use in determining the minimum standard  
9 of valuation for such policies; 2) for policies or contracts  
10 issued on or after January 1, 1961 and prior to January 1,  
11 1966, either such tables or, at the option of the insurer, the  
12 class (3) disability table (1926); and 3) for policies issued  
13 prior to January 1, 1961, the class (3) disability table  
14 (1926). Any such table shall, for active lives, be combined  
15 with a mortality table permitted for calculating the reserves  
16 for life insurance policies;

17 (f) for accidental death benefits in or  
18 supplementary to policies: 1) for policies issued on or after  
19 January 1, 1966, the 1959 accidental death benefits table or  
20 any accidental death benefits table, adopted after 1980 by the  
21 national association of insurance commissioners, that is  
22 approved by regulation promulgated by the superintendent for  
23 use in determining the minimum standard of valuation for such  
24 policies; 2) for policies issued on or after January 1, 1961  
25 and prior to January 1, 1966, either such table or, at the

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1 option of the insurer, the intercompany double indemnity  
2 mortality table; and 3) for policies issued prior to January 1,  
3 1961, the intercompany double indemnity mortality table. 4)

4 Either table shall be combined with a mortality table permitted  
5 for calculating the reserves for life insurance policies; and

6 (g) for group life insurance, life  
7 insurance issued on the substandard basis and other special  
8 benefits, such tables as may be approved by the superintendent.

9 (2) Except as provided in Paragraphs (3), (4)  
10 and (5) of this subsection and in Subsections C, D and E of  
11 this section, the minimum standard [~~for the~~] of valuation [~~of~~  
12 ~~all~~] for individual annuity and pure endowment contracts issued  
13 on or after the operative date of this paragraph, as defined  
14 herein, and for all annuities and pure endowments purchased on  
15 or after such operative date under group annuity and pure  
16 endowment contracts, shall be the commissioners reserve  
17 valuation methods defined in Paragraphs (1) and (2) of  
18 Subsection E of this section and the following tables and  
19 interest rates:

20 (a) for individual annuity and pure  
21 endowment contracts issued prior to July 1, 1977, excluding any  
22 disability and accidental death benefits in such contracts, the  
23 1971 individual annuity mortality table, or any modification of  
24 this table approved by the superintendent, and six percent  
25 interest for single premium immediate annuity contracts, and

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1 four percent interest for all other individual annuity and pure  
2 endowment contracts;

3 (b) for individual single premium  
4 immediate annuity contracts issued on or after July 1, 1977,  
5 excluding any disability and accidental death benefits in such  
6 contracts, the 1971 individual annuity mortality table, or any  
7 individual annuity mortality table, adopted after 1980 by the  
8 national association of insurance commissioners, that is  
9 approved by regulation promulgated by the superintendent for  
10 use in determining the minimum standard of valuation for such  
11 contracts, or any modification of these tables approved by the  
12 superintendent, and seven and one-half percent interest;

13 (c) for individual annuity and pure  
14 endowment contracts issued on or after July 1, 1977, other than  
15 single premium immediate annuity contracts, excluding any  
16 disability and accidental death benefits in such contracts, the  
17 1971 individual annuity mortality table, or any individual  
18 annuity mortality table, adopted after 1980 by the national  
19 association of insurance commissioners, that is approved by  
20 regulation promulgated by the superintendent for use in  
21 determining the minimum standard of valuation for such  
22 contracts, or any modification of these tables approved by the  
23 superintendent, and five and one-half percent interest for  
24 single premium deferred annuity and pure endowment contracts  
25 and four and one-half percent interest for all other such

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1 individual annuity and pure endowment contracts;

2 (d) for ~~[all]~~ annuities and pure  
3 endowments purchased prior to July 1, 1977, under group annuity  
4 and pure endowment contracts, excluding any disability and  
5 accidental death benefits purchased under such contracts, the  
6 1971 group annuity mortality table, or any modification of this  
7 table approved by the superintendent, and six percent interest;  
8 and

9 (e) for ~~[all]~~ annuities and pure  
10 endowments purchased on or after July 1, 1977, under group  
11 annuity and pure endowment contracts, excluding any disability  
12 and accidental death benefits purchased under such contracts,  
13 the 1971 group annuity mortality table, or any group annuity  
14 mortality table, adopted after 1980 by the national association  
15 of insurance commissioners, that is approved by regulation  
16 promulgated by the superintendent for use in determining the  
17 minimum standard of valuation for such annuities and pure  
18 endowments, or any modification of this table approved by the  
19 superintendent, and seven and one-half percent interest.

20 (f) After July 1, 1973, any insurer may  
21 file with the superintendent a written notice of its election  
22 to comply with the provisions of this paragraph after a  
23 specified date before January 1, 1979, which shall be the  
24 operative date of this paragraph for such insurer, provided  
25 that an insurer may elect a different operative date for

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1 individual annuity and pure endowment contracts from that  
2 elected for group annuity and pure endowment contracts. If an  
3 insurer makes no such election, the operative date of this  
4 paragraph for such insurer shall be January 1, 1979.

5 (3) The interest rates used in determining the  
6 minimum standard for the valuation of:

7 (a) [~~all~~] life insurance policies issued  
8 in a particular calendar year, on or after the operative date  
9 of Subsection F of Section 59A-20-31 NMSA 1978;

10 (b) [~~all~~] individual annuity and pure  
11 endowment contracts issued in a particular calendar year on or  
12 after January 1, 1982;

13 (c) [~~all~~] annuities and pure endowments  
14 purchased in a particular calendar year on or after January 1,  
15 1982 under group annuity and pure endowment contracts; and

16 (d) the net increase, if any, in a  
17 particular calendar year after January 1, 1982, in amounts held  
18 under guaranteed interest contracts shall be the calendar year  
19 statutory valuation interest rates as defined in Paragraph (4)  
20 of this subsection.

21 (4) The calendar year statutory valuation  
22 interest rates, I, shall be determined as follows and the  
23 results rounded to the nearest one-quarter of one percent:

24 (a) for life insurance,

25 
$$I = .03 + W (R1 - .03) + W/2 (R2 - .09);$$

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1 (b) for single premium immediate  
2 annuities and for annuity benefits involving life contingencies  
3 arising from other annuities with cash settlement options and  
4 [~~for~~] from guaranteed interest contracts with cash settlement  
5 options,

$$6 \quad I = .03 + W (R - .03)$$

7 where R1 is the lesser of R and .09, R2 is the greater of R and  
8 .09, R is the reference interest rate defined in Subsection D  
9 of this section, and W is the weighting factor defined in  
10 Subsection C of this section;

11 (c) for other annuities with cash  
12 settlement options and guaranteed interest contracts with cash  
13 settlement options, valued on an issue year basis, except as  
14 stated in Subparagraph (b) of this paragraph, the formula for  
15 life insurance stated in Subparagraph (a) of this paragraph  
16 shall apply to annuities and guaranteed interest contracts with  
17 guarantee durations in excess of ten years and the formula for  
18 single premium immediate annuities stated in Subparagraph (b)  
19 of this paragraph shall apply to annuities and guaranteed  
20 interest contracts with guarantee duration of ten years or  
21 less;

22 (d) for other annuities with no cash  
23 settlement options and for guaranteed interest contracts with  
24 no cash settlement options, the formula for single premium  
25 immediate annuities stated in Subparagraph (b) of this

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1 paragraph shall apply; and

2 (e) for other annuities with cash  
3 settlement options and guaranteed interest contracts with cash  
4 settlement options, valued on a change in fund basis, the  
5 formula for single premium immediate annuities stated in  
6 Subparagraph (b) of this paragraph shall apply.

7 (5) However, if the calendar year statutory  
8 valuation interest rate for any life insurance policies issued  
9 in any calendar year determined without reference to this  
10 sentence differs from the corresponding actual rate for similar  
11 policies issued in the immediately preceding calendar year by  
12 less than one-half of one percent, the calendar year statutory  
13 valuation interest rate for such life insurance policies shall  
14 be equal to the corresponding actual rate for the immediately  
15 preceding calendar year. For purposes of applying the  
16 immediately preceding sentence, the calendar year statutory  
17 valuation interest rate for life insurance policies issued in a  
18 calendar year shall be determined for 1980 (using the reference  
19 interest rate defined for 1979) and shall be determined for  
20 each subsequent calendar year regardless of when Subsection F  
21 of Section 59A-20-31 NMSA 1978 becomes operative.

22 C. The weighting factors referred to in the  
23 formulas stated above are given in the following tables:

24 (1) Weighting Factors for Life Insurance:

25 Guarantee

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1	Duration	Weighting
2	(Years)	Factors
3	_____	_____
4	10 or less	.50
5	More than 10, but not more	
6	than 20	.45
7	More than 20	.35

8 For life insurance, the guarantee duration is the maximum  
9 number of years the life insurance can remain in force on a  
10 basis guaranteed in the policy or under options to convert to  
11 plans of life insurance with premium rates or nonforfeiture  
12 values or both [~~which~~] that are guaranteed in the original  
13 policy;

14 (2) Weighting factor for single premium  
15 immediate annuities and for annuity benefits involving life  
16 contingencies arising from other annuities with cash settlement  
17 options and guaranteed interest contracts with cash settlement  
18 options:

19 .80

20 (3) Weighting factors for other annuities and  
21 for guaranteed interest contracts, except as stated in  
22 Paragraph (2) of this subsection, shall be as specified in the  
23 tables set forth in Subparagraphs (a), (b) and (c) of this  
24 paragraph, according to the rules and definitions set forth in  
25 Subparagraphs (d), (e) and (f) of this paragraph:

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1 (a) For annuities and guaranteed  
2 interest contracts valued on an issue year basis:

3 Guarantee 4 Duration 5 (Years)	6 Weighting Factor 7 for Plan Type		
	A	B	C
8 _____	_____	_____	_____
9 5 or less:	.80	.60	.50
10 More than 5, but not more 11 than 10:	.75	.60	.50
12 More than 10, but not more than 20:	.65	.50	.45
More than 20:	.45	.35	.35

13 (b) For annuities and guaranteed  
14 interest contracts valued on a change in fund basis, the  
15 factors shown in the table set forth in Subparagraph (a) of  
16 this paragraph increased by:

Plan Type	A	B	C
	_____	_____	_____
	.15	.25	.05

17  
18  
19  
20  
21 (c) For annuities and guaranteed  
22 interest contracts valued on an issue year basis (other than  
23 those with no cash settlement options) ~~which~~ that do not  
24 guarantee interest on considerations received more than one  
25 year after issue or purchase and for annuities and guaranteed

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1 interest contracts valued on a change in fund basis [~~which~~  
2 that do not guarantee interest rates on considerations received  
3 more than twelve months beyond the valuation date, the factors  
4 shown in the table set forth in Subparagraph (a) of this  
5 paragraph or derived as required in the table set forth in  
6 Subparagraph (b) of this paragraph increased by:

Plan Type		
A	B	C
<hr/>		
.05	.05	.05

7  
8  
9  
10  
11 (d) For other annuities with cash  
12 settlement options and guaranteed interest contracts with cash  
13 settlement options, the guarantee duration is the number of  
14 years for which the contract guarantees interest rates in  
15 excess of the calendar year statutory valuation interest rate  
16 for life insurance policies with guarantee duration in excess  
17 of twenty years. For other annuities with no cash settlement  
18 options and for guaranteed interest contracts with no cash  
19 settlement options, the guarantee duration is the number of  
20 years from the date of issue or date of purchase to the date  
21 annuity benefits are scheduled to commence.

22 (e) Plan type as used in the above  
23 tables is defined as follows:

24 Plan Type A: At any time, policyholder may withdraw funds  
25 only: with an adjustment to reflect changes in interest rates

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1 or asset values since receipt of the funds by the insurer; or  
2 without such adjustment but in installments over five years or  
3 more; or as an immediate life annuity; or no withdrawal  
4 permitted.

5 Plan Type B: Before expiration of the interest rate  
6 guarantee, policyholder may withdraw funds only: with an  
7 adjustment to reflect changes in interest rates or asset values  
8 since receipt of the funds by the insurer; or without such  
9 adjustment but in installments over five years or more; or no  
10 withdrawal permitted. At the end of interest rate guarantee,  
11 funds may be withdrawn without such adjustment in a single sum  
12 or installments over less than five years.

13 Plan Type C: Policyholder may withdraw funds before  
14 expiration of interest rate guarantee in a single sum or  
15 installments over less than five years either: without  
16 adjustment to reflect changes in interest rates or asset values  
17 since receipt of the funds by the insurer; or subject only to a  
18 fixed surrender charge stipulated in the contract as a  
19 percentage of the fund.

20 (f) An insurer may elect to value  
21 guaranteed interest contracts with cash settlement options and  
22 annuities with cash settlement options on either an issue year  
23 basis or on a change in fund basis. Guaranteed interest  
24 contracts with no cash settlement options and other annuities  
25 with no cash settlement options must be valued on an issue year

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1 basis. As used in Subsections B, C and D of this section, an  
2 issue year basis of valuation refers to a valuation basis under  
3 which the interest rate used to determine the minimum valuation  
4 standard for the entire duration of the annuity or guaranteed  
5 interest contract is the calendar year valuation interest rate  
6 for the year of issue or year of purchase of the annuity or  
7 guaranteed interest contract, and the change in fund basis of  
8 valuation refers to a valuation basis under which the interest  
9 rate used to determine the minimum valuation standard  
10 applicable to each change in the fund held under the annuity or  
11 guaranteed interest contract is the calendar year valuation  
12 interest rate for the year of the change in the fund.

13 D. The reference interest rate referred to in  
14 Paragraph (4) of Subsection B of this section shall be defined  
15 as follows:

16 (1) for ~~[all]~~ life insurance, the lesser of  
17 the average over a period of thirty-six months and the average  
18 over a period of twelve months, ending on June 30 of the  
19 calendar year next preceding the year of issue, of the monthly  
20 average of the composite yield on seasoned corporate bonds, as  
21 published by Moody's investors service, incorporated;

22 (2) for single premium immediate annuities and  
23 for annuity benefits involving life contingencies arising from  
24 other annuities with cash settlement options and guaranteed  
25 interest contracts with cash settlement options, the average

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1 over a period of twelve months, ending on June 30 of the  
2 calendar year of issue or year of purchase, of the monthly  
3 average of the composite yield on seasoned corporate bonds, as  
4 published by Moody's investors service, incorporated;

5 (3) for other annuities with cash settlement  
6 options and guaranteed interest contracts with cash settlement  
7 options, valued on a year of issue basis, except as stated in  
8 Paragraph (2) of this subsection, with guarantee duration in  
9 excess of ten years, the lesser of the average over a period of  
10 thirty-six months and the average over a period of twelve  
11 months, ending on June 30 of the calendar year of issue or  
12 purchase, of the monthly average of the composite yield on  
13 seasoned corporate bonds, as published by Moody's investors  
14 service, incorporated;

15 (4) for other annuities with cash settlement  
16 options and guaranteed interest contracts with cash settlement  
17 options, valued on a year of issue basis, except as stated in  
18 Paragraph (2) of this subsection, with guarantee duration of  
19 ten years or less, the average over a period of twelve months,  
20 ending on June 30 of the calendar year of issue or purchase, of  
21 the monthly average of the composite yield on seasoned  
22 corporate bonds, as published by Moody's investors service,  
23 incorporated;

24 (5) for other annuities with no cash  
25 settlement options and for guaranteed interest contracts with

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1 no cash settlement options, the average over a period of twelve  
2 months, ending on June 30 of the calendar year of issue or  
3 purchase, of the monthly average of the composite yield on  
4 seasoned corporate bonds, as published by Moody's investors  
5 service, incorporated;

6 (6) for other annuities with cash settlement  
7 options and guaranteed interest contracts with cash settlement  
8 options, valued on a change in fund basis, except as stated in  
9 Paragraph (2) of this subsection, the average over a period of  
10 twelve months, ending on June 30 of the calendar year of the  
11 change in the fund, of the monthly average of the composite  
12 yield on seasoned corporate bonds, as published by Moody's  
13 investors service, incorporated; and

14 (7) in the event that the national association  
15 of insurance commissioners determines that the monthly average  
16 of the composite yield on seasoned corporate bonds, as  
17 published by Moody's investors service, incorporated, is no  
18 longer appropriate for the determination of the reference  
19 interest rate, then an alternative method for determination of  
20 the reference interest rate ~~[which]~~ that is adopted by the  
21 national association of insurance commissioners and approved by  
22 regulation promulgated by the superintendent may be  
23 substituted.

24 E. The reserve valuation method shall be defined as  
25 follows:

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1                   (1) Except as otherwise provided in this  
2 paragraph and Paragraph (2) of this subsection, reserves  
3 according to the national association of insurance  
4 commissioners reserve valuation method, for the life insurance  
5 and endowment benefits of policies providing for a uniform  
6 amount of insurance and requiring the payment of uniform  
7 premiums, shall be the excess, if any, of the present value, at  
8 the date of valuation, of such future guaranteed benefits  
9 provided for by such policies, over the then present value of  
10 any future modified net premiums therefor. The modified net  
11 premiums for any such policy shall be such uniform percentage  
12 of the respective contract premiums for such benefits that the  
13 present value, at the date of issue of the policy, of all such  
14 modified net premiums shall be equal to the sum of the then  
15 present value of such benefits provided for by the policy and  
16 the excess of Subparagraph (a) over Subparagraph (b) of this  
17 paragraph, as follows:

18                   (a) a net level annual premium equal to  
19 the present value, at the date of issue, of such benefits  
20 provided for after the first policy year, divided by the  
21 present value, at the date of issue, of an annuity of one per  
22 annum payable on the first and each subsequent anniversary of  
23 such policy on which a premium falls due; provided, however,  
24 that such net level annual premium shall not exceed the net  
25 level annual premium on the nineteen-year premium whole life

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1 plan for insurance of the same amount at an age of one year  
2 higher than the age at issue of such policy; and

3 (b) a net one-year term premium for such  
4 benefits provided for in the first policy year.

5 Provided that for any life insurance policy issued on or  
6 after January 1, 1985 for which the contract premium in the  
7 first policy year exceeds that of the second year and for which  
8 no comparable additional benefit is provided in the first year  
9 for such excess and ~~[which]~~ that provides an endowment benefit  
10 or a cash surrender value or a combination thereof in an amount  
11 greater than such excess premium, the reserve according to the  
12 commissioners reserve valuation method as of any policy  
13 anniversary occurring on or before the assumed ending date  
14 defined herein as the first policy anniversary on which the sum  
15 of any endowment benefit and any cash surrender value then  
16 available is greater than such excess premium shall, except as  
17 otherwise provided in Subparagraph ~~[(e)]~~ (f) of this paragraph,  
18 be the greater of the reserve as of such policy anniversary  
19 calculated as described previously in this paragraph and the  
20 reserve as of such policy anniversary calculated as previously  
21 described in this paragraph, but with: the value defined in  
22 Subparagraph (a) of this paragraph being reduced by fifteen  
23 percent of the amount of such excess first year premium; all  
24 present values of benefits and premiums being determined  
25 without reference to premiums or benefits provided for by the

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1 policy after the assumed ending date; the policy being assumed  
2 to mature on such date as an endowment; and the cash surrender  
3 value provided on such date being considered as an endowment  
4 benefit. In making the above comparison the mortality and  
5 interest bases stated in Paragraphs (1), (3), (4) and (5) of  
6 Subsection B of this section and in Subsections C and D of this  
7 section shall be used.

8 Reserves according to the commissioners reserve valuation  
9 method for: 1) life insurance policies providing for a varying  
10 amount of insurance or requiring the payment of varying  
11 premiums; 2) group annuity and pure endowment contracts  
12 purchased under a retirement plan or plan of deferred  
13 compensation, established or maintained by an employer  
14 (including a partnership or sole proprietorship) or by an  
15 employee organization, or by both, other than a plan providing  
16 individual retirement accounts or individual retirement  
17 annuities under Section 408 of the Internal Revenue Code, as  
18 now or hereafter amended; 3) disability and accidental death  
19 benefits in all policies and contracts; and 4) all other  
20 benefits, except life insurance and endowment benefits in life  
21 insurance policies and benefits provided by all other annuity  
22 and pure endowment contracts, shall be calculated by a method  
23 consistent with the principles of this paragraph ~~[except that~~  
24 ~~any extra premiums charged because of impairments or special~~  
25 ~~hazards shall be disregarded in the determination of modified~~

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1 ~~net premiums~~];

2 (c) in no event shall an insurer's  
3 aggregate reserves for all life insurance policies, excluding  
4 disability and accidental death benefits, be less than the  
5 aggregate reserves calculated in accordance with the methods  
6 set forth in this paragraph and Paragraph (2) of this  
7 subsection and the mortality table or tables and rate or rates  
8 of interest used in calculating nonforfeiture benefits for such  
9 policies;

10 (d) at the option of the insurer,  
11 reserves for policies and contracts issued prior to the  
12 operative date of Section 59A-20-31 NMSA 1978 may be calculated  
13 according to a standard that produces greater aggregate  
14 reserves for the policies and contracts than the minimum  
15 required by the laws in effect immediately prior to that date;

16 [~~(d)~~] (e) reserves for any category of  
17 policies, contracts or benefits as established by the  
18 superintendent that are issued on or after the operative date  
19 of Section 59A-20-31 NMSA 1978 may be calculated, at the option  
20 of the insurer, according to any standards [~~which~~] that produce  
21 greater aggregate reserves for such category than those  
22 calculated according to the minimum standard herein provided,  
23 but the rate or rates of interest used for policies and  
24 contracts, other than annuity and pure endowment contracts,  
25 shall not be [~~higher~~] greater than the corresponding rate or

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1 rates of interest used in calculating any nonforfeiture  
2 benefits provided for [~~therein~~] in the policies or contracts.

3 Any such insurer [~~which~~] that at any time [~~shall have~~  
4 ~~adopted~~] adopts any standard of valuation producing greater  
5 aggregate reserves than those calculated according to the  
6 minimum standard [~~herein~~] provided by the Standard Valuation  
7 Law may, with the approval of the superintendent, adopt any  
8 lower standard of valuation, but not lower than the minimum  
9 herein provided; but, for the purpose of this section, the  
10 holding of additional reserves previously determined by [~~a~~  
11 ~~qualified~~] the appointed actuary to be necessary to render the  
12 opinion required by Section [~~59A-8-7~~] 59A-8A-4 NMSA 1978 shall  
13 not be deemed to be the adoption of a higher standard of  
14 valuation;

15 [~~(e)~~] (f) if in any contract year the  
16 gross premium charged by any insurer on any policy or contract  
17 is less than the valuation net premium for the policy or  
18 contract calculated by the method used in calculating the  
19 reserve thereon but using the minimum valuation standards of  
20 mortality and rate of interest, the minimum reserve required  
21 for such policy or contract shall be the greater of either the  
22 reserve calculated according to the mortality table, rate of  
23 interest, and method actually used for such policy or contract,  
24 or the reserve calculated by the method actually used for such  
25 policy or contract but using the minimum standards of mortality

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1 and rate of interest and replacing the valuation net premium by  
2 the actual gross premium in each contract year for which the  
3 valuation net premium exceeds the actual gross premium. The  
4 minimum valuation standards of mortality and rate of interest  
5 referred to in this paragraph are those standards stated in  
6 Paragraphs (1), (3), (4) and (5) of Subsection B of this  
7 section.

8         Provided that for any life insurance policy issued on or  
9 after January 1, 1985 for which the gross premium in the first  
10 policy year exceeds that of the second year and for which no  
11 comparable additional benefit is provided in the first year for  
12 such excess and ~~[which]~~ that provides an endowment benefit or a  
13 cash surrender value or a combination thereof in an amount  
14 greater than such excess premium, the foregoing provisions of  
15 Subparagraph ~~[(e)]~~ (f) of this paragraph shall be applied as if  
16 the method actually used in calculating the reserve for such  
17 policy were the method previously described in this paragraph  
18 ignoring the unnumbered paragraph immediately following  
19 Subparagraph (b) of this paragraph. The minimum reserve at  
20 each policy anniversary of such a policy shall be the greater  
21 of the minimum reserve calculated in accordance with the method  
22 previously described in this paragraph, including the  
23 unnumbered paragraph immediately following Subparagraph (b),  
24 and the minimum reserve calculated in accordance with  
25 Subparagraph ~~[(e)]~~ (f) of this paragraph; and

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1 contracts, shall be the greatest of the respective excesses of  
2 the present values, at the date of valuation, of the future  
3 guaranteed benefits, including guaranteed nonforfeiture  
4 benefits, provided for by such contracts at the end of each  
5 respective contract year, over the present value, at the date  
6 of valuation, of any future valuation considerations derived  
7 from future gross considerations, required by the terms of such  
8 contract, that become payable prior to the end of such  
9 respective contract year. The future guaranteed benefits shall  
10 be determined by using the mortality table, if any, and the  
11 interest rate or rates, specified in such contracts for  
12 determining guaranteed benefits. The valuation considerations  
13 are the portions of the respective gross considerations applied  
14 under the terms of such contracts to determine nonforfeiture  
15 values."

16 SECTION 21. A new Section 59A-8A-7 NMSA 1978 is enacted  
17 to read:

18 "59A-8A-7. [NEW MATERIAL] MINIMUM STANDARDS FOR ACCIDENT  
19 AND HEALTH INSURANCE CONTRACTS.--For an accident and health  
20 insurance contract issued on or after the operative date of the  
21 valuation manual, the standard prescribed in the valuation  
22 manual is the minimum standard of valuation required by  
23 Subsection B of Section 59A-8A-3 NMSA 1978. For an accident  
24 and health insurance contract issued on or after the operative  
25 date of Section 59A-20-31 NMSA 1978 and prior to the operative

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1 date of the valuation manual, the minimum standard of valuation  
2 is the standard adopted by the superintendent by rule."

3 SECTION 22. A new Section 59A-8A-8 NMSA 1978 is enacted  
4 to read:

5 "59A-8A-8. [NEW MATERIAL] VALUATION MANUAL FOR POLICIES  
6 ISSUED ON OR AFTER OPERATIVE DATE OF VALUATION MANUAL.--

7 A. For a policy issued on or after the operative  
8 date of the valuation manual, the standard prescribed in the  
9 valuation manual is the minimum standard of valuation required  
10 by Subsection B of Section 59A-8A-3 NMSA 1978, except as  
11 provided in Subsection D or F of this section.

12 B. Unless an amendment to the valuation manual  
13 provides for a later effective date, an amendment to the  
14 valuation manual takes effect on the January 1 after the date  
15 that the amendment was adopted by the national association of  
16 insurance commissioners by an affirmative vote of:

17 (1) at least three-fourths of the members of  
18 the national association of insurance commissioners voting, but  
19 not less than a majority of the total membership; and

20 (2) members representing jurisdictions that  
21 collectively represent more than seventy-five percent of  
22 written direct premiums, as reported in the life, accident and  
23 health annual statements, the health annual statements and the  
24 fraternal annual statements most recently available before the  
25 time of the vote referred to in Paragraph (1) of this

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1 subsection.

2 C. The valuation manual shall indicate:

3 (1) minimum valuation standards for and  
4 definitions of the policies or contracts subject to Subsection  
5 B of Section 59A-8A-3 NMSA 1978, including:

6 (a) the superintendent's reserve  
7 valuation method for life insurance contracts, other than  
8 annuity contracts, subject to that subsection;

9 (b) the superintendent's annuity reserve  
10 valuation method for annuity contracts subject to that  
11 subsection; and

12 (c) minimum reserves for all other  
13 policies or contracts subject to that subsection;

14 (2) which policies and contracts or types of  
15 policies and contracts are subject to the requirements of a  
16 principle-based valuation in Subsection A of Section 59A-8A-9  
17 NMSA 1978 and the minimum standards of valuation consistent  
18 with those requirements;

19 (3) for policies and contracts subject to a  
20 principle-based valuation pursuant to Section 59A-8A-9 NMSA  
21 1978:

22 (a) requirements for the format of  
23 reports filed with the superintendent pursuant to Paragraph (3)  
24 of Subsection B of Section 59A-8A-9 NMSA 1978, which shall  
25 include information necessary to determine if the valuation is

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1 appropriate and complies with the Standard Valuation Law;

2 (b) prescribed assumptions for risks  
3 over which the company has no significant control or influence;  
4 and

5 (c) procedures for, and a process for  
6 appropriate waiver or modification of, corporate governance and  
7 oversight of the actuarial function;

8 (4) for policies not subject to a  
9 principle-based valuation pursuant to Section 59A-8A-9 NMSA  
10 1978, the minimum standard of valuation shall either:

11 (a) be consistent with the minimum  
12 standard of valuation in effect prior to the operative date of  
13 the valuation manual; or

14 (b) provide for reserves that quantify  
15 the benefits and guarantees and the funding associated with the  
16 contracts and their risks at a level of conservatism that  
17 reflects conditions that include unfavorable events with a  
18 reasonable probability of occurring;

19 (5) other requirements, including those  
20 related to reserve methods, models for measuring risk,  
21 generation of economic scenarios, assumptions, margins, use of  
22 company experience, risk measurement, disclosure,  
23 certifications, reports, actuarial opinions and memoranda,  
24 transition rules and internal controls; and

25 (6) the data and form of the data required by

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1 Section 59A-8A-10 NMSA 1978, the person with whom the data must  
2 be submitted and, if appropriate, data analyses and reporting  
3 of analyses.

4 D. In the absence of a specific valuation  
5 requirement or if a specific valuation requirement in the  
6 valuation manual does not, in the opinion of the  
7 superintendent, comply with the Standard Valuation Law, then a  
8 company shall comply with the minimum valuation standards  
9 promulgated by rule by the superintendent.

10 E. The superintendent may engage, at the company's  
11 expense, a qualified actuary to conduct an actuarial  
12 examination of a company and issue an opinion on the  
13 appropriateness of the company's reserve assumption or method,  
14 or to review and issue an opinion on the company's compliance  
15 with a requirement of the Standard Valuation Law. The  
16 superintendent may rely upon the opinion of a qualified actuary  
17 engaged by the insurance supervisory official of another state,  
18 district or territory of the United States if that opinion  
19 relates to the provisions of the Standard Valuation Law. As  
20 used in this subsection, "engage" includes employment and  
21 contract employment.

22 F. The superintendent may require a company to  
23 change an assumption or method if the superintendent believes  
24 that the change is necessary to comply with the requirements of  
25 the valuation manual or the Standard Valuation Law. The

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1 company shall adjust its reserves to comply with the  
2 superintendent's requirement."

3 SECTION 23. A new Section 59A-8A-9 NMSA 1978 is enacted  
4 to read:

5 "59A-8A-9. [NEW MATERIAL] REQUIREMENTS OF A PRINCIPLE-  
6 BASED VALUATION.--

7 A. For policies and contracts that the valuation  
8 manual indicates are subject to this section, a company shall  
9 establish reserves using a principle-based valuation that:

10 (1) quantifies the benefits and guarantees and  
11 the funding associated with the contracts and their risks at a  
12 level of conservatism that reflects conditions that include  
13 unfavorable events with a reasonable probability of occurring  
14 during the lifetime of the contracts and, for a policy or  
15 contract with significant tail risk, reflects conditions  
16 appropriately adverse to quantify the tail risk;

17 (2) incorporates assumptions, risk analysis  
18 methods, financial models and management techniques that are  
19 consistent with, but not necessarily identical to, those used  
20 in the company's overall risk assessment process and that  
21 recognize potential differences in financial reporting  
22 structures and prescribed assumptions or methods;

23 (3) incorporates assumptions that:

24 (a) derive from the valuation manual; or

25 (b) do not derive from the valuation

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1 manual, but: 1) are established using the company's available  
2 experience and are relevant and statistically credible; or 2)  
3 if company data is not available, relevant or statistically  
4 credible, are established utilizing other relevant,  
5 statistically credible experience; and

6 (4) provides margins for uncertainty,  
7 including adverse deviation and estimation error, whose sizes  
8 vary in proportion to the margin and resulting reserve.

9 B. A company using a principle-based valuation for  
10 policies and contracts that the valuation manual indicates are  
11 subject to this section shall:

12 (1) establish procedures for corporate  
13 governance and oversight of the actuarial valuation function  
14 that are consistent with those provided for in the valuation  
15 manual;

16 (2) design its internal controls of  
17 principle-based valuation to ensure that all material risks  
18 inherent in the liabilities and associated assets subject to  
19 the valuation are included in the valuation and that valuations  
20 are made in accordance with the valuation manual;

21 (3) each year, provide to the superintendent  
22 and to the company's board of directors a certification of  
23 effectiveness of the internal controls of the company's  
24 principle-based valuation that are in place at the end of the  
25 preceding calendar year; and



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1 (4) develop and, upon the request of the  
2 superintendent, file a principle-based valuation report that  
3 complies with the standards prescribed in the valuation manual.

4 C. A principle-based valuation may include a  
5 prescribed formulaic reserve component."

6 SECTION 24. A new Section 59A-8A-10 NMSA 1978 is enacted  
7 to read:

8 "59A-8A-10. [NEW MATERIAL] EXPERIENCE REPORTING FOR  
9 POLICIES IN FORCE ON OR AFTER OPERATIVE DATE OF VALUATION  
10 MANUAL.--For policies in force on or after the operative date  
11 of the valuation manual, a company shall submit mortality,  
12 morbidity, policyholder behavior or expense experience and  
13 other data as prescribed in the valuation manual."

14 SECTION 25. A new Section 59A-8A-11 NMSA 1978 is enacted  
15 to read:

16 "59A-8A-11. [NEW MATERIAL] CONFIDENTIALITY.--

17 A. As used in this section, "confidential  
18 information" includes:

19 (1) memoranda in support of opinions submitted  
20 pursuant to Sections 59A-8A-4 and 59A-8A-5 NMSA 1978 and other  
21 documents, materials and information, including all working  
22 papers and copies of those papers, that are produced or  
23 obtained by or disclosed to the superintendent or another  
24 person in connection with those memoranda;

25 (2) documents, materials and other

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1 information, including all working papers and copies of those  
2 papers, that are produced or obtained by or disclosed to the  
3 superintendent or another person in the course of an  
4 examination conducted pursuant to Subsection E of Section  
5 59A-8A-8 NMSA 1978; provided, however, that if an examination  
6 report or other material prepared in connection with an  
7 examination pursuant to Sections 59A-4-5 through 59A-4-13 NMSA  
8 1978 is not held as private and confidential information  
9 pursuant to Sections 59A-4-5 through 59A-4-13 NMSA 1978, an  
10 examination report made under Subsection E of Section 59A-8A-8  
11 NMSA 1978 shall not be confidential information to the same  
12 extent as if the examination report or other material had been  
13 prepared pursuant to Sections 59A-4-5 through 59A-4-13 NMSA  
14 1978;

15 (3) reports, documents, materials and other  
16 information that are developed by a company in support of or in  
17 connection with an annual certification by a company pursuant  
18 to Paragraph (3) of Subsection B of Section 59A-8A-9 NMSA 1978  
19 and that evaluate the effectiveness of the company's internal  
20 controls with respect to a principle-based valuation and any  
21 other documents, materials and other information, including  
22 working papers and copies of those papers that are produced by,  
23 obtained by or disclosed to the superintendent or another  
24 person in connection with those reports, documents, materials  
25 or other information;

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1 (4) principle-based valuation reports  
2 developed pursuant to Paragraph (4) of Subsection B of Section  
3 59A-8A-9 NMSA 1978 and other documents, materials and other  
4 information, including all working papers and copies of those  
5 papers that are produced or obtained by or disclosed to the  
6 superintendent or another person in connection with those  
7 reports; and

8 (5) documents, materials, data and other  
9 information that are submitted by a company pursuant to Section  
10 59A-8A-10 NMSA 1978 and all other documents, materials, data  
11 and other information, including all working papers and copies  
12 of those papers, that are created or produced in connection  
13 with experience data that include any potentially company- or  
14 person-identifying information and that is provided to or  
15 obtained by the superintendent or another person in connection  
16 with the submissions required by Section 59A-8A-10 NMSA 1978.

17 B. Except as provided in this section, a company's  
18 confidential information is confidential and privileged, not  
19 subject to the Inspection of Public Records Act, not subject to  
20 subpoena and, in a private civil action, not subject to  
21 discovery or admissible in evidence; provided that the  
22 superintendent may use the documents, materials or other  
23 information in the furtherance of a regulatory or legal action  
24 brought as a part of the superintendent's official duties.  
25 Neither the superintendent nor another person who received

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1 documents, materials or other information while acting pursuant  
2 to the authority of the superintendent shall be permitted or  
3 required in a private civil action to testify on the  
4 confidential documents, materials or information subject to  
5 this subsection.

6 C. In order to assist in the performance of the  
7 superintendent's duties, the superintendent may share  
8 confidential information:

9 (1) with another state, federal or  
10 international regulatory agency and with the national  
11 association of insurance commissioners, its affiliates or its  
12 subsidiaries; and

13 (2) in the case of confidential information  
14 specified in Paragraphs (1) and (4) of Subsection A of this  
15 section:

16 (a) with the actuarial board for  
17 counseling and discipline or its successor if the actuarial  
18 board for counseling and discipline or its successor requests  
19 the confidential information and states that it is required for  
20 a professional disciplinary proceeding; and

21 (b) with a state, federal or  
22 international law enforcement official if that official has the  
23 legal authority to agree and does agree to maintain the  
24 confidentiality and privilege of the documents, materials, data  
25 and other information in the same manner and to the same extent

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1 as the superintendent.

2 D. The superintendent may receive documents,  
3 materials, data and other information, including otherwise  
4 confidential and privileged documents, materials, data and  
5 other information, from the national association of insurance  
6 commissioners, its affiliates or its subsidiaries, from  
7 regulatory or law enforcement officials of foreign or domestic  
8 jurisdictions and from the actuarial board for counseling and  
9 discipline or its successor. The superintendent shall maintain  
10 as confidential or privileged a document, materials, data or  
11 other information received with notice or the understanding  
12 that the content is confidential or privileged pursuant to the  
13 laws of the jurisdiction from which the information originates.

14 E. The superintendent may enter into agreements  
15 governing the sharing and use of information that are  
16 consistent with Subsections B through H of this section.

17 F. No waiver of an applicable privilege or claim of  
18 confidentiality in confidential information results from a  
19 disclosure to the superintendent pursuant to the provisions of  
20 this section or as a result of the sharing authorized by  
21 Subsection C of this section.

22 G. A privilege established by the laws of a state  
23 or jurisdiction that is substantially similar to the privilege  
24 established by Subsections B through H of this section shall be  
25 available and enforced in any official proceeding in, and in

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1 any court of, New Mexico.

2 H. For the purposes of this section, "regulatory  
3 agency", "law enforcement agency" and "national association of  
4 insurance commissioners" include the employees, agents,  
5 consultants and contractors of the entity.

6 I. Notwithstanding Subsections B through H of this  
7 section, the confidential information specified in Paragraphs  
8 (1) and (4) of Subsection A of this section:

9 (1) may be subject to subpoena for the purpose  
10 of defending an action seeking damages from an appointed  
11 actuary who submits a related memorandum in support of an  
12 opinion pursuant to Sections 59A-8A-4 and 59A-8A-5 NMSA 1978 or  
13 who submits a principle-based valuation report developed  
14 pursuant to Paragraph (4) of Subsection B of Section 59A-8A-9  
15 NMSA 1978 if the submission is required by the Standard  
16 Valuation Law or the rules promulgated in furtherance of that  
17 law;

18 (2) may, with the written consent of the  
19 company, be released by the superintendent; and

20 (3) ceases to be confidential once a portion  
21 of a memorandum in support of an opinion submitted pursuant to  
22 Sections 59A-8A-4 and 59A-8A-5 NMSA 1978 or a principle-based  
23 valuation report developed pursuant to Paragraph (4) of  
24 Subsection B of Section 59A-8A-9 NMSA 1978 is cited by the  
25 company in its marketing, publicly volunteered to a

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1 governmental agency other than a state insurance department or  
2 released by the company to the news media."

3 SECTION 26. A new Section 59A-8A-12 NMSA 1978 is enacted  
4 to read:

5 "59A-8A-12. [NEW MATERIAL] SINGLE STATE EXEMPTION.--

6 A. The superintendent may exempt from the  
7 requirements of Section 59A-8A-8 NMSA 1978 the specific product  
8 forms or product lines of a domestic company that is licensed  
9 and doing business only in New Mexico if:

10 (1) the superintendent has issued a written  
11 exemption to the company and has not subsequently revoked the  
12 exemption in writing; and

13 (2) the company computes reserves using the  
14 assumptions and methods used prior to the operative date of the  
15 valuation manual and using any requirements established by the  
16 superintendent and promulgated by rule.

17 B. For a company granted an exemption pursuant to  
18 this section, Sections 59A-8A-4, 59A-8A-6 and 59A-8A-7 NMSA  
19 1978 apply. For a company that applies this exemption, a  
20 reference to Section 59A-8A-8 NMSA 1978 that is found in  
21 Sections 59A-8A-4, 59A-8A-6 and 59A-8A-7 NMSA 1978 does not  
22 apply."

23 SECTION 27. Section 59A-20-31 NMSA 1978 (being Laws 1984,  
24 Chapter 127, Section 396) is amended to read:

25 "59A-20-31. STANDARD NONFORFEITURE LAW--LIFE INSURANCE.--

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1           A. In the case of policies issued on and after the  
2 operative date of this section, as defined in Subsection K of  
3 this section, no policy of life insurance, except as stated in  
4 Subsection J of this section, shall be delivered or issued for  
5 delivery in this state unless it shall contain in substance the  
6 following provisions, or corresponding provisions ~~[which]~~ that  
7 in the opinion of the superintendent are at least as favorable  
8 to the defaulting or surrendering policyholder as are the  
9 minimum requirements hereinafter specified and are essentially  
10 in compliance with Subsection I of this section:

11           (1) that, in the event of default in any  
12 premium payment the insurer will grant, upon proper request not  
13 later than sixty days after the due date of the premium in  
14 default, a paid-up nonforfeiture benefit on a plan stipulated  
15 in the policy, effective as of such due date, of such amount as  
16 may be hereinafter specified. In lieu of such stipulated paid-  
17 up nonforfeiture benefit, the insurer may substitute, upon  
18 proper request not later than sixty days after the due date of  
19 the premium in default, an actuarially equivalent alternative  
20 paid-up nonforfeiture benefit ~~[which]~~ that provides a greater  
21 amount or longer period of death benefits or, if applicable, a  
22 greater amount or earlier payment of endowment benefits;

23           (2) that, upon surrender of the policy within  
24 sixty days after the due date of any premium payment in default  
25 after premiums have been paid for at least three full years in

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1 the case of ordinary insurance or five full years in the case  
2 of industrial insurance, the insurer will pay, in lieu of any  
3 paid-up nonforfeiture benefit, a cash surrender value of such  
4 amount as may be hereinafter specified;

5 (3) that a specified paid-up nonforfeiture  
6 benefit shall become effective as specified in the policy  
7 unless the person entitled to make such election elects another  
8 available option not later than sixty days after the due date  
9 of the premium in default;

10 (4) that, if the policy shall have become  
11 paid-up by completion of all premium payments or if it is  
12 continued under any paid-up nonforfeiture benefit [~~which~~] that  
13 became effective on or after the third policy anniversary in  
14 the case of ordinary insurance or the fifth policy anniversary  
15 in the case of industrial insurance, the insurer will pay, upon  
16 surrender of the policy within thirty days after any policy  
17 anniversary, a cash surrender value of such amount as may be  
18 hereinafter specified;

19 (5) in the case of policies [~~which~~] that cause  
20 on a basis guaranteed in the policy unscheduled changes in  
21 benefits or premiums, or [~~which~~] that provide an option for  
22 changes in benefits or premiums other than a change to a new  
23 policy, a statement of the mortality table, interest rate and  
24 method used in calculating cash surrender values and the paid-  
25 up nonforfeiture benefits available under the policy. In the

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1 case of all other policies, a statement of the mortality table  
2 and interest rate used in calculating the cash surrender values  
3 and the paid-up nonforfeiture benefits available under the  
4 policy, together with a table showing the cash surrender value,  
5 if any, and paid-up nonforfeiture benefit, if any, available  
6 under the policy on each policy anniversary either during the  
7 first twenty policy years or during the term of the policy,  
8 whichever is shorter, such values and benefits to be calculated  
9 upon the assumption that there are no dividends or paid-up  
10 additions credited to the policy and that there is no  
11 indebtedness to the insurer on the policy; and

12 (6) a statement that the cash surrender values  
13 and the paid-up nonforfeiture benefits available under the  
14 policy are not less than the minimum values and benefits  
15 required by or pursuant to the insurance law of the state in  
16 which the policy is delivered; an explanation of the manner in  
17 which the cash surrender values and the paid-up nonforfeiture  
18 benefits are altered by the existence of any paid-up additions  
19 credited to the policy or any indebtedness to the insurer on  
20 the policy; if a detailed statement of the method of  
21 computation of the values and benefits shown in the policy is  
22 not stated therein, a statement that such method of computation  
23 has been filed with the insurance supervisory official of the  
24 state in which the policy is delivered; and a statement of the  
25 method to be used in calculating the cash surrender value and

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1 paid-up nonforfeiture benefit available under the policy on any  
2 policy anniversary beyond the last anniversary for which such  
3 values and benefits are consecutively shown in the policy.

4 Any of the provisions in this subsection or portions  
5 thereof not applicable by reason of the plan of insurance may,  
6 to the extent inapplicable, be omitted from the policy.

7 The insurer shall reserve the right to defer the payment  
8 of any cash surrender value for a period of six months after  
9 demand therefor with surrender of the policy.

10 B. Any cash surrender value available under the  
11 policy in the event of default in a premium payment due on any  
12 policy anniversary, whether or not required by Subsection A of  
13 this section, shall be an amount not less than the excess, if  
14 any, of the present value, on such anniversary, of the future  
15 guaranteed benefits [~~which~~] that would have been provided for  
16 by the policy, including any existing paid-up additions, if  
17 there had been no default, over the sum of:

18 (1) the then present value of the adjusted  
19 premiums as defined in Subsections D, E and F of this section,  
20 corresponding to premiums [~~which~~] that would have fallen due on  
21 or after such anniversary; and

22 (2) the amount of any indebtedness to the  
23 insurer on the policy.

24 Provided, however, that for any policy issued on or after  
25 the operative date of Subsection F of this section, as defined

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1 therein, which provides supplemental life insurance or annuity  
2 benefits at the option of the insured and for an identifiable  
3 additional premium by rider or supplemental policy provision,  
4 the cash surrender value referred to in [~~the first~~] Paragraph  
5 (1) of this subsection shall be an amount not less than the sum  
6 of the cash surrender value as defined in such paragraph for an  
7 otherwise similar policy issued at the same age without such  
8 rider or supplemental policy provision and the cash surrender  
9 value as defined in such paragraph for a policy [~~which~~] that  
10 provides only the benefits otherwise provided by such rider or  
11 supplemental policy provision.

12 Provided, further, that for any family policy issued on or  
13 after the operative date of Subsection F of this section as  
14 defined therein, which defines a primary insured and provides  
15 term insurance on the life of the spouse of the primary insured  
16 expiring before the spouse's age of seventy-one, the cash  
17 surrender value referred to in [~~the first~~] Paragraph (1) of  
18 this subsection shall be an amount not less than the sum of the  
19 cash surrender value as defined in such paragraph for an  
20 otherwise similar policy issued at the same age without such  
21 term insurance on the life of the spouse and the cash surrender  
22 value as defined in such paragraph for a policy [~~which~~] that  
23 provides only the benefits otherwise provided by such term  
24 insurance on the life of the spouse. Any cash surrender value  
25 available within thirty days after any policy anniversary under

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1 any policy paid up by completion of all premium payments or any  
2 policy continued under any paid-up nonforfeiture benefit,  
3 whether or not required by Subsection A of this section, shall  
4 be an amount not less than the present value, on such  
5 anniversary, of the future guaranteed benefits provided for by  
6 the policy, including any existing paid-up additions, decreased  
7 by any indebtedness to the insurer on the policy.

8 C. Any paid-up nonforfeiture benefit available  
9 under the policy in the event of default in a premium payment  
10 due on any policy anniversary shall be such that its present  
11 value as of such anniversary shall be at least equal to the  
12 cash surrender value then provided for by the policy or, if  
13 none is provided for, that cash surrender value ~~[which]~~ that  
14 would have been required by this section in the absence of the  
15 condition that premiums shall have been paid for at least a  
16 specified period.

17 D. This subsection shall not apply to policies  
18 issued on or after the operative date of Subsection F of this  
19 section. Except as provided in Paragraph (2) of this  
20 subsection, the adjusted premiums for any policy shall be  
21 calculated on an annual basis and shall be such uniform  
22 percentage of the respective premiums specified in the policy  
23 for each policy year, excluding any extra premiums charged  
24 because of impairments or special hazards, that the present  
25 value, at the date of issue of the policy, of all such adjusted

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1 premiums shall be equal to the sum of: (a) the then present  
2 value of the future guaranteed benefits provided for by the  
3 policy; (b) two percent of the amount of insurance, if the  
4 insurance be uniform in amount, or of the equivalent uniform  
5 amount, as hereinafter defined, if the amount of insurance  
6 varies with duration of the policy; (c) forty percent of the  
7 adjusted premium for the first policy year; (d) twenty-five  
8 percent of either the adjusted premium for the first policy  
9 year or the adjusted premium for a whole life policy of the  
10 same uniform or equivalent uniform amount with uniform premiums  
11 for the whole of life issued at the same age for the same  
12 amount of insurance, whichever is less. Provided, however,  
13 that in applying the percentages specified in (c) and (d)  
14 [~~above~~], no adjusted premium shall be deemed to exceed four  
15 percent of the amount of insurance or uniform amount equivalent  
16 thereto. The date of issue of a policy for the purpose of this  
17 subsection shall be the date as of which the rated age of the  
18 insured is determined.

19 (1) In the case of a policy providing an  
20 amount of insurance varying with duration of the policy, the  
21 equivalent uniform amount thereof for the purpose of this  
22 subsection shall be deemed to be the uniform amount of  
23 insurance provided by an otherwise similar policy, containing  
24 the same endowment benefit or benefits, if any, issued at the  
25 same age and for the same term, the amount of which does not

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1 vary with duration and the benefits under which have the same  
2 present value at the date of issue as the benefits under the  
3 policy; provided, however, that in the case of a policy  
4 providing a varying amount of insurance issued on the life of a  
5 child under age ten, the equivalent uniform amount may be  
6 computed as though the amount of insurance provided by the  
7 policy prior to the attainment of age ten were the amount  
8 provided by such policy at age ten.

9 (2) The adjusted premiums for any policy  
10 providing term insurance benefits by rider or supplemental  
11 policy provision shall be equal to: (1) the adjusted premiums  
12 for an otherwise similar policy issued at the same age without  
13 such term insurance benefits, increased, during the period for  
14 which premiums for such term insurance benefits are payable by  
15 (2) the adjusted premiums for such term insurance, the  
16 foregoing items (1) and (2) being calculated separately and as  
17 specified in the first two paragraphs (the first paragraphs and  
18 Paragraph (1)) of this subsection except that, for the purposes  
19 of (b), (c) and (d) of the first such paragraph, the amount of  
20 insurance or equivalent uniform amount of insurance used in the  
21 calculation of the adjusted premiums referred to in (2) shall  
22 be equal to the excess of the corresponding amount determined  
23 for the entire policy over the amount used in the calculation  
24 of the adjusted premiums in (1).

25 (3) Except as otherwise provided in Paragraph

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1 (4) of this subsection and Subsection E of this section, all  
2 adjusted premiums and present values referred to in this  
3 section shall for all policies of ordinary insurance be  
4 calculated on the basis of the national association of  
5 insurance commissioners 1941 standard ordinary mortality table,  
6 provided that for any category of ordinary insurance issued on  
7 female risks, adjusted premiums and present values may be  
8 calculated according to an age not more than three years  
9 younger than the actual age of the insured, and such  
10 calculations for all policies of industrial insurance shall be  
11 made on the basis of the 1941 standard industrial mortality  
12 table. All calculations shall be made on the basis of the rate  
13 of interest, not exceeding three and one-half percent per  
14 annum, specified in the policy for calculating cash surrender  
15 values and paid-up nonforfeiture benefits. Provided, however,  
16 that in calculating the present value of any paid-up term  
17 insurance with accompanying pure endowment, if any, offered as  
18 a nonforfeiture benefit, the rates of mortality assumed may be  
19 not more than one hundred thirty percent of the rates of  
20 mortality according to such applicable table. Provided,  
21 further, that for insurance issued on a substandard basis, the  
22 calculation of any such adjusted premiums and present values  
23 may be based on such other table of mortality as may be  
24 specified by the insurer and approved by the superintendent.

25 (4) This paragraph shall not apply to ordinary

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1 policies issued on or after the operative date of Subsection F  
2 of this section. In the case of ordinary policies issued on or  
3 after the operative date of this paragraph as defined herein,  
4 all adjusted premiums and present values referred to in this  
5 section shall be calculated on the basis of the commissioners  
6 1958 standard ordinary mortality table and the rate of interest  
7 specified in the policy for calculating cash surrender values  
8 and paid-up nonforfeiture benefits; provided that such rate of  
9 interest shall not exceed three and one-half percent a year,  
10 except that a rate of interest not exceeding four percent a  
11 year may be used for policies issued on or after July 1, 1973  
12 and prior to July 1, 1977 and a rate of interest not exceeding  
13 five and one-half percent per annum may be used for policies  
14 issued on or after July 1, 1977, except that for any single  
15 premium whole life or endowment insurance policy a rate of  
16 interest not exceeding six and one-half percent per annum may  
17 be used, and provided that for any category of ordinary  
18 insurance issued on female risks, adjusted premiums and present  
19 values may be calculated according to an age not more than six  
20 years younger than the actual age of the insured. Provided,  
21 however, that in calculating the present value of any paid-up  
22 term insurance with accompanying pure endowment, if any,  
23 offered as a nonforfeiture benefit, the rates of mortality  
24 assumed may be not more than those shown in the commissioners  
25 1958 extended term insurance table. Provided, further, that

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1 for insurance issued on a substandard basis, the calculation of  
2 any such adjusted premiums and present values may be based on  
3 such other table of mortality as may be specified by the  
4 insurer and approved by the superintendent.

5 After June 9, 1961, any insurer may file with the  
6 superintendent a written notice of its election to comply with  
7 the provisions of Paragraph (4) of this subsection after a  
8 specified date before January 1, 1966. After the filing of  
9 such notice, then upon such specified date (which shall be the  
10 operative date of this subsection for such insurer), this  
11 subsection shall become operative with respect to the ordinary  
12 policies thereafter issued by such insurer. If an insurer  
13 makes no such election, the operative date of this subsection  
14 for such insurer shall be January 1, 1966.

15 E. This subsection shall not apply to industrial  
16 policies issued on or after the operative date of Subsection F  
17 of this section.

18 In the case of industrial policies issued on or after the  
19 operative date of this subsection as defined herein, all  
20 adjusted premiums and present values referred to in this  
21 section shall be calculated on the bases of the commissioners  
22 1961 standard industrial mortality table and the rate of  
23 interest specified in the policy for calculating cash surrender  
24 values and paid-up nonforfeiture benefits; provided that such  
25 rate of interest shall not exceed three and one-half percent a

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1 year except that a rate of interest not exceeding four percent  
2 a year may be used for policies issued on or after July 1, 1973  
3 and prior to July 1, 1977 and a rate of interest not exceeding  
4 five and one-half percent per annum may be used for policies  
5 issued on or after July 1, 1977, except that, for any single  
6 premium whole life or endowment insurance policy, a rate of  
7 interest not exceeding six and one-half percent per annum may  
8 be used. Provided, however, that in calculating the present  
9 value of any paid-up term insurance with accompanying pure  
10 endowment, if any, offered as a nonforfeiture benefit, the  
11 rates of mortality assumed may be not more than those shown in  
12 the commissioners 1961 industrial extended term insurance  
13 table. Provided, further, that for insurance issued on a  
14 substandard basis, the calculation of any such adjusted  
15 premiums and present values may be based on such other table of  
16 mortality as may be specified by the insurer and approved by  
17 the superintendent.

18 After June 7, 1963, any insurer may file with the  
19 superintendent a written notice of its election to comply with  
20 the provisions of this subsection after a specified date before  
21 January 1, 1968. After the filing of such notice, then upon  
22 such specified date (which shall be the operative date of this  
23 subsection for such insurer), this subsection shall become  
24 operative with respect to the industrial policies thereafter  
25 issued by such insurer. If an insurer makes no such election,

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1 the operative date of this subsection for such insurer shall be  
2 January 1, 1968.

3 F. This subsection shall apply to all policies  
4 issued on or after the operative date of this subsection.  
5 Except as provided in Paragraph (6) of this subsection, the  
6 adjusted premiums for any policy shall be calculated on an  
7 annual basis and shall be such uniform percentage of the  
8 respective premiums specified in the policy for each policy  
9 year, excluding amounts payable as extra premiums to cover  
10 impairment or special hazards and also excluding any uniform  
11 annual contract charge or policy fee specified in the policy in  
12 a statement of the method to be used in calculating the cash  
13 surrender values and paid-up nonforfeiture benefits, that the  
14 present value, at the date of issue of the policy, of all  
15 adjusted premiums shall be equal to the sum of the then present  
16 value of the future guaranteed benefits provided for by the  
17 policy; one percent of either the amount of insurance, if the  
18 insurance be uniform in amount, or the average amount of  
19 insurance at the beginning of each of the first ten policy  
20 years; and one hundred ~~[and]~~ twenty-five percent of the  
21 nonforfeiture net level premium as hereinafter defined.  
22 Provided, however, that, in applying the last percentage  
23 specified above, no nonforfeiture net level premium shall be  
24 deemed to exceed four percent of either the amount of  
25 insurance, if the insurance be uniform in amount, or the

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1 average amount of insurance at the beginning of each of the  
2 first ten policy years. The date of issue of a policy for the  
3 purpose of this subsection shall be the date as of which the  
4 rated age of the insured is determined; and

5 (1) the nonforfeiture net level premium shall  
6 be equal to the present value, at the date of issue of the  
7 policy, of the guaranteed benefits provided for by the policy  
8 divided by the present value, at the date of issue of the  
9 policy, of an annuity of one per annum payable on the date of  
10 issue of the policy and on each anniversary of such policy on  
11 which a premium falls due;

12 (2) in the case of policies [~~which~~] that cause  
13 on a basis guaranteed in the policy unscheduled changes in  
14 benefits or premiums, or [~~which~~] that provide an option for  
15 changes in benefits or premiums other than a change to a new  
16 policy, the adjusted premiums and present values shall  
17 initially be calculated on the assumption that future benefits  
18 and premiums do not change from those stipulated at the date of  
19 issue of the policy. At the time of any such change in the  
20 benefits or premiums, the future adjusted premiums,  
21 nonforfeiture net level premiums and present values shall be  
22 recalculated on the assumption that future benefits and  
23 premiums do not change from those stipulated by the policy  
24 immediately after the change;

25 (3) except as otherwise provided in Paragraph

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1 (6) of this subsection, the recalculated future adjusted  
2 premiums for any such policy shall be such uniform percentage  
3 of the respective future premiums specified in the policy for  
4 each policy year, excluding amounts payable as extra premiums  
5 to cover impairments and special hazards, and also excluding  
6 any uniform annual contract charge or policy fee specified in  
7 the policy in a statement of the method to be used in  
8 calculating the cash surrender values and paid-up nonforfeiture  
9 benefits, that the present value, at the time of change to the  
10 newly defined benefits or premiums, of all such future adjusted  
11 premiums shall be equal to the excess of the sum of the then  
12 present value of the then future guaranteed benefits provided  
13 for by the policy and the additional expense allowance, if any,  
14 over the then cash surrender value, if any, or present value of  
15 any paid-up nonforfeiture benefit under the policy;

16 (4) the additional expense allowance, at the  
17 time of the change to the newly defined benefits or premiums,  
18 shall be the sum of one percent of the excess, if positive, of  
19 the average amount of insurance at the beginning of each of the  
20 first ten policy years subsequent to the change over the  
21 average amount of insurance prior to the change at the  
22 beginning of each of the first ten policy years subsequent to  
23 the time of the most recent previous change, or, if there has  
24 been no previous change, the date of issue of the policy; and  
25 one hundred twenty-five percent of the increase, if positive,

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1 in the nonforfeiture net level premium;

2 (5) the recalculated nonforfeiture net level  
3 premium shall be equal to the result obtained by dividing (a)  
4 by (b) where:

5 (a) equals the sum of: (1) the  
6 nonforfeiture net level premium applicable prior to the change  
7 times the present value of an annuity of one per annum payable  
8 on each anniversary of the policy on or subsequent to the date  
9 of the change on which a premium would have fallen due had the  
10 change not [~~occured~~] occurred; and (2) the present value of the  
11 increase in future guaranteed benefits provided for by the  
12 policy; and

13 (b) equals the present value of an  
14 annuity of one per annum payable on each anniversary of the  
15 policy on or subsequent to the date of change on which a  
16 premium falls due;

17 (6) notwithstanding any other provisions of  
18 this subsection to the contrary, in the case of a policy issued  
19 on a substandard basis [~~which~~] that provides reduced graded  
20 amounts of insurance so that, in each policy year, such policy  
21 has the same tabular mortality cost as an otherwise similar  
22 policy issued on the standard basis [~~which~~] that provides  
23 higher uniform amounts of insurance, adjusted premiums and  
24 present values for such substandard policy may be calculated as  
25 if it were issued to provide such higher uniform amounts of

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1 insurance on the standard basis;

2 (7) all adjusted premiums and present values  
3 referred to in this section shall for all policies of ordinary  
4 insurance be calculated on the basis of the commissioners 1980  
5 standard ordinary mortality table or, at the election of the  
6 insurer for any one or more specified plans of life insurance,  
7 the commissioners 1980 standard ordinary mortality table with  
8 ten-year select mortality factors; shall for all policies of  
9 industrial insurance be calculated on the basis of the  
10 commissioners 1961 standard industrial mortality table; and  
11 shall for all policies issued in a particular calendar year be  
12 calculated on the basis of a rate of interest not exceeding the  
13 nonforfeiture interest rate as defined in this subsection, for  
14 policies issued in that calendar year. Provided, however,  
15 that:

16 (a) at the option of the insurer,  
17 calculations for all policies issued in a particular calendar  
18 year may be made on the basis of a rate of interest not  
19 exceeding the nonforfeiture interest rate, as defined in this  
20 subsection, for policies issued in the immediately preceding  
21 calendar year;

22 (b) under any paid-up nonforfeiture  
23 benefit, including any paid-up dividend additions, any cash  
24 surrender value available, whether or not required by  
25 Subsection A of this section, shall be calculated on the basis

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1 of the mortality table and rate of interest used in determining  
2 the amount of such paid-up nonforfeiture benefit and paid-up  
3 dividend additions, if any;

4 (c) an insurer may calculate the amount  
5 of any guaranteed paid-up nonforfeiture benefit, including any  
6 paid-up additions under the policy, on the basis of an interest  
7 rate no lower than that specified in the policy for calculating  
8 cash surrender values;

9 (d) in calculating the present value of  
10 any paid-up term insurance with accompanying pure endowment, if  
11 any, offered as a nonforfeiture benefit, the rates of mortality  
12 assumed may be not more than those shown in the commissioners  
13 1980 extended term insurance table for policies of ordinary  
14 insurance and not more than the commissioners 1961 industrial  
15 extended term insurance table for policies of industrial  
16 insurance;

17 (e) for insurance issued on a  
18 substandard basis, the calculation of any such adjusted  
19 premiums and present values may be based on appropriate  
20 modifications of the aforementioned tables;

21 (f) for a policy issued prior to the  
22 operative date of the valuation manual, any commissioners  
23 standard ordinary mortality tables, adopted after 1980 by the  
24 national association of insurance commissioners, that are  
25 approved by regulation promulgated by the superintendent for

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1 use in determining the minimum nonforfeiture standard may be  
2 substituted for the commissioners 1980 standard ordinary  
3 mortality table with or without ten-year select mortality  
4 factors or for the commissioners 1980 extended term insurance  
5 table; [~~and~~]

6 (g) for a policy issued on or after the  
7 operative date of the valuation manual, the commissioners  
8 standard mortality table in the valuation manual shall be used  
9 to determine the minimum nonforfeiture standard that may be  
10 substituted for the commissioners 1980 standard ordinary  
11 mortality table, either with or without ten-year select  
12 mortality factors, or for the commissioners 1980 extended term  
13 insurance table. If the superintendent adopts through  
14 rulemaking a commissioners standard ordinary mortality table  
15 that was adopted by the national association of insurance  
16 commissioners for use in determining the minimum nonforfeiture  
17 standard for policies issued on or after the operative date of  
18 the valuation manual, then that minimum nonforfeiture standard  
19 shall substitute for the minimum nonforfeiture standard  
20 provided in the valuation manual;

21 [~~(g)~~] (h) for a policy issued prior to  
22 the operative date of the valuation manual, any commissioners  
23 standard industrial mortality tables, adopted after 1980 by the  
24 national association of insurance commissioners, that are  
25 approved by regulation promulgated by the superintendent for

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1 use in determining the minimum nonforfeiture standard may be  
2 substituted for the commissioners 1961 standard industrial  
3 mortality table or the commissioners 1961 industrial extended  
4 term insurance table; and

5 (i) for a policy issued on or after the  
6 operative date of the valuation manual, the commissioners  
7 standard mortality table in the valuation manual shall be used  
8 to determine the minimum nonforfeiture standard that may be  
9 substituted for the commissioners 1961 standard industrial  
10 mortality table or the commissioners 1961 industrial extended  
11 term insurance table. If the superintendent adopts through  
12 rulemaking a commissioners standard industrial mortality table  
13 that was adopted by the national association of insurance  
14 commissioners for use in determining the minimum nonforfeiture  
15 standard for policies issued on or after the operative date of  
16 the valuation manual, then that minimum nonforfeiture standard  
17 shall substitute for the minimum nonforfeiture standard  
18 provided in the valuation manual;

19 (8) the nonforfeiture interest rate:

20 (a) for a policy issued prior to the  
21 operative date of the valuation manual, the nonforfeiture  
22 interest rate per annum for any policy issued in a particular  
23 calendar year shall be equal to one hundred twenty-five percent  
24 of the calendar year statutory valuation interest rate for such  
25 policy as defined in the Standard Valuation Law [~~Section 122~~

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1 of ~~the Insurance Code~~), rounded to the nearest [~~one-quarter~~]  
2 one-fourth of one percent; and

3 (b) for a policy issued on or after the  
4 operative date of the valuation manual, the valuation manual  
5 shall be used to determine the nonforfeiture interest rate per  
6 annum for any policy issued in a particular calendar year;

7 (9) notwithstanding any other provision in the  
8 laws relating to insurance to the contrary, any refiling of  
9 nonforfeiture values or their methods of computation for any  
10 previously approved policy form [~~which~~] that involves only a  
11 change in the interest rate or mortality table used to compute  
12 nonforfeiture values shall not require refiling of any other  
13 provisions of that policy form; and

14 (10) after the effective date of this  
15 subsection, any insurer may file with the superintendent a  
16 written notice of its election to comply with the [~~provision~~]  
17 provisions of this subsection after a specified date before  
18 January 1, 1989, which shall be the operative date of this  
19 subsection for such insurer. If an insurer makes no such  
20 election, the operative date of this subsection for such  
21 insurer shall be January 1, 1989.

22 G. In the case of any plan of life insurance  
23 [~~which~~] that provides for future premium determination, the  
24 amounts of which are to be determined by the insurer based on  
25 the then estimates of future experience, or in the case of any

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1 plan of life insurance [~~which~~] that is of such a nature that  
2 minimum values cannot be determined by the methods described in  
3 Subsection A, B, C, D, E or F of this section, then:

4 (1) the superintendent must be satisfied that  
5 the benefits provided under the plan are substantially as  
6 favorable to policyholders and insureds as the minimum benefits  
7 otherwise required by Subsection A, B, C, D, E or F of this  
8 section;

9 (2) the superintendent must be satisfied that  
10 the benefits and the pattern of premiums of that plan are not  
11 such as to mislead prospective policyholders or insureds; and

12 (3) the cash surrender values and paid-up  
13 nonforfeiture benefits provided by such plan must not be less  
14 than the minimum values and benefits required for the plan  
15 computed by a method consistent with the principles of this  
16 section, as determined by regulations promulgated by the  
17 superintendent.

18 H. Any cash surrender value and any paid-up  
19 nonforfeiture benefit, available under the policy in the event  
20 of default in a premium payment due at any time other than on  
21 the policy anniversary, shall be calculated with allowance for  
22 the lapse of time and the payment of fractional premiums beyond  
23 the last preceding policy anniversary. All values referred to  
24 in Subsections B, C, D, E and F of this section may be  
25 calculated upon the assumption that any death benefit is

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1 payable at the end of the policy year of death. The net value  
2 of any paid-up additions, other than paid-up term additions,  
3 shall be not less than the amounts used to provide such  
4 additions. Notwithstanding the provisions of Subsection B of  
5 this section, additional benefits payable (a) in the event of  
6 death or dismemberment by accident or accidental means; (b) in  
7 the event of total and permanent disability; (c) as  
8 reversionary annuity or deferred reversionary annuity benefits;  
9 (d) as term insurance benefits provided by a rider or  
10 supplemental policy provision to which, if issued as a separate  
11 policy, this section would not apply; (e) as term insurance on  
12 the life of a child or on the lives of children provided in a  
13 policy on the life of a parent of the child, if such term  
14 insurance expires before the child's age is twenty-six, is  
15 uniform in amount after the child's age is one and has not  
16 become paid up by reason of the death of a parent of the child;  
17 and (f) as other policy benefits additional to life insurance  
18 and endowment benefits, and premiums for all such additional  
19 benefits, shall be disregarded in ascertaining cash surrender  
20 values and nonforfeiture benefits required by this section, and  
21 no such additional benefits shall be required to be included in  
22 any paid-up nonforfeiture benefits.

23 I. This subsection, in addition to all other  
24 applicable sections of this law, shall apply to all policies  
25 issued on or after January 1, 1985. Any cash surrender value

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1 available under the policy in the event of default in a premium  
2 payment due on any policy anniversary shall be in an amount  
3 ~~[which]~~ that does not differ by more than two-tenths of one  
4 percent of either the amount of insurance, if the insurance be  
5 uniform in amount, or the average amount of insurance at the  
6 beginning of each of the first ten policy years, from the sum  
7 of (a) the greater of zero and the basic cash value hereinafter  
8 specified; and (b) the present value of any existing paid-up  
9 additions less the amount of any indebtedness to the insurer  
10 under the policy.

11 The basic cash value shall be equal to the present value,  
12 on such anniversary, of the future guaranteed benefits ~~[which]~~  
13 that would have been provided for by the policy, excluding any  
14 existing paid-up additions and before deduction of any  
15 indebtedness to the insurer, if there had been no default, less  
16 the then present value of the nonforfeiture factors, as  
17 hereinafter defined, corresponding to premiums ~~[which]~~ that  
18 would have fallen due on and after such anniversary. Provided,  
19 however, that the effects on the basic cash value of  
20 supplemental life insurance or annuity benefits or of family  
21 coverage, as described in Subsection B or D of this section,  
22 whichever is applicable, shall be the same as are the effects  
23 specified therein.

24 The nonforfeiture factor for each policy year shall be an  
25 amount equal to a percentage of the adjusted premium for the

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1 policy year, as defined in Subsection D or F of this section,  
2 whichever is applicable. Except as is required by the next  
3 succeeding sentence of this paragraph, such percentage:

4 (1) must be the same percentage for each  
5 policy year between the second policy anniversary and the later  
6 of the fifth policy anniversary and the first policy  
7 anniversary at which there is available under the policy a cash  
8 surrender value in an amount, before including any paid-up  
9 additions and before deducting any indebtedness, of at least  
10 two-tenths of one percent of either the amount of insurance, if  
11 the insurance be uniform in amount, or the average amount of  
12 insurance at the beginning of each of the first ten policy  
13 years; and

14 (2) must be such that no percentage after the  
15 later of the two policy anniversaries specified in Paragraph  
16 (1) of this subsection may apply to fewer than five consecutive  
17 policy years.

18 Provided that no basic cash value may be less than the  
19 value ~~[which]~~ that would be obtained if the adjusted premiums  
20 for the policy, as defined in Subsection D or F of this  
21 section, whichever is applicable, were substituted for the  
22 nonforfeiture factors in the calculation of the basic cash  
23 value.

24 All adjusted premiums and present values referred to in  
25 this subsection shall for a particular policy be calculated on

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1 the same mortality and interest bases as are used in  
2 demonstrating the policy's compliance with the other  
3 subsections of this section. The cash surrender values  
4 referred to in this subsection shall include any endowment  
5 benefits provided for by the policy.

6 Any cash surrender value available other than in the  
7 event of default in a premium payment due on a policy  
8 anniversary, and the amount of any paid-up nonforfeiture  
9 benefit available under the policy in the event of default in a  
10 premium payment shall be determined in manners consistent with  
11 the manners specified for determining the analogous minimum  
12 amounts in Subsections A, B, C, F and H of this section. The  
13 amounts of any cash surrender values and of any paid-up  
14 nonforfeiture benefits granted in connection with additional  
15 benefits such as those listed as items (a) through (d) in  
16 Subsection H of this section shall conform with the principles  
17 of this subsection.

18 J. This section shall not apply to any reinsurance,  
19 group insurance, pure endowment, annuity or reversionary  
20 annuity contract, nor to any term policy of uniform amount  
21 [~~which~~] that provides no guaranteed nonforfeiture or endowment  
22 benefits, or renewal thereof, of twenty years or less expiring  
23 before age seventy-one for which uniform premiums are payable  
24 during the entire term of the policy, nor to any term policy of  
25 decreasing amount, [~~which~~] that provides no guaranteed

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1 nonforfeiture or endowment benefits, on which each adjusted  
2 premium, calculated as specified in Subsections D, E and F of  
3 this section, is less than the adjusted premium so calculated,  
4 on a term policy of uniform amount, or renewal thereof, [~~which~~]  
5 that provides no guaranteed nonforfeiture or endowment  
6 benefits, issued at the same age and for the same initial  
7 amount of insurance and for a term of twenty years or less  
8 expiring before age seventy-one, for which uniform premiums are  
9 payable during the entire term of the policy, nor to any  
10 policy, [~~which~~] that provides no guaranteed nonforfeiture or  
11 endowment benefits, for which no cash surrender value, if any,  
12 or present value of any paid-up nonforfeiture benefit, at the  
13 beginning of any policy year, calculated as specified in  
14 Subsections B, C, D, E and F of this section, exceeds two and  
15 one-half percent of the amount of insurance at the beginning of  
16 the same policy year; nor to any policy [~~which~~] that shall be  
17 delivered outside this state through an agent or other  
18 representative of the insurer issuing the policy.

19 For purposes of determining the applicability of this  
20 section, the age at expiry for a joint term life insurance  
21 policy shall be the age of expiry of the oldest life.

22 K. After the effective date of this act, any  
23 insurer may file with the superintendent a written notice of  
24 its election to comply with the provisions of this section  
25 after a specified date before January 1, 1952. After the

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1 filing of such notice, then upon such specified date (which  
2 shall be the operative date for such insurer), this section  
3 shall become operative with respect to policies thereafter  
4 issued by such insurer. If an insurer makes no such election,  
5 the operative date of this section for such insurer shall be  
6 January 1, 1952.

7 L. As used in this section:

8 (1) "operative date of the valuation manual"  
9 means the January 1 of the first calendar year following the  
10 first July 1 after which the following have occurred:

11 (a) the valuation manual has been  
12 adopted by the national association of insurance commissioners  
13 by an affirmative vote of at least forty-two members or  
14 three-fourths of the members voting, whichever is greater;

15 (b) the Standard Valuation Law of the  
16 national association of insurance commissioners, as amended in  
17 2009, or legislation including substantially similar terms and  
18 provisions, has been enacted by states that collectively  
19 represent more than seventy-five percent of written direct  
20 premiums, as reported in the life, accident and health annual  
21 statements, the health annual statements and the fraternal  
22 annual statements submitted for 2008; and

23 (c) the Standard Valuation Law of the  
24 national association of insurance commissioners, as amended in  
25 2009, or legislation including substantially similar terms and

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1 provisions, has been enacted by at least forty-two of the  
2 following fifty-five jurisdictions: 1) the fifty states of the  
3 United States; 2) American Samoa; 3) the Virgin Islands of the  
4 United States; 4) the District of Columbia; 5) Guam; and 6)  
5 Puerto Rico; and

6 (2) "valuation manual" means the most recent  
7 version of the manual of valuation instructions adopted by the  
8 national association of insurance commissioners."

9 SECTION 28. Section 59A-37-1 NMSA 1978 (being Laws 1984,  
10 Chapter 127, Section 616) is amended to read:

11 "59A-37-1. SHORT TITLE.--~~[This article]~~ Chapter 59A,  
12 Article 37 NMSA 1978 may be cited as the "Insurance Holding  
13 Company Law"."

14 SECTION 29. Section 59A-37-2 NMSA 1978 (being Laws 1984,  
15 Chapter 127, Section 617, as amended) is amended to read:

16 "59A-37-2. DEFINITIONS.--As used in ~~[Chapter 59A,~~  
17 ~~Article 37 NMSA 1978]~~ The Insurance Holding Company Law:

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

24 B. "affiliate" means a person that directly or  
25 indirectly is controlled by, is under common control with or

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1 controls another person;

2 C. "control" means the possession of the power to  
3 direct or cause the direction of the management and policies of  
4 a person, whether directly or indirectly, through the ownership  
5 of voting securities, through licensing or franchise  
6 agreements, by contract other than a commercial contract for  
7 goods or nonmanagement services, or otherwise, unless the power  
8 is the result of an official position with or corporate office  
9 held by an individual. Control shall be presumed to exist if  
10 any person, directly or indirectly, owns, controls, holds with  
11 the power to vote or holds proxies representing ten or more  
12 percent of the voting securities of any other person. This  
13 presumption may be rebutted by a showing, in the manner  
14 provided by Section 59A-37-19 NMSA 1978, that control does not  
15 in fact exist. The superintendent may determine, after  
16 furnishing all persons in interest notice and an opportunity to  
17 be heard, that control exists in fact, notwithstanding the  
18 absence of a presumption to that effect, provided the  
19 determination is based on specific findings of fact in its  
20 support;

21 D. "enterprise risk" means an activity, a  
22 circumstance, an event or a series of events involving one or  
23 more affiliates of an insurer that, if not remedied promptly,  
24 is likely to have a material adverse effect upon the financial  
25 condition or liquidity of the insurer or its whole insurance

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1 holding company system and includes a situation that would  
2 cause a company action level event as defined in Section  
3 59A-5A-4 NMSA 1978 or would cause the insurer to be in a  
4 hazardous financial condition as defined in Section 59A-41-24  
5 NMSA 1978;

6 E. "health maintenance organization" means a person  
7 that undertakes to provide or arrange for the delivery of basic  
8 health care services to enrollees on a prepaid basis; provided  
9 that "prepaid basis" may include the payment of copayments and  
10 deductibles by enrollees;

11 ~~[D.]~~ F. "insurance holding company" is a person  
12 that controls an insurer; "insurance holding company system"  
13 means a combination of two or more affiliated persons, at least  
14 one of which is an insurer;

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

23 ~~[F.]~~ H. "person" means an individual, corporation,  
24 association, partnership, joint stock company, trust,  
25 unincorporated organization or any similar entity or

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1 combination of entities;

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

6 [H.] J. "subsidiary" means an affiliate of a person  
7 controlled by the person either directly or indirectly through  
8 one or more intermediaries; and

9 [I.] K. "voting security" means a certificate  
10 evidencing the ownership or indebtedness of a person, to which  
11 is attached a right to vote on the management or policymaking  
12 of that person and includes any security convertible into or  
13 evidencing a right to acquire such a voting security [~~and~~

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

19 SECTION 30. Section 59A-37-3 NMSA 1978 (being Laws 1993,  
20 Chapter 320, Section 72, as amended) is amended to read:

21 "59A-37-3. SUBSIDIARIES OF INSURERS.--

22 A. Any domestic insurer, either by itself or in  
23 cooperation with one or more persons, may organize or acquire  
24 one or more subsidiaries. [~~engaged in the following kinds of~~  
25 ~~business:~~

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1                   ~~(1) an insurance business authorized by the~~  
2 ~~jurisdiction in which it is incorporated;~~

3                   ~~(2) acting as an insurance broker or as an~~  
4 ~~insurance agent for its parent or for any of its parent's~~  
5 ~~insurer subsidiaries;~~

6                   ~~(3) investing, reinvesting or trading in~~  
7 ~~securities for its own account, that of its parent, any~~  
8 ~~subsidiary of its parent, or any affiliate or subsidiary;~~

9                   ~~(4) management of any investment company~~  
10 ~~subject to or registered pursuant to the federal Investment~~  
11 ~~Company Act of 1940, as amended, including related sales and~~  
12 ~~services;~~

13                   ~~(5) acting as a broker-dealer subject to or~~  
14 ~~registered pursuant to the federal Securities Exchange Act of~~  
15 ~~1934, as amended;~~

16                   ~~(6) rendering investment advice to~~  
17 ~~governments, government agencies, corporations or other~~  
18 ~~organizations or groups;~~

19                   ~~(7) rendering other services relating to the~~  
20 ~~operations of an insurance business;~~

21                   ~~(8) owning and managing assets that the parent~~  
22 ~~corporation could itself own or manage;~~

23                   ~~(9) acting as administrative agent for a~~  
24 ~~governmental instrumentality that is performing an insurance~~  
25 ~~function;~~

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1                   ~~(10) financing of insurance premiums, agents~~  
2 ~~and other forms of consumer financing;~~

3                   ~~(11) any other business activity determined by~~  
4 ~~the superintendent to be reasonably ancillary to an insurance~~  
5 ~~business; and~~

6                   ~~(12) owning a corporation or corporations~~  
7 ~~engaged or organized to engage exclusively in one or more of~~  
8 ~~the businesses specified in this section] A subsidiary may~~  
9 conduct any kind of business. Its authority to conduct one or  
10 more businesses shall not be limited by its status as a  
11 subsidiary of a domestic insurer.

12                   B. In addition to investments in common stock,  
13 preferred stock, debt obligations and other securities  
14 permitted pursuant to The ~~[federal]~~ Insurance Holding Company  
15 Law, a domestic insurer may also invest:

16                   (1) ~~[invest]~~ in common stock, preferred stock,  
17 debt obligations and other securities of one or more  
18 subsidiaries, amounts ~~[which]~~ that do not exceed the lesser of  
19 ten percent of ~~[such]~~ the insurer's assets or fifty percent of  
20 the insurer's surplus as regards policyholders; provided that  
21 after the investments, the insurer's surplus as regards  
22 policyholders shall be reasonable in relation to the insurer's  
23 outstanding liabilities and adequate to its financial needs.  
24 In calculating the amount of the investments, investments in  
25 domestic or foreign insurance subsidiaries and health

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1 maintenance organizations shall be excluded, and there shall be  
2 included:

3 (a) total net money or other  
4 consideration expended and obligations assumed in the  
5 acquisition or formation of a subsidiary, including all  
6 organizational expenses and contributions to capital and  
7 surplus of the subsidiary whether or not represented by the  
8 purchase of capital stock or issuance of other securities; and

9 (b) all amounts expended in acquiring  
10 additional common stock, preferred stock, debt obligations and  
11 other securities and all contributions to the capital or  
12 surplus of a subsidiary subsequent to its acquisition or  
13 formation;

14 (2) [~~invest~~] any amount in common stock,  
15 preferred stock, debt obligations and other securities of one  
16 or more subsidiaries engaged or organized to engage exclusively  
17 in the ownership and management of assets authorized as  
18 investments for the insurer; provided that each subsidiary  
19 agrees to limit its investments in any asset so that the  
20 investments will not cause the amount of the total investment  
21 of the insurer to exceed any of the investment limitations  
22 specified in Paragraph (1) of this subsection or in Chapter  
23 59A, Article 9 NMSA 1978 applicable to the insurer. For the  
24 purpose of this paragraph, "the total investment of the  
25 insurer" includes:

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1 (a) any direct investment by the insurer  
2 in an asset; and

3 (b) the insurer's proportionate share of  
4 any investment in an asset by any subsidiary of the insurer,  
5 which shall be calculated by multiplying the amount of the  
6 subsidiary's investment by the percentage of the ownership of  
7 the subsidiary; or

8 (3) with the approval of the superintendent,  
9 [~~invest~~] any greater amount in common stock, preferred stock,  
10 debt obligations or other securities of one or more  
11 subsidiaries; provided that after the investment, the insurer's  
12 surplus as regards policyholders will be reasonable in relation  
13 to the insurer's outstanding liabilities and adequate to its  
14 financial needs.

15 C. Investments in common stock, preferred stock,  
16 debt obligations or other securities of subsidiaries made  
17 pursuant to Subsection B of this section shall not be subject  
18 to any of the otherwise applicable restrictions or prohibitions  
19 contained in the Insurance Code applicable to the investments  
20 of the insurer.

21 D. Whether any investment pursuant to Subsection B  
22 of this section meets the applicable requirements of that  
23 subsection shall be determined before the investment is made by  
24 calculating the applicable investment limitations as though the  
25 investment had already been made, taking into account the then

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1 outstanding principal balance on all previous investments in  
2 debt obligations and the value of all previous investments in  
3 equity securities as of the day they were made, net of any  
4 return of capital invested and not including dividends.

5 E. If an insurer ceases to control a subsidiary, it  
6 shall dispose of any investment made in it pursuant to this  
7 section within three years from the time of the cessation of  
8 control or within such further time as the superintendent may  
9 prescribe, unless at any time after the investment is made, the  
10 investment meets the requirements for investment under any  
11 other section of the Insurance Code and the insurer has so  
12 notified the superintendent."

13 SECTION 31. Section 59A-37-4 NMSA 1978 (being Laws 1984,  
14 Chapter 127, Section 619, as amended) is amended to read:

15 "59A-37-4. ACQUISITION OF CONTROL OF OR MERGER WITH  
16 DOMESTIC INSURER.--

17 A. No person other than the issuer shall make a  
18 tender offer for or a request or invitation for tenders of, or  
19 enter into [~~any~~] an agreement to exchange securities for,  
20 acquire, seek to acquire, in the open market or otherwise,  
21 [~~any~~] a voting security of a domestic insurer if, after the  
22 consummation [~~thereof, such~~] of it, the person would, directly  
23 or indirectly or by conversion or by exercise of any right to  
24 acquire, be in control of [~~such~~] the insurer, and no person  
25 shall enter into an agreement to merge with or otherwise to

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1 acquire control of a domestic insurer unless, at the time any  
2 such offer, request or invitation is made or [~~any such~~] an  
3 agreement is entered into, or prior to the acquisition of  
4 [~~such~~] the securities if no offer or agreement is involved,  
5 [~~such~~] the person has filed with the superintendent and has  
6 sent to [~~such~~] the insurer, and [~~such~~] the insurer has sent to  
7 its shareholders, a statement containing the information  
8 required by Section 59A-37-5 NMSA 1978 and [~~such~~] the offer,  
9 request, invitation, agreement or acquisition has been approved  
10 by the superintendent in the manner hereinafter prescribed.

11 B. For the purposes of Sections 59A-37-4 through  
12 59A-37-10 NMSA 1978, the superintendent shall identify the  
13 circumstances in which a person seeking to divest or acquire an  
14 interest of control of a domestic insurer is required to obtain  
15 the superintendent's approval for the transaction. A person  
16 who controls a domestic insurer and seeks to divest its  
17 interest of control of the domestic insurer shall, at least  
18 thirty days prior to the cessation of control, file with the  
19 superintendent confidential notice of the proposed divestiture  
20 and give a copy of that notice to the insurer. Information  
21 contained in the notice shall remain confidential until the  
22 conclusion of the transaction if the superintendent has not  
23 determined that treating the information as confidential will  
24 interfere with the provisions of this section. This subsection  
25 does not apply to a statement filed pursuant to Subsection A of

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1 this section.

2 C. For a transaction subject to Sections 59A-37-4  
3 through 59A-37-10 NMSA 1978, the acquiring person shall file  
4 with the superintendent a pre-acquisition notice, which shall  
5 contain the information set forth in Paragraph (1) of  
6 Subsection C of 59A-37-29 NMSA 1978. The superintendent may  
7 subject a person who fails to file the notice required by this  
8 subsection to a fine of not more than fifty thousand dollars  
9 (\$50,000).

10 ~~[B-]~~ D. For the purposes of this section and  
11 Sections 59A-37-5 through 59A-37-10 NMSA 1978:

12 (1) ~~[a]~~ "domestic insurer" includes any other  
13 person controlling a domestic insurer unless ~~[such]~~ the other  
14 person, as determined by the superintendent, is either directly  
15 or through its affiliates primarily engaged in business other  
16 than the business of insurance; and

17 (2) "person" shall not include any securities  
18 broker holding, while in the performance of ~~[his]~~ the broker's  
19 usual and customary broker's function, less than twenty percent  
20 of the voting securities of an insurer, or of any person  
21 ~~[which]~~ that controls an insurer."

22 **SECTION 32.** Section 59A-37-5 NMSA 1978 (being Laws 1984,  
23 Chapter 127, Section 620, as amended) is amended to read:

24 "59A-37-5. CONTENTS OF STATEMENT.--

25 A. The statement to be filed with the

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1 superintendent under Section 59A-37-4 NMSA 1978 shall be made  
2 under oath or affirmation and shall contain the following  
3 information:

4 (1) the name and address of each person,  
5 hereinafter called "acquiring party", by whom or on whose  
6 behalf the merger or other acquisition of control referred to  
7 in Section 59A-37-4 NMSA 1978 is to be effected and:

8 (a) if the acquiring party is an  
9 individual, [~~his~~] the individual's principal occupation and all  
10 offices and positions held by [~~him~~] the individual during the  
11 past five years and any conviction of crime other than minor  
12 traffic violations during the past ten years; or

13 (b) if the acquiring party is not an  
14 individual, a report of the nature of its business operations  
15 during the past five years or for such lesser period as it and  
16 any of its predecessors shall have been in existence; an  
17 informative description of the business intended to be done by  
18 it and its subsidiaries; and a list of all individuals who are  
19 or who have been selected to become its directors or executive  
20 officers or who perform or will perform functions appropriate  
21 to such positions. The list shall include for each individual  
22 the information required by Subparagraph (a) of this paragraph;

23 (2) the source, nature and amount of the  
24 consideration used or to be used in effecting the merger or  
25 other acquisition of control, a description of any transaction

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1 where funds were or are to be obtained for any such purpose,  
2 including any pledge of the insurer's stock or the stock of any  
3 of its subsidiaries or controlling affiliates and the identity  
4 of persons furnishing such consideration. However, where a  
5 source of such consideration is a loan made in the lender's  
6 ordinary course of business, the identity of the lender shall  
7 remain confidential if the person filing the statement so  
8 requests;

9 (3) fully audited financial information as to  
10 the earnings and financial condition of each acquiring party  
11 for the preceding five fiscal years of each acquiring party, or  
12 for such lesser period that the acquiring party and any of its  
13 predecessors shall have been in existence if less than five  
14 years, and similar unaudited information as of a date not  
15 earlier than ninety days prior to the date of the filing of the  
16 statement;

17 (4) any plans or proposals ~~[which]~~ that each  
18 acquiring party may have to liquidate the insurer, to sell its  
19 assets or merge or consolidate it with any other person, or to  
20 make any other material change in its business or corporate  
21 structure or management;

22 (5) the number of shares of any security  
23 ~~[which]~~ that each acquiring party proposes to acquire, the  
24 terms of the offer, request, invitation, agreement or  
25 acquisition and a statement as to the method by which the

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1 fairness of the proposal was determined;

2 (6) the amount of each class of any security  
3 referred to in Section 59A-37-4 NMSA 1978 [~~which~~] that is  
4 beneficially owned or concerning which there is a right to  
5 acquire beneficial ownership by each acquiring party;

6 (7) a full description of any contracts,  
7 arrangements or understandings with respect to any security  
8 referred to in Section 59A-37-4 NMSA 1978 in which any  
9 acquiring party is involved, including but not limited to  
10 transfer of any of the securities, joint ventures, loan or  
11 option arrangements, puts or calls, guarantees of loans,  
12 guarantees against loss or guarantees of profits, division of  
13 losses or profits or the giving or withholding of proxies. The  
14 description shall identify the persons with whom the contracts,  
15 arrangements or understandings have been entered into;

16 (8) a description of the purchase of any  
17 security referred to in Section 59A-37-4 NMSA 1978 during the  
18 twelve calendar months preceding the filing of the statement by  
19 any acquiring party, including the dates of purchase, names of  
20 the purchasers and consideration paid or agreed to be paid;

21 (9) a description of any recommendations to  
22 purchase any security referred to in Section 59A-37-4 NMSA 1978  
23 made during the twelve calendar months preceding the filing of  
24 the statement by any acquiring party or by anyone based upon  
25 interviews or at the suggestion of any acquiring party;

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1 (10) copies of all tender offers for, requests  
2 or invitations for tenders of exchange offers for and  
3 agreements to acquire or exchange any securities referred to in  
4 Section 59A-37-4 NMSA 1978 and, if distributed, of additional  
5 soliciting material relating thereto;

6 (11) the terms of any agreement, contract or  
7 understanding made with or proposed to be made with any broker-  
8 dealer as to solicitation of securities referred to in Section  
9 59A-37-4 NMSA 1978 for tender and the amount of any fees,  
10 commissions or other compensation to be paid to broker-dealers  
11 with regard thereto; [~~and~~]

12 (12) an agreement by the person required to  
13 file the statement that the person will provide, for as long as  
14 the person has control, an annual report pursuant to Section  
15 59A-37-30 NMSA 1978;

16 (13) acknowledgment by the person required to  
17 file the statement that the person and all subsidiaries within  
18 the person's control in the insurance holding company system  
19 will provide information to the superintendent upon request and  
20 as necessary to evaluate the enterprise risk to the insurer;  
21 and

22 [~~(12)~~] (14) such additional information as the  
23 superintendent may by rule or regulation prescribe as necessary  
24 or appropriate for the protection of policyholders and  
25 securityholders of the insurer or in the public interest.

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1           B. If the person required to file the statement  
2 referred to in Section 59A-37-4 NMSA 1978 is a partnership,  
3 limited partnership, syndicate or other group, the  
4 superintendent may require that the information called for by  
5 Subsection A of this section shall be given with respect to  
6 each partner of the partnership or limited partnership, each  
7 member of the syndicate or group and each person who controls  
8 the partner or member. If any partner, member or person is a  
9 corporation or the person required to file the statement  
10 referred to in Section 59A-37-4 NMSA 1978 is a corporation, the  
11 superintendent may require that the information called for by  
12 Subsection A of this section shall be given with respect to the  
13 corporation, each officer and director of the corporation and  
14 each person who is directly or indirectly the beneficial owner  
15 of more than ten percent of the outstanding voting securities  
16 of the corporation.

17           C. If any material change occurs in the facts set  
18 forth in the statement filed with the superintendent and sent  
19 to [~~such~~] the insurer pursuant to Section 59A-37-4 NMSA 1978,  
20 an amendment setting forth the change, together with copies of  
21 all documents and other material relevant to the change, shall  
22 be filed with the superintendent and sent to the insurer within  
23 two business days after the person learns of the change, and  
24 the insurer shall send the amendment to its shareholders  
25 without delay.

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1           D. If any offer, request, invitation, agreement or  
2 acquisition referred to in Section 59A-37-4 NMSA 1978 is  
3 proposed to be made by means of a registration statement under  
4 the federal Securities Act of 1933, as amended, or in  
5 circumstances requiring the disclosure of similar information  
6 under the federal Securities Exchange Act of 1934, as amended,  
7 or under a state law requiring similar registration or  
8 disclosure, the person required to file the statement referred  
9 to in Section 59A-37-4 NMSA 1978 may utilize such documents in  
10 furnishing the information called for by that statement."

11           SECTION 33. Section 59A-37-6 NMSA 1978 (being Laws 1984,  
12 Chapter 127, Section 621, as amended) is amended to read:

13           "59A-37-6. APPROVAL BY SUPERINTENDENT--REVIEW.--

14           A. The superintendent shall approve any merger or  
15 other acquisition of control referred to in Section 59A-37-4  
16 NMSA 1978 unless, after a public hearing [~~thereon, he~~] on it,  
17 the superintendent finds that:

18                   (1) after the change of control, the domestic  
19 insurer would not be able to satisfy the requirements for the  
20 issuance of a certificate of authority to write the line or  
21 lines of insurance for which it is presently authorized;

22                   (2) the effect of the merger or other  
23 acquisition of control would be substantially to lessen  
24 competition in insurance in [~~this state~~] New Mexico or tend to  
25 create a monopoly [~~therein~~] in insurance. In applying this

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1 paragraph:

2 (a) the informational requirements of  
3 Paragraph (1) of Subsection C of Section 59A-37-29 NMSA 1978  
4 and the standards of Paragraph (1) of Subsection D of Section  
5 59A-37-29 NMSA 1978 apply;

6 (b) the superintendent shall approve the  
7 merger or acquisition if the superintendent finds that any of  
8 the situations meeting the criteria provided in Paragraph (2)  
9 of Subsection D of Section 59A-37-29 NMSA 1978 exists; and

10 (c) the superintendent may condition the  
11 approval of the merger or acquisition on the removal, to take  
12 place within a specified period of time, of the circumstances  
13 that formed the basis for disapproval;

14 (3) the financial condition of any acquiring  
15 party is such as might jeopardize the financial stability of  
16 the insurer or prejudice the interests of its policyholders or  
17 the interests of any remaining security holders who are  
18 unaffiliated with the acquiring party;

19 (4) the plans or proposals ~~[which]~~ that the  
20 acquiring party has to liquidate the insurer, sell its assets  
21 or consolidate or merge it with any other person, or to make  
22 any other material change in its business or corporate  
23 structure or management, are unfair and unreasonable to  
24 policyholders of the insurer and not in the public interest;

25 (5) the competence, experience and integrity

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1 of those persons who would control the operation of the insurer  
2 are such that it would not be in the interest of policyholders  
3 of the insurer and of the public to permit the merger or other  
4 acquisition of control;

5 (6) the applicable provisions of Chapter 59A,  
6 Article 34 NMSA 1978 would be violated; or

7 (7) the acquisition is likely to be hazardous  
8 or prejudicial to the insurance-buying public.

9 B. The superintendent may retain at the acquiring  
10 party's expense any attorneys, actuaries, accountants and other  
11 experts not otherwise a part of the superintendent's staff that  
12 are reasonably necessary to assist the superintendent to review  
13 the proposed acquisition of control.

14 C. The superintendent shall ensure, by imposition  
15 of conditions, if necessary, that New Mexico charitable assets  
16 are protected and preserved for the benefit of the people of  
17 New Mexico.

18 D. The public hearing held pursuant to Subsection A  
19 of this section shall be held within thirty days after the  
20 statement required by Section 59A-37-4 NMSA 1978 is filed, and  
21 the superintendent shall notify the person filing the statement  
22 at least twenty days before the hearing. The person filing the  
23 statement shall notify the insurer, and other persons whom the  
24 superintendent designates, no fewer than seven days before the  
25 hearing. The superintendent shall make a determination within

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1 the sixty days before the effective date of the proposed  
2 transaction. At the hearing, the person filing the statement,  
3 the insurer, a person to whom notice of hearing was sent and  
4 any other person whose interests may be affected shall be  
5 entitled to present evidence, examine and cross-examine  
6 witnesses, offer oral and written arguments and conduct  
7 discovery proceedings according to the Rules of Civil Procedure  
8 for the District Courts. All discovery proceedings shall  
9 conclude no later than three days before the public hearing.

10 E. If the proposed acquisition of control requires  
11 the approval of one or more insurance supervisory officials in  
12 other states, and if requested by the person filing the  
13 statement required by Section 59A-37-4 NMSA 1978, the public  
14 hearing held pursuant to Subsection A of this section may be  
15 conducted as a consolidated hearing. Within five days of a  
16 person's request for a consolidated hearing, that person shall  
17 file the statement referred to in Section 59A-37-4 NMSA 1978  
18 with the national association of insurance commissioners. If  
19 the superintendent or an insurance supervisory official of  
20 another state elects not to participate in a consolidated  
21 hearing, then within ten days of receipt of the statement  
22 required by Section 59A-37-4 NMSA 1978, the superintendent or  
23 insurance supervisory official shall provide notice to the  
24 applicant of that person's election not to participate. A  
25 consolidated hearing shall be public and held within the United

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1 States before the insurance supervisory officials of the states  
2 in which the insurers are domiciled. Participating insurance  
3 supervisory officials shall hear and receive evidence. The  
4 superintendent may attend the hearing in person or by  
5 telecommunication.

6 F. For the change of control of a domestic insurer,  
7 a determination by the superintendent that the person acquiring  
8 control of the insurer must maintain or restore the capital of  
9 the insurer to the level required by the laws and rules of New  
10 Mexico shall be made no later than sixty days after the date of  
11 notice of the change of control submitted pursuant to  
12 Subsection A of Section 59A-37-4 NMSA 1978."

13 SECTION 34. Section 59A-37-9 NMSA 1978 (being Laws 1984,  
14 Chapter 127, Section 624) is amended to read:

15 "59A-37-9. VIOLATIONS.--

16 A. The following acts shall be violations of  
17 Sections ~~[619 through 621 of this article]~~ 59A-37-4 through  
18 59A-37-6 NMSA 1978:

19 ~~[A-]~~ (1) the failure to file any statement,  
20 amendment or other material required to be filed pursuant to  
21 ~~[Sections 619 or 620 of this article]~~ Section 59A-37-4 or  
22 59A-37-5 NMSA 1978; or

23 ~~[B-]~~ (2) the effectuation or any attempt to  
24 effectuate an acquisition of control of a domestic insurer  
25 unless the superintendent has given ~~[his]~~ approval ~~[thereto]~~ to



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1 it.

2 B. The failure to timely file a registration  
3 statement, a summary of the registration statement or an  
4 enterprise risk filing required by Sections 59A-37-11 through  
5 59A-37-19.2 NMSA 1978 and Section 59A-37-30 NMSA 1978 is a  
6 violation of Sections 59A-37-11 through 59A-37-19.2 NMSA 1978  
7 and Section 59A-37-30 NMSA 1978."

8 SECTION 35. Section 59A-37-12 NMSA 1978 (being Laws  
9 1984, Chapter 127, Section 627, as amended) is amended to read:

10 "59A-37-12. REGISTRATION--INFORMATION--FORM.--Every  
11 insurer subject to registration shall file a registration  
12 statement on a form [~~provided by the superintendent~~] and in a  
13 format prescribed by the national association of insurance  
14 commissioners, which shall [~~contain current information about~~]  
15 include:

16 A. information about the current capital structure,  
17 general financing condition, ownership and management of the  
18 insurer and any person controlling the insurer;

19 B. the identity of every current member of the  
20 insurance holding company system;

21 C. the following agreements in force, relationships  
22 subsisting and transactions currently outstanding between such  
23 insurer and its affiliates:

24 (1) loans, other investments or purchases,  
25 sales or exchanges of securities of the affiliates by the

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1 insurer or of the insurer by its affiliates;

2 (2) purchases, sales or exchanges of assets;

3 (3) transactions not in the ordinary course of  
4 business;

5 (4) guarantees or undertakings for the benefit  
6 of an affiliate [~~which~~] that result in an actual contingent  
7 exposure of the insurer's assets to liability, other than  
8 insurance contracts entered into in the ordinary course of the  
9 insurer's business;

10 (5) all management and service contracts and  
11 all cost-sharing arrangements;

12 (6) reinsurance agreements;

13 (7) dividends and other distributions to  
14 shareholders; and

15 (8) consolidated tax allocation agreements;

16 D. information about any existing pledge of the  
17 insurer's stock, including stock of any subsidiary or  
18 controlling affiliate, for a loan made to any member of the  
19 insurance holding company system; [~~and~~]

20 E. if requested by the superintendent, financial  
21 statements of or within an insurance holding company system and  
22 its affiliates. Financial statements may include existing  
23 annual audited financial statements filed with the federal  
24 securities and exchange commission pursuant to the federal  
25 Securities Act of 1933, as amended, or the federal Securities

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1 Exchange Act of 1934, as amended. An insurer may satisfy the  
2 requirement to file financial statements pursuant to this  
3 subsection by providing the superintendent with the most recent  
4 parent corporation financial statements that have been filed  
5 with the securities and exchange commission;

6 ~~[E.]~~ F. other matters concerning transactions  
7 between registered insurers and any affiliates as may be  
8 included from time to time in any registration forms adopted or  
9 approved by the superintendent;

10 G. statements that the insurer's board of directors  
11 oversees corporate governance and internal controls and that  
12 the insurer's officers or senior management have approved,  
13 implemented and continue to maintain and monitor corporate  
14 governance and internal control procedures; and

15 H. other information required by a rule that was  
16 promulgated by the superintendent."

17 **SECTION 36.** Section 59A-37-13 NMSA 1978 (being Laws  
18 1984, Chapter 127, Section 628) is amended to read:

19 "59A-37-13. MATERIALITY.--No information need be  
20 disclosed on the registration statement filed pursuant to  
21 Sections ~~[619 and 620 of this article]~~ 59A-37-4 and 59A-37-5  
22 NMSA 1978 if such information is not material for the purposes  
23 of ~~[Section 626 through 634 of this article]~~ Sections 59A-37-11  
24 through 59A-37-19 NMSA 1978. Unless the superintendent by  
25 rule, regulation or order provides otherwise, sales, purchases,

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1 exchanges, loans or extensions of credit, [~~or~~] investments or  
2 guarantees involving one-half of one percent or less of an  
3 insurer's admitted assets as of the most recent December 31  
4 [~~next preceding~~] shall not be deemed material for the purposes  
5 of such section."

6 SECTION 37. Section 59A-37-19 NMSA 1978 (being Laws  
7 1984, Chapter 127, Section 634) is amended to read:

8 "59A-37-19. DISCLAIMER.--Any person may file with the  
9 superintendent a disclaimer of affiliation with any authorized  
10 insurer or [~~such~~] a disclaimer may be filed by [~~such~~] the  
11 authorized insurer or any member of an insurance holding  
12 company system. The disclaimer shall fully disclose all  
13 material relationships and bases for affiliation between the  
14 person and the insurer as well as the basis for disclaiming an  
15 affiliation. After a disclaimer has been filed, the insurer  
16 shall be relieved of any duty to register or report [~~which~~]  
17 that may arise out of the insurer's relationship with [~~such~~]  
18 the person unless and until the superintendent, within thirty  
19 days after the receipt of a complete disclaimer, disallows the  
20 disclaimer. The superintendent shall disallow such a  
21 disclaimer only after furnishing all parties in interest with  
22 notice and opportunity to be heard and after making specific  
23 findings of fact to support the disallowance."

24 SECTION 38. Section 59A-37-20 NMSA 1978 (being Laws  
25 1993, Chapter 320, Section 83) is amended to read:

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1 "59A-37-20. TRANSACTIONS WITH AFFILIATES.--

2 A. Transactions within a holding company system to  
3 which an insurer subject to registration is a party shall be  
4 subject to the following standards:

5 (1) the terms shall be fair and reasonable;

6 (2) agreements for cost-sharing services and  
7 management shall include the provisions required by rule  
8 promulgated by the superintendent;

9 [~~2~~] (3) charges or fees for services  
10 performed shall be reasonable;

11 [~~3~~] (4) expenses incurred and payment  
12 received shall be allocated to the insurer in conformity with  
13 customary insurance accounting practices consistently applied;

14 [~~4~~] (5) the books, accounts and records of  
15 each party to all such transactions shall be so maintained as  
16 to clearly and accurately disclose the nature and details of  
17 the transactions, including such accounting information as is  
18 necessary to support the reasonableness of the charges or fees  
19 to the respective parties; and

20 [~~5~~] (6) the insurer's surplus as regards  
21 policyholders following any dividends or distributions to  
22 shareholder affiliates shall be reasonable in relation to the  
23 insurer's outstanding liabilities and adequate to its financial  
24 needs.

25 B. The following transactions involving a domestic

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1 insurer and any person in its holding company system, including  
2 amendments and modifications of affiliate agreements previously  
3 filed pursuant to this section that are subject to the  
4 materiality standards of this subsection, may not be entered  
5 into unless the insurer has notified the superintendent in  
6 writing of its intention to enter into such transactions at  
7 least thirty days prior thereto, or such shorter period as the  
8 superintendent may permit, and the superintendent has not  
9 disapproved it within that period:

10 (1) sales, purchases, exchanges, loans or  
11 extensions of credit, guarantees or investments, provided the  
12 transactions are equal to or exceed:

13 (a) with respect to nonlife insurers,  
14 the lesser of three percent of the insurer's admitted assets or  
15 twenty-five percent of surplus as regards policyholders as of  
16 the most recent December 31 [~~next preceding~~]; or

17 (b) with respect to life insurers, three  
18 percent of the insurer's admitted assets as of the most recent  
19 December 31 [~~next preceding~~];

20 (2) loans or extensions of credit to any  
21 person who is not an affiliate, where the insurer makes loans  
22 or extensions of credit with the agreement or understanding  
23 that the proceeds of the transactions, in whole or in  
24 substantial part, are to be used to make loans or extensions of  
25 credit to, to purchase assets of, or to make investments in,

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1 any affiliate of the insurer making the loans or extensions of  
2 credit, provided the transactions are equal to or exceed:

3 (a) with respect to nonlife insurers,  
4 the lesser of three percent of the insurer's admitted assets or  
5 twenty-five percent of surplus as regards policyholders as of  
6 the most recent December 31 [~~next preceding~~]; or

7 (b) with respect to life insurers, three  
8 percent of the insurer's admitted assets as of December 31 next  
9 preceding;

10 (3) reinsurance agreements or modifications  
11 [~~thereto~~] to those agreements, including reinsurance pooling  
12 agreements or agreements in which the reinsurance premium or a  
13 change in the insurer's liabilities, or projected reinsurance  
14 premium or a change in the insurer's liabilities in any of the  
15 next three years, equals or exceeds five percent of the  
16 insurer's surplus as regards policyholders, as of the most  
17 recent December 31 [~~next preceding~~], including those agreements  
18 [~~which~~] that may require as consideration the transfer of  
19 assets from an insurer to a non-affiliate, if an agreement or  
20 understanding exists between the insurer and non-affiliate that  
21 any portion of such assets will be transferred to one or more  
22 affiliates of the insurer;

23 (4) all management agreements, service  
24 contracts, tax allocation agreements, guarantees and [~~all~~]  
25 cost-sharing arrangements;

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1                   (5) guarantees made by a domestic insurer if  
2 the amount of the guarantee can be quantified and is greater  
3 than one-half of one percent of the insurer's admitted assets  
4 or ten percent of surplus as regards policyholders as of the  
5 most recent December 31, whichever is less. A guarantee whose  
6 amount cannot be quantified is subject to the notice  
7 requirements of this subsection;

8                   (6) direct or indirect acquisitions or  
9 investments in a person who controls the insurer or in an  
10 affiliate of the insurer in an amount that, together with its  
11 present holdings in the investments, exceeds two and one-half  
12 percent of the insurer's surplus as regards policyholders.  
13 Direct or indirect acquisitions or investments in subsidiaries  
14 acquired pursuant to Section 59A-37-3 NMSA 1978 or that are  
15 authorized pursuant to another section of the Insurance Code or  
16 in nonsubsidiary insurance affiliates that are subject to the  
17 provisions of The Insurance Holding Company Law are exempt from  
18 this requirement; and

19                   ~~(5)~~ (7) any material transactions specified  
20 by regulation ~~which~~ that the superintendent determines may  
21 adversely affect the interests of the insurer's policyholders.

22                   Notice to the superintendent for amendments or  
23 modifications shall provide the reasons for the change and a  
24 description of the change's financial impact on the domestic  
25 insurer. Within thirty days after the termination of a



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1 previously filed agreement, a person shall notify the  
2 superintendent of that event. The superintendent shall respond  
3 by indicating the type of filing, if any, that the person must  
4 file.

5 Nothing contained in this subsection shall be deemed to  
6 authorize or permit any transactions [~~which~~] that, in the case  
7 of an insurer not a member of the same holding company system,  
8 would be otherwise contrary to law.

9 C. A domestic insurer may not enter into  
10 transactions [~~which~~] that are part of a plan or series of like  
11 transactions with persons within the holding company system if  
12 the purpose of those separate transactions is to avoid the  
13 statutory threshold amount and thus avoid the review that would  
14 occur otherwise. If the superintendent determines that such  
15 separate transactions were entered into over any twelve-month  
16 period for that purpose, [~~he~~] the superintendent may exercise  
17 [~~his~~] authority under Section 59A-37-26 NMSA 1978.

18 D. The superintendent, in reviewing transactions  
19 pursuant to Subsection B of this section, shall consider  
20 whether the transactions comply with the standards set forth in  
21 Subsection A of this section and whether they may adversely  
22 affect the interests of policyholders.

23 E. The superintendent shall be notified within  
24 thirty days of any investment of the domestic insurer in any  
25 one corporation if the total investment in [~~such~~] the

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1 corporation by the insurance holding company system exceeds ten  
2 percent of the corporation's voting securities."

3 SECTION 39. Section 59A-37-22 NMSA 1978 (being Laws  
4 1984, Chapter 127, Section 637, as amended) is amended to read:

5 "59A-37-22. DIVIDENDS AND OTHER DISTRIBUTIONS.--

6 A. No domestic stock insurer shall declare or  
7 distribute any dividend to shareholders, other than a pro rata  
8 distribution of any class of the insurer's own securities,  
9 except out of earned surplus. For purposes of this section,  
10 "earned surplus" means the portion of the surplus that  
11 represents the net earnings, gains or profits, after deduction  
12 of all losses, that have not been distributed to the  
13 shareholders as dividends or transferred to stated capital or  
14 capital surplus or applied to other purposes permitted by law,  
15 but does not include twenty-five percent of the unrealized  
16 appreciation of assets.

17 B. No domestic insurer shall pay an extraordinary  
18 dividend or make any other extraordinary distribution to its  
19 shareholders until:

20 (1) thirty days after the superintendent has  
21 received notice of the declaration thereof and has not within  
22 such period disapproved such payment; or

23 (2) the superintendent shall have approved  
24 such payment within the thirty-day period.

25 C. For the purposes of Sections 59A-37-20 through

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1 59A-37-22 NMSA 1978, an extraordinary dividend or distribution  
2 includes any dividend or distribution of cash or other  
3 property, whose fair market value together with that of other  
4 dividends or distributions made within the preceding twelve  
5 months exceeds the lesser of ten percent of the insurer's  
6 surplus as regards policyholders as of the most recent December  
7 31 [~~next preceding~~] or the net gain from operations of the  
8 insurer after dividends to policyholders and federal income  
9 taxes and before realized capital gains and losses, if the  
10 insurer is either a life insurer or a health maintenance  
11 organization, or the net [~~investment~~] income, if the insurer is  
12 not a life insurer or a health maintenance organization, not  
13 including realized capital gains, for the twelve-month period  
14 ending December 31 next preceding, but shall not include pro  
15 rata distributions of any class of the insurer's own  
16 securities.

17 D. In determining whether a dividend or  
18 distribution is extraordinary:

19 (1) an insurer other than a life insurer or a  
20 health maintenance organization may carry forward net income  
21 from the previous [~~three~~] two calendar years that has not  
22 already been paid out as dividends, which carry-forward shall  
23 be computed by taking the net income from the second and third  
24 [~~and fourth~~] preceding calendar years, not including realized  
25 capital gains, less dividends paid in the [~~third~~] second and

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1 immediate preceding calendar years; and

2 (2) a life insurer or a health maintenance  
3 organization may carry forward net gains from operations, not  
4 including realized capital gains from the previous two calendar  
5 years, that have not already been paid out as dividends, which  
6 carry-forward shall be computed by taking the net gain from the  
7 second and third preceding calendar years, not including  
8 realized capital gains, less dividends paid in the second and  
9 immediate preceding calendar years.

10 E. Notwithstanding any other provision of law, an  
11 insurer may declare an extraordinary dividend or distribution  
12 [~~which~~] that is conditioned upon the superintendent's approval  
13 thereof, and such a declaration shall confer no rights upon  
14 shareholders until the superintendent has:

15 (1) [~~the superintendent has~~] approved the  
16 payment of the dividend or distribution; or

17 (2) [~~the superintendent has~~] not disapproved  
18 the payment within thirty days after [~~he~~] the superintendent  
19 has received notice of the declaration."

20 SECTION 40. Section 59A-37-23 NMSA 1978 (being Laws  
21 1984, Chapter 127, Section 638, as amended) is amended to read:

22 "59A-37-23. EXAMINATIONS.--

23 A. Pursuant to general powers of investigation and  
24 examination vested in the superintendent under Chapter 59A,  
25 Article 4 NMSA 1978, the superintendent may order [~~any~~] an

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1 insurer registered under Section 59A-37-11 NMSA 1978 to produce  
2 such records, books or other information papers in the  
3 possession of the insurer or its affiliates as are necessary to  
4 ascertain the insurer's financial condition, ~~[or its]~~ including  
5 the enterprise risk to the insurer by the ultimate controlling  
6 party, or by any entity or combination of entities within the  
7 insurance holding company system, or by the insurance holding  
8 company system on a consolidated basis or the insurer's  
9 compliance with ~~[Chapter 59A, Article 37 NMSA 1978]~~ The  
10 Insurance Company Holding Law. If the insurer fails to comply  
11 with the order, the superintendent may examine its affiliates  
12 to obtain the information.

13 B. The examination shall be conducted and otherwise  
14 be subject to applicable provisions of Chapter 59A, Article 4  
15 NMSA 1978.

16 C. To determine compliance with The Insurance  
17 Holding Company Law, the superintendent may require that an  
18 insurer registered pursuant to Section 59A-37-11 NMSA 1978  
19 produce information not possessed by the insurer if the insurer  
20 can access that information through a contractual relationship,  
21 statutory obligation or other valid method. If the insurer  
22 cannot obtain the information that the superintendent requests,  
23 the insurer shall provide the superintendent with a detailed  
24 explanation of the reasons for that inability and the identity  
25 of the holder of information. If the superintendent believes

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1 that the explanation lacks merit, the superintendent may  
2 require, after notice and a hearing, that the insurer pay a  
3 penalty of five hundred dollars (\$500) for each day that the  
4 production of information is delayed, or the superintendent may  
5 suspend or revoke the insurer's license."

6 SECTION 41. Section 59A-37-24 NMSA 1978 (being Laws  
7 1984, Chapter 127, Section 639) is amended to read:

8 "59A-37-24. CONFIDENTIAL TREATMENT.--

9 A. All [information] documents, [and copies  
10 thereof] materials or other information in the possession or  
11 control of the office of superintendent of insurance that are  
12 obtained by or disclosed to the superintendent or any other  
13 person in the course of an examination or investigation made  
14 pursuant to Sections [635 through 637 of this article]  
15 59A-37-20 through 59A-37-22 NMSA 1978, and all information  
16 reported pursuant to Section [619 of this article] 59A-37-4  
17 NMSA 1978, shall be [given] confidential [treatment] by law and  
18 privileged, shall not be subject to the Inspection of Public  
19 Records Act, shall not be subject to subpoena and are not  
20 subject to discovery or admissible in evidence in a private  
21 civil action. The superintendent may use the documents,  
22 materials or other information in a regulatory or legal action  
23 brought in the course of the superintendent's official duties.  
24 The documents, materials or other information shall not be made  
25 public by the superintendent or any other person without the

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1 prior written consent of the insurer to which it pertains  
2 unless the superintendent, after giving the insurer and its  
3 affiliates [~~who~~] that would be affected [~~thereby~~] by them,  
4 notice and an opportunity to be heard, determines that the  
5 interests of the policyholders, shareholders or the public will  
6 be served by the publication [~~thereof~~] of them, in which [~~event~~  
7 ~~he~~] case the superintendent may publish all or any part  
8 [~~thereof~~] of them in [~~such~~] the manner [~~as he~~] the  
9 superintendent deems appropriate.

10 B. Neither the superintendent nor a person who  
11 receives documents, materials or other information while acting  
12 pursuant to the authority of the superintendent or with whom  
13 such documents, materials or other information are shared  
14 pursuant to The Insurance Holding Company Law shall be  
15 permitted or required in a private civil action to testify on  
16 the confidential documents, materials or information identified  
17 in Subsection A of this section.

18 C. To assist in the performance of the  
19 superintendent's duties, the superintendent:

20 (1) may share documents, materials or other  
21 information, including the confidential and privileged  
22 documents, materials or information subject to Subsection A of  
23 this section, with other state, federal and international  
24 regulatory agencies, with the national association of insurance  
25 commissioners, its affiliates or its subsidiaries and with

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1 state, federal and international law enforcement authorities,  
2 including members of a supervisory college described in Section  
3 59A-37-32 NMSA 1978, if the recipient agrees in writing to  
4 maintain the confidentiality and privilege of the document,  
5 materials or other information and has cited in writing the  
6 legal authority to maintain the confidentiality;

7 (2) in the case of confidential and privileged  
8 documents, materials or information reported pursuant to  
9 Section 59A-37-30 NMSA 1978, and notwithstanding Paragraph (1)  
10 of this subsection, may share that information only with  
11 insurance supervisory officials of states that have statutes or  
12 regulations substantially similar to Subsection A of this  
13 section and that have agreed in writing not to disclose that  
14 information;

15 (3) may receive documents, materials or  
16 information, including otherwise confidential and privileged  
17 documents, materials or information, from the national  
18 association of insurance commissioners, its affiliates or its  
19 subsidiaries and from regulatory and law enforcement officials  
20 of foreign or domestic jurisdictions but shall maintain as  
21 confidential or privileged documents, materials or other  
22 information received with notice or the understanding that the  
23 content is confidential or privileged pursuant to the laws of  
24 the jurisdiction from which the information originates; and

25 (4) shall, pursuant to The Insurance Holding

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1 Company Law, enter into written agreements with the national  
2 association of insurance commissioners that govern the sharing  
3 and use of information, that are consistent with this  
4 subsection and that:

5 (a) specify procedures and protocols for  
6 maintaining the confidentiality and security of information  
7 shared with the national association of insurance  
8 commissioners, its affiliates or its subsidiaries, including  
9 procedures and protocols for the sharing between the national  
10 association of insurance commissioners and other state, federal  
11 or international regulators;

12 (b) provide that the superintendent  
13 retains ownership and governs the use of information shared  
14 with the national association of insurance commissioners, its  
15 affiliates or its subsidiaries;

16 (c) require that the national  
17 association of insurance commissioners promptly notify an  
18 insurer whose confidential information it possesses when that  
19 information is the subject of a request or subpoena for  
20 disclosure or production; and

21 (d) require that, in a judicial or  
22 administrative action in which the national association of  
23 insurance commissioners, its affiliates or its subsidiaries may  
24 be required to disclose shared confidential information about  
25 the insurer, the national association of insurance

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1 commissioners, its affiliates or its subsidiaries consent to  
2 intervention by the insurer.

3 D. The sharing of information by the superintendent  
4 pursuant to The Insurance Holding Company Law is not a  
5 delegation of regulatory authority or rulemaking. The  
6 superintendent alone is responsible for the administration,  
7 execution and enforcement of the provisions of The Insurance  
8 Holding Company Law.

9 E. The disclosure of documents, materials or  
10 information to the superintendent pursuant to this section or  
11 the sharing authorized by Subsection C of this section does not  
12 constitute a waiver of an applicable privilege or a claim of  
13 confidentiality.

14 F. Documents, materials or other information in the  
15 possession or control of the national association of insurance  
16 commissioners pursuant to The Insurance Holding Company Law is  
17 confidential by law and privileged, not subject to the  
18 Inspection of Public Records Act, not subject to subpoena and,  
19 in a private civil action, not subject to discovery or  
20 admissible in evidence."

21 **SECTION 42.** Section 59A-37-26 NMSA 1978 (being Laws  
22 1984, Chapter 127, Section 641, as amended) is amended to read:

23 "59A-37-26. ENFORCEMENT, CRIMINAL PROCEEDINGS--  
24 PENALTY.--

25 A. Any insurer failing, without just cause, to file

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1 any registration statement as required in [~~Chapter 59A, Article~~  
2 ~~37 NMSA 1978~~] The Insurance Holding Company Law shall be  
3 required, after notice and hearing, to pay a penalty of fifty  
4 dollars (\$50.00) for each day's delay, not to exceed a total  
5 penalty of ten thousand dollars (\$10,000). The superintendent  
6 may reduce the penalty if the insurer demonstrates to the  
7 superintendent that the imposition of the penalty would  
8 constitute a financial hardship to the insurer.

9 B. Every director or officer of an insurance  
10 holding company system who knowingly violates, participates in,  
11 or assents to, or who knowingly permits any officer or agent of  
12 the insurer to engage in transactions or make investments  
13 [~~which~~] that have not been properly reported or submitted  
14 pursuant to Section 59A-37-11 NMSA 1978, Subsection B of  
15 Section 59A-37-20 NMSA 1978 or Section 59A-37-22 NMSA 1978, or  
16 [~~which~~] that violate [~~Chapter 59A, Article 37 NMSA 1978~~] The  
17 Insurance Company Holding Law, shall pay, in their individual  
18 capacity, a penalty of not more than ten thousand dollars  
19 (\$10,000) per violation, after notice and hearing before the  
20 superintendent. In determining the amount of the penalty, the  
21 superintendent shall take into account the appropriateness of  
22 the penalty with respect to the gravity of the violation, the  
23 history of previous violations and such other matters as  
24 justice may require.

25 C. Whenever it appears to the superintendent that

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1 any insurer subject to the provisions of [~~Chapter 59A, Article~~  
2 ~~37 NMSA 1978~~] The Insurance Holding Company Law or any  
3 director, officer, employee or agent thereof has engaged in any  
4 transaction or entered into a contract [~~which~~] that is subject  
5 to the provisions of Sections 59A-37-20 through 59A-37-22 NMSA  
6 1978 and [~~which~~] that would not have been approved had the  
7 approval been requested, the superintendent may order the  
8 insurer to cease and desist immediately any further activity  
9 under that transaction or contract. After notice and hearing,  
10 the superintendent may also order the insurer to void any  
11 contracts and restore the status quo if the action is in the  
12 best interest of the policyholders, creditors or the public.

13 D. Whenever it appears to the superintendent that  
14 [~~any~~] an insurer or any director, officer, employee or agent  
15 thereof has committed a willful violation of [~~Chapter 59A,~~  
16 ~~Article 37 NMSA 1978~~] The Insurance Holding Company Law, the  
17 superintendent may cause criminal proceedings to be instituted  
18 in the district court for the county in which the principal  
19 office of the insurer is located or, if [~~such~~] the insurer has  
20 no such office in the state, then in the district court for  
21 Santa Fe county against the insurer or the responsible  
22 director, officer, employee or agent thereof. Any insurer  
23 [~~which~~] that willfully violates that [~~article~~] law may be fined  
24 not more than twenty thousand dollars (\$20,000). Any  
25 individual who willfully violates that [~~article~~] law may be

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1 fined not more than ten thousand dollars (\$10,000).

2 E. Any officer, director or employee of an  
3 insurance holding company system who willfully and knowingly  
4 subscribes to or makes or causes to be made any false  
5 statements or false reports or false filings with the intent to  
6 deceive the superintendent in the performance of [~~his~~] the  
7 superintendent's duties under [~~Chapter 59A, Article 37 NMSA~~  
8 ~~1978~~] The Insurance Holding Company Law, upon conviction  
9 thereof, shall be imprisoned for not more than twenty years or  
10 fined not more than one million dollars (\$1,000,000), or both.  
11 Any fines imposed shall be paid by the officer, director or  
12 employee in [~~his~~] the officer's, director's or employee's  
13 individual capacity.

14 F. If the superintendent suspects that a person has  
15 violated a provision of Sections 59A-37-4 through 59A-37-10  
16 NMSA 1978, and if that violation prevents the full  
17 understanding of the enterprise risk to the insurer by  
18 affiliates or by the insurance holding company system, the  
19 violation alone may provide the basis for disapproving  
20 dividends or distributions and for placing the insurer under an  
21 order of supervision in accordance with the Insurers  
22 Conservation, Rehabilitation and Liquidation Law."

23 SECTION 43. A new Section 59A-37-29 NMSA 1978 is enacted  
24 to read:

25 "59A-37-29. [NEW MATERIAL] ACQUISITIONS THAT WOULD

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1       LESSEN COMPETITION.--

2               A. As used in this section:

3                       (1) "acquisition" means an agreement,  
4       arrangement or activity whose consummation results in a person  
5       directly or indirectly acquiring the control of another person  
6       and includes the acquisition of voting securities, the  
7       acquisition of assets, bulk reinsurance and mergers; and

8                       (2) "involved insurer" includes an insurer  
9       that acquires or is acquired, is affiliated with an acquirer or  
10      acquired or is the result of a merger.

11              B. Except as provided in this subsection, this  
12      section applies to an acquisition in which there is a change of  
13      control of an insurer authorized to do business in New Mexico.  
14      This section does not apply to:

15                      (1) a purchase of securities made solely for  
16      investment purposes if the securities are not used by voting or  
17      otherwise to cause or attempt to cause the substantial  
18      lessening of competition in an insurance market in New Mexico.  
19      If a purchase of securities results in a presumption of control  
20      as provided in Subsection C of Section 59A-37-2 NMSA 1978, this  
21      section applies to the purchase unless the insurance  
22      supervisory official of the insurer's state of domicile accepts  
23      a disclaimer of control or affirmatively finds that control  
24      does not exist and the domiciliary insurance supervisory  
25      official communicates that disclaimer action or affirmative

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1 finding to the superintendent;

2 (2) the acquisition of a person by another  
3 person when both persons are neither directly nor through  
4 affiliates primarily engaged in the business of insurance, if  
5 the acquisition would otherwise not be excluded from this  
6 section by the provisions of another paragraph of this  
7 subsection and if the acquiring party to the acquisition files  
8 with the superintendent a notification in accordance with  
9 Paragraph (1) of Subsection C of this section at least thirty  
10 days prior to the proposed effective date of the acquisition;

11 (3) the acquisition of an already affiliated  
12 person;

13 (4) where "market" means the direct written  
14 insurance premium in New Mexico for a line of business  
15 contained in the annual statement required to be filed by an  
16 insurer licensed to do business in New Mexico, an acquisition  
17 if, as an immediate result of the acquisition:

18 (a) the combined market share of the  
19 involved insurers would not exceed five percent of the total  
20 market in any market;

21 (b) no market share would increase; or

22 (c) the combined market share of the  
23 involved insurers would not exceed twelve percent, and the  
24 market share would not increase by more than two percent, of  
25 the total market in any market;

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1 (5) an acquisition for which a pre-acquisition  
2 notification would be required by the provisions of this  
3 section solely because of its effect on the ocean marine  
4 insurance line of business; and

5 (6) an acquisition of an insurer whose  
6 domiciliary insurance supervisory official finds that the  
7 insurer is in failing condition, that there is no feasible way  
8 to improve the condition and that the benefit to the public of  
9 improving the insurer's condition through the acquisition  
10 exceeds the benefit to the public that would arise from not  
11 lessening competition; provided that the findings are  
12 communicated to the superintendent by the domiciliary insurance  
13 supervisory official.

14 C. An acquisition identified in Subsection B of  
15 this section may be subject to an order pursuant to Subsection  
16 E of this section, unless the acquiring person files a pre-  
17 acquisition notification and the waiting period has expired.  
18 The acquired person may file a pre-acquisition notification.  
19 The superintendent shall treat as confidential information  
20 submitted pursuant to this subsection in the same manner as  
21 provided in Section 59A-37-24 NMSA 1978.

22 (1) Pre-acquisition notification shall contain  
23 the information and be in the form prescribed by the national  
24 association of insurance commissioners relating to the markets  
25 that, pursuant to Paragraph (4) of Subsection B of this

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1 section, subject the acquisition to the provisions of this  
2 section. The superintendent may require the submission of  
3 additional materials and information that the superintendent  
4 deems necessary to determine whether the proposed acquisition,  
5 if consummated, would violate the competitive standard  
6 identified in Subsection D of this section. Among other  
7 materials, the superintendent may require the submission of an  
8 economist's opinion relating to the competitive impact of the  
9 acquisition in New Mexico along with an addendum addressing the  
10 economist's educational background, experience and ability to  
11 render an informed opinion.

12 (2) A waiting period shall begin on the date  
13 that the superintendent receives a pre-acquisition notification  
14 and shall end on the thirtieth day after the date of receipt or  
15 upon the superintendent's termination of the waiting period,  
16 whichever is earlier. Prior to the end of the waiting period,  
17 the superintendent, through one request, may require the  
18 submission of additional information relevant to the proposed  
19 acquisition. A request for the submission of additional  
20 information shall trigger a new waiting period that begins on  
21 the date of receipt of the additional information and ends on  
22 the thirtieth day after that receipt or upon the  
23 superintendent's termination of the waiting period, whichever  
24 is earlier.

25 D. The superintendent may enter an order pursuant

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1 to Subsection E of this section if there is substantial  
2 evidence that the acquisition may substantially lessen  
3 competition in a line of insurance in New Mexico or that the  
4 acquisition would tend to create a monopoly or if the insurer  
5 fails to file adequate information in compliance with  
6 Subsection C of this section.

7 (1) In determining whether a proposed  
8 acquisition would violate the competitive standard identified  
9 in this subsection, the superintendent shall consider that:

10 (a) an acquisition identified in  
11 Subsection B of this section that involves two or more insurers  
12 competing in the same market is prima facie evidence of a  
13 violation of the competitive standard: 1) if the market is  
14 highly concentrated and the involved insurers possess the  
15 following shares of the market:

16 Insurer A Insurer B

---

17

18 4%	4% or more
19 10%	2% or more
20 15%	1% or more; or

21 2) if the market is not highly concentrated and the involved  
22 insurers possess the following shares of the market:

23 Insurer A Insurer B

---

24

25 5%	5% or more
-------	------------

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1        10%            4% or more  
2        15%            3% or more  
3        19%            1% or more;

4                            (b) for the purposes of Subparagraph (a)  
5 of this paragraph, a highly concentrated market is one in which  
6 the share of the four largest insurers is seventy-five percent  
7 or more of the market; the insurer with the largest share of  
8 the market shall be deemed to be Insurer A; a percentage not  
9 shown in a table is interpolated in proportion to the  
10 percentages shown; and if more than two insurers are involved  
11 in the acquisition, exceeding the total of the two columns in  
12 the table is prima facie evidence of a violation of the  
13 competitive standard of this subsection;

14                            (c) there is a significant trend toward  
15 increased concentration when the aggregate market share of a  
16 grouping of the largest insurers in the market, from the two  
17 largest to the eight largest, has increased by seven or more  
18 percent of the market over a period of time extending from any  
19 base year five to ten years prior to the acquisition up to the  
20 time of the acquisition. An acquisition or a merger identified  
21 in Subsection B of this section that involves two or more  
22 insurers competing in the same market is prima facie evidence  
23 of a violation of the competitive standard of this subsection  
24 if: 1) there is a significant trend toward increased  
25 concentration in the market; 2) an involved insurer is in a

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1 grouping of large insurers showing the requisite increase in  
2 the market share; and 3) another involved insurer's market is  
3 two percent or more;

4 (d) for the purposes of this subsection:

5 1) "insurer" includes a company and a group of companies under  
6 common management, ownership or control; 2) "market" means the  
7 relevant product and geographical markets. In determining the  
8 relevant product and geographical markets, the superintendent  
9 shall give due consideration to, among other things, existing  
10 definitions or guidelines promulgated by the national  
11 association of insurance commissioners and information  
12 submitted by the parties to the acquisition. In the absence of  
13 sufficient information to the contrary, the relevant product  
14 market is assumed to be the direct written insurance premium  
15 for a line of business, such line being that used in the annual  
16 statement required to be filed by insurers doing business in  
17 New Mexico, and the relevant geographical market is assumed to  
18 be New Mexico; and 3) the superintendent bears the burden of  
19 showing prima facie evidence of a violation of the competitive  
20 standard; and

21 (e) an acquisition that is not prima  
22 facie evidence of a violation of the competitive standard  
23 pursuant to Subparagraphs (a) and (b) of this paragraph may  
24 establish the requisite anti-competitive effect based on other  
25 substantial evidence. Using other substantial evidence, a

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1 party may establish the absence of the requisite anti-  
2 competitive effect for an acquisition that violates the  
3 competitive standard pursuant to Subparagraphs (a) and (b) of  
4 Paragraph (2) of this subsection. In making a determination  
5 pursuant to this subparagraph, the superintendent shall  
6 consider relevant factors, including: 1) market shares; 2)  
7 volatility of the ranking of market leaders; 3) the number of  
8 competitors; 4) concentration; 5) the trend of concentration in  
9 the industry; and 6) the ease of entry and exit into the  
10 market.

11 (2) An order shall not be entered pursuant to  
12 Subsection E of this section if:

13 (a) the acquisition would yield  
14 substantial economies of scale or economies in resource  
15 utilization that cannot be feasibly achieved in another way and  
16 the benefit to the public that would arise from those economies  
17 would exceed the benefits to the public that would arise from  
18 not lessening competition; or

19 (b) the acquisition would substantially  
20 increase the availability of insurance and the benefits to the  
21 public of the increase would exceed the benefits to the public  
22 that would arise from not lessening competition.

23 E. If an acquisition violates the standards of this  
24 section, the superintendent may enter an order requiring an  
25 involved insurer to cease and desist from doing business in New

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1 Mexico with respect to the line or lines of insurance involved  
2 in the violation or an order denying the application of an  
3 acquired or acquiring insurer for a license to do business in  
4 New Mexico. The superintendent shall only enter an order if  
5 notice of a hearing was issued before the end of the waiting  
6 period, but not less than fifteen days prior to the hearing,  
7 and the hearing has concluded. The superintendent shall not  
8 enter an order more than sixty days after the insurer filed  
9 with the superintendent pre-acquisition notification. A  
10 written decision by the superintendent that sets forth findings  
11 of fact and conclusions of law shall accompany an order. An  
12 order is void if the acquisition is not consummated. After  
13 notice and a hearing, the superintendent may fine a person that  
14 violates a valid cease-and-desist order no more than ten  
15 thousand dollars (\$10,000) per day of the violation or suspend  
16 or revoke the person's license, or both. The superintendent  
17 may fine an insurer or other person that fails to make a filing  
18 required by this section and fails to demonstrate a good faith  
19 effort to comply with a filing requirement no more than fifty  
20 thousand dollars (\$50,000).

21 F. Subsections B and C of Section 59A-37-25 NMSA  
22 1978 and Subsection A of Section 59A-37-27 NMSA 1978 do not  
23 apply to an acquisition identified in Subsection B of this  
24 section."

25 SECTION 44. A new Section 59A-37-30 NMSA 1978 is enacted

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1 to read:

2 "59A-37-30. [NEW MATERIAL] ENTERPRISE RISK FILING.--The  
3 person who predominantly controls an insurer that is subject to  
4 registration shall file an enterprise risk report each year.  
5 The report shall reflect that person's knowledge and belief of  
6 the material risks within the insurance holding company system  
7 that pose enterprise risk to the insurer. The report shall be  
8 filed with the lead state insurance supervisory official of the  
9 insurance holding company system and in compliance with the  
10 relevant procedures outlined in the financial analysis handbook  
11 adopted by the national association of insurance  
12 commissioners."

13 SECTION 45. A new Section 59A-37-31 NMSA 1978 is enacted  
14 to read:

15 "59A-37-31. [NEW MATERIAL] MANAGEMENT OF DOMESTIC  
16 INSURERS SUBJECT TO REGISTRATION.--

17 A. The control of a domestic insurer by a person  
18 does not relieve the insurer's officers and directors of an  
19 obligation or a liability to which they are otherwise subject  
20 by law. An insurer shall be managed so that its separate  
21 operating identity is consistent with The Insurance Holding  
22 Company Law.

23 B. Nothing in this section precludes a domestic  
24 insurer from participating in a common management function, a  
25 cooperative or the joint use of personnel if that participation

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1 meets the standards of Subsection A of Section 59A-37-20 NMSA  
2 1978.

3 C. At least two-thirds of the directors and two-  
4 thirds of the members of each committee of the board of  
5 directors of a domestic insurer shall not be officers or  
6 employees of the insurer or of an entity that controls, is  
7 controlled by or is under common control with the insurer and  
8 shall not be beneficial owners of a controlling interest in the  
9 voting stock of the insurer or entity. At least one person in  
10 that group of two-thirds of the directors shall be present  
11 prior to the transaction of business at a meeting of the board  
12 of directors or a committee of the board of directors.

13 D. The board of directors of a domestic insurer  
14 shall establish at least one committee composed solely of  
15 directors who are not officers or employees of the insurer or  
16 of an entity that controls, is controlled by or is under common  
17 control with the insurer and who are not beneficial owners of a  
18 controlling interest in the voting stock of the insurer or  
19 entity. The committee or committees shall:

20 (1) nominate the candidates for director, who  
21 shall be elected by the shareholders or policyholders;

22 (2) evaluate the performance of officers  
23 deemed to be principal officers of the insurer; and

24 (3) recommend to the board of directors the  
25 selection and compensation of the principal officers.

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1           E. The provisions of Subsections C and D of this  
2 section do not apply to a domestic insurer if the person  
3 controlling the insurer, such as an insurer, a mutual insurance  
4 holding company or a publicly held corporation, has a board of  
5 directors and committees of the board of directors that meet  
6 the requirements of Subsections C and D of this section.

7           F. An insurer whose annual direct written and  
8 assumed premium, excluding premiums reinsured with the federal  
9 crop insurance corporation and the national flood insurance  
10 program, is less than three hundred million dollars  
11 (\$300,000,000) may apply to the superintendent for a waiver  
12 from the requirements of this section. An insurer whose  
13 circumstances are unusual may apply to the superintendent for a  
14 waiver from the requirements of this section. In determining  
15 whether the insurer qualifies for a waiver, the superintendent  
16 may consider, among other factors, the insurer's type of  
17 business entity, the volume of its business written, the  
18 availability of qualified board members and its ownership or  
19 organizational structure."

20           **SECTION 46.** A new Section 59A-37-32 NMSA 1978 is enacted  
21 to read:

22           "59A-37-32. [NEW MATERIAL] SUPERVISORY COLLEGES.--

23           A. In order to determine compliance with The  
24 Insurance Holding Company Law by an insurer registered pursuant  
25 to Section 59A-37-11 NMSA 1978, the superintendent may

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1 participate in a supervisory college for a domestic insurer  
2 that is part of an insurance holding company system with  
3 international operations. Concerning a supervisory college,  
4 the superintendent may:

5 (1) initiate its establishment;

6 (2) clarify its membership and the  
7 participation of other supervisors;

8 (3) clarify its functions and the role of  
9 other regulators, including the establishment of a group-wide  
10 supervisor;

11 (4) coordinate its ongoing activities,  
12 including planning meetings, supervision and processes for  
13 information sharing; and

14 (5) establish a crisis management plan.

15 B. A registered insurer subject to this section  
16 shall pay the reasonable expenses, including for travel,  
17 associated with the superintendent's participation in a  
18 supervisory college pursuant to Subsection C of this section.

19 A supervisory college may be convened as a temporary or  
20 permanent forum for communication and cooperation between the  
21 regulators charged with the supervision of the insurer or its  
22 affiliates. The superintendent may establish a regular  
23 assessment to the insurer for the payment of these expenses.

24 C. In order to assess the business strategy,  
25 financial position, legal and regulatory position, risk

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1 exposure, risk management and governance processes of an  
2 insurer, and as part of the examination of individual insurers  
3 pursuant to Section 59A-37-23 NMSA 1978, the superintendent may  
4 participate in a supervisory college with other regulators  
5 charged with the supervision of the insurer or its affiliates,  
6 including other state, federal and international regulatory  
7 agencies. The superintendent may enter into agreements in  
8 accordance with Subsection C of Section 59A-37-24 NMSA 1978  
9 that provide the basis for cooperation between the  
10 superintendent and the other regulatory agencies and the  
11 activities of the supervisory college. Nothing in this section  
12 shall delegate to the supervisory college the authority of the  
13 superintendent to regulate or supervise the insurer or its  
14 affiliates within its jurisdiction."

15 **SECTION 47.** Section 59A-41-24 NMSA 1978 (being Laws  
16 1984, Chapter 127, Section 716, as amended) is amended to read:

17 "59A-41-24. HAZARDOUS FINANCIAL CONDITION--  
18 DETERMINATION.--

19 A. For the purposes of Sections 59A-41-25 and  
20 59A-41-26 NMSA 1978, an insurer may be deemed to be in a  
21 hazardous financial condition when the superintendent has  
22 determined, after notice and hearing, that the loss experience  
23 of the insurer, when reviewed in conjunction with the kinds and  
24 characteristics of risks insured, or the insurer's financial  
25 condition, or its ownership, or the ratio of its annual premium

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1 volume in relation to its policyholders' surplus, would make  
2 further assumption of risks by the insurer hazardous to those  
3 persons doing business with the insurer or to the general  
4 public.

5 B. The following items may be considered by the  
6 superintendent to determine whether the continued operation of  
7 ~~[any]~~ an insurer transacting an insurance business in ~~[this~~  
8 ~~state]~~ New Mexico is hazardous to the policyholders,  
9 the creditors or the general public:

10 (1) adverse findings reported in financial  
11 condition and market conduct examination reports, audit reports  
12 and actuarial opinions, reports or summaries;

13 (2) the national association of insurance  
14 commissioners insurance regulatory information system and its  
15 ~~[related]~~ other financial analysis solvency tools and reports;

16 (3) ratios of commission expense, general  
17 insurance expense, policy benefits and reserve increases to  
18 annual premium and net investment income;

19 (4) ~~[the value, liquidity or diversity of the~~  
20 ~~insurer's asset portfolio when viewed in light of current~~  
21 ~~economic conditions with regard to assuring the company's~~  
22 ~~ability to meet its outstanding obligations as they mature]~~  
23 whether, according to currently accepted actuarial standards of  
24 practice, the insurer has made adequate provision for the  
25 anticipated cash flows required by the insurer's contractual

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1 obligations and related expenses, when considered in light of  
2 the insurer's assets and investment earnings on assets held for  
3 reserves and related actuarial items and the considerations  
4 anticipated to be received and retained through the insurer's  
5 policies and contracts;

6 (5) the [~~adequacy, reliability and soundness~~  
7 ~~of]~~ ability of an assuming reinsurer to perform and whether the  
8 insurer's reinsurance program provides sufficient protection  
9 for the insurer's remaining surplus after taking into account  
10 the insurer's cash flow and the classes of business written as  
11 well as the financial condition of the assuming reinsurer [and  
12 ~~the ability of the assuming reinsurer to perform under its~~  
13 ~~reinsurance agreements];~~

14 (6) whether the insurer's operating loss in  
15 the last twelve-month period or any shorter period of time,  
16 including net capital gain or loss, change in non-admitted  
17 assets and cash dividends paid to shareholders [in comparison  
18 ~~to such] is greater than fifty percent of the insurer's~~  
19 remaining surplus as regards policyholders in excess of the  
20 minimum required;

21 (7) whether the insurer's operating loss,  
22 excluding net capital gains, in the last twelve months or a  
23 shorter period of time is greater than twenty percent of the  
24 insurer's remaining surplus as regards policyholders in excess  
25 of the minimum required;

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1                    [~~(7)~~] (8) whether [~~any affiliate, subsidiary~~  
2 ~~or~~] a reinsurer, an obligor or an entity within the insurer's  
3 insurance holding company system is insolvent, threatened with  
4 insolvency or delinquent in payment of its monetary or other  
5 [~~obligation~~] obligations and that, in the superintendent's  
6 opinion, might affect the solvency of the insurer;

7                    [~~(8)~~] (9) contingent liabilities, pledges or  
8 guaranties [~~which~~] that individually or collectively involve a  
9 total amount that, in the superintendent's opinion, may affect  
10 the solvency of the insurer;

11                    [~~(9)~~] (10) whether any person having control  
12 of an insurer is delinquent in transmitting or paying net  
13 premiums to [~~such~~] the insurer;

14                    [~~(10)~~] (11) the age and collectibility of  
15 receivables;

16                    [~~(11)~~] (12) whether the management of an  
17 insurer, including officers, directors or any other person who  
18 directly or indirectly controls the operation of [~~such~~] the  
19 insurer, fails to possess and demonstrate the competence,  
20 fitness and reputation deemed necessary to serve the insurer in  
21 such position;

22                    [~~(12)~~] (13) whether management of an insurer  
23 has failed to respond to inquiries relative to the condition of  
24 the insurer or has furnished false or misleading information  
25 concerning an inquiry;

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1                    (14) whether the insurer, for a reason not  
2                    satisfactory to the superintendent, has failed to meet  
3                    financial and holding company filing requirements;

4                    [~~(13)~~] (15) whether management of an insurer  
5                    has filed with any regulatory authority or released to lending  
6                    institutions or to the general public any false or misleading  
7                    financial statements or has made a false or misleading entry or  
8                    has omitted an entry of material amount in the books of the  
9                    insurer;

10                    [~~(14)~~] (16) whether the insurer has grown so  
11                    rapidly and to such an extent that it lacks adequate financial  
12                    and administrative capacity to meet its obligations in a timely  
13                    manner;

14                    [~~(15)~~] (17) whether the [~~company~~] insurer has  
15                    experienced or will experience in the foreseeable future cash  
16                    flow or liquidity problems;

17                    (18) whether management of the insurer has  
18                    established reserves that do not meet the minimum standards  
19                    established by New Mexico's insurance laws and rules and by  
20                    statutory accounting standards, sound actuarial principles and  
21                    standards of practice;

22                    (19) whether management of the insurer  
23                    persistently engages in material under-reserving that results  
24                    in adverse development;

25                    (20) whether transactions among affiliates,

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1 subsidiaries or controlling persons for which the insurer  
2 receives assets or capital gains, or both, do not provide  
3 sufficient value, liquidity or diversity to ensure that the  
4 insurer can meet its outstanding obligations as they mature;

5 [~~(16)~~] (21) risk-based capital reports and  
6 other information obtained pursuant to the Risk-Based Capital  
7 Act; or

8 [~~(17)~~] (22) such other material information  
9 and data as the superintendent may deem relevant.

10 C. For the purposes of making a determination of an  
11 insurer's financial condition under this section, the  
12 superintendent may:

13 (1) disregard any credit or amount receivable  
14 resulting from transactions with a reinsurer [~~which~~] that is  
15 insolvent, impaired or otherwise subject to a delinquency  
16 proceeding;

17 (2) make appropriate adjustments, including  
18 disallowance, to asset values attributable to investments in or  
19 transactions with parents, subsidiaries or affiliates that are  
20 consistent with the national association of insurance  
21 commissioners' accounting practices and procedures manual and  
22 with state laws and rules;

23 (3) refuse to recognize the stated value of  
24 accounts receivable if the ability to collect receivables is  
25 highly speculative in view of the age of the account or the

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1 financial condition of the debtor; or

2 (4) increase the insurer's liability in an  
3 amount equal to any contingent liability, pledge or guarantee  
4 not otherwise included if there is a substantial risk that the  
5 insurer will be called upon to meet the obligation undertaken  
6 within the next twelve-month period."

7 SECTION 48. Section 59A-41-25 NMSA 1978 (being Laws  
8 1984, Chapter 127, Section 717, as amended) is amended to read:

9 "59A-41-25. REQUIREMENTS OF INSURER IN HAZARDOUS  
10 FINANCIAL CONDITION.--

11 A. Whenever ~~[he]~~ the superintendent finds an  
12 insurer authorized to transact insurance in ~~[this state]~~ New  
13 Mexico to be in hazardous financial condition, as referred to  
14 in Section 59A-41-24 NMSA 1978, the superintendent may order  
15 the insurer to take such action as ~~[he]~~ the superintendent  
16 deems reasonably necessary to rectify the hazardous condition,  
17 including ~~[but not limited to one or more of the following~~  
18 ~~measures]~~ requiring the insurer to:

19 (1) ~~[require the insurer to]~~ reduce, suspend  
20 or limit the volume of ~~[new]~~ business being accepted ~~[to an~~  
21 ~~amount, for the period of time, and in a manner prescribed in~~  
22 ~~the superintendent's order]~~ or renewed;

23 (2) ~~[require submission of]~~ submit its  
24 reinsurance contracts for approval and make such further  
25 requirements as to the insurer's reinsurance arrangements as

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1 the superintendent deems necessary;

2 (3) ~~[require the insurer to]~~ bulk-reinsure all  
3 or any part of its New Mexico business with another insurer  
4 authorized to transact such business in ~~[this state]~~ New  
5 Mexico;

6 (4) ~~[require a contribution to]~~ increase the  
7 insurer's capital and surplus on such terms, in such amount and  
8 in such manner as the superintendent deems necessary;

9 (5) ~~[require the insurer to]~~ maintain with the  
10 superintendent a special deposit in cash or securities eligible  
11 for investment of funds of a like domestic insurer under  
12 Chapter 59A, Article 9 NMSA 1978 and in amount not less than  
13 the lesser of:

14 (a) the amounts required to be  
15 maintained as: 1) reserves for losses and loss adjustment  
16 expenses on New Mexico business; and 2) reserves for unearned  
17 premiums on New Mexico business. In determining the amount of  
18 deposit required, the reserves for losses, loss adjustment  
19 expenses and unearned premiums shall be reduced only for  
20 reinsurance ceded to authorized or accredited reinsurers  
21 ~~[which]~~ that maintain with an independent custodian cash or  
22 marketable securities in amount not less than the sum of the  
23 reinsurer's reserves for losses, loss adjustment expenses and  
24 unearned premiums as to reinsurance assumed; or

25 (b) five hundred thousand dollars

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1 (\$500,000).

2 Any deposit required by this paragraph shall be for the  
3 protection and benefit only of New Mexico policyholders or  
4 claimants, or both, and shall not be withdrawn until the  
5 superintendent terminates the requirement of the deposit. This  
6 paragraph shall not apply as to any domestic insurer, and  
7 Subparagraph (b) of this paragraph shall not apply as to any  
8 life insurer;

9 (6) [~~require the insurer to~~] reduce general  
10 insurance and commission expenses by specified methods;

11 (7) [~~require the insurer to~~] suspend or limit  
12 the declaration and payment of dividends to its stockholders or  
13 to its policyholders;

14 (8) [~~require the insurer to~~] file reports in a  
15 form acceptable to the superintendent concerning the market  
16 value of an insurer's assets;

17 (9) [~~require the insurer to~~] limit or withdraw  
18 from certain investments or discontinue certain investment  
19 practices to the extent the superintendent deems necessary;

20 (10) [~~require the insurer to~~] document the  
21 adequacy of premium rates in relation to the risks insured;  
22 [~~or~~]

23 (11) [~~require the insurer to~~] file, in  
24 addition to regular annual statements, interim financial  
25 reports on the form adopted by the national association of

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1 insurance commissioners or on such format as required by the  
2 superintendent;

3 (12) correct corporate governance practice  
4 deficiencies and adopt and use governance practices acceptable  
5 to the superintendent;

6 (13) provide to the superintendent a business  
7 plan in order to continue to transact business in the state; or

8 (14) notwithstanding another provision of law  
9 limiting the frequency or amount of premium rate adjustments,  
10 adjust rates for a non-life insurance product written by the  
11 insurer that the superintendent considers necessary to improve  
12 the financial condition of the insurer.

13 B. The insurer may request a hearing to review the  
14 order in accordance with Chapter 59A, Article 4 NMSA 1978;  
15 however, the superintendent shall give written notice of the  
16 hearing not less than ten days in advance of the hearing, and  
17 the hearing shall be held privately unless the insurer requests  
18 a public hearing, in which case the hearing shall be public."

19 SECTION 49. Section 59A-42-3 NMSA 1978 (being Laws 2012,  
20 Chapter 9, Section 6) is amended to read:

21 "59A-42-3. DEFINITIONS.--As used in the Life and Health  
22 Insurance Guaranty Association Act:

23 A. "account" means either of the two accounts  
24 maintained pursuant to Section 59A-42-5 NMSA 1978;

25 B. "association" means the life and health

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1 insurance guaranty association created pursuant to Section  
2 59A-42-5 NMSA 1978;

3 C. "authorized assessment", or the term  
4 "authorized" when used in the context of assessments, means  
5 that a resolution by the board has been passed whereby an  
6 assessment will be called immediately or in the future from  
7 member insurers for a specified amount. An assessment is  
8 authorized when the resolution is passed;

9 D. "benefit plan" means a specific employee, a  
10 union or an association of natural persons benefit plan;

11 E. "board" means the board of directors organized  
12 pursuant to Section 59A-42-6 NMSA 1978;

13 F. "called assessment", or the term "called" when  
14 used in the context of assessments, means that a notice has  
15 been issued by the association to member insurers requiring  
16 that an authorized assessment be paid within the time frame set  
17 forth within the notice. An authorized assessment becomes a  
18 called assessment when notice is mailed by the association to  
19 member insurers;

20 G. "contractual obligation" means an obligation  
21 under a policy or contract or a certificate under a group  
22 policy or contract, or portion thereof, for which coverage is  
23 provided pursuant to Section 59A-42-4 NMSA 1978;

24 H. "covered policy" means a policy or contract or  
25 portion of a policy or contract for which coverage is provided

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1 pursuant to Section 59A-42-4 NMSA 1978;

2 I. "domiciliary state" means the state in which an  
3 insurer is incorporated or organized or, as to an alien  
4 insurer, the state in which at commencement of delinquency  
5 proceedings the larger amount of the insurer's assets are held  
6 in trust or on deposit for the benefit of its policyholders and  
7 creditors in the United States;

8 J. "extra-contractual claims" includes claims  
9 relating to bad faith in the payment of claims, punitive or  
10 exemplary damages or attorney fees and costs;

11 K. "impaired insurer" means a member insurer that,  
12 after the effective date of the Life and Health Insurance  
13 Guaranty Association Act, is not an insolvent insurer and is  
14 placed under an order of rehabilitation or conservation by a  
15 court of competent jurisdiction;

16 L. "insolvent insurer" means a member insurer that,  
17 after the effective date of the Life and Health Insurance  
18 Guaranty Association Act, is placed under an order of  
19 liquidation by a court of competent jurisdiction with a finding  
20 of insolvency;

21 M. "member insurer" means an insurer that is  
22 licensed or that holds a certificate of authority to transact  
23 in this state insurance for which coverage is provided pursuant  
24 to Section 59A-42-4 NMSA 1978 and includes an insurer whose  
25 license or certificate of authority in this state may have been

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1 suspended, revoked, not renewed or voluntarily withdrawn, but  
2 does not include:

- 3 (1) a [~~hospital or medical service~~  
4 ~~organization~~] health care plan, whether profit or nonprofit;  
5 (2) a health maintenance organization;  
6 (3) a prepaid dental plan;  
7 [~~3~~] (4) a fraternal benefit society;  
8 [~~4~~] (5) a mandatory state pooling plan;  
9 [~~5~~] (6) a mutual assessment company or other  
10 person that operates on an assessment basis;  
11 [~~6~~] (7) an insurance exchange;  
12 [~~7~~] (8) a charitable organization that is in  
13 good standing with the superintendent pursuant to Section  
14 59A-1-16.1 NMSA 1978;  
15 [~~8~~] (9) any insurer that was insolvent or  
16 unable to fulfill its contractual obligations as of April 9,  
17 1975; or  
18 [~~9~~] (10) an entity similar to any of the  
19 above;

20 N. "Moody's corporate bond yield average" means the  
21 monthly average corporates as published by Moody's investors  
22 service, incorporated, or its successor;

23 O. "owner" of a policy or contract, "policy owner"  
24 and "contract owner" means the person who is identified as the  
25 legal owner under the terms of the policy or contract or who is

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1 otherwise vested with legal title to the policy or contract  
2 through a valid assignment completed in accordance with the  
3 terms of the policy or contract and properly recorded as the  
4 owner on the books of the insurer. The terms "owner", "policy  
5 owner" and "contract owner" do not include persons with a mere  
6 beneficial interest in a policy or contract;

7 P. "plan sponsor" means:

8 (1) the employer in the case of a benefit plan  
9 established or maintained by a single employer;

10 (2) the employee organization in the case of a  
11 benefit plan established or maintained by an employee  
12 organization; or

13 (3) the association, committee, joint board of  
14 trustees or other similar group of representatives of the  
15 parties who establish or maintain the benefit plan in the case  
16 of a benefit plan established or maintained by two or more  
17 employers or jointly by one or more employers and one or more  
18 employee organizations;

19 Q. "premiums" means amounts or considerations, by  
20 whatever name used, received on covered policies or contracts  
21 less returned premiums, considerations and deposits and less  
22 dividends and experience credits. "Premiums" does not include:

23 (1) amounts or considerations received for  
24 policies or contracts or for the portions of policies or  
25 contracts for which coverage is not provided pursuant to



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1 Subsection E of Section 59A-42-4 NMSA 1978, except that  
2 assessable premiums shall not be reduced on account of  
3 Paragraph (3) of Subsection E of Section 59A-42-4 NMSA 1978,  
4 relating to interest limitations, or Paragraph (2) of  
5 Subsection F of Section 59A-42-4 NMSA 1978, relating to  
6 limitations, with respect to one individual, one participant or  
7 one contract owner;

8 (2) premiums in excess of five million dollars  
9 (\$5,000,000) on an unallocated annuity contract not issued  
10 under a governmental retirement benefit plan, or its trustee,  
11 established pursuant to Section 401, 403(b) or 457 of the  
12 federal Internal Revenue Code of 1986; or

13 (3) with respect to multiple non-group  
14 policies of life insurance owned by one owner, whether the  
15 policy owner is an individual, firm, corporation or other  
16 person, and whether the persons insured are officers, managers,  
17 employees or other persons, premiums in excess of five million  
18 dollars (\$5,000,000) with respect to these policies or  
19 contracts, regardless of the number of policies or contracts  
20 held by the owner;

21 R. "principal place of business" means:

22 (1) in the case of a plan sponsor or a person  
23 other than a natural person, the single state in which the  
24 natural person who establishes a policy for the direction,  
25 control and coordination of the operations of the entity as a

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1 whole primarily exercises that function, as determined by the  
2 association in its reasonable judgment by considering the  
3 following factors:

4 (a) the state in which the primary  
5 executive and administrative headquarters of the entity is  
6 located;

7 (b) the state in which the principal  
8 office of the chief executive officer of the entity is located;

9 (c) the state in which the board, or  
10 similar governing person or persons, of the entity conducts the  
11 majority of its meetings;

12 (d) the state in which the executive or  
13 management committee of the board, or similar governing person  
14 or persons, of the entity conducts the majority of its  
15 meetings;

16 (e) the state from which the management  
17 of the overall operations of the entity is directed; and

18 (f) in the case of a benefit plan  
19 sponsored by affiliated companies comprising a consolidated  
20 corporation, the state in which the holding company or  
21 controlling affiliate has its principal place of business as  
22 determined using the factors in this subsection; but

23 (g) in the case of a plan sponsor, if  
24 more than fifty percent of the participants in the benefit plan  
25 are employed in a single state, that state shall be deemed to

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1 be the principal place of business of the plan sponsor; and  
2 (2) in the case of a plan sponsor of a benefit  
3 plan described in Paragraph (3) of Subsection P of this  
4 section, the principal place of business of the association,  
5 committee, joint board of trustees or other similar group of  
6 representatives of the parties that establish or maintain the  
7 benefit plan that, in lieu of a specific or clear designation  
8 of a principal place of business, shall be deemed to be the  
9 principal place of business of the employer or employee  
10 organization that has the largest investment in the benefit  
11 plan in question;

12 S. "receivership court" means the court in the  
13 insolvent or impaired insurer's domiciliary state having  
14 jurisdiction over the conservation, rehabilitation or  
15 liquidation of the insurer;

16 T. "resident" means a person to whom a contractual  
17 obligation is owed and who resides in this state on the date of  
18 entry of a court order that determines a member insurer to be  
19 an impaired insurer or a court order that determines a member  
20 insurer to be an insolvent insurer. A person may be a resident  
21 of only one state, which, in the case of a person other than a  
22 natural person, shall be its principal place of business.  
23 Citizens of the United States that are either residents of  
24 foreign countries or residents of United States possessions,  
25 territories or protectorates that do not have an association

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1 similar to the association created by the Life and Health  
2 Insurance Guaranty Association Act shall be deemed residents of  
3 the state of domicile of the insurer that issued the policies  
4 or contracts;

5 U. "structured settlement annuity" means an annuity  
6 purchased in order to fund periodic payments for a plaintiff or  
7 other claimant in payment for or with respect to personal  
8 injury suffered by the plaintiff or other claimant;

9 V. "supplemental contract" means a written  
10 agreement entered into for the distribution of proceeds under a  
11 life, health or annuity policy or contract; and

12 W. "unallocated annuity contract" means an annuity  
13 contract or group annuity certificate that is not issued to and  
14 owned by an individual, except to the extent of annuity  
15 benefits guaranteed to an individual by an insurer under the  
16 contract or certificate."

17 SECTION 50. Section 59A-42A-7 NMSA 1978 (being Laws  
18 1997, Chapter 107, Section 7) is amended to read:

19 "59A-42A-7. EXAMINATION--ANNUAL STATEMENT.--

20 A. The association is subject to and responsible to  
21 pay the cost of examination by the superintendent [~~of~~  
22 ~~insurance~~] on a periodic basis, pursuant to Chapter 59A,  
23 Article 4 NMSA 1978.

24 B. Not later than March [~~31~~] 1 of each year, the  
25 board shall submit to the superintendent an [~~audited financial~~

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1 ~~report for the preceding calendar year in a form approved by~~  
2 ~~the superintendent]~~ annual statement in accordance with the  
3 requirements of Section 59A-5-29 NMSA 1978 and a risk-based  
4 capital report in accordance with the requirements of Section  
5 59A-5A-3 NMSA 1978."

6 SECTION 51. Section 59A-46-9 NMSA 1978 (being Laws 1993,  
7 Chapter 266, Section 9) is amended to read:

8 "59A-46-9. ANNUAL REPORT.--

9 A. Every health maintenance organization shall  
10 annually, on or before the first day of March, file a report,  
11 verified by at least two principal officers, with the  
12 superintendent covering the preceding calendar year.

13 B. The report shall be on forms prescribed by the  
14 superintendent and shall include:

15 (1) a financial statement of the organization  
16 prepared pursuant to forms prescribed by the superintendent,  
17 including its balance sheet and receipts and disbursements for  
18 the preceding year;

19 (2) any material changes in the information  
20 submitted pursuant to Subsection C of Section 59A-46-3 NMSA  
21 1978;

22 (3) the number of persons enrolled during the  
23 year and the number of enrollees as of the end of the year; and

24 (4) such other reasonable information  
25 materially relating to the performance of the health

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1 maintenance organization as is necessary to enable the  
2 superintendent to carry out ~~[his]~~ the superintendent's duties  
3 under the Insurance Code.

4 C. In addition, the health maintenance organization  
5 shall file by the dates indicated:

6 (1) ~~[audited financial statements as of the~~  
7 ~~end of the preceding calendar year on or before June 1 or~~  
8 ~~within one hundred twenty days following the end of its fiscal~~  
9 ~~year, whichever is later]~~ on or before March 1, an annual  
10 statement in accordance with the requirements of Section  
11 59A-5-29 NMSA 1978 and a risk-based capital report in  
12 accordance with the requirements of Section 59A-5A-3 NMSA 1978;

13 (2) a list of the providers who have executed  
14 a contract that complies with Subsection ~~[D]~~ E of Section  
15 59A-46-13 NMSA 1978 on or before March 1; and

16 (3) a description of the grievance procedures  
17 and the total number of grievances handled through such  
18 procedures, a compilation of the causes underlying those  
19 grievances and a summary of the final disposition of those  
20 grievances, on or before March 1.

21 D. The superintendent may require such additional  
22 reports as are deemed necessary and appropriate to enable the  
23 superintendent to carry out ~~[his]~~ the superintendent's duties  
24 under the Health Maintenance Organization Law."

25 SECTION 52. Section 59A-47-14 NMSA 1978 (being Laws

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1 1984, Chapter 127, Section 879.12) is amended to read:

2 "59A-47-14. ANNUAL STATEMENT.--As prerequisite to  
3 continuance of its certificate of authority, each health care  
4 plan shall on or before March [~~1st~~] 1 each year file with the  
5 superintendent and with the national association of insurance  
6 [~~superintendents its financial statement for the year ending~~  
7 ~~December 31st immediately preceding on form as prescribed and~~  
8 ~~furnished without charge by the superintendent. The form shall~~  
9 ~~conform as nearly as may be to the form of annual statement of~~  
10 ~~insurers as from time to time adopted by the national~~  
11 ~~association of insurance superintendents. The statement shall~~  
12 ~~be verified by the oaths of the president and secretary of the~~  
13 ~~health care plan, or in the absence of either of them, by other~~  
14 ~~principal officers] commissioners an annual statement in  
15 accordance with the requirements of Section 59A-5-29 NMSA 1978  
16 and a risk-based capital report in accordance with the  
17 requirements of Section 59A-5A-3 NMSA 1978."~~

18 SECTION 53. Section 59A-48-10 NMSA 1978 (being Laws  
19 1984, Chapter 127, Section 889) is amended to read:

20 "59A-48-10. ANNUAL REPORT TO SUPERINTENDENT.--

21 A. Every prepaid dental plan organization annually  
22 on or before the first day of March shall file with the  
23 superintendent a report covering its activities for the  
24 preceding calendar year in form as prescribed by the  
25 superintendent, verified by at least two [~~2~~] principal

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1 officers of the corporation. A copy of the report shall be  
2 sent by the prepaid dental plan organization to the [~~director~~  
3 ~~of the health services division of the health and environment]~~  
4 department of health.

5 B. Such reports shall be on forms prescribed by the  
6 superintendent and shall include:

7 (1) [~~a financial statement of the~~  
8 ~~organization, including its balance sheet and receipts and~~  
9 ~~disbursements for the preceding year certified as required by~~  
10 ~~the form of the annual report]~~ an annual statement in  
11 accordance with the requirements of Section 59A-5-29 NMSA 1978  
12 and a risk-based capital report in accordance with the  
13 requirements of Section 59A-5A-3 NMSA 1978;

14 (2) any material changes in the information;

15 (3) the number of persons who become members  
16 during the year, the number of members as of the end of the  
17 year and the number of memberships terminated during the year;

18 (4) the costs of all care provided and the  
19 number of units of care provided; and

20 (5) such other information relating to the  
21 performance of the prepaid dental plan organization as is  
22 necessary to enable the superintendent to carry out the duties  
23 prescribed by [~~this article]~~ The Prepaid Dental Plan Law.

24 C. The fee for filing the annual report shall be as  
25 specified in Section [~~101 (fee schedule) of the Insurance Code]~~

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1 59A-6-1 NMSA 1978."

2 SECTION 54. SEVERABILITY.--If any part or application of  
3 the provisions of this act is held invalid, the remainder or  
4 its application to other situations or persons shall not be  
5 affected.

6 SECTION 55. EFFECTIVE DATE--CONTINGENCIES--  
7 NOTIFICATION.--

8 A. The effective date of the provisions of Sections  
9 15 through 27 of this act is the January 1 of the first  
10 calendar year following the first July 1 after which the  
11 superintendent of insurance certifies to the New Mexico  
12 compilation commission and the director of the legislative  
13 council service that:

14 (1) the most recent version of the manual of  
15 valuation instructions adopted by the national association of  
16 insurance commissioners has been adopted by the national  
17 association of insurance commissioners by an affirmative vote  
18 of at least forty-two members or three-fourths of the members  
19 voting, whichever is greater;

20 (2) the Standard Valuation Law of the national  
21 association of insurance commissioners, as amended in 2009, or  
22 legislation including substantially similar terms and  
23 provisions, has been enacted by states that collectively  
24 represent more than seventy-five percent of written direct  
25 premiums, as reported in the life, accident and health annual

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1 statements, the health annual statements and the fraternal  
2 annual statements submitted for 2008; and

3 (3) the Standard Valuation Law of the national  
4 association of insurance commissioners, as amended in 2009, or  
5 legislation including substantially similar terms and  
6 provisions, has been enacted by at least forty-two of the  
7 following fifty-five jurisdictions:

8 (a) the fifty states of the United  
9 States;

10 (b) American Samoa;

11 (c) the Virgin Islands of the United  
12 States;

13 (d) the District of Columbia;

14 (e) Guam; and

15 (f) Puerto Rico.

16 B. If the requirements of Subsection A of this  
17 section have not been met by January 1, 2020, then Sections 15  
18 through 27 of this act shall not take effect.

19 C. The effective date of the provisions of Sections  
20 1 through 14 and 28 through 54 of this act is July 1, 2014.

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