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SENATE BILL 412

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Carroll H. Leavell

AN ACT

RELATING TO INSURANCE; ENACTING A PRINCIPLES-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-2-12 NMSA 1978 (being Laws 1984,
18 Chapter 127, Section 30) is amended to read:

19 "59A-2-12. RECORDS--INSPECTION--DESTRUCTION.--

20 A. The superintendent shall preserve in the office
21 of superintendent of insurance [~~department~~] and in permanent
22 form copies of all notices and orders given or made and of all
23 other papers and records relating to the business and
24 transactions of the [~~department~~] office, and shall hand the
25 same over to [~~his~~] the superintendent's successor in office.

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1 B. Except as otherwise provided by the Insurance
2 Code or by order of court, the papers and records shall be open
3 to public inspection. The superintendent may classify as
4 confidential certain records and information obtained from
5 another governmental agency or other source upon the express
6 condition that they remain confidential or are deemed
7 confidential by the superintendent, and such records and
8 information shall not be subject to public inspection while
9 confidentiality exists; except that no filing required to be
10 made with the superintendent under the Insurance Code shall be
11 deemed confidential unless expressly so provided by law or by
12 the superintendent.

13 C. The superintendent may destroy unneeded or
14 obsolete records and filings in the office of superintendent of
15 insurance [~~department~~] in accordance with the provisions [~~and~~
16 ~~procedures applicable in general to records and filings of the~~
17 ~~corporation commission~~] of rules promulgated by the
18 superintendent."

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

21 "59A-2-15. INTERSTATE, FEDERAL AND INTERNATIONAL
22 COOPERATION.--

23 A. On request of the insurance supervisory official
24 of any other state, province or country; [~~or~~] of the national
25 association of insurance commissioners or similar association

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1 of insurance regulatory officials; or of a federal agency, the
2 superintendent shall communicate to [~~such~~] the official, [~~or~~]
3 association [~~any~~] or agency information that it is [~~his~~] the
4 superintendent's duty by law to ascertain respecting [~~any~~] an
5 insurer or other person transacting insurance in this state or
6 otherwise subject to the superintendent's supervision.

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

12 SECTION 3. Section 59A-5A-2 NMSA 1978 (being Laws 1995,
13 Chapter 149, Section 2) is amended to read:

14 "59A-5A-2. DEFINITIONS.--As used in the Risk-Based
15 Capital Act:

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

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

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

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1 capital;

2 D. "corrective order" means an order issued by the
3 superintendent specifying required corrective actions;

4 E. "domestic insurer or health organization" means
5 an insurer or health organization domiciled in New Mexico;

6 F. "foreign insurer or health organization" means
7 an insurer or health organization that is authorized to do
8 business in New Mexico but is not 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 a property and
4 casualty insurer writing only health insurance [~~or nonprofit~~
5 ~~health care plan~~];

6 [F-] J. "mandatory control level risk-based
7 capital" means an amount equal to seventy percent of an
8 insurer's or health organization's authorized control level
9 risk-based 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, negative
20 trend over a period of time, as determined in accordance with
21 the trend test calculation included in the life or fraternal
22 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 4. 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 casualty
16 insurer's risk-based capital shall be determined in accordance
17 with the appropriate formula in the risk-based capital
18 instructions. The formula shall take into account and may
19 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 5. 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 report, notification to the insurer or
14 health organization that the superintendent has, after hearing,
15 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 6. 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 report, notification to the insurer or
24 health organization that the superintendent has, after hearing,
25 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 7. 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 capital report, notification to the
2 insurer or health organization that the superintendent has,
3 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 8. 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 report, notification to the insurer or
2 health organization that the superintendent has, after hearing,
3 rejected the insurer's or health organization's challenge.

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

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

22 (2) with respect to a property [~~or~~] and
23 casualty insurer, take such actions as are necessary to place
24 the insurer under regulatory control pursuant to Chapter 59A,
25 Article 41 NMSA 1978, or, in the case of an insurer that is

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

15 SECTION 9. Section 59A-5A-8 NMSA 1978 (being Laws 1995,
16 Chapter 149, Section 8) is amended to read:

17 "59A-5A-8. CHALLENGE HEARINGS.--Any insurer or health
18 organization has the right to a confidential administrative
19 hearing of record in accordance with Chapter 59A, Article 4
20 NMSA 1978 at which the insurer or health organization may
21 challenge any determination or action by the superintendent
22 pursuant to the Risk-Based Capital Act.

23 A. The insurer or health organization shall file
24 and serve on the superintendent its request for hearing within
25 five days after any of the following events:

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

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

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

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

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

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

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

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1 organization's request."

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

4 "59A-5A-9. CONFIDENTIALITY--PROHIBITION ON
5 ANNOUNCEMENTS--PROHIBITION ON USE IN RATEMAKING.--

6 A. To the extent not set forth in any other form
7 accessible to the public, all information in risk-based capital
8 reports, risk-based capital plans, results or reports of any
9 examination or analysis of an insurer or health organization
10 performed pursuant to the Risk-Based Capital Act and all
11 corrective orders issued by the superintendent pursuant to such
12 examination or analysis [~~is~~] are and shall be kept confidential
13 by the superintendent. This information shall not be made
14 public [~~or~~]; be subject to the Inspection of Public Records
15 Act; be subject to discovery or be admissible as evidence in a
16 private civil action; or be subject to subpoena, other than by
17 the superintendent and then only for the purpose of enforcement
18 actions taken by the superintendent pursuant to the Insurance
19 Code. Neither the superintendent nor a person who receives
20 documents, materials or other information while acting pursuant
21 to the authority of the superintendent shall be permitted or
22 required in a private civil action to testify on the
23 confidential documents, materials or information subject to
24 this subsection. No waiver of an applicable privilege or claim
25 of confidentiality in the documents, materials or information

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1 results from a disclosure to the superintendent pursuant to
2 this section or as a result of the superintendent sharing such
3 documents, materials or information with other state, federal
4 or international regulatory agencies, with the national
5 association of insurance commissioners, its affiliates or its
6 subsidiaries, and with state, federal and international law
7 enforcement authorities if the recipient agrees to maintain the
8 confidentiality and privileged status of the document, material
9 or other information.

10 B. The comparison of an insurer's or health
11 organization's total adjusted capital to any of its risk-based
12 capital levels is a regulatory tool that may indicate the need
13 for possible corrective action by the superintendent with
14 respect to the insurer or health organization and is not
15 intended as a means to rank insurers or health organizations
16 generally or to compare insurers or health organizations for
17 marketing purposes. Use of such comparisons for such purposes
18 is inherently misleading and deceptive. Except as otherwise
19 required under the provisions of the Risk-Based Capital Act or
20 applicable law, no insurer, health organization, agent, broker
21 or other person engaged in any manner in the business of
22 insurance shall make, publish, disseminate, circulate or place
23 before the public, or cause, directly or indirectly, to be
24 made, published, disseminated, circulated or placed before the
25 public in a newspaper, magazine or other publication, or in the

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1 form of a notice, circular, pamphlet, letter or poster, or over
2 any radio or television station, or in any other way, an
3 advertisement, announcement or statement containing an
4 assertion, representation or statement with regard to the
5 risk-based capital levels of any insurer or health
6 organization, or of any component derived in their calculation;
7 provided, however, that if any materially false statement with
8 respect to the comparison regarding an insurer's or health
9 organization's total adjusted capital to its risk-based capital
10 levels or an inappropriate comparison of any other amount to
11 the insurer's or health organization's risk-based capital
12 levels is published in any written publication and the insurer
13 or health organization is able to demonstrate to the
14 superintendent's satisfaction the falsity or inappropriateness
15 of the statement, then the insurer or health organization may
16 publish an announcement approved in advance by the
17 superintendent in a written publication whose sole purpose is
18 to rebut the materially false statement.

19 C. The risk-based capital instructions, risk-based
20 capital reports, adjusted risk-based capital reports, risk-
21 based capital plans and revised risk-based capital plans are
22 intended solely for use by the superintendent in monitoring the
23 solvency of insurers and health organizations and the need for
24 possible corrective action with respect to insurers and health
25 organizations. They shall not be used by the superintendent

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1 for ratemaking, considered or introduced as evidence in any
2 rate proceeding or used to calculate or derive any elements of
3 an appropriate premium level or rate of return for any line of
4 insurance [~~which~~] that an insurer, health organization or any
5 affiliate is authorized to write."

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

8 "59A-5A-11. FOREIGN INSURERS.--

9 A. Any foreign insurer or health organization
10 shall, upon the superintendent's written request, submit to the
11 superintendent a risk-based capital report, as of the end of
12 the most recent calendar year, on the same date risk-based
13 capital reports are required to be filed by domestic insurers
14 and health organizations under the Risk-Based Capital Act or
15 fifteen days after the request is received by the foreign
16 insurer or health organization, whichever is later. Any
17 foreign insurer or health organization shall, upon the
18 superintendent's written request, promptly submit to the
19 superintendent a copy of any risk-based capital plan filed with
20 the insurance commissioner of any other state.

21 B. In the event of a company action level event,
22 regulatory action level event or authorized control level event
23 with respect to any foreign insurer or health organization as
24 determined pursuant to the risk-based capital statute
25 applicable in an insurer's or health organization's state of

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1 domicile, or, if no risk-based capital requirements are in
2 force in that state, under the provisions of the Risk-Based
3 Capital Act, the superintendent may require the foreign insurer
4 or health organization to file a risk-based capital plan with
5 the superintendent unless the insurance commissioner of the
6 insurer's or health organization's state of domicile has
7 previously so required. The failure of the foreign insurer or
8 health organization to timely file a risk-based capital plan
9 with the superintendent shall be grounds to order the insurer
10 or health organization to cease and desist from writing new
11 insurance business in this state or to suspend or revoke its
12 certificate of authority.

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

17 SECTION 12. Section 59A-5A-13 NMSA 1978 (being Laws 1995,
18 Chapter 149, Section 13) is amended to read:

19 "59A-5A-13. NOTICES.--The superintendent's notices to an
20 insurer or health organization pursuant to the Risk-Based
21 Capital Act shall be effective upon mailing by certified mail
22 or, in the case of any other mode of transmission, shall be
23 effective upon the insurer's or health organization's receipt."

24 SECTION 13. A new section of the Risk-Based Capital Act
25 is enacted to read:

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

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

7 "59A-6-2. PREMIUM TAX--HEALTH INSURANCE PREMIUM SURTAX.--

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

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

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

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

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

25 (5) each unauthorized insurer that has assumed

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

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

17 C. In addition to the premium tax imposed pursuant
18 to Subsection B of this section, each taxpayer described in
19 Subsection A of this section that transacts health insurance in
20 New Mexico or is a plan described in Chapter 59A, Article 46 or
21 47 NMSA 1978 shall pay a health insurance premium surtax of one
22 percent of the gross health insurance premiums and membership
23 and policy fees received by it on hospital and medical expense
24 incurred insurance or contracts; nonprofit health care service
25 plan contracts, excluding dental or vision only contracts; and

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1 health maintenance organization subscriber contracts covering
2 health risks within this state during the preceding calendar
3 year, less all return health insurance premiums, including
4 dividends paid or credited to policyholders or contract holders
5 and health insurance premiums received for reinsurance on New
6 Mexico risks. Except as provided in this section, all
7 references in the Insurance Code to the premium tax shall
8 include both the premium tax and the health insurance premium
9 surtax.

10 D. For each calendar quarter, an estimated payment
11 of the premium tax and the health insurance premium surtax
12 shall be made on April 15, July 15, October 15 and the
13 following January 15. The estimated payments shall be equal to
14 at least one-fourth of [~~either~~] the payment made during the
15 previous calendar year or [~~eighty percent~~] one-fifth of the
16 actual payment due for the current calendar year, whichever is
17 greater. The final adjustment for payments due for the prior
18 year shall be made with the return, which shall be filed on
19 April 15 of each year, at which time all taxes for that year
20 are due. Dividends paid or credited to policyholders or
21 contract holders and refunds, savings, savings coupons and
22 similar returns or credits applied or credited to payment of
23 premiums for existing, new or additional insurance shall, in
24 the amount so used, constitute premiums subject to tax under
25 this section for the year in which so applied or credited.

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1 E. Exempted from the taxes imposed by this section
2 are:

3 (1) premiums attributable to insurance or
4 contracts purchased by the state or a political subdivision for
5 the state's or political subdivision's active or retired
6 employees; and

7 (2) payments received by a health maintenance
8 organization from the federal secretary of health and human
9 services pursuant to a contract issued under the provisions of
10 42 U.S.C. Section 1395 mm(g)."

11 **SECTION 15.** Section 59A-7-11 NMSA 1978 (being Laws 1984,
12 Chapter 127, Section 117, as amended) is amended to read:

13 "59A-7-11. REINSURANCE.--

14 A. An insurer may reinsure all or any part of a
15 particular risk or of a particular class of risks in another
16 insurer, or accept such reinsurance from another insurer. No
17 domestic insurer shall so reinsure with an insurer not
18 authorized to transact insurance in [~~this state~~] New Mexico
19 unless the unauthorized insurer is authorized to transact
20 insurance in another state and conforms to the same standards
21 of solvency as would be required if at the time such
22 reinsurance is effected the reinsurer was so authorized in
23 [~~this state~~] New Mexico or unless, in the case of a group that
24 includes incorporated and individual, unincorporated alien
25 insurers, it has assets held in trust for the benefit of its

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1 United States policyholders in an amount not less than one
2 hundred million dollars (\$100,000,000) and is authorized to
3 transact insurance in at least one state or unless with the
4 superintendent's approval in advance. With the
5 superintendent's approval, a domestic insurer may reinsure all
6 or substantially all of its risks in another insurer, or
7 similarly reinsure the risks of another insurer, as provided in
8 Section 59A-34-40 NMSA 1978.

9 B. Credit for reinsurance shall be allowed as an
10 asset or as a deduction from liability to any ceding insurer
11 for reinsurance lawfully ceded only when the reinsurance is
12 payable by the assuming insurer on the basis of the liability
13 of the ceding insurer under the contracts reinsured without
14 diminution because of the insolvency of the ceding insurer
15 directly to the ceding insurer or to its domiciliary liquidator
16 or receiver, except where the assuming insurer with the consent
17 of the direct insured or insureds has assumed such policy
18 obligations of the ceding insurer as direct obligations of the
19 assuming insurer to the payees under such policies and in
20 substitution for the obligations of the ceding insurer to such
21 payees, and the reinsurer meets the requirements of Paragraph
22 (1), (2), (3), ~~(4)~~, (5) or (6) of this subsection. If
23 meeting the requirements of Paragraph (3) or (4) of this
24 subsection, the requirements of Paragraph ~~(5)~~ (7) of this
25 subsection ~~must~~ shall also be met. Credit shall be allowed

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1 pursuant to Paragraph (1), (2) or (3) of this subsection only
2 for cessions of those kinds or classes of business that the
3 assuming insurer is licensed or otherwise permitted to write or
4 assume in its state of domicile or, in the case of a United
5 States branch of an alien assuming insurer, in the state
6 through which it is entered and licensed to transact insurance
7 or reinsurance.

8 (1) Credit shall be allowed when the
9 reinsurance is ceded to an assuming insurer [~~which is~~]
10 authorized to transact insurance or reinsurance in [~~this state~~]
11 New Mexico.

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

16 (a) files with the superintendent
17 evidence of its submission to [~~this state~~] New Mexico's
18 jurisdiction;

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

21 (c) is licensed to transact insurance or
22 reinsurance in at least one state or, in the case of a United
23 States branch of an alien assuming insurer, is entered through
24 and licensed to transact insurance or reinsurance in at least
25 one state; and

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

12 (e) ~~No credit shall be allowed a ceding~~
13 ~~insurer, if the assuming insurer's accreditation has been~~
14 ~~revoked by the superintendent after notice and hearing]~~
15 demonstrates to the satisfaction of the superintendent that it
16 has adequate financial capacity to meet its reinsurance
17 obligations and is otherwise qualified to assume reinsurance
18 from domestic insurers. An assuming insurer is deemed to meet
19 this requirement at the time of its application if it maintains
20 a surplus for policyholders in an amount not less than twenty
21 million dollars (\$20,000,000) and its accreditation has not
22 been denied by the superintendent within ninety days after the
23 submission of its application.

24 (3) Credit shall be allowed when the
25 reinsurance is ceded to an assuming insurer domiciled in or, in

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1 the case of a United States branch of an alien assuming
2 insurer, is entered through, a state that employs standards for
3 credit for reinsurance substantially similar to those provided
4 in this section if the assuming insurer or United States branch
5 of an alien assuming insurer:

6 (a) maintains a surplus as regards
7 policyholders in an amount not less than twenty million dollars
8 (\$20,000,000), unless the reinsurance is ceded and assumed
9 pursuant to pooling arrangements among insurers in the same
10 holding company system; and

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

13 ~~[(3)]~~ (4) Credit shall be allowed when ~~[the~~
14 ~~following requirements are met:~~

15 ~~(a)]~~ the reinsurance is ceded to an
16 assuming insurer ~~[which]~~ that maintains a trust ~~[fund]~~ in a
17 qualified United States financial institution, as defined in
18 Paragraph (2) of Subsection D of this section, for the payment
19 of the valid claims of its United States policyholders and
20 ceding insurers, their assigns and successors in interest. The
21 assuming insurer shall report annually to the superintendent
22 information substantially the same as that required to be
23 reported on the national association of insurance commissioners
24 annual statement form by licensed insurers to enable the
25 superintendent to determine the sufficiency of the trust ~~[fund].~~

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1 ~~In the case of]~~ and shall submit to and bear the expense of the
2 examination of its books and records by the superintendent.
3 Credit for reinsurance shall not be granted pursuant to this
4 paragraph unless the trust and amendments to the trust have
5 been approved by the insurance supervisory official of the
6 state in which the trust is domiciled or the insurance
7 supervisory official of another state who, pursuant to the
8 terms of the trust, has accepted principal regulatory oversight
9 of the trust. The trust and every trust amendment shall be
10 filed with the superintendent and with the insurance
11 supervisory official of every state in which the ceding insurer
12 beneficiaries of the trust are domiciled. The trust shall
13 provide that contested claims be valid and enforceable upon the
14 final order of a court of competent jurisdiction in the United
15 States. The trust shall vest legal title to its assets in its
16 trustees for the benefit of the assuming insurer's United
17 States ceding insurers, their assigns and successors in
18 interest and shall remain in effect for as long as the assuming
19 insurer has an outstanding obligation due pursuant to the
20 reinsurance agreements subject to the trust. The
21 superintendent may examine the trust and the assuming insurer.
22 No later than February 28 of each year, the trustee of the
23 trust shall report in writing to the superintendent the balance
24 of the trust and a list of the trust's investments at the
25 preceding year's end and certify the date of termination of the

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1 trust, if planned, or that the trust will not expire prior to
2 the following December 31.

3 (a) For a single assuming insurer, the
4 trust shall consist of a trustee account representing the
5 assuming insurer's liabilities attributable to business written
6 in the United States, and, in addition, the assuming insurer
7 shall maintain a trustee surplus of not less than twenty
8 million dollars (\$20,000,000). [~~In the case of~~]

9 (b) At any time after a single assuming
10 insurer has permanently discontinued underwriting new business
11 secured by the trust for at least three years and after a
12 finding based on an assessment of the risk that the new
13 required surplus level, in light of reasonably foreseeable
14 adverse loss development, is adequate for the protection of
15 United States ceding insurers, policyholders and claimants, the
16 insurance supervisory official with principal regulatory
17 oversight of the trust may authorize a reduction in the
18 required trustee surplus. The risk assessment may involve an
19 actuarial review, including an independent analysis of reserves
20 and cash flows, and shall consider all material risk factors,
21 including when applicable the lines of business involved, the
22 stability of the incurred loss estimates and the effect of the
23 surplus requirements on the assuming insurer's liquidity or
24 solvency. The minimum required trustee surplus shall not be
25 reduced to less than thirty percent of the assuming insurer's

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1 liabilities attributable to reinsurance ceded by United States
2 ceding insurers covered by the trust.

3 (c) For a group that includes
4 incorporated and individual unincorporated underwriters, the
5 trust shall consist of a trustee account representing the
6 group's liabilities attributable to business written in the
7 United States and, in addition, the group shall maintain a
8 trustee surplus of which one hundred million dollars
9 (\$100,000,000) shall be held jointly for the benefit of United
10 States ceding insurers of any member of the group for all years
11 of account; provided that the group shall make available to the
12 superintendent an annual certification of the solvency of each
13 underwriter by the group's domiciliary regulator and its
14 independent public accounts; and provided further that the
15 incorporated members of the group shall not engage in any
16 business other than underwriting as a member of the group and
17 shall be subject to the same level of solvency regulation and
18 control by the group's domiciliary regulator as are the
19 unincorporated members.

20 [~~(b) in the case of~~] (d) A group of
21 incorporated insurers under common administration [~~which~~
22 ~~complies with the filing requirements contained in Subparagraph~~
23 ~~(a) of this paragraph and which has~~] shall: 1) have
24 continuously transacted an insurance business outside the
25 United States for at least three years immediately prior to

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1 making application for accreditation [~~and submits to this~~
2 ~~state's authority to examine its books and records and bears~~
3 ~~the expense of the examination, and which has~~]; 2) maintain
4 aggregate policyholders' surplus of at least ten billion
5 dollars (\$10,000,000,000) [~~the trust shall be~~]; 3) maintain a
6 trust fund in an amount [~~equal to~~] not less than the group's
7 several liabilities attributable to business ceded by United
8 States ceding insurers to any member of the group pursuant to
9 reinsurance contracts issued in the name of such group [~~plus~~
10 ~~the group shall~~]; and 4) maintain a joint trusteed surplus of
11 which one hundred million dollars (\$100,000,000) [~~shall be~~] is
12 held jointly and exclusively for the benefit of the United
13 States ceding insurers of any member of the group as additional
14 security for any such liabilities. [~~and~~] Each member of the
15 group shall make available to the superintendent an annual
16 certification of the member's solvency by the member's
17 domiciliary regulator and its independent public accountant.

18 [~~(c) such trust shall be established in~~
19 ~~a form approved by the superintendent. The trust instrument~~
20 ~~shall provide that contested claims shall be valid and~~
21 ~~enforceable upon the final order of any court of competent~~
22 ~~jurisdiction in the United States. The trust shall vest legal~~
23 ~~title to its assets in the trustees of the trust for its United~~
24 ~~States policyholders and ceding insurers, their assigns and~~
25 ~~successors in interest. The trust and the assuming insurer~~

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1 ~~shall be subject to examination as determined by the~~
2 ~~superintendent. The trust described herein must remain in~~
3 ~~effect for as long as the assuming insurer shall have~~
4 ~~outstanding obligations due under the reinsurance agreements~~
5 ~~subject to the trust; and~~

6 ~~(d) no later than February 28 of each~~
7 ~~year, the trustees of the trust shall report to the~~
8 ~~superintendent in writing setting forth the balance of the~~
9 ~~trust and listing the trust's investments at the preceding year~~
10 ~~end and shall certify the date of termination of the trust, if~~
11 ~~so planned, or certify that the trust shall not expire prior to~~
12 ~~the next following December 31.]~~

13 (5) Credit shall be allowed when the
14 reinsurance is ceded to an assuming insurer that has been
15 certified by the superintendent as a reinsurer in New Mexico
16 and that secures its obligations in accordance with the
17 requirements of this paragraph.

18 (a) To be eligible for certification, an
19 assuming insurer shall: 1) be domiciled and licensed to
20 transact insurance or reinsurance in a qualified jurisdiction,
21 pursuant to Subparagraph (c) of this paragraph; 2) maintain
22 minimum capital and surplus, or its equivalent, in an amount to
23 be determined by the superintendent pursuant to rule; 3)
24 maintain financial strength ratings from two or more rating
25 agencies deemed acceptable by the superintendent pursuant to

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1 rule; 4) agree to submit to the jurisdiction of New Mexico,
2 appoint the superintendent as its agent for service of process
3 in New Mexico and agree to provide security for one hundred
4 percent of the assuming insurer's liabilities attributable to
5 reinsurance ceded by United States ceding insurers if it
6 resists enforcement of a final United States judgment; 5) in an
7 initial application for certification and on an ongoing basis,
8 agree to meet applicable information-filing requirements, as
9 determined by the superintendent; and 6) satisfy other
10 requirements for certification that the superintendent deems
11 relevant.

12 (b) To be eligible for certification, an
13 association including incorporated and individual
14 unincorporated underwriters shall: 1) satisfy the requirements
15 of Subparagraph (a) of this paragraph; 2) satisfy its minimum
16 capital and surplus requirements through the capital and
17 surplus equivalents, net of liabilities, of the association and
18 its members, which shall include a joint central fund that may
19 be applied to an unsatisfied obligation of the association or
20 any of its members, in an amount determined by the
21 superintendent to provide adequate protection; 3) not have
22 incorporated members who engage in a business other than
23 underwriting as a member of the association and who are subject
24 to the same level of regulation and solvency control by the
25 association's domiciliary regulator as the unincorporated

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1 members; and 4) within ninety days after its financial
2 statements must be filed with the association's domiciliary
3 regulator, provide to the superintendent an annual
4 certification by the association's domiciliary regulator of the
5 solvency of each underwriter member or if a certification is
6 unavailable, provide to the superintendent financial
7 statements, prepared by independent public accountants, of each
8 underwriter member of the association.

9 (c) The superintendent shall create and
10 publish a list of qualified jurisdictions in which an assuming
11 insurer licensed and domiciled in the jurisdiction is eligible
12 to be considered by the superintendent for certification as a
13 reinsurer. 1) In creating the list of qualified jurisdictions,
14 the superintendent shall evaluate the appropriateness and
15 effectiveness of the reinsurance supervisory system of the
16 jurisdiction, initially and on an ongoing basis, and the
17 rights, benefits and extent of reciprocal recognition afforded
18 by the alien jurisdiction to reinsurers licensed and domiciled
19 in the United States. The superintendent may consider
20 additional factors. A jurisdiction shall not be recognized as
21 a qualified jurisdiction if it does not agree to share
22 information and cooperate with the superintendent with respect
23 to all certified reinsurers domiciled within that jurisdiction.
24 A jurisdiction shall not be recognized as a qualified
25 jurisdiction if the superintendent has determined that a

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1 jurisdiction does not adequately and promptly enforce final
2 United States judgments and arbitration awards. 2) The
3 superintendent shall consider the list of qualified
4 jurisdictions published through the national association of
5 insurance commissioners' committee process in determining
6 qualified jurisdictions. If the superintendent recognizes as
7 qualified a jurisdiction that does not appear on the list of
8 qualified jurisdictions, the superintendent shall provide
9 thoroughly documented justification in accordance with criteria
10 developed by rule. 3) United States jurisdictions that meet
11 the requirement for accreditation pursuant to the national
12 association of insurance commissioners' financial standards and
13 accreditation program shall be recognized as qualified
14 jurisdictions. 4) If a certified reinsurer's domiciliary
15 jurisdiction ceases to be a qualified jurisdiction, the
16 superintendent may suspend the reinsurer's certification
17 indefinitely in lieu of revocation.

18 (d) The superintendent shall consider
19 the financial strength ratings that have been assigned by
20 rating agencies deemed acceptable to the superintendent
21 pursuant to rule and assign a rating to each certified
22 reinsurer. The superintendent shall publish a list of all
23 certified reinsurers and their ratings.

24 (e) A certified reinsurer shall secure
25 obligations assumed from United States ceding insurers pursuant

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1 to this subsection at a level consistent with its rating, as
2 specified in rules promulgated by the superintendent. 1) In
3 order for a domestic ceding insurer to qualify for full
4 financial statement credit for reinsurance ceded to a certified
5 reinsurer, the certified reinsurer shall maintain security in a
6 form acceptable to the superintendent and consistent with the
7 provisions of Subsection C of this section, or in a multi-
8 beneficiary trust in accordance with Paragraph (4) of this
9 subsection, except as otherwise provided in this subsection.
10 2) If a certified reinsurer maintains a trust to fully secure
11 its obligations pursuant to Paragraph (4) of this subsection
12 and secures its obligations incurred as a certified reinsurer
13 in the form of a multi-beneficiary trust, the certified
14 reinsurer shall maintain separate trust accounts for its
15 obligations incurred pursuant to reinsurance agreements issued
16 or renewed as a certified reinsurer with reduced security as
17 permitted by this subsection or comparable laws of other United
18 States jurisdictions and for its obligations pursuant to
19 Paragraph (4) of this subsection. To be certified pursuant to
20 Paragraph (5) of this subsection, a certified reinsurer shall
21 have bound itself, by the language of the trust and by
22 agreement with the insurance supervisory official with
23 principal regulatory oversight of each such trust account, to
24 fund, upon termination of that trust account, out of the
25 remaining surplus of the trust any deficiency of any other such

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1 trust account. 3) The minimum trustee surplus requirements
2 provided in Paragraph (4) of this subsection do not apply to a
3 multi-beneficiary trust maintained by a certified reinsurer for
4 the purpose of securing obligations incurred pursuant to this
5 subsection if that multi-beneficiary trust maintains a minimum
6 trustee surplus of ten million dollars (\$10,000,000). 4) If
7 the security for obligations incurred by a certified reinsurer
8 pursuant to this subsection is insufficient, the superintendent
9 shall reduce the allowable credit by an amount proportionate to
10 the deficiency and may, upon a finding of material risk that
11 the certified reinsurer's obligations will not be paid in full
12 when due, impose further reductions in allowable credit. 5)
13 For the purposes of this paragraph, a certified reinsurer whose
14 certification has been terminated for any reason shall be
15 treated as a certified reinsurer required to secure one hundred
16 percent of its obligations. If the superintendent continues to
17 assign a higher rating as permitted by other provisions of this
18 section, this requirement does not apply to a certified
19 reinsurer in inactive status or to a reinsurer whose
20 certification has been suspended. As used in this
21 subparagraph, "terminated" means revocation, suspension,
22 voluntary surrender or inactive status.

23 (f) If an applicant for certification
24 has been certified as a reinsurer in a jurisdiction accredited
25 by the national association of insurance commissioners, the

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1 superintendent may defer to that jurisdiction's certification
2 and to the rating assigned by that jurisdiction, and the
3 assuming insurer shall be considered a certified reinsurer in
4 New Mexico.

5 (g) To continue to qualify for a
6 reduction in security for its in-force business, a certified
7 reinsurer that ceases to assume new business in New Mexico may
8 request that it maintain its certification in inactive status.
9 An inactive, certified reinsurer shall comply with all
10 applicable requirements of this subsection, and the
11 superintendent shall assign a rating that reflects, if
12 relevant, the reason that the reinsurer is not assuming new
13 business.

14 [~~(4)~~] (6) Credit shall be allowed when the
15 reinsurance is ceded to an assuming insurer not meeting the
16 requirements of Paragraph (1), (2), [~~or~~] (3), (4) or (5) of
17 this subsection but only with respect to the insurance of risks
18 located in jurisdictions where such reinsurance is required by
19 applicable law or regulation of that jurisdiction.

20 [~~(5)~~] (7) If the assuming insurer is not
21 licensed, [~~or~~] accredited or certified to transact insurance or
22 reinsurance in [~~this state~~] New Mexico, the credit permitted by
23 [~~Paragraph~~] Paragraphs (3) and (4) of this subsection shall not
24 be allowed unless the assuming insurer agrees in the
25 reinsurance agreements:

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1 (a) that in the event of the failure of
2 the assuming insurer to perform its obligations under the terms
3 of the reinsurance agreement, the assuming insurer, at the
4 request of the ceding insurer, shall submit to the jurisdiction
5 of any court of competent jurisdiction in any state of the
6 United States, will comply with all requirements necessary to
7 give such court jurisdiction and will abide by the final
8 decision of such court or of any appellate court in the event
9 of an appeal; and

10 (b) to designate the superintendent or a
11 designated attorney as its true and lawful attorney upon whom
12 may be served any lawful process in any action, suit or
13 proceeding instituted by or on behalf of the ceding company.
14 This provision is not intended to conflict with or override the
15 obligation of the parties to a reinsurance agreement to
16 arbitrate their disputes, if such an obligation is created in
17 the agreement.

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

23 (a) notwithstanding any other provision
24 in the trust, if the trust is inadequate because it contains an
25 amount less than the amount required by Paragraph (4) of this

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1 subsection, or if the grantor of the trust has been declared
2 insolvent or placed into receivership, rehabilitation,
3 liquidation or similar proceeding pursuant to the laws of its
4 state or country of domicile, the trustee shall comply with an
5 order of either the superintendent or the insurance supervisory
6 official with regulatory oversight over the trust or of a court
7 of competent jurisdiction directing the trustee to transfer to
8 the superintendent or the insurance supervisory official with
9 regulatory oversight all of the assets of the trust fund;

10 (b) in accordance with the laws of the
11 state in which the trust is domiciled that apply to the
12 liquidation of domestic insurance companies, claims are filed
13 with the superintendent or the insurance supervisory official
14 with regulatory oversight, who will value the claim and
15 distribute the assets;

16 (c) if the superintendent or the
17 insurance supervisory official with regulatory oversight
18 determines that the assets of the trust fund or any part of the
19 trust fund are not necessary to satisfy the claims of the
20 United States ceding insurers of the grantor of the trust, the
21 assets or a part thereof will be returned by the superintendent
22 or the insurance supervisory official with regulatory oversight
23 to the trustee for distribution in accordance with the trust;
24 and

25 (d) the grantor will waive any right

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1 otherwise available to it pursuant to federal law that is
2 inconsistent with the provisions of this paragraph.

3 (9) If an accredited or certified reinsurer
4 ceases to meet the requirements for accreditation or
5 certification, the superintendent may suspend or revoke the
6 reinsurer's accreditation or certification.

7 (a) The superintendent shall give the
8 reinsurer notice and the opportunity for a hearing. The
9 suspension or revocation shall not take effect until after the
10 superintendent delivers an order on the hearing, unless: 1)
11 the reinsurer waives its right to a hearing; 2) the
12 superintendent's order is based on regulatory action by the
13 reinsurer's domiciliary jurisdiction or the voluntary surrender
14 or termination of the reinsurer's eligibility to transact
15 insurance or reinsurance business in its domiciliary
16 jurisdiction or in the primary certifying state of the
17 reinsurer pursuant to Subparagraph (f) of Paragraph (5) of this
18 subsection; or 3) the superintendent finds that an emergency
19 requires immediate action and a court of competent jurisdiction
20 has not stayed the superintendent's action.

21 (b) While a reinsurer's accreditation or
22 certification is suspended, no reinsurance contract issued or
23 renewed after the effective date of the suspension shall
24 qualify for credit except to the extent that the reinsurer's
25 obligations pursuant to the contract are secured in accordance

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1 with Subsection C of this section. If a reinsurer's
2 accreditation or certification is revoked, no credit for
3 reinsurance shall be granted after the effective date of the
4 revocation except to the extent that the reinsurer's
5 obligations pursuant to the contract are secured in accordance
6 with either Subparagraph (e) of Paragraph (5) of this
7 subsection or Subsection C of this section.

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

15 (a) reinsurance recoverables from any
16 single assuming insurer or group of affiliated assuming
17 insurers exceed fifty percent of the domestic ceding insurer's
18 last reported surplus to policyholders; or

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

23 (11) A ceding insurer shall attempt to
24 diversify its reinsurance program. Within thirty days after
25 one of the following events, a domestic ceding insurer shall

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1 notify the superintendent of the event and, in the
2 notification, demonstrate that the domestic ceding insurer is
3 safely managing the exposure:

4 (a) ceding to any single assuming
5 insurer or group of affiliated assuming insurers more than
6 twenty percent of the ceding insurer's gross written premium in
7 the prior calendar year; or

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

12 C. An asset or a reduction from liability for the
13 reinsurance ceded by an insurer to an assuming insurer not
14 meeting the requirements of Subsection B of this section shall
15 be allowed in an amount not exceeding the liabilities carried
16 by the ceding insurer and such reduction shall be in the amount
17 of funds held by or on behalf of the ceding insurer, including
18 funds held in trust for the ceding insurer, under a reinsurance
19 contract with such assuming insurer as security for the payment
20 of obligations thereunder, if such security is held in the
21 United States subject to withdrawal solely by, and under the
22 exclusive control of, the ceding insurer; or, in the case of a
23 trust, held in a qualified United States financial institution,
24 as defined in Paragraph (2) of Subsection D of this section.

25 This security may be in the form of:

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1 (1) cash;
2 (2) securities listed by the securities
3 valuation office of the national association of insurance
4 commissioners, including those deemed exempt from filing as
5 defined by the purposes and procedures manual of the securities
6 valuation office, and qualifying as admitted assets;

7 (3) clean, irrevocable, unconditional letters
8 of credit, issued or confirmed by a qualified United States
9 financial institution, as defined in Paragraph (1) of
10 Subsection D of this section, no later than December 31 in
11 respect of the year for which filing is being made, and in the
12 possession of the ceding company on or before the filing date
13 of its annual statement. Letters of credit meeting applicable
14 standards of issuer acceptability as of the dates of their
15 issuance or confirmation shall, notwithstanding the issuing or
16 confirming institution's subsequent failure to meet applicable
17 standards of issuer acceptability, continue to be acceptable as
18 security until their expiration, extension, renewal,
19 modification or amendment, whichever first occurs; or

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

22 D. A "qualified United States financial
23 institution" means:

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

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1 (a) is organized or, in the case of a
2 United States office of a foreign banking organization,
3 licensed under the laws of the United States or any state
4 thereof;

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

8 (c) has been determined by either the
9 superintendent or the securities valuation office of the
10 national association of insurance commissioners to meet such
11 standards of financial condition and standing as are considered
12 necessary and appropriate to regulate the quality of financial
13 institutions whose letters of credit are acceptable to the
14 superintendent; and

15 (2) for purposes of those provisions of this
16 section specifying those institutions that are eligible to act
17 as a fiduciary of a trust, an institution that:

18 (a) is organized or, in the case of a
19 United States branch or agency office of a foreign banking
20 organization, licensed under the laws of the United States or
21 any state thereof and has been granted authority to operate
22 with fiduciary powers; and

23 (b) is regulated, supervised and
24 examined by federal or state authorities having regulatory
25 authority over banks and trust companies.

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1 E. No insurer shall accept reinsurance of risk of
2 any kind of insurance that it is not authorized to transact
3 directly in [~~this state~~] New Mexico, if an authorized insurer,
4 or in another state if the insurer does not hold a certificate
5 of authority in [~~this state~~] New Mexico.

6 F. Upon the superintendent's request, an insurer
7 shall furnish the superintendent with copies of its reinsurance
8 treaties then in effect and promptly inform the superintendent
9 in writing of cancellation or other material change in its
10 reinsurance treaties or arrangements.

11 G. No person shall have any rights against the
12 reinsurer [~~which~~] that are not expressly stated in the
13 reinsurance contract or in a written agreement between such
14 person and the reinsurer.

15 H. This section does not apply to wet marine and
16 transportation insurance."

17 **SECTION 16.** A new Section 59A-8A-1 NMSA 1978 is enacted
18 to read:

19 "59A-8A-1. [NEW MATERIAL] SHORT TITLE.--Chapter 59A,
20 Article 8A NMSA 1978 may be cited as the "Standard Valuation
21 Law"."

22 **SECTION 17.** A new Section 59A-8A-2 NMSA 1978 is enacted
23 to read:

24 "59A-8A-2. [NEW MATERIAL] DEFINITIONS.--As used in the
25 Standard Valuation Law:

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1 A. "accident and health insurance" means a policy
2 that reflects morbidity risk and provides protection against
3 economic loss resulting from an accident, a sickness or a
4 medical condition and includes policies identified by the
5 valuation manual as accident and health insurance;

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

9 C. "company" means an entity that has written,
10 issued or reinsured life insurance contracts, accident and
11 health insurance contracts or deposit-type contracts in New
12 Mexico and has at least one contract for a life insurance,
13 accident and health insurance or deposit-type policy in force
14 or on claim or an entity that has written, issued or reinsured
15 life insurance contracts, accident and health insurance
16 contracts or deposit-type contracts in any state and is
17 required to hold a certificate of authority to write life
18 insurance, accident and health insurance or deposit-type
19 contracts in New Mexico;

20 D. "deposit-type contract" means a contract that
21 does not reflect mortality or morbidity risks and includes
22 contracts identified by the valuation manual as deposit-type
23 contracts;

24 E. "life insurance" means a policy that reflects
25 mortality risk and includes annuity policies, pure endowment

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1 policies and policies identified by the valuation manual as
2 life insurance;

3 F. "operative date of the valuation manual" means
4 the January 1 of the first calendar year following the first
5 July 1 after which the following have occurred:

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

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

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

23 (a) the fifty states of the United
24 States;

25 (b) American Samoa;

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1 (c) the Virgin Islands of the United
2 States;

3 (d) the District of Columbia;

4 (e) Guam; and

5 (f) Puerto Rico;

6 G. "policyholder behavior" means an action that a
7 policyholder, a contract holder or a person who has the right
8 to elect options, such as a certificate holder, may take
9 pursuant to a policy or contract that is subject to the
10 Standard Valuation Law and, if allowed pursuant to the policy
11 or contract, includes lapses, withdrawals, transfers, deposits,
12 premium payments, loans and annuitization and benefit
13 elections, but excludes events of mortality or morbidity that
14 result in benefits prescribed in their essential aspects by the
15 terms of the policy or contract;

16 H. "principle-based valuation" means a reserve
17 valuation that uses one or more methods or one or more
18 assumptions determined by the insurer and that is required to
19 comply with Section 59A-8A-9 NMSA 1978;

20 I. "qualified actuary" means an individual who,
21 according to the applicable qualification standards of the
22 American academy of actuaries, is qualified to sign the
23 applicable statement of actuarial opinion and who meets the
24 applicable requirements indicated by the valuation manual;

25 J. "tail risk" means a risk that occurs either when

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1 the frequency of low-probability events is higher than expected
2 under a normal probability distribution or when events of very
3 significant magnitude are observed; and

4 K. "valuation manual" means the most recent version
5 of the manual of valuation instructions adopted by the national
6 association of insurance commissioners."

7 SECTION 18. Section 59A-8-6 NMSA 1978 (being Laws 1984,
8 Chapter 127, Section 123, as amended) is recompiled as Section
9 59A-8A-3 NMSA 1978 and is amended to read:

10 "59A-8A-3. ~~[ANNUAL]~~ RESERVE VALUATION ~~[RESERVES]~~.--

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

13 (1) the superintendent shall annually value,
14 or cause to be valued, the reserve liabilities (hereinafter
15 called reserves) for all outstanding life insurance policies
16 and annuity and pure endowment contracts of every life insurer
17 authorized to do business in ~~[this state, except that as to an~~
18 ~~alien insurer the valuation shall be limited to its United~~
19 ~~States business. The superintendent may certify the amount of~~
20 ~~any such reserves, specifying the mortality table or tables,~~
21 ~~rate or rates of interest and methods (net level premium method~~
22 ~~or other) used in calculation of such reserves.~~

23 B.] New Mexico and that are issued on or after the
24 operative date of Section 59A-20-31 NMSA 1978. In calculating
25 such reserves the superintendent may use group methods and

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1 approximate averages for fractions of a year or otherwise. In
2 lieu of valuation of reserves herein required of a foreign or
3 alien insurer, the superintendent may accept any valuation
4 made, or caused to be made, by the insurance supervisory
5 official of any state or other jurisdiction when such valuation
6 complies with the minimum standard [herein] provided [and if
7 ~~the official of such state or jurisdiction accepts as~~
8 ~~sufficient and valid for all legal purposes the certificate of~~
9 ~~valuation of the superintendent when such certificate states~~
10 ~~the valuation to have been made in a specified manner according~~
11 ~~to which the aggregate reserves would be at least as large as~~
12 ~~if they had been computed in the manner prescribed by the law~~
13 ~~of that state or jurisdiction~~

14 G. ~~The insurer may increase the standards of~~
15 ~~mortality in particular cases of invalid lives and other extra~~
16 ~~hazards.~~

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

24 (2) the provisions of Sections 59A-8A-6 and
25 59A-8A-7 NMSA 1978 apply, as appropriate, to a policy or

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1 contract that is subject to the provisions of the Standard
2 Valuation Law and that is issued on or after the operative date
3 of Section 59A-20-31 NMSA 1978 but prior to the operative date
4 of the valuation manual. The provisions of Sections 59A-8A-8
5 and 59A-8A-9 NMSA 1978 do not apply to a policy or contract
6 that is subject to the provisions of the Standard Valuation Law
7 and that is issued on or after the operative date of Section
8 59A-20-31 NMSA 1978 but prior to the operative date of the
9 valuation manual; and

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

14 B. For a policy or contract that is issued on or
15 after the operative date of the valuation manual:

16 (1) the superintendent shall annually value,
17 or cause to be valued, the reserve liabilities, hereinafter
18 called reserves, of all outstanding life insurance, annuity and
19 pure endowment, accident and health and deposit-type contracts
20 of a life insurer authorized to do business in New Mexico that
21 are issued on or after the operative date of the valuation
22 manual. In the case of a foreign or alien insurer, the
23 superintendent may, in the alternative, accept a valuation
24 made, or caused to be made, by the insurance supervisory
25 official of a state or other jurisdiction if that valuation

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1 complies with the minimum standard provided in the Standard
2 Valuation Law; and

3 (2) the provisions of Sections 59A-8A-8 and
4 59A-8A-9 NMSA 1978 apply to all policies and contracts issued
5 on or after the operative date of the valuation manual.

6 ~~E.]~~ C. In no event shall the aggregate reserves for
7 all [~~policies~~] policies, contracts and benefits be less than the
8 aggregate reserves determined by the qualified actuary to be
9 necessary to render the opinion required by Section [~~59A-8-7~~]
10 59A-8A-4 NMSA 1978."

11 SECTION 19. Section 59A-8-7 NMSA 1978 (being Laws 1993,
12 Chapter 320, Section 22) is recompiled as Section 59A-8A-4 NMSA
13 1978 and is amended to read:

14 "59A-8A-4. ACTUARIAL OPINION OF RESERVES ISSUED PRIOR TO
15 OPERATIVE DATE OF VALUATION MANUAL.--

16 A. This section [~~shall become operative on January~~
17 ~~1, 1995 for calendar years 1994 and thereafter~~] applies to
18 actuarial opinions issued prior to the operative date of the
19 valuation manual.

20 B. Every life insurer doing business in [~~this~~
21 ~~state~~] New Mexico shall annually submit the opinion of a
22 qualified actuary as to whether the reserves and related
23 actuarial items held in support of the policies and contracts
24 specified by the superintendent by regulation are computed
25 appropriately, are based on assumptions [~~which~~] that satisfy

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1 contractual provisions, are consistent with prior reported
2 amounts and comply with applicable laws of [~~this state~~] New
3 Mexico. The superintendent by regulation shall define the
4 specifics of this opinion and add any other items deemed to be
5 necessary to its scope.

6 C. Every life insurer, except as exempted by or
7 pursuant to regulation, shall also annually include in the
8 opinion required by Subsection B of this section, an opinion of
9 the same qualified actuary as to whether the reserves and
10 related actuarial items held in support of the policies and
11 contracts specified by the superintendent by regulation, when
12 considered in light of the assets held by the insurer with
13 respect to the reserves and related actuarial items, including
14 but not limited to the investment earnings on the assets and
15 the considerations anticipated to be received and retained
16 under the policies and contracts, make adequate provision for
17 the insurer's obligations under the policies and contracts,
18 including but not limited to the benefits under and expenses
19 associated with the policies and contracts. The superintendent
20 may provide by regulation for a transition period for
21 establishing any higher reserves [~~which~~] that the qualified
22 actuary may deem necessary in order to render the opinion
23 required by this section.

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

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

4 (2) if the insurer fails to provide a
5 supporting memorandum at the request of the superintendent
6 within a period specified by rule or if the superintendent
7 determines that the supporting memorandum provided by the
8 insurer fails to meet the standards prescribed by the
9 regulations or is otherwise unacceptable to the superintendent,
10 the superintendent may engage a qualified actuary at the
11 expense of the insurer to review the opinion and the basis for
12 the opinion and prepare such supporting memorandum as is
13 required by the superintendent.

14 E. Every opinion required by this section shall be
15 governed by the following provisions:

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

19 (2) the opinion shall apply to all business in
20 force, including individual and group health insurance plans in
21 form and substance acceptable to the superintendent as
22 specified by regulation;

23 (3) the opinion shall be based on standards
24 adopted from time to time by the actuarial standards board and
25 on such additional standards as the superintendent may by

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1 regulation prescribe;

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

8 (5) for the purposes of this section,
9 "qualified actuary" means a member in good standing of the
10 American academy of actuaries who meets the requirements set
11 forth in such regulations;

12 (6) except in cases of fraud or willful
13 misconduct, the qualified actuary shall not be liable for
14 damages to any person, other than the insurer and the
15 superintendent, for any act, error, omission, decision or
16 conduct with respect to the actuary's opinion;

17 (7) disciplinary action by the superintendent
18 against the insurer or the qualified actuary shall be defined
19 in regulations by the superintendent; [~~and~~]

20 (8) except as provided in Paragraph (12) of
21 this subsection, the documents, materials and other information
22 that constitute a memorandum in support of the opinion and that
23 are in the possession or control of the office of
24 superintendent of insurance, and other materials provided by
25 the company to the superintendent in connection with the

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1 memorandum, are confidential and privileged, not subject to the
2 Inspection of Public Records Act, not subject to subpoena and,
3 in a private civil action, not subject to discovery or
4 admissible in evidence; but the superintendent may use the
5 documents, materials or other information in the furtherance of
6 a regulatory or legal action brought in the course of the
7 superintendent's official duties;

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

14 (10) to assist in the performance of the
15 superintendent's duties, the superintendent may:

16 (a) if the recipient agrees to maintain
17 the confidentiality and privilege of the document, material or
18 other information, share documents, materials or other
19 information, including the confidential and privileged
20 documents of a state, federal or international regulatory
21 agency, with the national association of insurance
22 commissioners, its affiliates or its subsidiaries and with
23 state, federal and international law enforcement authorities;

24 (b) receive documents, materials or
25 information, including that which is otherwise confidential and

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1 privileged, from the national association of insurance
2 commissioners, its affiliates or its subsidiaries and from
3 regulatory and law enforcement officials of other foreign or
4 domestic jurisdictions if the superintendent maintains as
5 confidential or privileged a document, material or other
6 information received with notice or the understanding that the
7 content is confidential or privileged pursuant to the laws of
8 the jurisdiction from which the information originates; and

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

12 (11) a disclosure to or a sharing by the
13 superintendent pursuant to this section does not constitute a
14 waiver of an applicable privilege or claim of confidentiality
15 in the documents, materials or information; and

16 [~~(8) any~~] (12) a memorandum in support of the
17 opinion and any other material provided by the insurer to the
18 superintendent in connection therewith [~~shall be kept~~
19 confidential by the superintendent and shall not be made public
20 and shall not] may be subject to subpoena [~~other than~~] for the
21 purpose of defending an action seeking damages from [~~any~~
22 person] the actuary by reason of any action required by this
23 section or by regulations promulgated hereunder; provided,
24 however, that the memorandum or other material may otherwise be
25 released by the superintendent, with the written consent of the

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1 insurer, or to the American academy of actuaries upon request
2 stating that the memorandum or other material is required for
3 the purpose of professional disciplinary proceedings and
4 setting forth procedures satisfactory to the superintendent for
5 preserving the confidentiality of the memorandum or other
6 material. Once any portion of the confidential memorandum is
7 cited by the insurer in its marketing or is cited before any
8 governmental agency other than a state insurance department or
9 is released by the insurer to the news media, all portions of
10 the confidential memorandum shall be no longer confidential."

11 SECTION 20. A new Section 59A-8A-5 NMSA 1978 is enacted
12 to read:

13 "59A-8A-5. [NEW MATERIAL] ACTUARIAL OPINION OF RESERVES
14 ISSUED AFTER OPERATIVE DATE OF VALUATION MANUAL.--

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

17 B. A company with outstanding life insurance,
18 accident and health insurance or deposit-type contracts in New
19 Mexico and that is subject to regulation by the superintendent
20 shall annually submit the opinion of the appointed actuary on
21 whether the reserves and related actuarial items held in
22 support of the policies and contracts are computed
23 appropriately, based on assumptions that satisfy contractual
24 provisions, consistent with prior reported amounts and comply
25 with the laws of New Mexico. The opinion shall comport with

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1 related provisions of the valuation manual.

2 C. Except as excluded by the provisions of the
3 valuation manual, a company with outstanding life insurance,
4 accident and health insurance or deposit-type contracts in New
5 Mexico and that is subject to regulation by the superintendent
6 shall include in the opinion required by Subsection B of this
7 section an assessment of whether, when considering the assets
8 held by the company with respect to the reserves and related
9 actuarial items, including the investment earnings on the
10 assets and the anticipated considerations to be received and
11 retained pursuant to the policies and contracts, the reserves
12 and related actuarial items that are held in support of the
13 policies and contracts that are specified in the valuation
14 manual make adequate provision for the company's obligations
15 pursuant to the policies and contracts, including the benefits
16 pursuant to and expenses associated with the policies and
17 contracts.

18 D. An opinion required by Subsection B of this
19 section shall be accompanied by a memorandum of support, whose
20 form and substance comply with the provisions of the valuation
21 manual and are acceptable to the superintendent. If, within a
22 period of time specified by the provisions of the valuation
23 manual and upon the request of the superintendent, an insurance
24 company fails to provide a memorandum of support, the
25 superintendent may engage, at the insurance company's expense,

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1 a qualified actuary to review the opinion and the basis for it
2 and prepare a memorandum of support. If the superintendent
3 determines that an insurance company's memorandum of support
4 fails to meet the standards provided in the valuation manual or
5 is otherwise unacceptable, the superintendent may engage the
6 services of a qualified actuary to review the opinion and the
7 basis for it and prepare a memorandum of support.

8 E. An opinion required by this section shall:

9 (1) conform in form and substance to the
10 provisions of the valuation manual and be acceptable to the
11 superintendent;

12 (2) accompany an annual statement that
13 indicates the valuation of reserve liabilities for each year
14 ending on or after the operative date of the valuation manual;

15 (3) apply to all policies and contracts
16 subject to Subsection B of this section and other actuarial
17 liabilities specified by the provisions of the valuation
18 manual; and

19 (4) meet the standards adopted by the
20 actuarial standards board or its successor and the relevant
21 standards provided in the valuation manual.

22 F. In the case of a foreign or alien company, the
23 superintendent may accept, instead of an opinion filed pursuant
24 to Subsection B of this section, an opinion filed by the
25 company with the insurance supervisory official of another

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1 state if the superintendent determines that the opinion
2 reasonably meets the requirements applicable to a company
3 domiciled in New Mexico.

4 G. Except in cases of fraud or willful misconduct,
5 an appointed actuary is not liable for damages to a person,
6 except the insurance company that appointed the actuary or the
7 superintendent, resulting from an act, error, omission,
8 decision or conduct related to the appointed actuary's opinion.

9 H. Disciplinary action by the superintendent
10 against a company or its appointed actuary shall be defined by
11 rules promulgated by the superintendent."

12 SECTION 21. Section 59A-8-5 NMSA 1978 (being Laws 1984,
13 Chapter 127, Section 122, as amended) is recompiled as Section
14 59A-8A-6 NMSA 1978 and is amended to read:

15 "59A-8A-6. [~~STANDARD VALUATION LAW, LIFE INSURANCE AND~~
16 ~~ANNUITIES]~~ RULE-BASED RESERVE VALUATION METHODS.--

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

20 The legal minimum standard for valuation of life insurance
21 contracts issued before the first day of January 1926 shall be
22 the method and basis of valuation heretofore applied by the
23 insurer in the valuation of such contracts, and for life
24 insurance contracts issued on or after this date shall be the
25 American experience table of mortality, with interest at the

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1 rate of three and one-half percent a year; or any other basis
2 not producing a lower net value; provided, however, that the
3 insurer may provide for not more than one-year preliminary term
4 insurance by incorporating in the contracts a clause plainly
5 showing that the first year's insurance under such policies is
6 term insurance.

7 Except as otherwise provided in Paragraphs (2), (3), (4)
8 and (5) of Subsection B of this section and in Subsections C, D
9 and E of this section for group annuity and pure endowment
10 contracts, the legal minimum standard for the valuation of
11 annuities shall be the American experience table of mortality,
12 with interest at the rate of five percent a year for group
13 annuity and pure endowment contracts and four percent a year
14 for other annuities.

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

22 (1) Except as otherwise provided in Paragraphs
23 (2), (3), (4) and (5) of this subsection and Subsections C, D
24 and E of this section, the minimum standard for the valuation
25 of all such policies and contracts shall be the commissioners

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1 reserve valuation methods defined in Paragraphs (1) and (2) of
2 Subsection E of this section, five percent interest for group
3 annuity and pure endowment contracts and three and one-half
4 percent interest for all other such policies and contracts, or
5 in the case of life insurance policies and contracts, other
6 than annuity and pure endowment contracts, issued on or after
7 July 1, 1973, four percent interest for such policies issued
8 prior to July 1, 1977, five and one-half percent interest for
9 single premium life insurance policies and four and one-half
10 percent interest for all other such policies issued on or after
11 July 1, 1977, and the following tables:

12 (a) for ~~[all]~~ ordinary policies of life
13 insurance issued on the standard basis, excluding any
14 disability and accidental death benefits in such policies, the
15 commissioners 1941 standard ordinary mortality table for such
16 policies issued prior to the operative date of Paragraph (1) of
17 Subsection D of Section 59A-20-31 NMSA 1978 and the
18 commissioners 1958 standard ordinary mortality table for such
19 policies issued on or after the operative date of Paragraph (1)
20 of Subsection D of Section 59A-20-31 NMSA 1978 and prior to the
21 operative date of Subsection F of Section 59A-20-31 NMSA 1978,
22 provided that for any category of such policies issued on
23 female risks, all modified net premiums and present values
24 referred to in Subsections B, C, D and E of this section may be
25 calculated according to an age not more than six years younger

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1 than the actual age of the insured; and for such policies
2 issued on or after the operative date of Subsection F of
3 Section 59A-20-31 NMSA 1978: 1) the commissioners 1980
4 standard ordinary mortality table; or 2) at the election of the
5 insurer for any one or more specified plans of life insurance,
6 the commissioners 1980 standard ordinary mortality table with
7 ten-year select mortality factors; or 3) any ordinary mortality
8 table, adopted after 1980 by the national association of
9 insurance commissioners, that is approved by regulation
10 promulgated by the superintendent for use in determining the
11 minimum standard of valuation for such policies;

12 (b) for ~~[all]~~ industrial life insurance
13 policies issued on the standard basis, excluding any disability
14 and accidental death benefits in such policies, the 1941
15 standard industrial mortality table for such policies issued
16 prior to the operative date of Subsection E of Section
17 59A-20-31 NMSA 1978, and for such policies issued on or after
18 such operative date, the commissioners 1961 standard industrial
19 mortality table or any industrial mortality table, adopted
20 after 1980 by the national association of insurance
21 commissioners, that is approved by regulation promulgated by
22 the superintendent for use in determining the minimum standard
23 of valuation for such policies;

24 (c) for individual annuity and pure
25 endowment contracts, excluding any disability and accidental

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1 death benefits in such policies, the 1937 standard annuity
2 mortality table or, at the option of the insurer, the annuity
3 mortality table for 1949, ultimate, or any modification of
4 either of these tables approved by the superintendent;

5 (d) for group annuity and pure endowment
6 contracts, excluding any disability and accidental death
7 benefits in such policies, the group annuity mortality table
8 for 1951, any modification of such table approved by the
9 superintendent, or, at the option of the insurer, any of the
10 tables or modifications of tables specified for individual
11 annuity and pure endowment contracts;

12 (e) for total and permanent disability
13 benefits in or supplementary to ordinary policies or contracts:
14 1) for policies or contracts issued on or after January 1,
15 1966, the tables of period 2 disablement rates and the 1930 to
16 1950 termination rates of the 1952 disability study of the
17 society of actuaries, with due regard to the type of benefit or
18 any tables of disablement rates and termination rates, adopted
19 after 1980 by the national association of insurance
20 commissioners, that are approved by regulation promulgated by
21 the superintendent for use in determining the minimum standard
22 of valuation for such policies; 2) for policies or contracts
23 issued on or after January 1, 1961 and prior to January 1,
24 1966, either such tables or, at the option of the insurer, the
25 class (3) disability table (1926); and 3) for policies issued

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1 prior to January 1, 1961, the class (3) disability table
2 (1926). Any such table shall, for active lives, be combined
3 with a mortality table permitted for calculating the reserves
4 for life insurance policies;

5 (f) for accidental death benefits in or
6 supplementary to policies: 1) for policies issued on or after
7 January 1, 1966, the 1959 accidental death benefits table or
8 any accidental death benefits table, adopted after 1980 by the
9 national association of insurance commissioners, that is
10 approved by regulation promulgated by the superintendent for
11 use in determining the minimum standard of valuation for such
12 policies; 2) for policies issued on or after January 1, 1961
13 and prior to January 1, 1966, either such table or, at the
14 option of the insurer, the intercompany double indemnity
15 mortality table; and 3) for policies issued prior to January 1,
16 1961, the intercompany double indemnity mortality table. 4)

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

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

22 (2) Except as provided in Paragraphs (3), (4)
23 and (5) of this subsection and in Subsections C, D and E of
24 this section, the minimum standard [~~for the~~] of valuation [~~of~~
25 ~~all~~] for individual annuity and pure endowment contracts issued

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1 on or after the operative date of this paragraph, as defined
2 herein, and for all annuities and pure endowments purchased on
3 or after such operative date under group annuity and pure
4 endowment contracts, shall be the commissioners reserve
5 valuation methods defined in Paragraphs (1) and (2) of
6 Subsection E of this section and the following tables and
7 interest rates:

8 (a) for individual annuity and pure
9 endowment contracts issued prior to July 1, 1977, excluding any
10 disability and accidental death benefits in such contracts, the
11 1971 individual annuity mortality table, or any modification of
12 this table approved by the superintendent, and six percent
13 interest for single premium immediate annuity contracts, and
14 four percent interest for all other individual annuity and pure
15 endowment contracts;

16 (b) for individual single premium
17 immediate annuity contracts issued on or after July 1, 1977,
18 excluding any disability and accidental death benefits in such
19 contracts, the 1971 individual annuity mortality table, or any
20 individual annuity mortality 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 contracts, or any modification of these tables approved by the
25 superintendent, and seven and one-half percent interest;

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

15 (d) for [~~all~~] annuities and pure
16 endowments purchased prior to July 1, 1977, under group annuity
17 and pure endowment contracts, excluding any disability and
18 accidental death benefits purchased under such contracts, the
19 1971 group annuity mortality table, or any modification of this
20 table approved by the superintendent, and six percent interest;
21 and

22 (e) for [~~all~~] annuities and pure
23 endowments purchased on or after July 1, 1977, under group
24 annuity and pure endowment contracts, excluding any disability
25 and accidental death benefits purchased under such contracts,

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1 the 1971 group annuity mortality table, or any group annuity
2 mortality table, adopted after 1980 by the national association
3 of insurance commissioners, that is approved by regulation
4 promulgated by the superintendent for use in determining the
5 minimum standard of valuation for such annuities and pure
6 endowments, or any modification of this table approved by the
7 superintendent, and seven and one-half percent interest.

8 (f) After July 1, 1973, any insurer may
9 file with the superintendent a written notice of its election
10 to comply with the provisions of this paragraph after a
11 specified date before January 1, 1979, which shall be the
12 operative date of this paragraph for such insurer, provided
13 that an insurer may elect a different operative date for
14 individual annuity and pure endowment contracts from that
15 elected for group annuity and pure endowment contracts. If an
16 insurer makes no such election, the operative date of this
17 paragraph for such insurer shall be January 1, 1979.

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

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

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

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1 (c) [~~all~~] annuities and pure endowments
2 purchased in a particular calendar year on or after January 1,
3 1982 under group annuity and pure endowment contracts; and

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

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

12 (a) for life insurance,

$$13 I = .03 + W (R_1 - .03) + W/2 (R_2 - .09);$$

14 (b) for single premium immediate
15 annuities and for annuity benefits involving life contingencies
16 arising from other annuities with cash settlement options and
17 [~~for~~] from guaranteed interest contracts with cash settlement
18 options,

$$19 I = .03 + W (R - .03)$$

20 where R_1 is the lesser of R and $.09$, R_2 is the greater of R and
21 $.09$, R is the reference interest rate defined in Subsection D
22 of this section, and W is the weighting factor defined in
23 Subsection C of this section;

24 (c) for other annuities with cash
25 settlement options and guaranteed interest contracts with cash

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1 settlement options, valued on an issue year basis, except as
2 stated in Subparagraph (b) of this paragraph, the formula for
3 life insurance stated in Subparagraph (a) of this paragraph
4 shall apply to annuities and guaranteed interest contracts with
5 guarantee durations in excess of ten years and the formula for
6 single premium immediate annuities stated in Subparagraph (b)
7 of this paragraph shall apply to annuities and guaranteed
8 interest contracts with guarantee duration of ten years or
9 less;

10 (d) for other annuities with no cash
11 settlement options and for guaranteed interest contracts with
12 no cash settlement options, the formula for single premium
13 immediate annuities stated in Subparagraph (b) of this
14 paragraph shall apply; and

15 (e) for other annuities with cash
16 settlement options and guaranteed interest contracts with cash
17 settlement options, valued on a change in fund basis, the
18 formula for single premium immediate annuities stated in
19 Subparagraph (b) of this paragraph shall apply.

20 (5) However, if the calendar year statutory
21 valuation interest rate for any life insurance policies issued
22 in any calendar year determined without reference to this
23 sentence differs from the corresponding actual rate for similar
24 policies issued in the immediately preceding calendar year by
25 less than one-half of one percent, the calendar year statutory

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1 valuation interest rate for such life insurance policies shall
2 be equal to the corresponding actual rate for the immediately
3 preceding calendar year. For purposes of applying the
4 immediately preceding sentence, the calendar year statutory
5 valuation interest rate for life insurance policies issued in a
6 calendar year shall be determined for 1980 (using the reference
7 interest rate defined for 1979) and shall be determined for
8 each subsequent calendar year regardless of when Subsection F
9 of Section 59A-20-31 NMSA 1978 becomes operative.

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

12 (1) Weighting Factors for Life Insurance:

13 Guarantee	
14 Duration	Weighting
15 <u>(Years)</u>	<u>Factors</u>
16 10 or less	.50
17 More than 10, but not more	
18 than 20	.45
19 More than 20	.35

20 For life insurance, the guarantee duration is the maximum
21 number of years the life insurance can remain in force on a
22 basis guaranteed in the policy or under options to convert to
23 plans of life insurance with premium rates or nonforfeiture
24 values or both [~~which~~] that are guaranteed in the original
25 policy;

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1 (2) Weighting factor for single premium
2 immediate annuities and for annuity benefits involving life
3 contingencies arising from other annuities with cash settlement
4 options and guaranteed interest contracts with cash settlement
5 options:

6 .80

7 (3) Weighting factors for other annuities and
8 for guaranteed interest contracts, except as stated in
9 Paragraph (2) of this subsection, shall be as specified in the
10 tables set forth in Subparagraphs (a), (b) and (c) of this
11 paragraph, according to the rules and definitions set forth in
12 Subparagraphs (d), (e) and (f) of this paragraph:

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

15 Guarantee	16 Weighting Factor		
17 <u>(Years)</u>	18 for Plan Type		
	<u>A</u>	<u>B</u>	<u>C</u>
19 5 or less:	.80	.60	.50
20 More than 5, but not more			
21 than 10:	.75	.60	.50
22 More than 10, but not more			
23 than 20:	.65	.50	.45
24 More than 20:	.45	.35	.35

25 (b) For annuities and guaranteed
interest contracts valued on a change in fund basis, the

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1 factors shown in the table set forth in Subparagraph (a) of
2 this paragraph increased by:

3 Plan Type
4 A B C
5 .15 .25 .05

6 (c) For annuities and guaranteed
7 interest contracts valued on an issue year basis (other than
8 those with no cash settlement options) ~~which~~ that do not
9 guarantee interest on considerations received more than one
10 year after issue or purchase and for annuities and guaranteed
11 interest contracts valued on a change in fund basis ~~which~~
12 that do not guarantee interest rates on considerations received
13 more than twelve months beyond the valuation date, the factors
14 shown in the table set forth in Subparagraph (a) of this
15 paragraph or derived as required in the table set forth in
16 Subparagraph (b) of this paragraph increased by:

17 Plan Type
18 A B C
19 .05 .05 .05

20 (d) For other annuities with cash
21 settlement options and guaranteed interest contracts with cash
22 settlement options, the guarantee duration is the number of
23 years for which the contract guarantees interest rates in
24 excess of the calendar year statutory valuation interest rate
25 for life insurance policies with guarantee duration in excess

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1 of twenty years. For other annuities with no cash settlement
2 options and for guaranteed interest contracts with no cash
3 settlement options, the guarantee duration is the number of
4 years from the date of issue or date of purchase to the date
5 annuity benefits are scheduled to commence.

6 (e) Plan type as used in the above
7 tables is defined as follows:

8 Plan Type A: At any time
9 policyholder may withdraw funds only: with an adjustment to
10 reflect changes in interest rates or asset values since receipt
11 of the funds by the insurer; or without such adjustment but in
12 installments over five years or more; or as an immediate life
13 annuity; or no withdrawal permitted.

14 Plan Type B: Before expiration of
15 the interest rate guarantee, policyholder may withdraw funds
16 only: with an adjustment to reflect changes in interest rates
17 or asset values since receipt of the funds by the insurer; or
18 without such adjustment but in installments over five years or
19 more; or no withdrawal permitted. At the end of interest rate
20 guarantee, funds may be withdrawn without such adjustment in a
21 single sum or installments over less than five years.

22 Plan Type C: Policyholder may
23 withdraw funds before expiration of interest rate guarantee in
24 a single sum or installments over less than five years either:
25 without adjustment to reflect changes in interest rates or

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1 asset values since receipt of the funds by the insurer; or
2 subject only to a fixed surrender charge stipulated in the
3 contract as a percentage of the fund.

4 (f) An insurer may elect to value
5 guaranteed interest contracts with cash settlement options and
6 annuities with cash settlement options on either an issue year
7 basis or on a change in fund basis. Guaranteed interest
8 contracts with no cash settlement options and other annuities
9 with no cash settlement options must be valued on an issue year
10 basis. As used in Subsections B, C and D of this section, an
11 issue year basis of valuation refers to a valuation basis under
12 which the interest rate used to determine the minimum valuation
13 standard for the entire duration of the annuity or guaranteed
14 interest contract is the calendar year valuation interest rate
15 for the year of issue or year of purchase of the annuity or
16 guaranteed interest contract, and the change in fund basis of
17 valuation refers to a valuation basis under which the interest
18 rate used to determine the minimum valuation standard
19 applicable to each change in the fund held under the annuity or
20 guaranteed interest contract is the calendar year valuation
21 interest rate for the year of the change in the fund.

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

25 (1) for ~~[all]~~ life insurance, the lesser of

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

6 (2) for single premium immediate annuities and
7 for annuity benefits involving life contingencies arising from
8 other annuities with cash settlement options and guaranteed
9 interest contracts with cash settlement options, the average
10 over a period of twelve months, ending on June 30 of the
11 calendar year of issue or year of purchase, of the monthly
12 average of the composite yield on seasoned corporate bonds, as
13 published by Moody's investors service, incorporated;

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

24 (4) for other annuities with cash settlement
25 options and guaranteed interest contracts with cash settlement

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1 options, valued on a year of issue basis, except as stated in
2 Paragraph (2) of this subsection, with guarantee duration of
3 ten years or less, the average over a period of twelve months,
4 ending on June 30 of the calendar year of issue or purchase, of
5 the monthly average of the composite yield on seasoned
6 corporate bonds, as published by Moody's investors service,
7 incorporated;

8 (5) for other annuities with no cash
9 settlement options and for guaranteed interest contracts with
10 no cash settlement options, 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 (6) for other annuities with cash settlement
16 options and guaranteed interest contracts with cash settlement
17 options, valued on a change in fund basis, except as stated in
18 Paragraph (2) of this subsection, the average over a period of
19 twelve months, ending on June 30 of the calendar year of the
20 change in the fund, of the monthly average of the composite
21 yield on seasoned corporate bonds, as published by Moody's
22 investors service, incorporated; and

23 (7) in the event that the national association
24 of insurance commissioners determines that the monthly average
25 of the composite yield on seasoned corporate bonds, as

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1 published by Moody's investors service, incorporated, is no
2 longer appropriate for the determination of the reference
3 interest rate, then an alternative method for determination of
4 the reference interest rate [~~which~~] that is adopted by the
5 national association of insurance commissioners and approved by
6 regulation promulgated by the superintendent may be
7 substituted.

8 E. The reserve valuation method shall be defined as
9 follows:

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

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1 paragraph, as follows:

2 (a) a net level annual premium equal to
3 the present value, at the date of issue, of such benefits
4 provided for after the first policy year, divided by the
5 present value, at the date of issue, of an annuity of one per
6 annum payable on the first and each subsequent anniversary of
7 such policy on which a premium falls due; provided, however,
8 that such net level annual premium shall not exceed the net
9 level annual premium on the nineteen-year premium whole life
10 plan for insurance of the same amount at an age of one year
11 higher than the age at issue of such policy; and

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

14 Provided that for any life insurance policy issued on or
15 after January 1, 1985 for which the contract premium in the
16 first policy year exceeds that of the second year and for which
17 no comparable additional benefit is provided in the first year
18 for such excess and ~~which~~ that provides an endowment benefit
19 or a cash surrender value or a combination thereof in an amount
20 greater than such excess premium, the reserve according to the
21 commissioners reserve valuation method as of any policy
22 anniversary occurring on or before the assumed ending date
23 defined herein as the first policy anniversary on which the sum
24 of any endowment benefit and any cash surrender value then
25 available is greater than such excess premium shall, except as

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1 otherwise provided in Subparagraph [~~(e)~~] (f) of this paragraph,
2 be the greater of the reserve as of such policy anniversary
3 calculated as described previously in this paragraph and the
4 reserve as of such policy anniversary calculated as previously
5 described in this paragraph, but with: the value defined in
6 Subparagraph (a) of this paragraph being reduced by fifteen
7 percent of the amount of such excess first year premium; all
8 present values of benefits and premiums being determined
9 without reference to premiums or benefits provided for by the
10 policy after the assumed ending date; the policy being assumed
11 to mature on such date as an endowment; and the cash surrender
12 value provided on such date being considered as an endowment
13 benefit. In making the above comparison the mortality and
14 interest bases stated in Paragraphs (1), (3), (4) and (5) of
15 Subsection B of this section and in Subsections C and D of this
16 section shall be used.

17 Reserves according to the commissioners reserve valuation
18 method for: 1) life insurance policies providing for a varying
19 amount of insurance or requiring the payment of varying
20 premiums; 2) group annuity and pure endowment contracts
21 purchased under a retirement plan or plan of deferred
22 compensation, established or maintained by an employer
23 (including a partnership or sole proprietorship) or by an
24 employee organization, or by both, other than a plan providing
25 individual retirement accounts or individual retirement

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1 annuities under Section 408 of the Internal Revenue Code, as
2 now or hereafter amended; 3) disability and accidental death
3 benefits in all policies and contracts; and 4) all other
4 benefits, except life insurance and endowment benefits in life
5 insurance policies and benefits provided by all other annuity
6 and pure endowment contracts, shall be calculated by a method
7 consistent with the principles of this paragraph [~~except that~~
8 ~~any extra premiums charged because of impairments or special~~
9 ~~hazards shall be disregarded in the determination of modified~~
10 ~~net premiums~~];

11 (c) in no event shall an insurer's
12 aggregate reserves for all life insurance policies, excluding
13 disability and accidental death benefits, be less than the
14 aggregate reserves calculated in accordance with the methods
15 set forth in this paragraph and Paragraph (2) of this
16 subsection and the mortality table or tables and rate or rates
17 of interest used in calculating nonforfeiture benefits for such
18 policies;

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

25 [~~(d)~~] (e) reserves for any category of

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1 policies, contracts or benefits as established by the
2 superintendent that are issued on or after the operative date
3 of Section 59A-20-31 NMSA 1978, may be calculated, at the
4 option of the insurer, according to any standards [~~which~~] that
5 produce greater aggregate reserves for such category than those
6 calculated according to the minimum standard herein provided,
7 but the rate or rates of interest used for policies and
8 contracts, other than annuity and pure endowment contracts,
9 shall not be [~~higher~~] greater than the corresponding rate or
10 rates of interest used in calculating any nonforfeiture
11 benefits provided for [~~therein~~] in the policies or contracts.

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

24 [~~(e)~~] (f) if in any contract year the
25 gross premium charged by any insurer on any policy or contract

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1 is less than the valuation net premium for the policy or
2 contract calculated by the method used in calculating the
3 reserve thereon but using the minimum valuation standards of
4 mortality and rate of interest, the minimum reserve required
5 for such policy or contract shall be the greater of either the
6 reserve calculated according to the mortality table, rate of
7 interest, and method actually used for such policy or contract,
8 or the reserve calculated by the method actually used for such
9 policy or contract but using the minimum standards of mortality
10 and rate of interest and replacing the valuation net premium by
11 the actual gross premium in each contract year for which the
12 valuation net premium exceeds the actual gross premium. The
13 minimum valuation standards of mortality and rate of interest
14 referred to in this paragraph are those standards stated in
15 Paragraphs (1), (3), (4) and (5) of Subsection B of this
16 section.

17 Provided that for any life insurance policy issued on or
18 after January 1, 1985 for which the gross premium in the first
19 policy year exceeds that of the second year and for which no
20 comparable additional benefit is provided in the first year for
21 such excess and ~~[which]~~ that provides an endowment benefit or a
22 cash surrender value or a combination thereof in an amount
23 greater than such excess premium, the foregoing provisions of
24 Subparagraph ~~[(e)]~~ (f) of this paragraph shall be applied as if
25 the method actually used in calculating the reserve for such

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1 policy were the method previously described in this paragraph
2 ignoring the unnumbered paragraph immediately following
3 Subparagraph (b) of this paragraph. The minimum reserve at
4 each policy anniversary of such a policy shall be the greater
5 of the minimum reserve calculated in accordance with the method
6 previously described in this paragraph, including the
7 unnumbered paragraph immediately following Subparagraph (b),
8 and the minimum reserve calculated in accordance with
9 Subparagraph [~~e~~] (f) of this paragraph; and

10 [~~f~~] (g) in the case of any plan of
11 life insurance [~~which~~] that provides for future premium
12 determination, the amounts of which are to be determined by the
13 insurer based on then estimates of future experience, or in the
14 case of any plan of life insurance or annuity [~~which~~] that is
15 of such a nature that the minimum reserves cannot be determined
16 by the methods described in Paragraphs (1) and (2) of this
17 subsection, the reserves [~~which~~] that are held under any such
18 plan must: 1) be appropriate in relation to the benefits and
19 the pattern of premiums for that plan; and 2) be computed by a
20 method [~~which~~] that is consistent with the principles of this
21 standard valuation law, as determined by regulations
22 promulgated by the superintendent.

23 (2) This paragraph shall apply to all annuity
24 and pure endowment contracts other than group annuity and pure
25 endowment contracts purchased under a retirement plan or plan

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1 of deferred compensation, established or maintained by an
2 employer (including a partnership or sole proprietorship) or by
3 an employee organization, or by both, other than a plan
4 providing individual retirement accounts or individual
5 retirement annuities under Section 408 of the Internal Revenue
6 Code, as now or hereafter amended.

7 Reserves according to the commissioners annuity reserve
8 method for benefits under annuity or pure endowment contracts,
9 excluding any disability and accidental death benefits in such
10 contracts, shall be the greatest of the respective excesses of
11 the present values, at the date of valuation, of the future
12 guaranteed benefits, including guaranteed nonforfeiture
13 benefits, provided for by such contracts at the end of each
14 respective contract year, over the present value, at the date
15 of valuation, of any future valuation considerations derived
16 from future gross considerations, required by the terms of such
17 contract, that become payable prior to the end of such
18 respective contract year. The future guaranteed benefits shall
19 be determined by using the mortality table, if any, and the
20 interest rate or rates, specified in such contracts for
21 determining guaranteed benefits. The valuation considerations
22 are the portions of the respective gross considerations applied
23 under the terms of such contracts to determine nonforfeiture
24 values."

25 SECTION 22. A new Section 59A-8A-7 NMSA 1978 is enacted

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1 to read:

2 "59A-8A-7. [NEW MATERIAL] MINIMUM STANDARDS FOR ACCIDENT
3 AND HEALTH INSURANCE CONTRACTS.--For an accident and health
4 insurance contract issued on or after the operative date of the
5 valuation manual, the standard prescribed in the valuation
6 manual is the minimum standard of valuation required by
7 Subsection B of Section 59A-8A-3 NMSA 1978. For an accident
8 and health insurance contract issued on or after the operative
9 date of Section 59A-20-31 NMSA 1978 and prior to the operative
10 date of the valuation manual, the minimum standard of valuation
11 is the standard adopted by the superintendent by rule."

12 SECTION 23. A new Section 59A-8A-8 NMSA 1978 is enacted
13 to read:

14 "59A-8A-8. [NEW MATERIAL] VALUATION MANUAL FOR POLICIES
15 ISSUED ON OR AFTER OPERATIVE DATE OF VALUATION MANUAL.--

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

21 B. Unless an amendment to the valuation manual
22 provides for a later effective date, an amendment to the
23 valuation manual takes effect on the January 1 after the date
24 that the amendment was adopted by the national association of
25 insurance commissioners by an affirmative vote of:

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

4 (2) members representing jurisdictions that
5 collectively represent more than seventy-five percent of
6 written direct premiums, as reported in the life, accident and
7 health annual statements, the health annual statements and the
8 fraternal annual statements most recently available before the
9 time of the vote referred to in Paragraph (1) of this
10 subsection.

11 C. The valuation manual shall indicate:

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

15 (a) the superintendent's reserve
16 valuation method for life insurance contracts, other than
17 annuity contracts, subject to that subsection;

18 (b) the superintendent's annuity reserve
19 valuation method for annuity contracts subject to that
20 subsection; and

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

23 (2) which policies and contracts or types of
24 policies and contracts are subject to the requirements of a
25 principle-based valuation in Subsection A of Section 59A-8A-9

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1 NMSA 1978 and the minimum standards of valuation consistent
2 with those requirements;

3 (3) for policies and contracts subject to a
4 principle-based valuation pursuant to Section 59A-8A-9 NMSA
5 1978:

6 (a) requirements for the format of
7 reports filed with the superintendent pursuant to Paragraph (3)
8 of Subsection B of Section 59A-8A-9 NMSA 1978, which shall
9 include information necessary to determine if the valuation is
10 appropriate and complies with the Standard Valuation Law;

11 (b) prescribed assumptions for risks
12 over which the company has no significant control or influence;
13 and

14 (c) procedures for, and a process for
15 appropriate waiver or modification of, corporate governance and
16 oversight of the actuarial function;

17 (4) for policies not subject to a
18 principle-based valuation pursuant to Section 59A-8A-9 NMSA
19 1978, the minimum standard of valuation shall either:

20 (a) be consistent with the minimum
21 standard of valuation in effect prior to the operative date of
22 the valuation manual; or

23 (b) provide for reserves that quantify
24 the benefits and guarantees and the funding associated with the
25 contracts and their risks at a level of conservatism that

1 reflects conditions that include unfavorable events with a
2 reasonable probability of occurring;

3 (5) other requirements, including those
4 related to reserve methods, models for measuring risk,
5 generation of economic scenarios, assumptions, margins, use of
6 company experience, risk measurement, disclosure,
7 certifications, reports, actuarial opinions and memoranda,
8 transition rules and internal controls; and

9 (6) the data and form of the data required by
10 Section 59A-8A-10 NMSA 1978, the person with whom the data must
11 be submitted and, if appropriate, data analyses and reporting
12 of analyses.

13 D. In the absence of a specific valuation
14 requirement or if a specific valuation requirement in the
15 valuation manual does not, in the opinion of the
16 superintendent, comply with the Standard Valuation Law, then a
17 company shall comply with the minimum valuation standards
18 promulgated by rule by the superintendent.

19 E. The superintendent may engage, at the company's
20 expense, a qualified actuary to conduct an actuarial
21 examination of a company and issue an opinion on the
22 appropriateness of the company's reserve assumption or method,
23 or to review and issue an opinion on the company's compliance
24 with a requirement of the Standard Valuation Law. The
25 superintendent may rely upon the opinion of a qualified actuary

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1 engaged by the insurance supervisory official of another state,
2 district or territory of the United States if that opinion
3 relates to the provisions of the Standard Valuation Law. As
4 used in this subsection, "engage" includes employment and
5 contract employment.

6 F. The superintendent may require a company to
7 change an assumption or method if the superintendent believes
8 that the change is necessary to comply with the requirements of
9 the valuation manual or the Standard Valuation Law. The
10 company shall adjust its reserves to comply with the
11 superintendent's requirement."

12 SECTION 24. A new Section 59A-8A-9 NMSA 1978 is enacted
13 to read:

14 "59A-8A-9. [NEW MATERIAL] REQUIREMENTS OF A PRINCIPLE-
15 BASED VALUATION.--

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

19 (1) quantifies the benefits and guarantees and
20 the funding associated with the contracts and their risks at a
21 level of conservatism that reflects conditions that include
22 unfavorable events with a reasonable probability of occurring
23 during the lifetime of the contracts and, for a policy or
24 contract with significant tail risk, reflects conditions
25 appropriately adverse to quantify the tail risk;

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1 (2) incorporates assumptions, risk analysis
2 methods, financial models and management techniques that are
3 consistent with, but not necessarily identical to, those used
4 in the company's overall risk assessment process and that
5 recognize potential differences in financial reporting
6 structures and prescribed assumptions or methods;

7 (3) incorporates assumptions that:

8 (a) derive from the valuation manual; or

9 (b) do not derive from the valuation
10 manual, but: 1) are established using the company's available
11 experience and are relevant and statistically credible; or 2)
12 if company data is not available, relevant or statistically
13 credible, are established utilizing other relevant,
14 statistically credible experience; and

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

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

21 (1) establish procedures for corporate
22 governance and oversight of the actuarial valuation function
23 that are consistent with those provided for in the valuation
24 manual;

25 (2) design its internal controls of

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1 principle-based valuation to ensure that all material risks
2 inherent in the liabilities and associated assets subject to
3 the valuation are included in the valuation and that valuations
4 are made in accordance with the valuation manual;

5 (3) each year, provide to the superintendent
6 and to the company's board of directors a certification of
7 effectiveness of the internal controls of the company's
8 principle-based valuation that are in place at the end of the
9 preceding calendar year; and

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

13 C. A principle-based valuation may include a
14 prescribed formulaic reserve component."

15 SECTION 25. A new Section 59A-8A-10 NMSA 1978 is enacted
16 to read:

17 "59A-8A-10. [NEW MATERIAL] EXPERIENCE REPORTING FOR
18 POLICIES IN FORCE ON OR AFTER OPERATIVE DATE OF VALUATION
19 MANUAL.--For policies in force on or after the operative date
20 of the valuation manual, a company shall submit mortality,
21 morbidity, policyholder behavior or expense experience and
22 other data as prescribed in the valuation manual."

23 SECTION 26. A new Section 59A-8A-11 NMSA 1978 is enacted
24 to read:

25 "59A-8A-11. [NEW MATERIAL] CONFIDENTIALITY.--

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1 A. As used in this section, "confidential
2 information" includes:

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

9 (2) documents, materials and other
10 information, including all working papers and copies of those
11 papers, that are produced or obtained by or disclosed to the
12 superintendent or another person in the course of an
13 examination conducted pursuant to Subsection E of Section
14 59A-8A-8 NMSA 1978; provided, however, that if an examination
15 report or other material prepared in connection with an
16 examination pursuant to Sections 59A-4-5 through 59A-4-13 NMSA
17 1978 is not held as private and confidential information
18 pursuant to Sections 59A-4-5 through 59A-4-13 NMSA 1978, an
19 examination report made under Subsection E of Section 59A-8A-8
20 NMSA 1978 shall not be confidential information to the same
21 extent as if the examination report or other material had been
22 prepared pursuant to Sections 59A-4-5 through 59A-4-13 NMSA
23 1978;

24 (3) reports, documents, materials and other
25 information developed by a company in support of or in

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

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

14 (5) documents, materials, data and other
15 information, including working papers and copies those papers,
16 that contain potentially identifying company or personal
17 information and that are produced or obtained by or disclosed
18 to the superintendent or another person in connection with the
19 submissions required by Section 59A-8A-10 NMSA 1978.

20 B. Except as provided in this section, a company's
21 confidential information is confidential and privileged, not
22 subject to the Inspection of Public Records Act, not subject to
23 subpoena and, in a private civil action, not subject to
24 discovery or admissible in evidence; provided that the
25 superintendent may use the documents, materials or other

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1 information in the furtherance of a regulatory or legal action
2 brought as a part of the superintendent's official duties.
3 Neither the superintendent nor another person who received
4 documents, materials or other information while acting pursuant
5 to the authority of the superintendent shall be permitted or
6 required in a private civil action to testify on the
7 confidential documents, materials or information subject to
8 this subsection.

9 C. In order to assist in the performance of the
10 superintendent's duties, the superintendent may share
11 confidential information:

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

16 (2) in the case of confidential information
17 specified in Paragraphs (1) and (4) of Subsection A of this
18 section:

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

24 (b) with a state, federal or
25 international law enforcement official if that official has the

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1 legal authority to agree and does agree to maintain the
2 confidentiality and privilege of the documents, materials, data
3 and other information in the same manner and to the same extent
4 as the superintendent.

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

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

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

25 G. A privilege established by the laws of a state

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1 or jurisdiction that is substantially similar to the privilege
2 established by Subsections B through H of this section shall be
3 available and enforced in any official proceeding in, and in
4 any court of, New Mexico.

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

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

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

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

22 (3) ceases to be confidential once a portion
23 of a memorandum in support of an opinion submitted pursuant to
24 Sections 59A-8A-4 and 59A-8A-5 NMSA 1978 or a principle-based
25 valuation report developed pursuant to Paragraph (4) of

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1 Subsection B of Section 59A-8A-9 NMSA 1978 is cited by the
2 company in its marketing, publicly volunteered to a
3 governmental agency other than a state insurance department or
4 released by the company to the news media."

5 SECTION 27. A new Section 59A-8A-12 NMSA 1978 is enacted
6 to read:

7 "59A-8A-12. [NEW MATERIAL] SINGLE STATE EXEMPTION.--

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

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

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

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

25 SECTION 28. Section 59A-20-31 NMSA 1978 (being Laws 1984,

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1 Chapter 127, Section 396) is amended to read:

2 "59A-20-31. THE STANDARD NONFORFEITURE LAW OF LIFE
3 INSURANCE.--

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

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

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1 (2) that, upon surrender of the policy within
2 sixty days after the due date of any premium payment in default
3 after premiums have been paid for at least three full years in
4 the case of ordinary insurance or five full years in the case
5 of industrial insurance, the insurer will pay, in lieu of any
6 paid-up nonforfeiture benefit, a cash surrender value of such
7 amount as may be hereinafter specified;

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

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

22 (5) in the case of policies [~~which~~] that cause
23 on a basis guaranteed in the policy unscheduled changes in
24 benefits or premiums, or [~~which~~] that provide an option for
25 changes in benefits or premiums other than a change to a new

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

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

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1 has been filed with the insurance supervisory official of the
2 state in which the policy is delivered; and a statement of the
3 method to be used in calculating the cash surrender value and
4 paid-up nonforfeiture benefit available under the policy on any
5 policy anniversary beyond the last anniversary for which such
6 values and benefits are consecutively shown in the policy.

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

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

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

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

25 (2) the amount of any indebtedness to the

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1 insurer on the policy.

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

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

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1 provides only the benefits otherwise provided by such term
2 insurance on the life of the spouse. Any cash surrender value
3 available within thirty days after any policy anniversary under
4 any policy paid up by completion of all premium payments or any
5 policy continued under any paid-up nonforfeiture benefit,
6 whether or not required by Subsection A of this section, shall
7 be an amount not less than the present value, on such
8 anniversary, of the future guaranteed benefits provided for by
9 the policy, including any existing paid-up additions, decreased
10 by any indebtedness to the insurer on the policy.

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

20 D. This subsection shall not apply to policies
21 issued on or after the operative date of Subsection F of this
22 section. Except as provided in Paragraph (2) of this
23 subsection, the adjusted premiums for any policy shall be
24 calculated on an annual basis and shall be such uniform
25 percentage of the respective premiums specified in the policy

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

22 (1) In the case of a policy providing an
23 amount of insurance varying with duration of the policy, the
24 equivalent uniform amount thereof for the purpose of this
25 subsection shall be deemed to be the uniform amount of

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1 insurance provided by an otherwise similar policy, containing
2 the same endowment benefit or benefits, if any, issued at the
3 same age and for the same term, the amount of which does not
4 vary with duration and the benefits under which have the same
5 present value at the date of issue as the benefits under the
6 policy; provided, however, that in the case of a policy
7 providing a varying amount of insurance issued on the life of a
8 child under age ten, the equivalent uniform amount may be
9 computed as though the amount of insurance provided by the
10 policy prior to the attainment of age ten were the amount
11 provided by such policy at age ten.

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

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1 for the entire policy over the amount used in the calculation
2 of the adjusted premiums in (1).

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

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1 may be based on such other table of mortality as may be
2 specified by the insurer and approved by the superintendent.

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

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1 offered as a nonforfeiture benefit, the rates of mortality
2 assumed may be not more than those shown in the commissioners
3 1958 extended term insurance table. Provided, further, that
4 for insurance issued on a substandard basis, the calculation of
5 any such adjusted premiums and present values may be based on
6 such other table of mortality as may be specified by the
7 insurer and approved by the superintendent.

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

18 E. This subsection shall not apply to industrial
19 policies issued on or after the operative date of Subsection F
20 of this section.

21 In the case of industrial policies issued on or after the
22 operative date of this subsection as defined herein, all
23 adjusted premiums and present values referred to in this
24 section shall be calculated on the bases of the commissioners
25 1961 standard industrial mortality table and the rate of

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

21 After June 7, 1963, any insurer may file with the
22 superintendent a written notice of its election to comply with
23 the provisions of this subsection after a specified date before
24 January 1, 1968. After the filing of such notice, then upon
25 such specified date (which shall be the operative date of this

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1 subsection for such insurer), this subsection shall become
2 operative with respect to the industrial policies thereafter
3 issued by such insurer. If an insurer makes no such election,
4 the operative date of this subsection for such insurer shall be
5 January 1, 1968.

6 F. This subsection shall apply to all policies
7 issued on or after the operative date of this subsection.
8 Except as provided in Paragraph (6) of this subsection, the
9 adjusted premiums for any policy shall be calculated on an
10 annual basis and shall be such uniform percentage of the
11 respective premiums specified in the policy for each policy
12 year, excluding amounts payable as extra premiums to cover
13 impairment or special hazards and also excluding any uniform
14 annual contract charge or policy fee specified in the policy in
15 a statement of the method to be used in calculating the cash
16 surrender values and paid-up nonforfeiture benefits, that the
17 present value, at the date of issue of the policy, of all
18 adjusted premiums shall be equal to the sum of the then present
19 value of the future guaranteed benefits provided for by the
20 policy; one percent of either the amount of insurance, if the
21 insurance be uniform in amount, or the average amount of
22 insurance at the beginning of each of the first ten policy
23 years; and one hundred ~~[and]~~ twenty-five percent of the
24 nonforfeiture net level premium as hereinafter defined.
25 Provided, however, that, in applying the last percentage

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1 specified above, no nonforfeiture net level premium shall be
2 deemed to exceed four percent of either the amount of
3 insurance, if the insurance be uniform in amount, or the
4 average amount of insurance at the beginning of each of the
5 first ten policy years. The date of issue of a policy for the
6 purpose of this subsection shall be the date as of which the
7 rated age of the insured is determined; and

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

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

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1 premiums do not change from those stipulated by the policy
2 immediately after the change;

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

19 (4) the additional expense allowance, at the
20 time of the change to the newly defined benefits or premiums,
21 shall be the sum of one percent of the excess, if positive, of
22 the average amount of insurance at the beginning of each of the
23 first ten policy years subsequent to the change over the
24 average amount of insurance prior to the change at the
25 beginning of each of the first ten policy years subsequent to

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1 the time of the most recent previous change, or, if there has
2 been no previous change, the date of issue of the policy; and
3 one hundred twenty-five percent of the increase, if positive,
4 in the nonforfeiture net level premium;

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

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

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

20 (6) notwithstanding any other provisions of
21 this subsection to the contrary, in the case of a policy issued
22 on a substandard basis [~~which~~] that provides reduced graded
23 amounts of insurance so that, in each policy year, such policy
24 has the same tabular mortality cost as an otherwise similar
25 policy issued on the standard basis [~~which~~] that provides

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1 higher uniform amounts of insurance, adjusted premiums and
2 present values for such substandard policy may be calculated as
3 if it were issued to provide such higher uniform amounts of
4 insurance on the standard basis;

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

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

25 (b) under any paid-up nonforfeiture

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1 benefit, including any paid-up dividend additions, any cash
2 surrender value available, whether or not required by
3 Subsection A of this section, shall be calculated on the basis
4 of the mortality table and rate of interest used in determining
5 the amount of such paid-up nonforfeiture benefit and paid-up
6 dividend additions, if any;

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

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

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

24 (f) for a policy issued prior to the
25 operative date of the valuation manual, any ordinary mortality

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1 tables, adopted after 1980 by the national association of
2 insurance commissioners, that are approved by regulation
3 promulgated by the superintendent for use in determining the
4 minimum nonforfeiture standard may be substituted for the
5 commissioners 1980 standard ordinary mortality table with or
6 without ten-year select mortality factors or for the
7 commissioners 1980 extended term insurance table; [~~and~~]

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

23 [~~(g)~~] (h) for a policy issued prior to
24 the operative date of the valuation manual, any industrial
25 mortality tables, adopted after 1980 by the national

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1 association of insurance commissioners, that are approved by
2 regulation promulgated by the superintendent for use in
3 determining the minimum nonforfeiture standard may be
4 substituted for the commissioners 1961 standard industrial
5 mortality table or the commissioners 1961 industrial extended
6 term insurance table; and

7 (i) for a policy issued on or after the
8 operative date of the valuation manual, the commissioners
9 standard mortality table in the valuation manual shall be used
10 to determine the minimum nonforfeiture standard that may be
11 substituted for the commissioners 1961 standard industrial
12 mortality table or the commissioners 1961 industrial extended
13 term insurance table. If the superintendent adopts through
14 rulemaking a commissioners standard industrial 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 (8) the nonforfeiture interest rate:

22 (a) for a policy issued prior to the
23 operative date of the valuation manual, the nonforfeiture
24 interest rate per annum for any policy issued in a particular
25 calendar year shall be equal to one hundred twenty-five percent

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1 of the calendar year statutory valuation interest rate for such
2 policy as defined in the Standard Valuation Law [~~Section 122~~
3 ~~of the Insurance Code~~], rounded to the nearest [~~one-quarter~~
4 one-fourth of one percent; and

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

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

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

24 G. In the case of any plan of life insurance
25 [~~which~~] that provides for future premium determination, the

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1 amounts of which are to be determined by the insurer based on
2 the then estimates of future experience, or in the case of any
3 plan of life insurance [~~which~~] that is of such a nature that
4 minimum values cannot be determined by the methods described in
5 Subsection A, B, C, D, E or F of this section, then:

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

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

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

20 H. Any cash surrender value and any paid-up
21 nonforfeiture benefit, available under the policy in the event
22 of default in a premium payment due at any time other than on
23 the policy anniversary, shall be calculated with allowance for
24 the lapse of time and the payment of fractional premiums beyond
25 the last preceding policy anniversary. All values referred to

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

25 I. This subsection, in addition to all other

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1 applicable sections of this law, shall apply to all policies
2 issued on or after January 1, 1985. Any cash surrender value
3 available under the policy in the event of default in a premium
4 payment due on any policy anniversary shall be in an amount
5 ~~[which]~~ that does not differ by more than two-tenths of one
6 percent of either the amount of insurance, if the insurance be
7 uniform in amount, or the average amount of insurance at the
8 beginning of each of the first ten policy years, from the sum
9 of (a) the greater of zero and the basic cash value hereinafter
10 specified; and (b) the present value of any existing paid-up
11 additions less the amount of any indebtedness to the insurer
12 under the policy.

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

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1 The nonforfeiture factor for each policy year shall be an
2 amount equal to a percentage of the adjusted premium for the
3 policy year, as defined in Subsection D or F of this section,
4 whichever is applicable. Except as is required by the next
5 succeeding sentence of this paragraph, such percentage:

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

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

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

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1 All adjusted premiums and present values referred to in
2 this subsection shall for a particular policy be calculated on
3 the same mortality and interest bases as are used in
4 demonstrating the policy's compliance with the other
5 subsections of this section. The cash surrender values
6 referred to in this subsection shall include any endowment
7 benefits provided for by the policy.

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

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

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

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

24 K. After the effective date of this act, any
25 insurer may file with the superintendent a written notice of

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

9 L. As used in this section:

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

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

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

24 (c) the Standard Valuation Law of the
25 national association of insurance commissioners, as amended in

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1 2009, or legislation including substantially similar terms and
2 provisions, has been enacted by at least forty-two of the
3 following fifty-five jurisdictions: 1) the fifty states of the
4 United States; 2) American Samoa; 3) the Virgin Islands of the
5 United States; 4) the District of Columbia; 5) Guam; and 6)
6 Puerto Rico; and

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

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

12 "59A-37-2. DEFINITIONS.--As used in [~~Chapter 59A,~~
13 ~~Article 37 NMSA 1978]~~ The Insurance Holding Company Law:

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

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

23 C. "control" means the possession of the power to
24 direct or cause the direction of the management and policies of
25 a person, whether directly or indirectly, through the ownership

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

17 D. "enterprise risk" means an activity, a
18 circumstance, an event or a series of events involving one or
19 more affiliates of an insurer that, if not remedied promptly,
20 is likely to have a material adverse effect upon the financial
21 condition or liquidity of the insurer or its whole insurance
22 holding company system and includes a situation that would
23 cause the insurer's risk-based capital to fall to a company
24 action level as defined in Section 59A-5A-4 NMSA 1978 or would
25 cause the insurer to be in a hazardous financial condition as

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1 defined in Section 59A-41-24 NMSA 1978;

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

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

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

19 [~~F.~~] H. "person" means an individual, corporation,
20 association, partnership, joint stock company, trust,
21 unincorporated organization or any similar entity or
22 combination of entities;

23 [~~G.~~] I. "securityholder" means the owner of any
24 security of a person, including common stock, preferred stock,
25 debt obligations and any other security convertible into or

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1 evidencing the right to acquire any of the foregoing;

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

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

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

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

17 "59A-37-3. SUBSIDIARIES OF INSURERS.--

18 A. Any domestic insurer, either by itself or in
19 cooperation with one or more persons, may organize or acquire
20 one or more subsidiaries. [~~engaged in the following kinds of~~
21 ~~business:~~

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

24 ~~(2) acting as an insurance broker or as an~~
25 ~~insurance agent for its parent or for any of its parent's~~

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1 ~~insurer subsidiaries;~~

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

5 ~~(4) management of any investment company~~
6 ~~subject to or registered pursuant to the federal Investment~~
7 ~~Company Act of 1940, as amended, including related sales and~~
8 ~~services;~~

9 ~~(5) acting as a broker-dealer subject to or~~
10 ~~registered pursuant to the federal Securities Exchange Act of~~
11 ~~1934, as amended;~~

12 ~~(6) rendering investment advice to~~
13 ~~governments, government agencies, corporations or other~~
14 ~~organizations or groups;~~

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

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

19 ~~(9) acting as administrative agent for a~~
20 ~~governmental instrumentality that is performing an insurance~~
21 ~~function;~~

22 ~~(10) financing of insurance premiums, agents~~
23 ~~and other forms of consumer financing;~~

24 ~~(11) any other business activity determined by~~
25 ~~the superintendent to be reasonably ancillary to an insurance~~

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1 business; and

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

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

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

24 (a) total net money or other
25 consideration expended and obligations assumed in the

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1 acquisition or formation of a subsidiary, including all
2 organizational expenses and contributions to capital and
3 surplus of the subsidiary whether or not represented by the
4 purchase of capital stock or issuance of other securities; and

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

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

22 (a) any direct investment by the insurer
23 in an asset; and

24 (b) the insurer's proportionate share of
25 any investment in an asset by any subsidiary of the insurer,

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1 which shall be calculated by multiplying the amount of the
2 subsidiary's investment by the percentage of the ownership of
3 the subsidiary; or

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

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

17 D. Whether any investment pursuant to Subsection B
18 of this section meets the applicable requirements of that
19 subsection shall be determined before the investment is made by
20 calculating the applicable investment limitations as though the
21 investment had already been made, taking into account the then
22 outstanding principal balance on all previous investments in
23 debt obligations and the value of all previous investments in
24 equity securities as of the day they were made, net of any
25 return of capital invested and not including dividends.

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

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

11 "59A-37-4. ACQUISITION OF CONTROL OF OR MERGER WITH
12 DOMESTIC INSURER.--

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

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1 ~~[such]~~ the person has filed with the superintendent and has
2 sent to ~~[such]~~ the insurer, and ~~[such]~~ the insurer has sent to
3 its shareholders, a statement containing the information
4 required by Section 59A-37-5 NMSA 1978 and ~~[such]~~ the offer,
5 request, invitation, agreement or acquisition has been approved
6 by the superintendent in the manner hereinafter prescribed.

7 B. For the purposes of Sections 59A-37-4 through
8 59A-37-10 NMSA 1978, the superintendent shall identify the
9 circumstances in which a person seeking to divest or acquire an
10 interest of control of a domestic insurer is required to obtain
11 the superintendent's approval for the transaction. A person
12 who controls a domestic insurer and seeks to divest its
13 interest of control of the domestic insurer shall, at least
14 thirty days prior to the cessation of control, file with the
15 superintendent confidential notice of the proposed divestiture
16 and give a copy of that notice to the insurer. Information
17 contained in the notice shall remain confidential until the
18 conclusion of the transaction if the superintendent has not
19 determined that treating the information as confidential will
20 interfere with the provisions of this section. This subsection
21 does not apply to a statement filed pursuant to Subsection A of
22 this section.

23 C. For a transaction subject to Sections 59A-37-4
24 through 59A-37-10 NMSA 1978, the acquiring person shall file
25 with the superintendent a pre-acquisition notice, which shall

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1 contain the information set forth in Paragraph (1) of
2 Subsection C of Section 43 of this 2013 act. The
3 superintendent may subject a person who fails to file the
4 notice required by this subsection to a fine of not more than
5 fifty thousand dollars (\$50,000).

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

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

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

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

20 "59A-37-5. CONTENTS OF STATEMENT.--

21 A. The statement to be filed with the
22 superintendent under Section 59A-37-4 NMSA 1978 shall be made
23 under oath or affirmation and shall contain the following
24 information:

25 (1) the name and address of each person,

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1 hereinafter called "acquiring party", by whom or on whose
2 behalf the merger or other acquisition of control referred to
3 in Section 59A-37-4 NMSA 1978 is to be effected and:

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

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

19 (2) the source, nature and amount of the
20 consideration used or to be used in effecting the merger or
21 other acquisition of control, a description of any transaction
22 where funds were or are to be obtained for any such purpose,
23 including any pledge of the insurer's stock or the stock of any
24 of its subsidiaries or controlling affiliates and the identity
25 of persons furnishing such consideration. However, where a

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1 source of such consideration is a loan made in the lender's
2 ordinary course of business, the identity of the lender shall
3 remain confidential if the person filing the statement so
4 requests;

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

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

18 (5) the number of shares of any security
19 [~~which~~] that each acquiring party proposes to acquire, the
20 terms of the offer, request, invitation, agreement or
21 acquisition and a statement as to the method by which the
22 fairness of the proposal was determined;

23 (6) the amount of each class of any security
24 referred to in Section 59A-37-4 NMSA 1978 [~~which~~] that is
25 beneficially owned or concerning which there is a right to

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1 acquire beneficial ownership by each acquiring party;

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

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

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

22 (10) copies of all tender offers for, requests
23 or invitations for tenders of exchange offers for and
24 agreements to acquire or exchange any securities referred to in
25 Section 59A-37-4 NMSA 1978 and, if distributed, of additional

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1 soliciting material relating thereto;

2 (11) the terms of any agreement, contract or
3 understanding made with or proposed to be made with any broker-
4 dealer as to solicitation of securities referred to in Section
5 59A-37-4 NMSA 1978 for tender and the amount of any fees,
6 commissions or other compensation to be paid to broker-dealers
7 with regard thereto; [~~and~~]

8 (12) an agreement by the person required to
9 file the statement that the person will provide, for as long as
10 the person has control, an annual report pursuant to Section 44
11 of this 2013 act;

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

18 [~~(12)~~] (14) such additional information as the
19 superintendent may by rule or regulation prescribe as necessary
20 or appropriate for the protection of policyholders and
21 securityholders of the insurer or in the public interest.

22 B. If the person required to file the statement
23 referred to in Section 59A-37-4 NMSA 1978 is a partnership,
24 limited partnership, syndicate or other group, the
25 superintendent may require that the information called for by

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

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

22 D. If any offer, request, invitation, agreement or
23 acquisition referred to in Section 59A-37-4 NMSA 1978 is
24 proposed to be made by means of a registration statement under
25 the federal Securities Act of 1933, as amended, or in

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1 circumstances requiring the disclosure of similar information
2 under the federal Securities Exchange Act of 1934, as amended,
3 or under a state law requiring similar registration or
4 disclosure, the person required to file the statement referred
5 to in Section 59A-37-4 NMSA 1978 may utilize such documents in
6 furnishing the information called for by that statement."

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

9 "59A-37-6. APPROVAL BY SUPERINTENDENT--REVIEW.--

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

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

18 (2) the effect of the merger or other
19 acquisition of control would be substantially to lessen
20 competition in insurance in [~~this state~~] New Mexico or tend to
21 create a monopoly [~~therein~~] in insurance. In applying this
22 paragraph:

23 (a) the informational requirements of
24 Paragraph (1) of Subsection C of Section 43 of this 2013 act,
25 and the standards of Paragraph (1) of Subsection D of that

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1 section, apply;

2 (b) the superintendent shall approve the
3 merger or acquisition if the superintendent finds that any of
4 the situations meeting the criteria provided in Paragraph (2)
5 of Subsection D of Section 43 of this 2013 act exist; and

6 (c) the superintendent may condition the
7 approval of the merger or acquisition on the removal, to take
8 place within a specified period of time, of the circumstances
9 that formed the basis for disapproval;

10 (3) the financial condition of any acquiring
11 party is such as might jeopardize the financial stability of
12 the insurer or prejudice the interests of its policyholders or
13 the interests of any remaining security holders who are
14 unaffiliated with the acquiring party;

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

21 (5) the competence, experience and integrity
22 of those persons who would control the operation of the insurer
23 are such that it would not be in the interest of policyholders
24 of the insurer and of the public to permit the merger or other
25 acquisition of control;

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

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

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

10 C. The superintendent shall ensure, by imposition
11 of conditions, if necessary, that New Mexico charitable assets
12 are protected and preserved for the benefit of the people of
13 New Mexico.

14 D. The public hearing held pursuant to Subsection A
15 of this section shall be held within thirty days after the
16 statement required by Section 59A-37-4 NMSA 1978 is filed, and
17 the superintendent shall notify the person filing the statement
18 at least twenty days before the hearing. The person filing the
19 statement shall notify the insurer, and other persons whom the
20 superintendent designates, no fewer than seven days before the
21 hearing. The superintendent shall make a determination within
22 the sixty days before the effective date of the proposed
23 transaction. At the hearing, the person filing the statement,
24 the insurer, a person to whom notice of hearing was sent and
25 any other person whose interests may be affected shall be

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1 entitled to present evidence, examine and cross-examine
2 witnesses, offer oral and written arguments and conduct
3 discovery proceedings according to the rules of civil procedure
4 for the district courts. All discovery proceedings shall
5 conclude no later than three days before the public hearing.

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

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1 telecommunication.

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

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

11 "59A-37-9. VIOLATIONS.--

12 A. The following acts shall be violations of
13 Sections [~~619 through 621 of this article~~] 59A-37-4 through
14 59A-37-6 NMSA 1978:

15 [~~A.~~] (1) the failure to file any statement,
16 amendment or other material required to be filed pursuant to
17 [~~Sections 619 or 620 of this article~~] Section 59A-37-4 or
18 59A-37-5 NMSA 1978; or

19 [~~B.~~] (2) the effectuation or any attempt to
20 effectuate an acquisition of control of a domestic insurer
21 unless the superintendent has given [~~his~~] approval [~~thereto~~] to
22 it.

23 B. The failure to timely file a registration
24 statement, a summary of the registration statement or an
25 enterprise risk filing required by Sections 59A-37-11 through

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1 59A-37-19.2 NMSA 1978 and Section 44 of this 2013 act is a
2 violation of Sections 59A-37-11 through 59A-37-19.2 NMSA 1978
3 and Section 44 of this 2013 act."

4 SECTION 35. Section 59A-37-12 NMSA 1978 (being Laws
5 1984, Chapter 127, Section 627, as amended) is amended to read:

6 "59A-37-12. REGISTRATION--INFORMATION--FORM.--Every
7 insurer subject to registration shall file a registration
8 statement on a form [~~provided by the superintendent~~] and in a
9 format prescribed by the national association of insurance
10 commissioners, which shall [~~contain current information about~~]
11 include:

12 A. information about the current capital structure,
13 general financing condition, ownership and management of the
14 insurer and any person controlling the insurer;

15 B. the identity of every current member of the
16 insurance holding company system;

17 C. the following agreements in force, relationships
18 subsisting and transactions currently outstanding between such
19 insurer and its affiliates:

20 (1) loans, other investments or purchases,
21 sales or exchanges of securities of the affiliates by the
22 insurer or of the insurer by its affiliates;

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

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

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

6 (5) all management and service contracts and
7 all cost-sharing arrangements;

8 (6) reinsurance agreements;

9 (7) dividends and other distributions to
10 shareholders; and

11 (8) consolidated tax allocation agreements;

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

16 E. if requested by the superintendent, financial
17 statements of or within an insurance holding company system and
18 its affiliates. Financial statements may include existing
19 annual audited financial statements filed with the federal
20 securities and exchange commission pursuant to the federal
21 Securities Act of 1933, as amended, or the federal Securities
22 Exchange Act of 1934, as amended. An insurer may satisfy the
23 requirement to file financial statements pursuant to this
24 subsection by providing the superintendent with the most recent
25 parent corporation financial statements that have been filed

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1 with the securities and exchange commission;

2 ~~[E-]~~ F. other matters concerning transactions
3 between registered insurers and any affiliates as may be
4 included from time to time in any registration forms adopted or
5 approved by the superintendent;

6 G. statements that the insurer's board of directors
7 is responsible for and oversees corporate governance and
8 internal controls and that the insurer's officers or senior
9 management have approved, implemented and continue to maintain
10 and monitor corporate governance and internal control
11 procedures; and

12 H. other information required by a rule that was
13 promulgated by the superintendent."

14 SECTION 36. Section 59A-37-13 NMSA 1978 (being Laws
15 1984, Chapter 127, Section 628) is amended to read:

16 "59A-37-13. MATERIALITY.--No information need be
17 disclosed on the registration statement filed pursuant to
18 Sections ~~[619 and 620 of this article]~~ 59A-37-4 and 59A-37-5
19 NMSA 1978 if such information is not material for the purposes
20 of ~~[Section 626 through 634 of this article]~~ Sections 59A-37-11
21 through 59A-37-19 NMSA 1978. Unless the superintendent by
22 rule, regulation or order provides otherwise, sales, purchases,
23 exchanges, loans or extensions of credit, ~~[or]~~ investments or
24 guarantees involving one-half of one percent or less of an
25 insurer's admitted assets as of the most recent December 31

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1 [next preceding] shall not be deemed material for the purposes
2 of such section."

3 SECTION 37. Section 59A-37-19 NMSA 1978 (being Laws
4 1984, Chapter 127, Section 634) is amended to read:

5 "59A-37-19. DISCLAIMER.--Any person may file with the
6 superintendent a disclaimer of affiliation with any authorized
7 insurer or [~~such~~] a disclaimer may be filed by [~~such~~] the
8 authorized insurer or any member of an insurance holding
9 company system. The disclaimer shall fully disclose all
10 material relationships and bases for affiliation between the
11 person and the insurer as well as the basis for disclaiming an
12 affiliation. After a disclaimer has been filed, the insurer
13 shall be relieved of any duty to register or report [~~which~~
14 that may arise out of the insurer's relationship with [~~such~~
15 the person unless and until the superintendent, within thirty
16 days after the receipt of a complete disclaimer, disallows the
17 disclaimer. The superintendent shall disallow such a
18 disclaimer only after furnishing all parties in interest with
19 notice and opportunity to be heard and after making specific
20 findings of fact to support the disallowance."

21 SECTION 38. Section 59A-37-20 NMSA 1978 (being Laws
22 1993, Chapter 320, Section 83) is amended to read:

23 "59A-37-20. TRANSACTIONS WITH AFFILIATES.--

24 A. Transactions within a holding company system to
25 which an insurer subject to registration is a party shall be

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1 subject to the following standards:

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

3 (2) agreements for cost-sharing services and
4 management shall include the provisions required by rule
5 promulgated by the superintendent;

6 [~~2~~] (3) charges or fees for services
7 performed shall be reasonable;

8 [~~3~~] (4) expenses incurred and payment
9 received shall be allocated to the insurer in conformity with
10 customary insurance accounting practices consistently applied;

11 [~~4~~] (5) the books, accounts and records of
12 each party to all such transactions shall be so maintained as
13 to clearly and accurately disclose the nature and details of
14 the transactions, including such accounting information as is
15 necessary to support the reasonableness of the charges or fees
16 to the respective parties; and

17 [~~5~~] (6) the insurer's surplus as regards
18 policyholders following any dividends or distributions to
19 shareholder affiliates shall be reasonable in relation to the
20 insurer's outstanding liabilities and adequate to its financial
21 needs.

22 B. The following transactions involving a domestic
23 insurer and any person in its holding company system, including
24 amendments and modifications of affiliate agreements previously
25 filed pursuant to this section that are subject to the

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1 materiality standards of this subsection, may not be entered
2 into unless the insurer has notified the superintendent in
3 writing of its intention to enter into such transactions at
4 least thirty days prior thereto, or such shorter period as the
5 superintendent may permit, and the superintendent has not
6 disapproved it within that period:

7 (1) sales, purchases, exchanges, loans or
8 extensions of credit, guarantees or investments, provided the
9 transactions are equal to or exceed:

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

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

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

25 (a) with respect to nonlife insurers,

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1 the lesser of three percent of the insurer's admitted assets or
2 twenty-five percent of surplus as regards policyholders as of
3 the most recent December 31 [~~next preceding~~]; or

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

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

20 (4) all management agreements, service
21 contracts, tax allocation agreements, guarantees and all cost-
22 sharing arrangements;

23 (5) guarantees made by a domestic insurer if
24 the amount of the guarantee can be quantified and is greater
25 than one-half of one percent of the insurer's admitted assets

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1 or ten percent of surplus as regards policyholders as of the
2 most recent December 31, whichever is less. A guarantee whose
3 amount cannot be quantified is subject to the notice
4 requirements of this subsection;

5 (6) direct or indirect acquisitions or
6 investments in a person who controls the insurer or in an
7 affiliate of the insurer in an amount that, together with its
8 present holdings in the investments, exceeds two and one-half
9 percent of the insurer's surplus as regards policyholders.

10 Direct or indirect acquisitions or investments in subsidiaries
11 acquired pursuant to Section 59A-37-3 NMSA 1978 or that are
12 authorized pursuant to another section of the Insurance Code or
13 in nonsubsidiary insurance affiliates that are subject to the
14 provisions of The Insurance Holding Company Law are exempt from
15 this requirement; and

16 [~~(5)~~] (7) any material transactions specified
17 by regulation [which] that the superintendent determines may
18 adversely affect the interests of the insurer's policyholders.

19 Notice to the superintendent for amendments or
20 modifications shall provide the reasons for the change and a
21 description of the change's financial impact on the domestic
22 insurer. Within thirty days after the termination of a
23 previously filed agreement, a person shall notify the
24 superintendent of that event. The superintendent shall respond
25 by indicating the type of filing, if any, that the person must

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1 file.

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

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

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

20 E. The superintendent shall be notified within
21 thirty days of any investment of the domestic insurer in any
22 one corporation if the total investment in [~~such~~] the
23 corporation by the insurance holding company system exceeds ten
24 percent of the corporation's voting securities."

25 SECTION 39. Section 59A-37-22 NMSA 1978 (being Laws

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1 1984, Chapter 127, Section 637, as amended) is amended to read:

2 "59A-37-22. DIVIDENDS AND OTHER DISTRIBUTIONS.--

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

14 B. No domestic insurer shall pay an extraordinary
15 dividend or make any other extraordinary distribution to its
16 shareholders until:

17 (1) thirty days after the superintendent has
18 received notice of the declaration thereof and has not within
19 such period disapproved such payment; or

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

22 C. For the purposes of Sections 59A-37-20 through
23 59A-37-22 NMSA 1978, an extraordinary dividend or distribution
24 includes any dividend or distribution of cash or other
25 property, whose fair market value together with that of other

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1 dividends or distributions made within the preceding twelve
2 months exceeds the lesser of ten percent of the insurer's
3 surplus as regards policyholders as of the most recent December
4 31 [~~next preceding~~] or the net gain from operations of the
5 insurer after dividends to policyholders and federal income
6 taxes and before realized capital gains and losses, if the
7 insurer is either a life insurer or a health maintenance
8 organization, or the net [~~investment~~] income, if the insurer is
9 not a life insurer or a health maintenance organization, not
10 including realized capital gains, for the twelve-month period
11 ending December 31 next preceding, but shall not include pro
12 rata distributions of any class of the insurer's own
13 securities.

14 D. In determining whether a dividend or
15 distribution is extraordinary:

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

24 (2) a life insurer or a health maintenance
25 organization may carry forward net gains from operations, not

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1 including realized capital gains from the previous two calendar
2 years, that have not already been paid out as dividends, which
3 carry-forward shall be computed by taking the net gain from the
4 second and third preceding calendar years, not including
5 realized capital gains, less dividends paid in the second and
6 immediate preceding calendar years.

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

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

14 (2) ~~[the superintendent has]~~ not disapproved
15 the payment within thirty days after ~~[he]~~ the superintendent
16 has received notice of the declaration."

17 **SECTION 40.** Section 59A-37-23 NMSA 1978 (being Laws
18 1984, Chapter 127, Section 638, as amended) is amended to read:

19 "59A-37-23. EXAMINATIONS.--

20 A. Pursuant to general powers of investigation and
21 examination vested in the superintendent under Chapter 59A,
22 Article 4 NMSA 1978, the superintendent may order ~~[any]~~ an
23 insurer registered under Section 59A-37-11 NMSA 1978 to produce
24 such records, books or other information papers in the
25 possession of the insurer or its affiliates as are necessary to

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1 ascertain the insurer's financial condition, ~~[or its]~~ including
2 the enterprise risk to the insurer by the ultimate controlling
3 party, or by any entity or combination of entities within the
4 insurance holding company system, or by the insurance holding
5 company system on a consolidated basis or the insurer's
6 compliance with ~~[Chapter 59A, Article 37 NMSA 1978]~~ The
7 Insurance Company Holding Law. If the insurer fails to comply
8 with the order, the superintendent may examine its affiliates
9 to obtain the information.

10 B. The examination shall be conducted and otherwise
11 be subject to applicable provisions of Chapter 59A, Article 4
12 NMSA 1978.

13 C. To determine compliance with The Insurance
14 Holding Company Law, the superintendent may require that an
15 insurer registered pursuant to Section 59A-37-11 NMSA 1978
16 produce information not possessed by the insurer if the insurer
17 can access that information through a contractual relationship,
18 statutory obligation or other valid method. If the insurer
19 cannot obtain the information that the superintendent requests,
20 the insurer shall provide the superintendent with a detailed
21 explanation of the reasons for that inability and the identity
22 of the holder of information. If the superintendent believes
23 that the explanation lacks merit, the superintendent may
24 require, after notice and a hearing, that the insurer pay a
25 penalty of five hundred dollars (\$500) for each day that the

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1 production of information is delayed, or the superintendent may
2 suspend or revoke the insurer's license."

3 SECTION 41. Section 59A-37-24 NMSA 1978 (being Laws
4 1984, Chapter 127, Section 639) is amended to read:

5 "59A-37-24. CONFIDENTIAL TREATMENT.--

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

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1 notice and an opportunity to be heard, determines that the
2 interests of the policyholders, shareholders or the public will
3 be served by the publication [~~thereof~~] of them, in which [~~event~~
4 ~~he~~] case the superintendent may publish all or any part
5 [~~thereof~~] of them in [~~such~~] the manner [~~as he~~] the
6 superintendent deems appropriate.

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

15 C. To assist in the performance of the
16 superintendent's duties, the superintendent:

17 (1) may share documents, materials or other
18 information, including the confidential and privileged
19 documents, materials or information identified in Subsection A
20 of this section, with other state, federal and international
21 regulatory agencies, with the national association of insurance
22 commissioners, its affiliates or its subsidiaries and with
23 state, federal and international law enforcement authorities,
24 including members of a supervisory college described in Section
25 46 of this 2013 act, if the recipient agrees in writing to

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1 maintain the confidentiality and privilege of the document,
2 materials or other information and has cited in writing the
3 legal authority to maintain the confidentiality;

4 (2) in the case of confidential and privileged
5 documents, materials or information reported pursuant to
6 Section 44 of this 2013 act, and notwithstanding Paragraph (1)
7 of this subsection, may share that information only with
8 insurance supervisory officials of states that have statutes or
9 regulations substantially similar to Subsection A of this
10 section and that have agreed in writing not to disclose that
11 information;

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

22 (4) shall, pursuant to The Insurance Holding
23 Company Law, enter into written agreements with the national
24 association of insurance commissioners that govern the sharing
25 and use of information, that are consistent with this

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1 subsection and that:

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

8 (b) provide that the superintendent
9 retains ownership and governs the use of information shared
10 with the national association of insurance commissioners, its
11 affiliates or its subsidiaries;

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

17 (d) require that, in a judicial or
18 administrative action in which the national association of
19 insurance commissioners, its affiliates or its subsidiaries
20 must disclose shared confidential information about the
21 insurer, the national association of insurance commissioners,
22 its affiliates or its subsidiaries consent to intervention by
23 the insurer.

24 D. The sharing of information by the superintendent
25 pursuant to The Insurance Holding Company Law is not a

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1 delegation of regulatory authority or rulemaking. The
2 superintendent alone is responsible for the administration,
3 execution and enforcement of the provisions of The Insurance
4 Holding Company Law.

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

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

17 **SECTION 42.** Section 59A-37-26 NMSA 1978 (being Laws
18 1984, Chapter 127, Section 641, as amended) is amended to read:

19 "59A-37-26. ENFORCEMENT, CRIMINAL PROCEEDINGS--
20 PENALTY.--

21 A. Any insurer failing, without just cause, to file
22 any registration statement as required in [~~Chapter 59A, Article~~
23 ~~37 NMSA 1978~~] The Insurance Holding Company Law shall be
24 required, after notice and hearing, to pay a penalty of fifty
25 dollars (\$50.00) for each day's delay, not to exceed a total

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1 penalty of ten thousand dollars (\$10,000). The superintendent
2 may reduce the penalty if the insurer demonstrates to the
3 superintendent that the imposition of the penalty would
4 constitute a financial hardship to the insurer.

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

21 C. Whenever it appears to the superintendent that
22 any insurer subject to the provisions of ~~[Chapter 59A, Article~~
23 ~~37 NMSA 1978]~~ The Insurance Holding Company Law or any
24 director, officer, employee or agent thereof has engaged in any
25 transaction or entered into a contract ~~[which]~~ that is subject

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1 to the provisions of Sections 59A-37-20 through 59A-37-22 NMSA
2 1978 and [~~which~~] that would not have been approved had the
3 approval been requested, the superintendent may order the
4 insurer to cease and desist immediately any further activity
5 under that transaction or contract. After notice and hearing,
6 the superintendent may also order the insurer to void any
7 contracts and restore the status quo if the action is in the
8 best interest of the policyholders, creditors or the public.

9 D. Whenever it appears to the superintendent that
10 [~~any~~] an insurer or any director, officer, employee or agent
11 thereof has committed a willful violation of [~~Chapter 59A,~~
12 ~~Article 37 NMSA 1978~~] The Insurance Holding Company Law, the
13 superintendent may cause criminal proceedings to be instituted
14 in the district court for the county in which the principal
15 office of the insurer is located or, if [~~such~~] the insurer has
16 no such office in the state, then in the district court for
17 Santa Fe county against the insurer or the responsible
18 director, officer, employee or agent thereof. Any insurer
19 [~~which~~] that willfully violates that [~~article~~] law may be fined
20 not more than twenty thousand dollars (\$20,000). Any
21 individual who willfully violates that [~~article~~] law may be
22 fined not more than ten thousand dollars (\$10,000).

23 E. Any officer, director or employee of an
24 insurance holding company system who willfully and knowingly
25 subscribes to or makes or causes to be made any false

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

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

19 **SECTION 43.** A new section of The Insurance Holding
20 Company Law is enacted to read:

21 "[NEW MATERIAL] ACQUISITIONS THAT WOULD LESSEN
22 COMPETITION.--

23 A. As used in this section:

24 (1) "acquisition" means an agreement,
25 arrangement or activity whose consummation results in a person

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1 directly or indirectly acquiring the control of another person
2 and includes the acquisition of voting securities, the
3 acquisition of assets, bulk reinsurance and mergers; and

4 (2) "involved insurer" includes an insurer
5 that acquires or is acquired, is affiliated with an acquirer or
6 acquired or is the result of a merger.

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

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

23 (2) the acquisition of a person by another
24 person when both persons are neither directly nor through
25 affiliates primarily engaged in the business of insurance, if

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1 the acquisition would otherwise not be excluded from this
2 section by the provisions of another paragraph of this
3 subsection and if the acquiring party to the acquisition files
4 with the superintendent a notification in accordance with
5 Paragraph (1) of Subsection C of this section at least thirty
6 days prior to the proposed effective date of the acquisition;

7 (3) the acquisition of an already affiliated
8 person;

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

14 (a) the combined market share of the
15 involved insurers would not exceed five percent of the total
16 market in any market;

17 (b) no market share would increase; or

18 (c) the combined market share of the
19 involved insurers would not exceed twelve percent, and the
20 market share would not increase by more than two percent, of
21 the total market in any market;

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

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

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

18 (1) Pre-acquisition notification shall contain
19 the information and be in the form prescribed by the national
20 association of insurance commissioners relating to the markets
21 that, pursuant to Paragraph (4) of Subsection B of this
22 section, subject the acquisition to the provisions of this
23 section. The superintendent may require the submission of
24 additional materials and information that the superintendent
25 deems necessary to determine whether the proposed acquisition,

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1 if consummated, would violate the competitive standard
2 identified in Subsection D of this section. Among other
3 materials, the superintendent may require the submission of an
4 economist's opinion relating to the competitive impact of the
5 acquisition in New Mexico along with an addendum addressing the
6 economist's educational background, experience and ability to
7 render an informed opinion.

8 (2) A waiting period shall begin on the date
9 that the superintendent receives a pre-acquisition notification
10 and shall end on the thirtieth day after the date of receipt or
11 upon the superintendent's termination of the waiting period,
12 whichever is earlier. Prior to the end of the waiting period,
13 the superintendent, through one request, may require the
14 submission of additional information relevant to the proposed
15 acquisition. A request for the submission of additional
16 information shall trigger a new waiting period that begins on
17 the date of receipt of the additional information and ends on
18 the thirtieth day after that receipt or upon the
19 superintendent's termination of the waiting period, whichever
20 is earlier.

21 D. The superintendent may enter an order pursuant
22 to Subsection E of this section if there is substantial
23 evidence that the acquisition may substantially lessen
24 competition in a line of insurance in New Mexico or that the
25 acquisition would tend to create a monopoly or if the insurer

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1 fails to file adequate information in compliance with
2 Subsection C of this section.

3 (1) In determining whether a proposed
4 acquisition would violate the competitive standard identified
5 in this subsection, the superintendent shall consider that:

6 (a) an acquisition identified in
7 Subsection B of this section that involves two or more insurers
8 competing in the same market is prima facie evidence of a
9 violation of the competitive standard: 1) if the market is
10 highly concentrated and the involved insurers possess the
11 following shares of the market:

12	Insurer A	Insurer B
13	<hr/>	
14	4%	4% or more
15	10%	2% or more
16	15%	1% or more; or

17 2) if the market is not highly concentrated and the involved
18 insurers possess the following shares of the market:

19	Insurer A	Insurer B
20	<hr/>	
21	5%	5% or more
22	10%	4% or more
23	15%	3% or more
24	19%	1% or more;

25 (b) for the purposes of Subparagraph (a)

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1 of this paragraph, a highly concentrated market is one in which
2 the share of the four largest insurers is seventy-five percent
3 or more of the market; the insurer with the largest share of
4 the market shall be deemed to be Insurer A; a percentage not
5 shown in a table is interpolated in proportion to the
6 percentages shown; and if more than two insurers are involved
7 in the acquisition, exceeding the total of the two columns in
8 the table is prima facie evidence of a violation of the
9 competitive standard of this subsection;

10 (c) there is a significant trend toward
11 increased concentration when the aggregate market share of a
12 grouping of the largest insurers in the market, from the two
13 largest to the eight largest, has increased by seven or more
14 percent of the market over a period of time extending from any
15 base year five to ten years prior to the acquisition up to the
16 time of the acquisition. An acquisition or a merger identified
17 in Subsection B of this section that involves two or more
18 insurers competing in the same market is prima facie evidence
19 of a violation of the competitive standard of this subsection
20 if: 1) there is a significant trend toward increased
21 concentration in the market; 2) an involved insurer is in a
22 grouping of large insurers showing the requisite increase in
23 the market share; and 3) another involved insurer's market is
24 two percent or more;

25 (d) for the purposes of this subsection:

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1 1) "insurer" includes a company and a group of companies under
2 common management, ownership or control; 2) "market" means the
3 relevant product and geographical markets. In determining the
4 relevant product and geographical markets, the superintendent
5 shall give due consideration to, among other things, existing
6 definitions or guidelines promulgated by the national
7 association of insurance commissioners and information
8 submitted by the parties to the acquisition. In the absence of
9 sufficient information to the contrary, the relevant product
10 market is assumed to be the direct written insurance premium
11 for a line of business, such line being that used in the annual
12 statement required to be filed by insurers doing business in
13 New Mexico, and the relevant geographical market is assumed to
14 be New Mexico; and 3) the superintendent bears the burden of
15 showing prima facie evidence of a violation of the competitive
16 standard; and

17 (e) an acquisition that is not prima
18 facie evidence of a violation of the competitive standard
19 pursuant to Subparagraphs (a) and (b) of this paragraph may
20 establish the requisite anti-competitive effect based on other
21 substantial evidence. Using other substantial evidence, a
22 party may establish the absence of the requisite anti-
23 competitive effect for an acquisition that violates the
24 competitive standard pursuant to Subparagraphs (a) and (b) of
25 Paragraph (2) of this subsection. In making a determination

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1 pursuant to this subparagraph, the superintendent shall
2 consider relevant factors, including: 1) market shares; 2)
3 volatility of the ranking of market leaders; 3) the number of
4 competitors; 4) concentration; 5) the trend of concentration in
5 the industry; and 6) the ease of entry and exit into the
6 market.

7 (2) An order shall not be entered pursuant to
8 Subsection E of this section if:

9 (a) the acquisition would yield
10 substantial economies of scale or economies in resource
11 utilization that cannot be feasibly achieved in another way and
12 the benefit to the public that would arise from those economies
13 would exceed the benefits to the public that would arise from
14 not lessening competition; or

15 (b) the acquisition would substantially
16 increase the availability of insurance and the benefits to the
17 public of the increase would exceed the benefits to the public
18 that would arise from not lessening competition.

19 E. If an acquisition violates the standards of this
20 section, the superintendent may enter an order requiring an
21 involved insurer to cease and desist from doing business in New
22 Mexico with respect to the line or lines of insurance involved
23 in the violation or an order denying the application of an
24 acquired or acquiring insurer for a license to do business in
25 New Mexico. The superintendent shall only enter an order if

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1 notice of a hearing was issued before the end of the waiting
2 period, but not less than fifteen days prior to the hearing,
3 and the hearing has concluded. The superintendent shall not
4 enter an order more than sixty days after the insurer filed
5 with the superintendent pre-acquisition notification. A
6 written decision by the superintendent that sets forth findings
7 of fact and conclusions of law shall accompany an order. An
8 order is void if the acquisition is not consummated.

9 (1) After notice and a hearing, the
10 superintendent may fine a person who violates a valid cease-
11 and-desist order no more than ten thousand dollars (\$10,000)
12 per day of the violation or suspend or revoke the person's
13 license, or both.

14 (2) The superintendent may fine an insurer or
15 other person who fails to make a filing required by this
16 section and fails to demonstrate a good faith effort to comply
17 with a filing requirement no more than fifty thousand dollars
18 (\$50,000).

19 F. Subsections B and C of Section 59A-37-25 NMSA
20 1978 and Subsection A of Section 59A-37-27 NMSA 1978 do not
21 apply to an acquisition identified in Subsection B of this
22 section."

23 **SECTION 44.** A new section of The Insurance Holding
24 Company Law is enacted to read:

25 "[NEW MATERIAL] ENTERPRISE RISK FILING.--The person who

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1 predominantly controls an insurer that is subject to
2 registration shall file an enterprise risk report each year.
3 The report shall reflect that person's knowledge and belief of
4 the material risks within the insurance holding company system
5 that pose enterprise risk to the insurer. The report shall be
6 filed with the lead state insurance supervisory official of the
7 insurance holding company system and in compliance with the
8 relevant procedures outlined in the financial analysis handbook
9 adopted by the national association of insurance
10 commissioners."

11 SECTION 45. A new section of The Insurance Holding
12 Company Law is enacted to read:

13 "[NEW MATERIAL] MANAGEMENT OF DOMESTIC INSURERS SUBJECT
14 TO REGISTRATION.--

15 A. The control of a domestic insurer by a person
16 does not relieve the insurer's officers and directors of an
17 obligation or a liability to which they are otherwise subject
18 by law. An insurer shall be managed so that its separate
19 operating identity is consistent with The Insurance Holding
20 Company Law.

21 B. Nothing in this section precludes a domestic
22 insurer from participating in a common management function, a
23 cooperative or the joint use of personnel if that participation
24 meets the standards of Subsection A of Section 59A-37-20 NMSA
25 1978.

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1 C. At least two-thirds of the directors and two-
2 thirds of the members of each committee of the board of
3 directors of a domestic insurer shall not be officers or
4 employees of the insurer or of an entity that controls, is
5 controlled by or is under common control with the insurer and
6 shall not be beneficial owners of a controlling interest in the
7 voting stock of the insurer or entity. At least one person in
8 that group of two-thirds of the directors shall be present
9 prior to the transaction of business at a meeting of the board
10 of directors or a committee of the board of directors.

11 D. The board of directors of a domestic insurer
12 shall establish at least one committee composed solely of
13 directors who are not officers or employees of the insurer or
14 of an entity that controls, is controlled by or is under common
15 control with the insurer and who are not beneficial owners of a
16 controlling interest in the voting stock of the insurer or
17 entity. The committee or committees shall:

18 (1) nominate the candidates for director, who
19 shall be elected by the shareholders or policyholders;

20 (2) evaluate the performance of officers
21 deemed to be principal officers of the insurer; and

22 (3) recommend to the board of directors the
23 selection and compensation of the principal officers.

24 E. The provisions of Subsections C and D of this
25 section do not apply to a domestic insurer if the person

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1 controlling the insurer, such as an insurer, a mutual insurance
2 holding company or a publicly held corporation, has a board of
3 directors and committees of the board of directors that meet
4 the requirements of Subsections C and D of this section.

5 F. An insurer whose annual direct written and
6 assumed premium, excluding premiums reinsured with the federal
7 crop insurance corporation and the national flood insurance
8 program, is less than three hundred million dollars
9 (\$300,000,000) may apply to the superintendent for a waiver
10 from the requirements of this section. An insurer whose
11 circumstances are unusual may apply to the superintendent for a
12 waiver from the requirements of this section. In determining
13 whether the insurer qualifies for a waiver, the superintendent
14 may consider, among other factors, the insurer's type of
15 business entity, the volume of its business written, the
16 availability of qualified board members and its ownership or
17 organizational structure."

18 SECTION 46. A new section of The Insurance Holding
19 Company Law is enacted to read:

20 "[NEW MATERIAL] SUPERVISORY COLLEGES.--

21 A. In order to determine compliance with The
22 Insurance Holding Company Law by an insurer registered pursuant
23 to Section 59A-37-11 NMSA 1978, the superintendent may
24 participate in a supervisory college for a domestic insurer
25 that is part of an insurance holding company system with

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1 international operations. Concerning a supervisory college,
2 the superintendent may:

- 3 (1) initiate its establishment;
- 4 (2) clarify its membership and the
5 participation of other supervisors;
- 6 (3) clarify its functions and the role of
7 other regulators, including the establishment of a group-wide
8 supervisor;
- 9 (4) coordinate its ongoing activities,
10 including planning meetings, supervision and processes for
11 information sharing; and
- 12 (5) establish a crisis management plan.

13 B. A registered insurer subject to this section
14 shall pay the reasonable expenses, including for travel,
15 associated with the superintendent's participation in a
16 supervisory college pursuant to Subsection C of this section.
17 A supervisory college may be convened as a temporary or
18 permanent forum for communication and cooperation between the
19 regulators charged with the supervision of the insurer or its
20 affiliates. The superintendent may establish a regular
21 assessment to the insurer for the payment of these expenses.

22 C. In order to assess the business strategy,
23 financial position, legal and regulatory position, risk
24 exposure, risk management and governance processes of an
25 insurer, and as part of the examination of individual insurers

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1 pursuant to Section 59A-37-23 NMSA 1978, the superintendent may
2 participate in a supervisory college with other regulators
3 charged with the supervision of the insurer or its affiliates,
4 including other state, federal and international regulatory
5 agencies. The superintendent may enter into agreements in
6 accordance with Subsection C of Section 59A-37-24 NMSA 1978
7 that provide the basis for cooperation between the
8 superintendent and the other regulatory agencies and the
9 activities of the supervisory college. Nothing in this section
10 shall delegate to the supervisory college the authority of the
11 superintendent to regulate or supervise the insurer or its
12 affiliates within its jurisdiction."

13 **SECTION 47.** Section 59A-41-24 NMSA 1978 (being Laws
14 1984, Chapter 127, Section 716, as amended) is amended to read:

15 "59A-41-24. HAZARDOUS FINANCIAL CONDITION--
16 DETERMINATION.--

17 A. For the purposes of Sections 59A-41-25 and
18 59A-41-26 NMSA 1978, an insurer may be deemed to be in a
19 hazardous financial condition when the superintendent has
20 determined, after notice and hearing, that the loss experience
21 of the insurer, when reviewed in conjunction with the kinds and
22 characteristics of risks insured, or the insurer's financial
23 condition, or its ownership, or the ratio of its annual premium
24 volume in relation to its policyholders' surplus, would make
25 further assumption of risks by the insurer hazardous to those

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1 persons doing business with the insurer or to the general
2 public.

3 B. The following items may be considered by the
4 superintendent to determine whether the continued operation of
5 ~~[any]~~ an insurer transacting an insurance business in ~~[this~~
6 ~~state]~~ New Mexico is hazardous to the policyholders,
7 the creditors or the general public:

8 (1) adverse findings reported in financial
9 condition and market conduct examination reports, audit reports
10 and actuarial opinions, reports or summaries;

11 (2) the national association of insurance
12 commissioners insurance regulatory information system and its
13 ~~[related]~~ other financial analysis solvency tools and reports;

14 (3) ratios of commission expense, general
15 insurance expense, policy benefits and reserve increases to
16 annual premium and net investment income;

17 (4) ~~[the value, liquidity or diversity of the~~
18 ~~insurer's asset portfolio when viewed in light of current~~
19 ~~economic conditions with regard to assuring the company's~~
20 ~~ability to meet its outstanding obligations as they mature]~~
21 whether, according to currently accepted actuarial standards of
22 practice, the insurer has made adequate provision for the
23 anticipated cash flows required by the insurer's contractual
24 obligations and related expenses, when considered in light of
25 the insurer's assets and investment earnings on assets held for

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1 reserves and related actuarial items and the considerations
2 anticipated to be received and retained through the insurer's
3 policies and contracts;

4 (5) the [~~adequacy, reliability and soundness~~
5 ~~of]~~ ability of an assuming reinsurer to perform and whether the
6 insurer's reinsurance program provides sufficient protection
7 for the insurer's remaining surplus after taking into account
8 the insurer's cash flow and the classes of business written as
9 well as the financial condition of the assuming reinsurer [and
10 ~~the ability of the assuming reinsurer to perform under its~~
11 ~~reinsurance agreements];~~

12 (6) whether the insurer's operating loss in
13 the last twelve-month period or any shorter period of time,
14 including net capital gain or loss, change in non-admitted
15 assets and cash dividends paid to shareholders [~~in comparison~~
16 ~~to such]~~ is greater than fifty percent of the insurer's
17 remaining surplus as regards policyholders in excess of the
18 minimum required;

19 (7) whether the insurer's operating loss,
20 excluding net capital gains, in the last twelve months or a
21 shorter period of time is greater than twenty percent of the
22 insurer's remaining surplus as regards policyholders in excess
23 of the minimum required;

24 [~~(7)~~] (8) whether [any affiliate, subsidiary
25 ~~of]~~ a reinsurer, an obligor or an entity within the insurer's

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1 insurance holding company system is insolvent, threatened with
2 insolvency or delinquent in payment of its monetary or other
3 ~~[obligation]~~ obligations and that, in the superintendent's
4 opinion, might affect the solvency of the insurer;

5 ~~[(8)]~~ (9) contingent liabilities, pledges or
6 guaranties ~~[which]~~ that individually or collectively involve a
7 total amount that, in the superintendent's opinion, may affect
8 the solvency of the insurer;

9 ~~[(9)]~~ (10) whether any person having control
10 of an insurer is delinquent in transmitting or paying net
11 premiums to ~~[such]~~ the insurer;

12 ~~[(10)]~~ (11) the age and collectibility of
13 receivables;

14 ~~[(11)]~~ (12) whether the management of an
15 insurer, including officers, directors or any other person who
16 directly or indirectly controls the operation of ~~[such]~~ the
17 insurer, fails to possess and demonstrate the competence,
18 fitness and reputation deemed necessary to serve the insurer in
19 such position;

20 ~~[(12)]~~ (13) whether management of an insurer
21 has failed to respond to inquiries relative to the condition of
22 the insurer or has furnished false or misleading information
23 concerning an inquiry;

24 (14) whether the insurer, for a reason not
25 satisfactory to the superintendent, has failed to meet

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1 financial and holding company filing requirements;

2 [~~(13)~~] (15) whether management of an insurer
3 has filed with any regulatory authority or released to lending
4 institutions or to the general public any false or misleading
5 financial statements or has made a false or misleading entry or
6 has omitted an entry of material amount in the books of the
7 insurer;

8 [~~(14)~~] (16) whether the insurer has grown so
9 rapidly and to such an extent that it lacks adequate financial
10 and administrative capacity to meet its obligations in a timely
11 manner;

12 [~~(15)~~] (17) whether the [~~company~~] insurer has
13 experienced or will experience in the foreseeable future cash
14 flow or liquidity problems;

15 (18) whether management of the insurer has
16 established reserves that do not meet the minimum standards
17 established by New Mexico's insurance laws and rules and by
18 statutory accounting standards, sound actuarial principles and
19 standards of practice;

20 (19) whether management of the insurer
21 persistently engages in material under-reserving that results
22 in adverse development;

23 (20) whether transactions among affiliates,
24 subsidiaries or controlling persons for which the insurer
25 receives assets or capital gains, or both, do not provide

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1 sufficient value, liquidity or diversity to ensure that the
2 insurer can meet its outstanding obligations as they mature;

3 [~~(16)~~] (21) risk-based capital reports and
4 other information obtained pursuant to the Risk-Based Capital
5 Act; or

6 [~~(17)~~] (22) such other material information
7 and data as the superintendent may deem relevant.

8 C. For the purposes of making a determination of an
9 insurer's financial condition under this section, the
10 superintendent may:

11 (1) disregard any credit or amount receivable
12 resulting from transactions with a reinsurer [~~which~~] that is
13 insolvent, impaired or otherwise subject to a delinquency
14 proceeding;

15 (2) make appropriate adjustments, including
16 disallowance, to asset values attributable to investments in or
17 transactions with parents, subsidiaries or affiliates that are
18 consistent with the national association of insurance
19 commissioners' accounting practices and procedures manual and
20 with state laws and rules;

21 (3) refuse to recognize the stated value of
22 accounts receivable if the ability to collect receivables is
23 highly speculative in view of the age of the account or the
24 financial condition of the debtor; or

25 (4) increase the insurer's liability in an

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1 amount equal to any contingent liability, pledge or guarantee
2 not otherwise included if there is a substantial risk that the
3 insurer will be called upon to meet the obligation undertaken
4 within the next twelve-month period."

5 SECTION 48. Section 59A-41-25 NMSA 1978 (being Laws
6 1984, Chapter 127, Section 717, as amended) is amended to read:

7 "59A-41-25. REQUIREMENTS OF INSURER IN HAZARDOUS
8 FINANCIAL CONDITION.--

9 A. Whenever [~~he~~] the superintendent finds an
10 insurer authorized to transact insurance in [~~this state~~] New
11 Mexico to be in hazardous financial condition, as referred to
12 in Section 59A-41-24 NMSA 1978, the superintendent may order
13 the insurer to take such action as [~~he~~] the superintendent
14 deems reasonably necessary to rectify the hazardous condition,
15 including [~~but not limited to one or more of the following~~
16 ~~measures~~] requiring the insurer to:

17 (1) [~~require the insurer to~~] reduce, suspend
18 or limit the volume of [~~new~~] business being accepted [~~to an~~
19 ~~amount, for the period of time, and in a manner prescribed in~~
20 ~~the superintendent's order~~] or renewed;

21 (2) [~~require submission of~~] submit its
22 reinsurance contracts for approval and make such further
23 requirements as to the insurer's reinsurance arrangements as
24 the superintendent deems necessary;

25 (3) [~~require the insurer to~~] bulk-reinsure all

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1 or any part of its New Mexico business with another insurer
2 authorized to transact such business in [~~this state~~] New
3 Mexico;

4 (4) [~~require a contribution to~~] increase the
5 insurer's capital and surplus on such terms, in such amount and
6 in such manner as the superintendent deems necessary;

7 (5) [~~require the insurer to~~] maintain with the
8 superintendent a special deposit in cash or securities eligible
9 for investment of funds of a like domestic insurer under
10 Chapter 59A, Article 9 NMSA 1978 and in amount not less than
11 the lesser of:

12 (a) the amounts required to be
13 maintained as: 1) reserves for losses and loss adjustment
14 expenses on New Mexico business; and 2) reserves for unearned
15 premiums on New Mexico business. In determining the amount of
16 deposit required, the reserves for losses, loss adjustment
17 expenses and unearned premiums shall be reduced only for
18 reinsurance ceded to authorized or accredited reinsurers
19 [~~which~~] that maintain with an independent custodian cash or
20 marketable securities in amount not less than the sum of the
21 reinsurer's reserves for losses, loss adjustment expenses and
22 unearned premiums as to reinsurance assumed; or

23 (b) five hundred thousand dollars
24 (\$500,000).

25 Any deposit required by this paragraph shall be for the

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1 protection and benefit only of New Mexico policyholders or
2 claimants, or both, and shall not be withdrawn until the
3 superintendent terminates the requirement of the deposit. This
4 paragraph shall not apply as to any domestic insurer, and
5 Subparagraph (b) of this paragraph shall not apply as to any
6 life insurer;

7 (6) [~~require the insurer to~~] reduce general
8 insurance and commission expenses by specified methods;

9 (7) [~~require the insurer to~~] suspend or limit
10 the declaration and payment of dividends to its stockholders or
11 to its policyholders;

12 (8) [~~require the insurer to~~] file reports in a
13 form acceptable to the superintendent concerning the market
14 value of an insurer's assets;

15 (9) [~~require the insurer to~~] limit or withdraw
16 from certain investments or discontinue certain investment
17 practices to the extent the superintendent deems necessary;

18 (10) [~~require the insurer to~~] document the
19 adequacy of premium rates in relation to the risks insured;
20 [~~or~~]

21 (11) [~~require the insurer to~~] file, in
22 addition to regular annual statements, interim financial
23 reports on the form adopted by the national association of
24 insurance commissioners or on such format as required by the
25 superintendent;

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1 (12) correct corporate governance practice
2 deficiencies and adopt and use governance practices acceptable
3 to the superintendent;

4 (13) provide to the superintendent a business
5 plan in order to continue to transact business in the state; or

6 (14) notwithstanding another provision of law
7 limiting the frequency or amount of premium rate adjustments,
8 adjust rates for a non-life insurance product written by the
9 insurer that the superintendent considers necessary to improve
10 the financial condition of the insurer.

11 B. The insurer may request a hearing to review the
12 order in accordance with Chapter 59A, Article 4 NMSA 1978;
13 however, the superintendent shall give written notice of the
14 hearing not less than ten days in advance of the hearing, and
15 the hearing shall be held privately unless the insurer requests
16 a public hearing, in which case the hearing shall be public."

17 **SECTION 49.** Section 59A-42-3 NMSA 1978 (being Laws 2012,
18 Chapter 9, Section 6) is amended to read:

19 "59A-42-3. DEFINITIONS.--As used in the Life and Health
20 Insurance Guaranty Association Act:

21 A. "account" means either of the two accounts
22 maintained pursuant to Section 59A-42-5 NMSA 1978;

23 B. "association" means the life and health
24 insurance guaranty association created pursuant to Section
25 59A-42-5 NMSA 1978;

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1 C. "authorized assessment", or the term
2 "authorized" when used in the context of assessments, means
3 that a resolution by the board has been passed whereby an
4 assessment will be called immediately or in the future from
5 member insurers for a specified amount. An assessment is
6 authorized when the resolution is passed;

7 D. "benefit plan" means a specific employee, a
8 union or an association of natural persons benefit plan;

9 E. "board" means the board of directors organized
10 pursuant to Section 59A-42-6 NMSA 1978;

11 F. "called assessment", or the term "called" when
12 used in the context of assessments, means that a notice has
13 been issued by the association to member insurers requiring
14 that an authorized assessment be paid within the time frame set
15 forth within the notice. An authorized assessment becomes a
16 called assessment when notice is mailed by the association to
17 member insurers;

18 G. "contractual obligation" means an obligation
19 under a policy or contract or a certificate under a group
20 policy or contract, or portion thereof, for which coverage is
21 provided pursuant to Section 59A-42-4 NMSA 1978;

22 H. "covered policy" means a policy or contract or
23 portion of a policy or contract for which coverage is provided
24 pursuant to Section 59A-42-4 NMSA 1978;

25 I. "domiciliary state" means the state in which an

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1 insurer is incorporated or organized or, as to an alien
2 insurer, the state in which at commencement of delinquency
3 proceedings the larger amount of the insurer's assets are held
4 in trust or on deposit for the benefit of its policyholders and
5 creditors in the United States;

6 J. "extra-contractual claims" includes claims
7 relating to bad faith in the payment of claims, punitive or
8 exemplary damages or attorney fees and costs;

9 K. "impaired insurer" means a member insurer that,
10 after the effective date of the Life and Health Insurance
11 Guaranty Association Act, is not an insolvent insurer and is
12 placed under an order of rehabilitation or conservation by a
13 court of competent jurisdiction;

14 L. "insolvent insurer" means a member insurer that,
15 after the effective date of the Life and Health Insurance
16 Guaranty Association Act, is placed under an order of
17 liquidation by a court of competent jurisdiction with a finding
18 of insolvency;

19 M. "member insurer" means an insurer that is
20 licensed or that holds a certificate of authority to transact
21 in this state insurance for which coverage is provided pursuant
22 to Section 59A-42-4 NMSA 1978 and includes an insurer whose
23 license or certificate of authority in this state may have been
24 suspended, revoked, not renewed or voluntarily withdrawn, but
25 does not include:

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- 1 (1) a [~~hospital or medical service~~
2 ~~organization~~] health care plan, whether profit or nonprofit;
- 3 (2) a health maintenance organization;
- 4 (3) a prepaid dental plan;
- 5 [~~(3)~~] (4) a fraternal benefit society;
- 6 [~~(4)~~] (5) a mandatory state pooling plan;
- 7 [~~(5)~~] (6) a mutual assessment company or other
8 person that operates on an assessment basis;
- 9 [~~(6)~~] (7) an insurance exchange;
- 10 [~~(7)~~] (8) a charitable organization that is in
11 good standing with the superintendent pursuant to Section
12 59A-1-16.1 NMSA 1978;
- 13 [~~(8)~~] (9) any insurer that was insolvent or
14 unable to fulfill its contractual obligations as of April 9,
15 1975; or
- 16 [~~(9)~~] (10) an entity similar to any of the
17 above;
- 18 N. "Moody's corporate bond yield average" means the
19 monthly average corporates as published by Moody's investors
20 service, incorporated, or its successor;
- 21 O. "owner" of a policy or contract, "policy owner"
22 and "contract owner" means the person who is identified as the
23 legal owner under the terms of the policy or contract or who is
24 otherwise vested with legal title to the policy or contract
25 through a valid assignment completed in accordance with the

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1 terms of the policy or contract and properly recorded as the
2 owner on the books of the insurer. The terms "owner", "policy
3 owner" and "contract owner" do not include persons with a mere
4 beneficial interest in a policy or contract;

5 P. "plan sponsor" means:

6 (1) the employer in the case of a benefit plan
7 established or maintained by a single employer;

8 (2) the employee organization in the case of a
9 benefit plan established or maintained by an employee
10 organization; or

11 (3) the association, committee, joint board of
12 trustees or other similar group of representatives of the
13 parties who establish or maintain the benefit plan in the case
14 of a benefit plan established or maintained by two or more
15 employers or jointly by one or more employers and one or more
16 employee organizations;

17 Q. "premiums" means amounts or considerations, by
18 whatever name used, received on covered policies or contracts
19 less returned premiums, considerations and deposits and less
20 dividends and experience credits. "Premiums" does not include:

21 (1) amounts or considerations received for
22 policies or contracts or for the portions of policies or
23 contracts for which coverage is not provided pursuant to
24 Subsection E of Section 59A-42-4 NMSA 1978, except that
25 assessable premiums shall not be reduced on account of

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1 Paragraph (3) of Subsection E of Section 59A-42-4 NMSA 1978,
2 relating to interest limitations, or Paragraph (2) of
3 Subsection F of Section 59A-42-4 NMSA 1978, relating to
4 limitations, with respect to one individual, one participant or
5 one contract owner;

6 (2) premiums in excess of five million dollars
7 (\$5,000,000) on an unallocated annuity contract not issued
8 under a governmental retirement benefit plan, or its trustee,
9 established pursuant to Section 401, 403(b) or 457 of the
10 federal Internal Revenue Code of 1986; or

11 (3) with respect to multiple non-group
12 policies of life insurance owned by one owner, whether the
13 policy owner is an individual, firm, corporation or other
14 person, and whether the persons insured are officers, managers,
15 employees or other persons, premiums in excess of five million
16 dollars (\$5,000,000) with respect to these policies or
17 contracts, regardless of the number of policies or contracts
18 held by the owner;

19 R. "principal place of business" means:

20 (1) in the case of a plan sponsor or a person
21 other than a natural person, the single state in which the
22 natural person who establishes a policy for the direction,
23 control and coordination of the operations of the entity as a
24 whole primarily exercises that function, as determined by the
25 association in its reasonable judgment by considering the

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1 following factors:

2 (a) the state in which the primary
3 executive and administrative headquarters of the entity is
4 located;

5 (b) the state in which the principal
6 office of the chief executive officer of the entity is located;

7 (c) the state in which the board, or
8 similar governing person or persons, of the entity conducts the
9 majority of its meetings;

10 (d) the state in which the executive or
11 management committee of the board, or similar governing person
12 or persons, of the entity conducts the majority of its
13 meetings;

14 (e) the state from which the management
15 of the overall operations of the entity is directed; and

16 (f) in the case of a benefit plan
17 sponsored by affiliated companies comprising a consolidated
18 corporation, the state in which the holding company or
19 controlling affiliate has its principal place of business as
20 determined using the factors in this subsection; but

21 (g) in the case of a plan sponsor, if
22 more than fifty percent of the participants in the benefit plan
23 are employed in a single state, that state shall be deemed to
24 be the principal place of business of the plan sponsor; and

25 (2) in the case of a plan sponsor of a benefit

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1 plan described in Paragraph (3) of Subsection P of this
2 section, the principal place of business of the association,
3 committee, joint board of trustees or other similar group of
4 representatives of the parties that establish or maintain the
5 benefit plan that, in lieu of a specific or clear designation
6 of a principal place of business, shall be deemed to be the
7 principal place of business of the employer or employee
8 organization that has the largest investment in the benefit
9 plan in question;

10 S. "receivership court" means the court in the
11 insolvent or impaired insurer's domiciliary state having
12 jurisdiction over the conservation, rehabilitation or
13 liquidation of the insurer;

14 T. "resident" means a person to whom a contractual
15 obligation is owed and who resides in this state on the date of
16 entry of a court order that determines a member insurer to be
17 an impaired insurer or a court order that determines a member
18 insurer to be an insolvent insurer. A person may be a resident
19 of only one state, which, in the case of a person other than a
20 natural person, shall be its principal place of business.
21 Citizens of the United States that are either residents of
22 foreign countries or residents of United States possessions,
23 territories or protectorates that do not have an association
24 similar to the association created by the Life and Health
25 Insurance Guaranty Association Act shall be deemed residents of

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1 the state of domicile of the insurer that issued the policies
2 or contracts;

3 U. "structured settlement annuity" means an annuity
4 purchased in order to fund periodic payments for a plaintiff or
5 other claimant in payment for or with respect to personal
6 injury suffered by the plaintiff or other claimant;

7 V. "supplemental contract" means a written
8 agreement entered into for the distribution of proceeds under a
9 life, health or annuity policy or contract; and

10 W. "unallocated annuity contract" means an annuity
11 contract or group annuity certificate that is not issued to and
12 owned by an individual, except to the extent of annuity
13 benefits guaranteed to an individual by an insurer under the
14 contract or certificate."

15 SECTION 50. Section 59A-42A-7 NMSA 1978 (being Laws
16 1997, Chapter 107, Section 7) is amended to read:

17 "59A-42A-7. EXAMINATION--ANNUAL STATEMENT.--

18 A. The association is subject to and responsible to
19 pay the cost of examination by the superintendent [~~of~~
20 ~~insurance~~] on a periodic basis, pursuant to Chapter 59A,
21 Article 4 NMSA 1978.

22 B. Not later than March [~~31~~] 1 of each year, the
23 board shall submit to the superintendent an [~~audited financial~~
24 ~~report for the preceding calendar year in a form approved by~~
25 ~~the superintendent~~] annual statement in accordance with the

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1 requirements of Section 59A-5-29 NMSA 1978 and a risk-based
2 capital report in accordance with the requirements of Section
3 59A-5A-3 NMSA 1978."

4 SECTION 51. Section 59A-46-9 NMSA 1978 (being Laws 1993,
5 Chapter 266, Section 9) is amended to read:

6 "59A-46-9. ANNUAL REPORT.--

7 A. Every health maintenance organization shall
8 annually, on or before the first day of March, file a report,
9 verified by at least two principal officers, with the
10 superintendent covering the preceding calendar year.

11 B. The report shall be on forms prescribed by the
12 superintendent and shall include:

13 (1) a financial statement of the organization
14 prepared pursuant to forms prescribed by the superintendent,
15 including its balance sheet and receipts and disbursements for
16 the preceding year;

17 (2) any material changes in the information
18 submitted pursuant to Subsection C of Section 59A-46-3 NMSA
19 1978;

20 (3) the number of persons enrolled during the
21 year and the number of enrollees as of the end of the year; and

22 (4) such other reasonable information
23 materially relating to the performance of the health
24 maintenance organization as is necessary to enable the
25 superintendent to carry out ~~[his]~~ the superintendent's duties

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1 under the Insurance Code.

2 C. In addition, the health maintenance organization
3 shall file by the dates indicated:

4 (1) ~~[audited financial statements as of the~~
5 ~~end of the preceding calendar year on or before June 1 or~~
6 ~~within one hundred twenty days following the end of its fiscal~~
7 ~~year, whichever is later]~~ on or before March 1, an annual
8 statement in accordance with the requirements of Section
9 59A-5-29 NMSA 1978 and a risk-based capital report in
10 accordance with the requirements of Section 59A-5A-3 NMSA 1978;

11 (2) a list of the providers who have executed
12 a contract that complies with Subsection ~~[D]~~ E of Section
13 59A-46-13 NMSA 1978 on or before March 1; and

14 (3) a description of the grievance procedures
15 and the total number of grievances handled through such
16 procedures, a compilation of the causes underlying those
17 grievances and a summary of the final disposition of those
18 grievances, on or before March 1.

19 D. The superintendent may require such additional
20 reports as are deemed necessary and appropriate to enable the
21 superintendent to carry out ~~[his]~~ the superintendent's duties
22 under the Health Maintenance Organization Law."

23 SECTION 52. Section 59A-47-14 NMSA 1978 (being Laws
24 1984, Chapter 127, Section 879.12) is amended to read:

25 "59A-47-14. ANNUAL STATEMENT.--As prerequisite to

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1 continuation of its certificate of authority, each health care
2 plan shall on or before March [~~1st~~] 1 each year file with the
3 superintendent and with the national association of insurance
4 ~~[superintendents its financial statement for the year ending~~
5 ~~December 31st immediately preceding on form as prescribed and~~
6 ~~furnished without charge by the superintendent. The form shall~~
7 ~~conform as nearly as may be to the form of annual statement of~~
8 ~~insurers as from time to time adopted by the national~~
9 ~~association of insurance superintendents. The statement shall~~
10 ~~be verified by the oaths of the president and secretary of the~~
11 ~~health care plan, or in the absence of either of them, by other~~
12 ~~principal officers] commissioners an annual statement in
13 accordance with the requirements of Section 59A-5-29 NMSA 1978
14 and a risk-based capital report in accordance with the
15 requirements of Section 59A-5A-3 NMSA 1978."~~

16 **SECTION 53.** Section 59A-48-10 NMSA 1978 (being Laws
17 1984, Chapter 127, Section 889) is amended to read:

18 "59A-48-10. ANNUAL REPORT TO SUPERINTENDENT.--

19 A. Every prepaid dental plan organization annually
20 on or before the first day of March shall file with the
21 superintendent a report covering its activities for the
22 preceding calendar year in form as prescribed by the
23 superintendent, verified by at least two [~~(2)~~] principal
24 officers of the corporation. A copy of the report shall be
25 sent by the prepaid dental plan organization to the [~~director~~

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1 ~~of the health services division of the health and environment]~~
2 department of health.

3 B. Such reports shall be on forms prescribed by the
4 superintendent and shall include:

5 (1) ~~[a financial statement of the~~
6 ~~organization, including its balance sheet and receipts and~~
7 ~~disbursements for the preceding year certified as required by~~
8 ~~the form of the annual report]~~ an annual statement in
9 accordance with the requirements of Section 59A-5-29 NMSA 1978
10 and a risk-based capital report in accordance with the
11 requirements of Section 59A-5A-3 NMSA 1978;

12 (2) any material changes in the information;

13 (3) the number of persons who become members
14 during the year, the number of members as of the end of the
15 year and the number of memberships terminated during the year;

16 (4) the costs of all care provided and the
17 number of units of care provided; and

18 (5) such other information relating to the
19 performance of the prepaid dental plan organization as is
20 necessary to enable the superintendent to carry out the duties
21 prescribed by ~~[this article]~~ The Prepaid Dental Plan Law.

22 C. The fee for filing the annual report shall be as
23 specified in Section ~~[101 (fee schedule) of the Insurance Code]~~
24 59A-6-1 NMSA 1978."

25 SECTION 54. SEVERABILITY.--If any part or application of

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1 the provisions of this act is held invalid, the remainder or
2 its application to other situations or persons shall not be
3 affected.

4 SECTION 55. CONTINGENT DELAYED REPEAL.--If Sections 16
5 through 28 of this act have not taken effect by January 1,
6 2020, those sections are repealed.

7 SECTION 56. EFFECTIVE DATE--CONTINGENCY--NOTIFICATION.--

8 A. The effective date of the provisions of Sections
9 16 through 28 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, health

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1 and fraternal 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 B. The effective date of the provisions of Sections
16 1 through 15 and 29 through 54 of this act is July 1, 2013.