

1 SENATE BILL 376

2 **53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017**

3 INTRODUCED BY

4 George K. Munoz

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10 AN ACT

11 RELATING TO TAXATION; TRANSFERRING THE COLLECTION AND
12 ENFORCEMENT OF THE PREMIUM TAX TO THE TAXATION AND REVENUE
13 DEPARTMENT; DECLARING AN EMERGENCY.

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 59A-2-1 NMSA 1978 (being Laws 1984,
17 Chapter 127, Section 19, as amended) is amended to read:

18 "59A-2-1. OFFICE OF SUPERINTENDENT OF INSURANCE.--

19 A. The office of superintendent of insurance,
20 created as of July 1, 2013 by Article 11, Section 20 of the
21 constitution of New Mexico, is an adjunct agency pursuant to
22 Section 9-1-6 NMSA 1978.

23 B. All powers relating to state supervision of
24 insurance, insurance rates and rate practices, together with
25 collection of insurance licenses; taxes or fees, except for the

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1 premium tax; and all records pertaining to such supervision are
2 under control of the office of superintendent of insurance."

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

5 "59A-6-2. PREMIUM TAX--HEALTH INSURANCE PREMIUM SURTAX.--

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

8 (1) each insurer authorized to transact
9 insurance in New Mexico, except for surplus lines insurance
10 provided for in Section 57A-14-12 NMSA 1978;

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

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

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

24 (5) each unauthorized insurer that has assumed
25 a contract or policy of insurance directly or indirectly from

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

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

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

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

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

14 SECTION 3. Section 59A-6-3 NMSA 1978 (being Laws 1984,
15 Chapter 127, Section 103) is amended to read:

16 "59A-6-3. INSURER MUST PAY TAX ON WITHDRAWAL FROM
17 STATE.--Any insurer holding a certificate of authority to
18 transact insurance in New Mexico [~~which~~] that ceases to do
19 business in the state shall [~~thereupon~~] file with the
20 superintendent and the taxation and revenue department a report
21 of its premiums collected to the date of such cessation of
22 business [~~which~~] that are subject to the premium tax as
23 provided by Section [~~102 of this article~~] 59A-6-2 NMSA 1978 and
24 not [~~theretofore~~] reported previously, and forthwith pay to the
25 [~~superintendent~~] taxation and revenue department the tax

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1 [thereon] owed and surrender its certificate of authority to
2 the superintendent."

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

5 "59A-6-4. [~~PENALTY FOR FAILURE TO REPORT OR PAY TAX OR~~
6 ~~FEES~~] ENFORCEMENT.--Every insurer, nonprofit health care plan,
7 health maintenance organization, prepaid dental plan or
8 prearranged funeral plan transacting business in New Mexico
9 [~~that fails to file when due any report for taxation,~~
10 ~~regardless of whether tax is due, or to pay when due any tax or~~
11 ~~fees as required in this article shall be liable to the state~~
12 ~~for the amount thereof and for penalty of one thousand dollars~~
13 ~~(\$1,000) for each month or part thereof it has failed to file~~
14 ~~the report or pay the tax or fees after demand therefor.~~
15 ~~Services of process in any action against a person to recover~~
16 ~~the tax, fee or penalty may be made upon the superintendent as~~
17 ~~attorney for service of process as provided in Section 59A-5-32~~
18 ~~NMSA 1978] is subject to the enforcement provisions of the Tax
19 Administration Act."~~

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

22 "59A-6-5. DISTRIBUTION OF DIVISION COLLECTIONS.--

23 A. All money received by the division for fees,
24 licenses, penalties and taxes, except premium taxes collected
25 pursuant to Section 59A-6-2 NMSA 1978, shall be paid daily by

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1 the superintendent to the state treasurer and credited to the
2 "insurance department suspense fund" except as provided by:

3 (1) the Law Enforcement Protection Fund Act;
4 and

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

6 B. The taxation and revenue department shall
7 distribute premium taxes collected pursuant to Section 59A-6-2
8 NMSA 1978 to the insurance department suspense fund.

9 ~~[B-]~~ C. The superintendent may authorize refund of
10 money erroneously paid as fees, licenses, penalties or taxes
11 from the insurance department suspense fund under request for
12 refund made within three years after the erroneous payment. In
13 the case of premium taxes erroneously paid or overpaid in
14 accordance with law, the taxpayer may request from the taxation
15 and revenue department a refund or may request that the refund
16 [may also be requested] be applied as a credit against premium
17 taxes due in any annual or quarterly premium tax return filed
18 within three years of the erroneous or excess payment. Refunds
19 shall be paid by the superintendent from the insurance
20 department suspense fund on order of the taxation and revenue
21 department.

22 ~~[G-]~~ D. If required by a compact to which New
23 Mexico has joined pursuant to law, the superintendent shall
24 authorize the allocation of premiums collected pursuant to
25 Section 59A-14-12 NMSA 1978 to other states that have joined

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1 the compact pursuant to an allocation formula agreed upon by
2 the compacting states.

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

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

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

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

25 (3) to the general fund, the balance remaining

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in the insurance department suspense fund derived from all other kinds of insurance business."

SECTION 6. APPLICABILITY.--The provisions of this act apply to taxable years beginning on or after January 1, 2017.

SECTION 7. EMERGENCY.--It is necessary for the public peace, health and safety that this act take effect immediately.