

**59A-5-19**

**Special deposit or surety bond for certificate**

A. To qualify for and continue to hold a certificate of authority to transact insurance in this state, the insurer shall also make a special deposit in trust for the benefit only of all its policyholders and creditors in this state in applicable amount as shown in Schedule I of Section 59A-5-16 NMSA 1978. The deposit shall consist of assets eligible therefor under Section 59A-10-3 NMSA 1978 and shall be deposited with or through the superintendent or in a commercial depository located in the state of New Mexico approved by the superintendent subject to rules and regulations issued by the superintendent.

B. In lieu of such deposit, the insurer may file with the state treasurer of New Mexico through the superintendent a surety bond issued by a surety insurer authorized to transact such insurance in this state, in penal sum not less than the aggregate special deposits required by this section. The bond shall be in such form as may be prescribed by the attorney general of New Mexico. The bond shall not be subject to cancellation except upon not less than sixty days advance written notice to the superintendent by the insurer or surety; and the insurer shall promptly replace, not later than fifteen days prior to expiration of the bond, with another like bond, any bond so canceled or otherwise terminated. The bond shall expressly provide that failure of the insurance company to replace a canceled or terminated bond as provided in this section shall constitute a breach of the condition upon which the bond is given, upon which occurrence the superintendent may immediately recover from the surety the penal sum of the bond to be held as a special deposit in the manner described in Subsection A of this section.

C. The special deposit, or bond in lieu thereof, shall remain on deposit or on file and in force for so long as there may arise in this state any claim under any policy issued by the insurer covering a subject located or a service to be performed in this state or claim arising out of the insurer's operations in this state.

D. Whenever because of volume of business being transacted by the insurer, methods of doing business, regulatory practices of the domiciliary state or for other good cause the superintendent deems advisable for protection of policyholders and creditors, the superintendent may require an insurer to make and maintain a special deposit in reasonable amount greater than required under Schedule I of Section 59A-5-16 NMSA 1978, but no greater than one hundred fifteen percent of its direct unpaid losses in New Mexico.

E. The special deposit shall be subject to the applicable provisions of Chapter 59A, Article 10 NMSA 1978.

F. This section shall not apply as to domestic Lloyds plan automobile insurers as identified in Chapter 59A, Article 38 NMSA 1978.