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FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/09

SPONSOR HJC LAST UPDATED _____ HB 468/HJCS

SHORT TITLE Insurance Penalties, Violations and Authority SB _____

ANALYST Hoffmann

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY09	FY10		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	FY10	FY11		
	Indeterminate			Various

(Parenthesis () Indicate Revenue Decreases)

SOURCES OF INFORMATION

LFC Files

SUMMARY

Synopsis of Bill

House Judiciary Committee Substitute for House Bill 468 as amended by the House Business and Industry Committee clarifies the meaning of threatened violations of the Insurance Code by requiring the Superintendent to base actions on “objective and credible evidence or documentation.” It makes the documentation produced for an administrative proceeding confidential and subject to the requirements of 59A-4-2 NMSA 1978. The bill adds a new Subsection B to 59A-5-26 which states that the Superintendent “may suspend or revoke an insurer’s certificate of authority if found after a hearing thereon that the insurer reinsured all or substantially all of its risks, or all or substantially all of its risks in a particular kind of insurance, with another insurer.” The original bill used the language “the superintendent shall suspend or revoke...” on the same conditions that the original bill required suspension or revocation. (Words underlined by FIR analyst.)

House Judiciary Committee Substitute for House Bill 468 strengthens the ability of the Superintendent of Insurance to enforce the requirements of the Insurance Code, the rules promulgated under the Insurance Code, and provides uniform enforcement provisions for the Insurance Code.

The following changes to Insurance Code are proposed:

Section 1 of the bill amends NMSA 1978, § 59A-1-18, to increase the statutory maximum for administrative penalties that may be assessed by the Superintendent of Insurance from \$5,000 to \$10,000. The current statutory maximum of \$5,000 was enacted in 1989 when the amount was increased from \$100 to \$5,000. Section 1 amends NMSA 1978, § 59A-1-18, to increase the statutory maximum for administrative penalties that may be assessed by the Superintendent of Insurance for willful and intentional violations from \$10,000 to \$25,000. The current statutory maximum of \$10,000 was enacted in 1989 when the amount was increased from \$1,000 to \$10,000. Section 1 caps the amount of civil penalties that the Superintendent may seek in civil actions at the levels provided for administrative penalties. Section 1 eliminates language that the penalties provided by NMSA 1978, § 59A-1-18, “shall be in addition to any other penalty provided by law”. This language conflicts with language in Subsection (B) provides “[w]here other monetary penalty is not expressly provided for”. These conflicting provisions complicate the efforts of the Superintendent in seeking administrative penalties under NMSA 1978, § 59A-1-18.

Section 2 of the bill amends NMSA 1978, § 59A-2-9, by removing language that no penalties may be assessed for acts done “in good faith in conformity” with regulations. The bill eliminates “in good faith” provision which will remove the distinction between the required intent for violations of the Insurance Code and violations of insurance regulations. Current statutory language arguably requires willful violations in order to assess penalties for violations of regulations, while no such requirement exists for violations of the Insurance Code. For this reason, violations of the regulations require to a different standard proof than violations of the Insurance Code. Instead, the bill proposes to require the Superintendent to consider good faith efforts when assessing penalties. The bill also removes the language that no penalties may be assessed for acts done “in conformity” with regulations. The bill removes this “in conformity” language, because an act done in conformity with a rule is an act that complies with the rule. The Superintendent could not assess penalties acts done in compliance with the law.

Section 3 of the bill amends NMSA 1978, § 59A-2-11, adopts a general civil enforcement provision for civil and administrative enforcement proceedings. The bill would allow the Superintendent of Insurance to issue compliance orders, cease and desist orders, or pursue civil actions in District Court for violations of the Insurance Code, regulations promulgated under the Insurance Code, and orders of the Superintendent. The current statute limits the Superintendent to seek injunctive relief in district court in order to stop unauthorized insurers from transacting the business of insurance in New Mexico. The bill would allow the Superintendent to issue cease-and-desist orders to stop the unauthorized insurer. The bill transfers provisions of Subsection (B) of 59A-2-11, which relate to the criminal prosecution of violations of the Insurance Code to the Insurance Fraud Act, specifically, NMSA 1978, § 59A-16C-12. The bill provides authority for the Superintendent to suspend or revoke a license, certificate of authority, certificate of registration by issuing a compliance order. The bill requires the Superintendent to consider good faith efforts when assessing civil penalties. The bill provides procedures for conducting hearings on compliance orders and cease and desist orders. The bill provides the

Superintendent the authority to issue subpoenas in conjunction with these administrative hearings. The bill requires the Superintendent to adopt rules of procedure to conduct these hearings. The bill requires administrative penalties to be deposited in the general fund.

Section 4 of the bill repeals provisions in NMSA 1978, § 59A-5-26, which duplicate the proposed new general civil enforcement provision contained in proposed changes to NMSA 1978, § 59A-2-11. The bill also repeals distinction between violations of the Insurance Code and willful violations of the regulations. The bill repeals the “in lieu” provision, which would allow the Superintendent seek both a suspension and revocation of a certificate of authority and administrative penalties in the same administrative action. A new subsection B is added that permits the superintendent to suspend or revoke an insurer’s certificate of authority if after a hearing it is found that the insurer has reinsured all or substantially all of its risks in a particular kind of insurance, in another insurer.

Section 5 of the bill repeals provisions in NMSA 1978, § 59A-5-30, which duplicate the proposed new uniform civil enforcement provision contained in NMSA 1978, § 59A-2-11.

Section 6 of the bill removes the “in lieu of” provision for administrative enforcement for agents, which restricts the Superintendent to seeking either a suspension or revocation of a license or administrative penalties for violations by an insurance agent. The bill also increases the range of administrative penalties for insurance agents from \$100-\$500 to \$500-\$1000.

Section 7 of the bill repeals provisions in NMSA 1978, § 59A-17-33, which duplicates the proposed new general civil enforcement provision contained in NMSA 1978, § 59A-2-11. This section also repeals the requirement that the Superintendent must seek the assistance of the Attorney General in order to stop a continuing violation of the Insurance Rate Regulation Law.

Section 8 repeals sections 59A-15-10 and 59A-15-13 NMSA 1978. Section 59A-15-10 contains a penalty that would conflict with the amendments above, and section 59A-15-13 contained cease and desist language that is replaced by the amendments explained above.

FISCAL IMPLICATIONS

House Bill 468 makes no appropriations.

The PRC states that if the Superintendent were, first, to assess and, second, collect increased administrative penalties, those increased penalties would be deposited into the general fund.

SIGNIFICANT ISSUES

The PRC states that House Bill 468 consolidates many of the existing enforcement authorities contained in the Insurance Code and eliminates distinctions in procedures for exercising those authorities.

The AOC notes the following issues.

1) **Section 1:** Currently, Section 59A-1-18 empowers the insurance department to bring civil actions for penalties in sums not to exceed the criminal fine for each violation of the Insurance Code, in lieu of criminal prosecution. The bill’s amendment to 59A-1-18 no longer permits civil actions to be brought in lieu of criminal actions. Instead, HB 468 amends Section 59A-16C-12 to require the AG or other law enforcement official to institute a required or justified action or proceeding based upon information of violations criminal in nature received from the superintendent.

2) **Section 3:** Currently, Section 59A-2-11 permits the superintendent to invoke the aid of the court to seek appropriate relief for existing or threatened violations of the Insurance Code. The HB 468 amendment retains this discretion on the part of the superintendent.

3) As penalties increase, there may be an increase in appeals of administrative orders resulting in an increase in judicial resources expended.

CH/mt:svb