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FISCAL IMPACT REPORT

SPONSOR	<u>Leavell</u>	ORIGINAL DATE	<u>01/31/09</u>	LAST UPDATED	<u>02/20/09</u>	HB	<u></u>
SHORT TITLE	<u>Life and Health Insurance Guaranty Law Changes</u>					SB	<u>75/aSCORC</u>
						ANALYST	<u>Lucero</u>

Relates to SB15

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (AGO)

Public Regulation Commission (PRC)

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee (SCORC) amendment:

The SCORC amendments to Senate Bill 75 amend NMSA Section 59A-5-19 of the New Mexico Insurance Code (requiring an insurer to make a special deposit or post a bond in trust "for the benefit only of all its policyholders and creditors in this state") to provide that the term "creditors" used in that section does not include shareholders or other owners of the insurer regarding claims arising out of their capacity as shareholders or other owners; or holders of bonds, surplus notes, capital notes, contribution notes or similar obligations of the insurer regarding claims arising out of their capacity as holders of those instruments.

The Committee amendments to Senate Bill 75 also amend NMSA Section 59A-10-9 of the New Mexico Insurance Code (providing for the release of general and special deposits of an insurer under that Code) to require release of those deposits at the request of a domiciliary receiver upon entry of a final order of liquidation or order approving a rehabilitation plan of an insurer, to the receiver or applicable New Mexico guaranty association.

The Committee amendments also amend that section to provide that prior to release of those deposits upon entry of those described orders; or if the insurer is subject to delinquency proceedings upon order of a court releasing those deposits to the receiver, conservator, rehabilitator or liquidator of the insurer, that the Superintendent of Insurance may require written assurances from the domiciliary receiver that the deposit will be handled in accordance with Section 59A-5-19 NMSA 1978 and applicable federal law.

The Committee amendments would also enact a new section of the Insurers Conservation, Rehabilitation, and Liquidation Law (NMSA Chapter 59A Article 41) to grant a receiver the right to recover assets transferred by the insurer to an affiliate within the five years preceding the initial petition for receivership, unless, when the transfer was made, the insurer was solvent; the transfer was lawful; and neither the insurer nor the affiliate knew or should have known that the transfer, under then-applicable statutory accounting standards, would place the insurer in violation of applicable capital or surplus requirements; place the insurer below the risk-based capital level as defined in the Risk-Based Capital Act; cause the insurer's filed financial statements not to present fairly the capital and surplus of the insurer; or otherwise cause the insurer to be in a hazardous financial condition. The amendments also strike similar language contained in the original bill.

Synopsis of Original Bill

Senate Bill 75 amends the Life and Health Insurance Guarantee Law, NMSA Sections 59A-42-1 et seq. Specifically, the bill:

- Section 1 (p.1) amends the short title, replacing “Law” with “Act.”
- Section 2 (p.2) amends the purpose to reflect the new short title.
- Section 3 (p.2) repeals the existing scope of the Article, and provides new definitions for terminology used throughout the revised Act; certain terms inherently identify the scope of the Act.
- Section 4 (p.10) repeals existing definitions and replaces the section with the revised coverage obligations of the association, and limitations on its coverage obligations.
- Section 5 (p.21) amends the provisions for the organization of the association and its accounting structural requirements, and adds a provision for supervision of the association by the Superintendent of Insurance.
- Section 6 (p.23) adds public representation on the board of directors of the association.
- Section 7 (p.24) repeals the existing provisions for the powers and duties of the association and replaces them with a more extensive list of restated powers and duties.
- Section 8 (p.43) repeals the provisions of the existing law regarding assessment of member insurers to provide funding for the association and replaces them with restated provisions regarding assessments.
- Section 9 (p.50) amends the provisions regarding the association's required plan of operation, providing a more extensive list of required items.
- Section 10 (p.53) amends the duties and powers of the Superintendent.
- Section 11 (p.55) amends the provisions regarding prevention of insolvencies, most significantly adding notification, reporting, and sharing of information with the association and with other state insurance commissioners.
- Section 12 (p.58) makes grammatical changes to the provisions for appeals of board decisions by member insurers to the Superintendent.
- Section 13 (p.59) amends miscellaneous provisions, most notably regarding the status of the association as a creditor of the estate of the insolvent insurer, and the right of the receiver to recover dividends paid by the insolvent insurer to stockholders prior to the commencement of the receivership proceeding.
- Section 14 (p.63) amends the provisions regarding examination of the association by the Superintendent, providing that the association shall provide a copy of the examination report to a member insurer that requests it.
- Section 15 (p.63) amends the immunity provision of the law, extending it to the

association's participation in an organization of one or more other similar associations.

- Section 16 (p.64) expands the automatic stay of court proceedings to which the insolvent insurer is a party from 60 days to 180 days.
- Section 17 (p.64) adds a new section to the law prohibiting advertisement of the existence of the association for purposes of sales, solicitation or inducement to purchase a policy, and requires the association to produce a summary document describing the association, its purposes, and limitations, that is required to be delivered with the policy subsequent to sale.
- Section 18 (p.67) is a temporary provision providing for transition from the existing association, its current accounts, board, plan of operation, and activities, to the new association, board, etc.

FISCAL IMPLICATIONS

The association and its operations are funded entirely from assessments of member insurers and assets of the estate of the insolvent insurer. There is no fiscal impact to governmental entities.

SIGNIFICANT ISSUES

Regarding the SCORC amendment:

The PRC notes that the technical issues have been addressed in the SCORC amendments adopted Feb 2.

The Attorney General's Office notes:

The amendments to Senate Bill 75 generally prevent shareholders or bond holders of an insurer from making claims against the special deposit or surety bond required of every insurer as a condition of transacting business in this state.

The amendments would authorize and provide conditions for the release of an insurer's deposits to a receiver.

The amendments would allow the receiver to recover an insurer's property which was transferred to an affiliate of the insurer (an entity controlling, controlled by, or under common control of the insurer, NMSA Section 59A-35-4) within the five years preceding the initial petition for receivership, with certain exceptions based upon the insurer's condition, the lawfulness of the transfer; and what the insurer or affiliate "knew or should have known". Presumably this will require the receiver to determine the state of mind of all of the managers, directors, officers, owners, etc. of those entities during that five year period before recovery of that property during a receivership.

Public Regulation Commission notes that under current law, the Life and Health Guaranty Law provides for continuation of life and health insurance coverage and benefits in the event of the insolvency of the insurance company that wrote the policy (similar in function to FDIC coverage for bank accounts). This bill is based upon the latest draft of a revised model law in the process of being adopted by the National Association of Insurance Commissioners (NAIC) (though it has not yet been adopted, it is scheduled to be considered at the March 2009 meeting of the NAIC). It expands coverage limits over the current statute, and provides

clear limitations where coverage is inappropriate. It also amends various administrative provisions regarding governance of the guaranty association (frequently referred to as the “guaranty fund”) responsible for providing the coverage. 4 of the existing 16 statutory sections are repealed and completely rewritten, the remaining 12 are amended, and one new section is added.

According to the Attorney General’s Office, this bill is an extensive modification of the current Life and Health Insurance Guarantee Act, Sections 59A-42-1 NMSA. The bill would, in great detail, expand and govern the powers and duties of the Life Insurance Guarantee Association with regard to impaired and insolvent member insurers.

Current law requires insurance providers operating within New Mexico to organize the Association as a condition of transacting business in this state. The purpose of the current Act, Section 59A-42-2 NMSA, is to:

“provide a mechanism to facilitate continuation of coverage, payment of covered claims under certain insurance policies, to avoid excessive delay in payment and avoid financial loss to claimants or policyholders because of insolvency of an insurer, to assist in detection and prevention of insurer insolvencies and provide an association to assess the cost of such protection among insurers.”

Currently, Section 59A-42-7 NMSA, grants the Association the authority to guarantee or reinsure the covered policies of an insolvent insurer, provide funding to assure payment of the contractual obligations of an insolvent insurer, and to loan money to the insurer, and allows the Association to take certain actions prior to an insurer being declared insolvent.

This bill would allow the Association to provide insurance coverage and to assume the obligations of insolvent insurers. It would limit and provide for the amount of benefits paid by the Association. It would also modify the assessments paid by member insurers.

PERFORMANCE IMPLICATIONS

This bill may ease the administration of the receiverships of insolvent life and health insurers.

ADMINISTRATIVE IMPLICATIONS

None identified by PRC.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Relates to SB15,

TECHNICAL ISSUES

The model law from which this bill is derived has not been adopted by the NAIC, and may be amended before it is finally adopted. Adoption is anticipated in March, but may be postponed if any objection is raised to the fast-track expedited exposure and comment period allowed for the current draft. This may require subsequent amendment of this Act to bring it into conformity with the model law as finally adopted.

The problematic issues surrounding unallocated annuities are addressed in the bill.

On page 21, line 17, in subsection J, it is clarified that non-material impairment of the contract is permitted. Material impairment of the contract is still prohibited as to “impaired” insurers” on page 24, line 18, but as to “insolvent insurers” replacement of existing policies with alternative policies by the association is permitted, subject to approval by the domiciliary receiver and the receivership court (see page 27, line 11), without approval of the Superintendent and without any express prohibition against impairment as contained in the existing provisions of 59A-42-7(A). This may not pose a constitutional problem if policyholders are afforded an opportunity to opt out of the restructured policy.

Public representation on the board is provided for the first time on page 23, line 18.

The treatment of statutory deposits in subsection G starting on page 30, line 21, departs from current legislative policy regarding the purposes and treatment of statutory deposits, and conflicts with existing law, which is not amended in the bill, contained in NMSA 1978 Sections 59A-5-19 and 59A-10-9. This treatment also seems out of place in a section on powers and duties of the association, when it seeks to establish the duty of the superintendent to release the deposit to the association—it may more appropriately be place in the section on duties of the superintendent, or in an amendment to 59A-10-9, however the subsection does indicate what the association should do with it once received. Additionally, the requirement to release a deposit in the case of both liquidations and rehabilitations (see page 30, lines 24 and 25), would require revocation of the certificate of authority pursuant to section 59A-5-19, which may not be a desired consequence from the perspective of the receiver or rehabilitator, who may want the certificate of authority preserved.

AMENDMENTS

On page 9, line 2, in the definition of “receivership court” it may be preferable to be more clear by using the defined term “domiciliary state,” so that “impaired insurer's state having jurisdiction” becomes “impaired insurer's domiciliary state having jurisdiction”....

On page 25, line 9, it appears that “insolvent insured” should be replaced with “insolvent insurer”

Also, as reported above in “Significant Issues”, the treatment of statutory deposits, between proposed Section 59A-42-7(G), and existing Sections 59A-5-19 and 59A-10-9, keeping in mind that the latter two sections are generally applicable to all insurers, not just to life and health insurers. (The PRC will attempt to draft proposed amendments that may be acceptable to the sponsor as quickly as possible and provide them in an amended analysis.)

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The Life Insurance Guarantee Association and Superintendent of Insurance would continue to perform the powers and duties set forth in the current Life and Health Insurance Guarantee Law. New Mexico will not be able to enact the new model law until the 2011 session, and thus will be delayed in obtaining the benefits afforded by the bill (such as higher coverage limits, treatment of unallocated annuities, etc.).