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FISCAL IMPACT REPORT

	ORIGINAL DATE	02/15/13	
SPONSOR <u>Leavell</u>	LAST UPDATED	03/15/13	HB
			<u>412/aSCORC/aSJC/aSFI#1</u>
SHORT TITLE <u>Update Model Acts of Insurance Code</u>			SB
			<u>412/aSCORC/aSJC/aSFI#1</u>
	ANALYST	<u>Weber/Daly/Chabot</u>	

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General Office (AGO)

Public Regulation Commission (PRC)

SUMMARY

Synopsis of SFI #1 Amendment

The Senate Floor #1 amendment to Senate Bill 412 strikes the Senate Judiciary Amendments 1 and 2 and limits the confidentiality granted to all information in reports, plans, or results for reports of any examination or analysis of an insurer or health organization to those done exclusively for the purposes required by the Risk-Based Capital Act. It deletes the remainder of Subsection A of Section 59A-5A-9, NMSA 1978, which allowed use of that information by the superintendent of insurance for enforcement purposes, along with other language barring the use of that information in civil actions and maintaining the confidential nature of information that is shared with other regulatory agencies. (Certain provisions regarding sharing between the superintendent and other regulatory agencies upon agreement to maintain confidentiality were revised and reformatted as a new Subsection B in the SJC amendment, which new subsection remains in place under this amendment).

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 412 as amended makes these particular changes:

1. Deletes the exception for enforcement actions by the superintendent under the Insurance Code in the confidentiality provision to Section 59A-5A-9(A) NMSA 1978 relating to

information in reports, plans, and examination or analysis results or reports of an insurer or health organization performed under the Risk-Based Capital Act.

2. Revises the provision allowing the superintendent to share documents, materials or other information, including that identified in (1) above, with other regulatory agencies, with the National Association of Insurance Commissioners (NAIC) and with state, federal and international law enforcement authorities if the recipient agrees to maintain confidentiality;
3. Revises the provision allowing the superintendent to receive documents, materials and information received from the NAIC and regulatory and law enforcement officials of foreign or domestic jurisdictions subject to maintaining as confidential or privileged those materials identified as such pursuant to the laws of the originating jurisdiction; and
4. Limits for alien insurers the superintendent's annual valuation of the reserves of life insurers authorized to do business in New Mexico to that insurer's United States business.

The balance of the other changes appear to be grammatical or for purposes of clarification.

Synopsis of SCORC Amendment

1. On pages 2 and 3, strike Section 1 in its entirety.
2. Renumber succeeding sections accordingly.

This deletes the changes to 59A-2-12 NMSA 1978, RECORDS-INSPECTION-DESTRUCTION

Synopsis of Original Bill

The Public Regulation Commission (PRC) reports that Senate Bill 412 (SB 412) amends the Insurance Code to incorporate updates to model laws promulgated by the National Association of Insurance Commissioners (NAIC) in the following areas:

1. Risk-based capital requirements
2. Valuation of life insurance reserves to incorporate "principle-based" reserving
3. Credit allowed to insurers for obtaining reinsurance Insurance holding company systems
4. Insurers in hazardous financial condition

SB 412 also amends the Insurance Code to:

1. Clarify the calculation of quarterly premium tax estimates
2. Exclude health care plans and prepaid dental plans from the definition of "member insurers" in the Life and Health Insurance Guaranty Association Act
3. Clarify the Superintendent's authority to cooperate with federal and international regulatory agencies and to grant confidential status to certain required filings

FISCAL IMPLICATIONS

No fiscal implications identified.

SIGNIFICANT ISSUES

The PRC reports that the NAIC requires all states to amend their Insurance Codes to incorporate these updates. States that fail to do so face the risk of losing their accreditation with the NAIC.

The PRC expands that SB 412 clarifies health insurers are subject to risk-based capital requirements and that property/casualty insurers and health insurers are also subject to “trend tests.” The bill expands the allowances for reinsurance credit to include foreign reinsurers that are approved by another state with comparable laws, and also to include reinsurers that are “certified” by the Superintendent as having adequately collateralized their obligations. The bill expands the Insurance Holding Company Law to allow domestic insurers to organize or acquire any type of subsidiary business, to require potential acquirers of a domestic insurer to submit an analysis of their enterprise risk exposures and mitigation, to establish standards for determining if an acquisition would materially lessen competition, and to allow the Superintendent to jointly regulate multi-state and international insurers through “supervisory colleges.” Lastly, SB 412 adds additional factors that the Superintendent may consider when determining whether an insurer is in a hazardous financial condition.

The Attorney General’s Office (AGO) focuses on provisions that implicate potential conflicts with the New Mexico Constitution and policy concerns respecting the inspection of public records act.

1. Section one, page 3. This section allows the superintendent “to deem” records filed with him to be confidential and thus not open to public inspection. No standards are provided by the legislature for this purpose. A “standardless” delegation of power by the legislature to the executive to “deem” records confidential for purposes of enacting lawful exceptions the inspection of public records act raises a constitutional issue under Article III, Section 1 of the New Mexico Constitution, the Separation of Powers provision. See Montoya v. O’Toole, 94 N.M. 303, 304-05 (1980).

2. Section 10, pages 26-27. With respect to risk-based capital reports, etc., such information is not subject to inspection under the inspection of public records act, is not subject to discovery in private civil suits and is not admissible in evidence in private civil suits. Neither the superintendent nor any person who receives documents shall be permitted or required to testify in a private civil suit about documents made confidential by this section.

These testimonial and evidentiary privileges and discovery prohibitions, in the context of lawsuits, raise a constitutional issue under Article III, Section 1, because only the judicial branch of government has the power to promulgate rules regulating the pleading, practice and procedure for the courts, which includes testimonial privileges and discovery rules. See Ammerman v. Hubbard Broadcasting Co., 89 N.M. 307, 312 (1976); Lovelace Medical Center v. Mendez, 111 N.M. 336, 338-39 (1991); Southwest Community Health Services v. Smith, 107 N.M. 196 (1988); Miller & Assoc. v. Rainwater, 102 N.M. 170 (1985). Cf. Albuquerque Rape Crisis Center v. Blackmer, 138 N.M. 398 (2005) (upholding a confidentiality statute that the court construed to be consistent with the Supreme Court’s psychotherapist-patient privilege, Rule 11-504 NMRA).

3. Section 19, pages 67-68. Same issue as noted above at ¶ 2.
4. Section 41, pages 174-75. Same issue as noted above at ¶ 2.
5. Section 31, page 149. This section concerns mergers, acquisitions and divestitures of control of domestic insurers. Provision is made for confidentiality of certain information. This sentence on lines 16-20 is confusing: “Information contained in the notice shall remain confidential until the conclusion of the transaction if the superintendent has not determined that treating the information as confidential will interfere with the provisions of this section...”

The Administrative Office of the Courts (AOC) points out that several provisions may impact the courts by allowing for penalties, hearings and matters of evidence:

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