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FISCAL IMPACT REPORT

SPONSOR Leavell **ORIGINAL DATE** 01/28/11 **LAST UPDATED** 03/18/11 **HB** _____

SHORT TITLE Health & Life Insurance Guaranty Law Changes **SB** 34/aSJC/aHBIC/aHJC

ANALYST Hanika-Ortiz/Wilson

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY11	FY12		
	NFI		

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Public Regulation Commission (PRC)

SUMMARY

Synopsis of HJC Amendment

The House Judiciary Committee Amendment to Senate Bill 34 strikes HBIC Amendment 1.

The HJC Amendment then strikes the remainder of line 12 after “contracts”, lines 13 through 19 in their entirety and line 20 up to the semicolon on page 39.

This amendment removes restrictions to an association’s common law rights of subrogation.

Synopsis of HBIC Amendment

The House Business and Industry Committee amendment to Senate Bill 34 adds that the association shall have all common law rights of subrogation and any other equitable or legal remedy except against a person that purchased the structured settlement annuity.

Synopsis of SJC Amendment

The Senate Judiciary Committee amendment to Senate Bill 34 provides that two persons who are public representatives may (as opposed to shall) be appointed by the superintendent to the board.

Synopsis of Original Bill

Senate Bill 34 amends the Life and Health Insurance Guaranty Law (Article 42 of the Insurance Code) which protects life and health insurance policyholders if their insurer becomes insolvent. The bill reflects the National Association of Insurance Commissioners' model law. Key provisions include increasing coverage limits for annuities and major medical policies, and establishing coverage for long-term care, disability income, structured settlement annuities and unallocated annuities. The bill adds two consumer advocates to the Guaranty Association Board of Directors and also facilitates the Guaranty Association to work efficiently with the guaranty associations of other states, with the National Organization of Life & Health Insurance Guaranty Associations and with state receivers of insolvent insurers.

FISCAL IMPLICATIONS

PRC reports that the Guaranty Association and its operations are funded entirely from assessments of member insurers and the assets of the estates of insolvent insurers.

SIGNIFICANT ISSUES

PRC claims that the bill improves policyholder coverage and protections, provides or clarifies coverage for emerging new products, reduces litigation costs, and improves the Guaranty Association's operations, finances and recoveries.

PERFORMANCE IMPLICATIONS

The bill excludes from coverage federal programs such as Medicare Parts C and D that are preempted by federal law.

ADMINISTRATIVE IMPLICATIONS

PRC further claims that the bill may ease the administration of the receiverships of insolvent life and health insurers.

OTHER SUBSTANTIVE ISSUES

PRC provided further detail on the bill:

Section 1 narrows the definition of creditor as it applies to the purpose of the special deposit.

Section 2 amends 59A-10-9 to permit payment of the special deposit to the New Mexico Life Insurance Guaranty Association. Section 3 addresses the claw-back of assets inappropriately transferred to affiliates prior to insolvencies.

Section 6 adds new definitions: authorized assessments, benefit plan, board, called assessment, domiciliary state, extra-contractual claims, impaired insurer, Moody's corporate bond yield average, owner, plan sponsor, principal place of business, receivership court, structured settlement annuity, supplemental contract and unallocated annuity contract. Definitions of member insurer, premiums and resident have been expanded for clarity.

Section 7 Subsection A describes who is covered by the act and focuses not only on owners of contracts, but also beneficiaries, assignees or payees of covered persons. New language has been added concerning coverage of structured settlement annuities and unallocated annuities. Subsections B and C eliminate dual coverage by more than one state guaranty association. Subsection D deals with coverage by type of contract and Subsection E describes which types of contracts are not covered. Subsections F, G and H set forth the maximum benefits insured by the guaranty association, which vary by contract. The effect of this rewrite on coverage limits is to increase the coverage for individual annuities from \$100,000 to \$250,000 and for major medical health insurance from \$300,000 to \$500,000. Also new coverage limits have been specifically established for Long-term care insurance, \$300,000; Disability income insurance, \$300,000; Structured settlement annuities, \$250,000; and Unallocated annuities, \$5,000,000.

Section 8 changes the number of accounts maintained by the association from three to two and to provide for supervision of the association by the Superintendent. Under current law the association maintains three accounts: the life insurance account, the annuity account and the health insurance account. The amendment provides for two accounts: the life insurance and annuity account (which has three subaccounts: the life insurance subaccount, the annuity subaccount and the unallocated annuity subaccount) and the health insurance account.

Section 9 adds two public members to the board, both appointed by the Superintendent.

Section 10 Subsection A sets forth powers that the association *may* exercise with respect to impaired insurers, which include guaranteeing, assuming, reinsuring any or all of the policies of the impaired insurer and providing money, pledges, loans, notes, or other means necessary to assure payment of contractual obligations. Subsection B sets forth the powers that the association *must* exercise with respect to an insolvent insurer, which also include guaranteeing, assuming, reinsuring any or all of the policies of the insolvent insurer and providing money, pledges, loans, notes, or other means necessary to assure claim payments. Subsection B also sets forth the parameters under which the association is to provide benefits and coverage. Subsections C and D set forth premium requirements for the coverage and Subsection E is another provision avoiding double coverage by more than one state guaranty association.

Subsection F limits the association's ability to alter or change future policy benefits. Such changes can only be made based on certain conditions and subject to approval by the court. These conditions relate to financial hardship and include limitations in statute on assessments and the economic or financial condition of the affected member insurers. Subsection F provides for temporary moratoriums or deferral of cash or loan values.

Subsection G sets forth the association's rights with respect to the special deposit being held by the Superintendent. Subsection H provides that if the association fails to act on an insolvent or impaired insurer within a reasonable time, the Superintendent shall have the powers and duties of the association. Subsection I provides that the association may render assistance to the Superintendent upon request.

Subsection J gives the association standing to appear or intervene in a court or agency with jurisdiction over an impaired or insolvent insurer concerning the association's obligations under this act. Subsection K outlines the association's subrogation rights with respect to the coverage provided. Subsection L sets forth the association's powers and duties to contract, sue, borrow, employ or retain, take legal action and other rights. Subsection M permits the association to join

a national organization of similar guaranty associations. Subsection N permits the association to succeed to the rights of the insolvent insured with respect to its existing reinsurance agreements.

Subsection O gives the board the latitude to exercise reasonable business judgment. Subsection P limits the association's obligations. Subsection Q states Santa Fe County as venue for a suit against the association. Subsection R gives direction to the board for certain contracts with external factors.

Section 11 Subsections A and B provides the association with the right to assess its members with two classes of assessments: Class A assessment, for administrative, legal and other expenses; and Class B assessment, to carry out coverage requirements for impaired or insolvent insurers. Subsection C limits the Class A assessment to \$300 per member per calendar year. Class B assessments are required by Subsection D to be proportional based on premiums. Subsections G, H and I place limits on the amount of Class B assessments. Subsections J and K give direction to the association for dealing with assessments when maximum limits are triggered.

Subsection F permits the association to abate or defer a member insured's assessment if the payment would endanger the ability of the member to fulfill its contractual obligations. Subsection L provides for refunds of excess funds. Subsection M permits insurers to recognize assessments in determining premium rates and policyholder dividends. Subsection N requires the association to provide to each member assessed a certificate of contribution. Subsection O outlines procedures for member insureds to follow when protesting an assessment.

Section 12 expands requirements in the association's plan of operation and require Superintendent approval of the plan.

Section 13 recognizes the Superintendent's power to reinforce the association's responsibilities with respect to an impaired insurer and to delete a requirement that the association notify insureds concerning the act.

Section 14 requires the Superintendent to report to the association and other state associations with respect to actions taken against impaired or insolvent insurers. The amendment deletes a requirement that the association prepare a lessons learned report at the end of each insolvency.

Section 16 defines the association's status as a creditor of the impaired or insolvent insurer. It also acknowledges that the association's claim must be recovered before any distributions to stockholders. It provides for "claw-back" by the receiver of certain distributions made prior to an impairment or insolvency.

Section 17 permits member insurers to request a copy of the association's financial reports.

Section 18 expands immunity to include participating in an organization of one or more other state associations. Section 19 changes the period of the stay from 60 days to 180 days.

Section 20 Subsection A prohibits the use of references to the association or guaranty association coverage in the sale or advertising of a covered policy. Subsection B requires that each insurer after issuing a policy must provide notice to the insured of their guaranty coverage rights. This

section provides for the content of such notices and requires the insurer to maintain a record of the notices provided.

Section 21 is a temporary section providing for transition from the Life and Health Insurance Guaranty Law to the Life and Health Insurance Guaranty Association Act. Section 22 indicates that the coverage established by Section 7 is applicable to insolvencies that occur after July 1, 2010. Section 23 establishes the effective date of the act as July 1, 2011.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

The current Life and Health Insurance Guaranty Law will remain outdated and will continue to provide limited protections for New Mexicans who own life and health insurance products.

AHO/bym:svb