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## FISCAL IMPACT REPORT

**ORIGINAL DATE** 01/21/12  
**LAST UPDATED** 02/08/12    **HB** \_\_\_\_\_

**SPONSOR**    Leavell

**SHORT TITLE**    Health & Life Insurance Guaranty Law Changes    **SB** 47/aSCORC

**ANALYST**    Wilson

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY12	FY13		
	NFI		

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

Response Received From  
Public Regulation Commission (PRC)

### SUMMARY

#### Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment to Senate Bill 47 states that the board of directors of the New Mexico guaranty association shall consist of not less than five nor more than nine member insurers serving terms as established in the plan of operation.

#### Synopsis of Original Bill

Senate Bill 47 substantially amends the Life and Health Insurance Guaranty Law based on a current version of a model act developed by the National Association of Insurance Commissioners (NAIC). Key changes include:

- Increasing coverage limits on annuities and major medical health insurance,
- Adding two public members to the board of directors, and

Numerous sections have been rewritten to facilitate the New Mexico guaranty association to work more efficiently with other state guaranty associations, the National Organization of Life & Health Insurance Guaranty Association and state receivers of impaired and insolvent insurers. Three other sections of the Insurance Code are amended to eliminate potential conflicts with the NAIC model act.

See attachment for a section by section analysis of SB 47 by the PRC.

**FISCAL IMPLICATIONS**

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**

The current Life and Health Insurance Guaranty Law is outdated and will continue to provide more limited protections for New Mexicans who own life and health insurance products.

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.

**ADMINISTRATIVE IMPLICATIONS**

The Department of Insurance of the PRC can handle the requirements of this bill with existing staff. The bill may even ease the administration of the receiverships of insolvent life and health insurers.

**TECHNICAL ISSUES**

The bill excludes from coverage federal programs such as Medicare Parts C and D. This tracks with existing federal law.

DW/lj:amm:svb

## Section by Section Analysis of Senate Bill 47 by the PRC

Section 1 amends 59A-5-19 to narrow 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 to be consistent with language in Section 10. Section 3 creates a new section in Article 41 to address the claw-back of assets inappropriately transferred to affiliates prior to insolvencies.

Section 6 repeals 59A-42-3 and creates a new section 59A-42-3 Definitions. This section contains definitions that are similar to those provided by 59A-42-4, which is being repealed by Section 7. Additionally, new definitions are provided for: 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 repeals 59A-42-4 and creates a new section 59A-42-4 Coverage; limitations. This new section is a substantial rewrite of the scope and limitations of coverage found in current law, specifically 59A-42-3 which is being repealed by Section 6 and certain subsections of 59A-42-7, which is being repealed by Section 10. 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. It primarily covers residents but also covers non-residents in limited circumstances. 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 amends 59A-42-5 Organization of association- participation, to change 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 amends 59A-42-6 Board of directors, adding two public members to the board, both appointed by the Superintendent.

Section 10 repeals 59A-42-7 and creates a new section 59A-42-7 Powers and duties of the association. This section is a substantial rewrite and expands the powers and duties specifically. 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 repeals 59A-42-8 and creates a new section 59A-42-8 Assessments. Again this section is a substantial rewrite. 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 amends 59A-42-9 Plan of operation, to expand requirements in the association's plan of operation and require Superintendent approval of the plan.

Section 13 amends 59A-42-10 Duties and powers of the superintendent of insurance, to recognize 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. This notification is handled differently in a new section created by Section 17.

Section 14 amends 59A-42-11 Prevention of insolvencies, to require the Superintendent to report to the association and other state associations with respect to actions taken against impaired or insolvent insurers. It permits the Superintendent to consult with the board concerning such actions. The amendment also deletes a section permitting the association to request the Superintendent to conduct examinations of troubled insurers and a requirement that the association prepare a lessons learned report at the end of each insolvency.

Section 16 amends 59A-42-13 Miscellaneous provisions, to define 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 amends 59A-42-14 Examination of association; annual report, to permit member insurers to request a copy of the association's financial reports. Section 18 amends 59A-42-15 Immunity, to expand immunity to include participating in an organization of one or more other state associations. Section 19 amends 59A-42-16 Stay of proceedings; reopening default judgments, to change the period of the stay from 60 days to 180 days.

Section 20 creates a new section of the act Prohibited advertising; notice to policyholders. 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, 2012. Section 23 establishes the effective date of the act as July 1, 2012.