

LFC Requester:	Jon Clark
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**AGENCY BILL ANALYSIS
2016 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply: **Date** January 26, 2016
Original **Amendment** **Bill No:** SB 164
Correction **Substitute**

Sponsor: Sen. Stuart Ingle **Agency Code:** 305
Short **Person Writing** Sally Malavé, AAG
Title: Insurance Code Changes **Phone:** 827-6031 **Email** smalave@nmag.gov

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY16	FY17	FY18		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY16	FY17	FY18	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to: SB 108 (Insurance Licensing Provisions)

SECTION III: NARRATIVE

BILL SUMMARY

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

Synopsis: SB 164 amends various sections of the state Insurance Code.

Section 1 of SB 164 amends Section 59A-4-9, to require examiner in charge to deliver written examination report to Superintendent of Insurance (“SOI”) within 60 days of completion of an examination.

Section 2 of SB 164 amends Section 59A-4-10, relating to examination reports, to specify the time within which a person examined shall confer with the SOI and examiner about requested corrections and modifications to examination report. It requires the SOI to enter order accompanied by findings of fact and conclusions of law within 30 days of the period allowed for receipt of written submissions or rebuttals. The order issued by the SOI shall adopt the examination report as filed or with modification and correction, including any action the SOI deems necessary and appropriate to cure violation, reject the examination report with directions to the examiners to reopen the examination, or call for an investigatory hearing. The investigatory hearing contemplated by SB 164 shall be conducted by SOI or an authorized representative as a non-adversarial, confidential proceeding, as needed for the resolution of any disputed issue raised by the person examined or the SOI. In connection with an investigatory hearing, SB 164 grants subpoena powers to the SOI or SOI’s representative to compel the attendance of witnesses or the production of documents. The person being examined and the SOI may present testimony relevant to the investigation, but only the SOI or SOI’s representative is allowed to ask questions to any person subpoenaed and to conduct cross-examination.

Section 3 of SB 164 amends Section 59A-4-12, to require each member of an insurer’s board or directors to file an affidavit, within 30 days of the issuance of examination report, stating under oath that they have received a copy of the adopted report and related orders.

Section 4 amends Section 59A-5-30, relating to penalties for late and false annual statements, and removes requirement that the Attorney General file a civil action against an insurer in order to recover penalty assessed for failure to annual statements as required by law.

Section 5 adds a severability provision to the Risk-Based Capital Act, NMSA 1978, and Sections 59A-5A-1 to 13 (1995).

Section 6 of SB 164 amends the various clauses of Section 59A-6-2, relating to the health

insurance premium surtax, to revise surtax from one percent of gross insurance premiums to one percent of direct health insurance premiums. The amount of the premium tax and health insurance premium surtax reported and payable will no longer be estimated. It shall be based on the current actual tax due for the calendar quarter preceding the premium tax due date. New Mexico medical insurance pool credits shall no longer be included in the quarterly report; they shall be granted only after medical insurance pool final assessments have been issued for the prior year and shall not exceed the annual premium tax due on the final annual premium return.

Section 7 of SB 164 repeals the current Section 59A-6-2 and replaces it with a new Section 59A-6-2, as amended by Section 6 above.

Section 8 of SB 164 amends Section 59A-6-4, relating to penalties for the failure to file a report or pay tax or fees due, by including bail bondsmen, among those subject to a penalty and delineating when penalties accrue and the amount of the penalty for failure to file a complete report, to pay timely in full a fee due, to pay in full the amount of health insurance premium surtax owed.

Section 9 of SB 164 makes minor changes to Section 59A-6-5, including replacing “division” with “office of superintendent of insurance.”

Section 10 amends Section 59A-16-21, relating to payment of claims, by adding electronic transfer to the methods of payment an insurer may use to pay claims.

Section 11 amends Section 59A-16C-14, to specify the date on which the fee collected by the SOI to implement the provisions of the Insurance Fraud Act shall be due. It also authorizes \$1000 per month penalty for late fee payment due under this provision.

Section 12 amends Section 59A-22-1, to include student policies within the scope of the article relating to policies of individual health insurance.

Section 13 amends Section 59A-23-2, relating to blanket health insurance, to delete clause related to policy issued to a college, school or other institution of learning as the policyholder, covering students and teachers, and adds a new clause stating that a blanket sickness or accident policy or contract issued to a college, school or other institution of learning shall not be identified or sold as “a student health plan.”

Section 14 amends Section 59A-23B-5, by extending the time within which SOI must complete review and approve marketing materials submitted by insurers.

Sections 15 and 16 of SB 164 make minor changes to Section 59A-25-8, relating to the filing, approval and withdrawal of forms, and Section 59A-57-3, relating to definitions used in the Patient Protection Act.

FISCAL IMPLICATIONS None to this Office.

SIGNIFICANT ISSUES Whether the investigatory hearing procedures set forth in Section 2 implicates/satisfies due process?

PERFORMANCE IMPLICATIONS None to this Office.

ADMINISTRATIVE IMPLICATIONS None to this Office.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP Relates to SB 108
(Insurance Licensing Provisions)

TECHNICAL ISSUES None.

OTHER SUBSTANTIVE ISSUES None.

ALTERNATIVES None.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL Status quo.

AMENDMENTS None.