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FISCAL IMPACT REPORT

SPONSOR Berghmans/Duhigg/Charley/Brantley/
Tobiassen **LAST UPDATED** 3/05/2025
ORIGINAL DATE 2/24/2025

SHORT TITLE Foster Children & Homeowners Insurance **BILL NUMBER** Senate Bill 284

ANALYST Rodriguez

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT*

(dollars in thousands)

Agency/Program	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
OSI	No fiscal impact	\$85.2	\$85.2	\$170.4	Recurring	General Fund

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent analysis of this legislation.

Sources of Information

LFC Files

Agency Analysis Received From

New Mexico Attorney General (NMAG)

Office of Superintendent of Insurance (OSI)

Children, Youth and Families Department (CYFD)

SUMMARY

Synopsis of Senate Bill 284

Senate Bill 284 (SB284) adds a new section to the New Mexico Insurance Code clarifying that foster children are not residents of foster homes for purposes of homeowners insurance.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns if enacted, or June 20, 2025.

FISCAL IMPLICATIONS

The Office of Superintendent of Insurance (OSI) notes that the changes proposed in SB284 would increase the number of filings the agency would need to review (see “Administrative Implications”). The analysis assumes OSI would need an additional FTE in the Property and Casualty Bureau to review filings, ensure compliance, and develop policy and form language to align with the changes in SB284.

SIGNIFICANT ISSUES

SB284 clarifies that foster children are not legally classified as "residents" of foster homes under the homeowner's insurance policy.

Homeowners insurance typically includes liability coverage, which helps pay for injuries to guests or other third parties who were hurt on the property. However, it generally does not extend to injuries suffered by residents of the household. By specifying that foster children are not legally classified as residents, a foster child would be covered by the household's liability insurance. Therefore, foster parents might face increased liability. The bill could also result in premium increases or the loss of homeowners insurance coverage for foster families.

The New Mexico Attorney General (NMAG) indicates there is existing court precedent for considering whether a foster child is a resident under homeowners insurance policy. SB284 would eliminate the two-factor judicial test set forth in *Risk Management v. Farmers* by establishing that foster children are not residents of foster homes for purposes of homeowners insurance. NMAG writes:

In Risk Mgmt. Div., Gen. Servs. Dep't of State ex rel. Apodaca v. Farmers Ins. Co. of Arizona, 2003-NMCA-095, ¶ 15, 134 N.M. 188, 193, 75 P.3d 404, the New Mexico Court of Appeals held that, in order to determine whether a foster child is a resident under a homeowners insurance policy, the district court must consider (1) the intent of the parties to the insurance contract and (2) the nature of the child's stay in the foster home.

ADMINISTRATIVE IMPLICATIONS

OSI indicates that passage of SB284 would increase the amount of form filings reviewed to ensure compliance with law, and requiring insurance policies to remove exclusions for foster children in the definition of "family member" or "resident." OSI would also draft new policy and form language to ensure foster children are covered, while addressing changes in placement that could impact coverage and address situations where a foster child is placed in a blood relative's home as opposed to a non-relative's home.

TECHNICAL ISSUES

As noted by OSI, the bill does not identify where or in what article of the Insurance Code the exemption should be located.

SB284 does not include definitions for "substitute care," "foster care," a "licensed child placement agency", or a "premises liability insurance policy." NMAG notes that potential questions over the meaning of language commonly arise in the insurance context and indicates existing definitions elsewhere in statute should be incorporated by reference or included into SB284.

JR/hj/SL2/rl/hg