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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/1/22

SPONSOR Stefanics LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Credit for Reinsurance Act SB 150/ec

ANALYST Rees

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY22	FY23	FY24	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI					

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Attorney General’s Office (NMGA)  
 Public School Insurance Authority (PSIA)  
 Office of the Superintendent of Insurance (OSI)  
 General Services Department (GSD)  
 Regulation and Licensing Department (RLD)

#### No Response Received

Taxation and Revenue Department (TRD)

### BILL SUMMARY

#### Synopsis of Bill

Senate Bill 150 (SB150) repeals Section 59A-7-11 NMSA 1978 of the New Mexico Insurance Code and replaces it with a model law provided by the National Association of Insurance Commissioners (NAIC) titled the “Credit for Reinsurance Act”.

If enacted, the Credit for Reinsurance Act’s language would be consistent with Federal Insurance Office (FIO) approved NAIC Model Law #785, which conforms to the United States Covered Agreements with the European Union and United Kingdom.

The FIO has determined that under its authority in the federal Dodd-Frank Act of 2010, the U.S. Covered Agreements preempt state insurance laws if the state law results in a less favorable treatment of a non-United States insurer domiciled in a foreign jurisdiction which is subject to a Covered Agreement.

The United States has entered into two “Covered Agreements” to date. These are international agreements that provide protection for insurance or reinsurance consumers substantially equivalent to the level of protection achieved under state insurance or reinsurance regulation.

Currently, state insurance law under Section 59A-7-11NMSA 1978 holds non-U.S. companies to a more stringent standard to do business in New Mexico than that which is required of U.S. companies. This makes New Mexico law inconsistent with the requirements of the FIO Covered Agreements and subject to federal preemption. The new language in SB150 would make New Mexico state insurance law consistent with FIO requirements and prevent federal preemption.

More specifically, under current law, reinsurers operating from offshore and not licensed in the United States must post 100 percent collateral to secure the transaction, unless they are a Certified Reinsurer. SB150, as required by federal law, eliminates the collateral requirement for Covered Agreement reinsurers that maintain a minimum amount of own-funds equivalent to \$250 million USD and a solvency capital requirement of 100 percent. SB150 retains the Superintendent of Insurance’s authority to review other qualifications of reinsurers domiciled in reciprocal jurisdictions.

SB150 has an emergency clause and if passed by both houses with at least a 2/3rds vote of each house is effective immediately upon its passage by the Legislature and approval by the governor per Article IV, Section 23 of the New Mexico Constitution.

### **FISCAL IMPLICATIONS**

SB150 does not contain an appropriation and will have no fiscal impact on the Office of the Superintendent of Insurance (OSI) according to its analysis.

### **SIGNIFICANT ISSUES**

OSI notes that the language of SB150 has been adopted in 47 jurisdictions and has been introduced in four others. There has been no opposition to enacting this language in any of those jurisdictions and OSI notes that it has not encountered any opposition to SB150 in New Mexico.

### **PERFORMANCE IMPLICATIONS**

OSI reports there will need to be a minor change in training for financial examination staff.

OSI will need to promulgate emergency administrative rules (assumable under the State Rules Act) by September 1, 2022 to avoid federal preemption regarding credit for reinsurance and putting NAIC accreditation in jeopardy.

### **OTHER SUBSTANTIVE ISSUES**

The emergency clause on SB150 is necessary to have emergency administrative rules in place by September 1, 2022.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

Reinsurance in New Mexico will continue to be governed by current law which will be preempted by federal law being more stringent than the state law.

**PROPOSED AMENDMENTS**

According to the Attorney General’s Office, throughout SB150, the terms “reinsurer” and “assuming insurer” appear to be used interchangeably. Only the term “assuming insurer” is defined in Section 2 of the bill. For clarity, SB150 should be amended to replace all instances of the term “reinsurer” with the term “assuming insurer”.

Alternatively, the Definitions Section of the bill, Section 2, Paragraph C., page 2, line 2, could be amended to read,

‘assuming insurer’ or ‘reinsurer’ means an insurer assuming risk from another insurer;[.]

CR/rl/al