

LFC Requester:

Julisa Rodriguez

AGENCY BILL ANALYSIS - 2025 REGULAR SESSION

SECTION I: GENERAL INFORMATION

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

Date Prepared: January 27, 2025

Check all that apply:

Bill Number: SB124

Original x Correction
Amendment Substitute

Sponsor: Sen. Katy M. Duhigg

Agency Name and Code Number: 305 – New Mexico Department of Justice

Person Writing

Short Title: Superintendent of Insurance Subpoenas

Analysis: AAG Jeff Dan Herrera

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SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY25	FY26		

(Parenthesis () indicate expenditure decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY25	FY26	FY27		

(Parenthesis () indicate revenue decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY25	FY26	FY27	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
 Duplicates/Relates to Appropriation in the General Appropriation Act

SECTION III: NARRATIVE

This analysis is neither a formal Opinion nor an Advisory Letter issued by the New Mexico Department of Justice. This is a staff analysis in response to a committee or legislator’s request. The analysis does not represent any official policy or legal position of the NM Department of Justice.

BILL SUMMARY

Synopsis:

SB124 (the “Bill”) seeks to amend one statute within the Insurance Code, NMSA 1978, Sec. 59A-2-8. This section enumerates the authorities and powers granted to the Superintendent of Insurance (the “Superintendent”). Currently, the relevant sub-paragraph, Sec. 59A-2-8(A)(5) provides that the Superintendent may conduct examinations and investigations of insurance matters as the superintendent deems proper upon “reasonable and probable cause” to determine if there has been a violation of the Insurance Code.

The Bill would add two clauses to this provision, 59A-2-8(A)(5)(a) and (b) that would explicitly grant the Superintendent or their delegated staff authority to issue civil investigative subpoenas prior to the issuance of a notice of contemplated action. The Bill would further provide the Superintendent authority to petition the district court for an order to compel compliance with a civil investigative subpoena where a recipient without lawful excuse to obey the subpoena has failed to comply.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

The Bill would provide the Superintendent with similar civil investigative authority to that authorized by statutes granting the Attorney General authority to issue civil investigative demands (“CIDs”). *See, e.g.*, NMSA 1978, § 57-1-5 (authorizing CIDs to investigate potential violations of the Antitrust Act); NMSA 1978, § 57-12-12 (authorizing CIDs to investigate potential violations of the Unfair Practices Act). These statutes typically involve more specificity about what is required to be identified in CIDs and the limits on such demands.

The civil investigative demand statutes also provide respondents the opportunity to petition courts to set aside, modify, or extend the deadline for production. *See, e.g.*, § 57-1-5(B) (“Upon motion by the person and for good cause shown, the court may make any further protective order in the proceedings that justice requires.”); § 57-12-12(G) (“At any time before the return date of the demand, a petition to set aside the demand, modify the demand, or extend the return date thereon may be filed in the district court[.]”). As drafted, the statute provides that the

Superintendent may petition a court to compel compliance, but provides no redress for an individual to seek a protective order or other modification of the subpoena from a court. Absent such a provision, the statute may raise due process concerns.

PERFORMANCE IMPLICATIONS

None noted.

ADMINISTRATIVE IMPLICATIONS

None noted.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

Related:

SB14 seeks to create a permanent statute authorizing the Superintendent to investigate proposed mergers of health care entities for anticompetitive or detrimental effects on health care prices, quality, and availability.

SB62 seeks to amend the Pharmacy Benefits Manager Regulation Act within the Insurance Code—enforced by the Superintendent—to prohibit pharmacy benefit managers from deriving remuneration other than bona fide service fees.

TECHNICAL ISSUES

None noted.

OTHER SUBSTANTIVE ISSUES

None noted.

ALTERNATIVES

N/A.

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo.

AMENDMENTS

See Significant Issues section, *supra*.