

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1053 Long-Term Care Insurance

SPONSOR(S): Metz

TIED BILLS: **IDEN./SIM. BILLS:** SB 1306

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	10 Y, 5 N	Barnum	Cooper
2) Health & Human Services Committee			
3) Economic Affairs Committee			

SUMMARY ANALYSIS

Chapter 627, Part XVIII, F. S., is the Long-Term Care Insurance Act. Along with Chapter 690-157, F.A.C., it establishes policies and procedures for the sale, servicing, and administration of long-term care insurance policies issued or delivered for issue in Florida.

Long-term Care Plans are a type of private insurance developed specifically to cover the costs of long-term care services, most of which are not covered by traditional health insurance or Medicare. These include services in one's home such as assistance with Activities of Daily Living, as well as care in a variety of facility and community settings. Premiums are pre-paid, and policies may contain provisions allowing an insurer to revise the rates at the time of renewal; however, the rate revision must be on a class basis.

In Florida, for a long-term care policy issued to an individual, the only renewal provision it can contain is either "guaranteed renewable" or "noncancellable". For a "guaranteed renewable" policy, the insured has the right to continue the long-term care insurance in force by the timely payment of premiums. The insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

In 2009, Florida's Third District Court of Appeal, in a case involving a guaranteed renewable long-term care insurance policy, held that the renewal of the insurance contract through timely premium payment constituted making a new contract. Thus, a statutory change forbidding a particular policy provision, which was enacted subsequent to the original issue date of the guaranteed renewable contract, was incorporated into the policy upon renewal and became part of the new contract.

The general rule in insurance is that the statute in effect at the time an insurance contract is executed governs the substantive issues arising in connection with that contract. Thus, if the Legislature amends an insurance law, the amendment typically will not apply to an insurance contract entered into before the amendment. Statutes that do not alter contractual or vested rights but relate only to remedies or procedure can be applied retroactively. Statutes affecting substantive rights, liabilities, and duties cannot apply retroactively. Also, statutes impairing vested rights, creating new obligations, or imposing new penalties cannot apply retroactively.

HB 1053 specifies that, as applied to long-term care insurance policies, the continuation or renewal of a guaranteed renewable policy by the timely payment of required premiums does not constitute the making of a new policy or contract for any purpose. Therefore, any statutory or regulatory changes enacted after the original issue date of the guaranteed renewable policy would not be incorporated into the policy.

The bill codifies in law a definition of "guaranteed renewable" as it applies to the Long-Term Care Insurance Act. In so doing, it also codifies that any rate revision by the insurer, at the time of renewal, may only be on a class basis.

There is no fiscal impact on state or local governments.

Insurers may experience a positive economic impact.

The bill provides for an effective date of July 1, 2012.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background:

Long-term Care Plans

Long-term Care Plans^{1,2} are a type of private insurance developed specifically to cover the costs of long-term care services, most of which are not covered by traditional health insurance or Medicare. These include services in one's home such as assistance with Activities of Daily Living (ADL),³ as well as care in a variety of facility and community settings. Most policies use ADL and Cognitive Impairment (CI)⁴ as triggers for benefits. Typically the policy pays benefits when one needs help with two or more of the six ADLs or when one has a CI. Coverage may be offered on an expense incurred, indemnity, prepaid, or other basis.

Most policies have a benefit period or lifetime benefit maximum, which is the total amount of time or total amount of dollars up to which benefits will be paid. Common benefit periods for long-term care policies are two, three, four, and five years, and lifetime or unlimited coverage. Most policies translate these time periods into dollar amounts and do not actually limit the number of days for which they will pay for care – just the overall dollar amount that the policy will pay. Premiums are pre-paid, and different payment options may be available. These include: payment according to a schedule - monthly, quarterly, semi-annually or annually; a lump sum payment; payment only for a specified period – most often 10, 15, or 20 years; and, premium payment only until age 65. Typically, premiums are waived during the time one is receiving benefits.

Retroactive Application of Statutes

The general rule in insurance is that the statute in effect at the time an insurance contract is executed governs the substantive issues arising in connection with that contract.⁵ Thus, if the Legislature amends an insurance law, the amendment typically will not apply to an insurance contract entered into before the amendment. However, if the amendment is procedural, the court may apply it retroactively to an insurance contract entered into before the amendment.

If the Legislature clearly expresses an intent that a statute apply retroactively, the court then determines whether retroactive application is constitutionally permissible.⁶ Courts make this determination by looking to the effect of a statute. Stated legislative intent that a statute apply retroactively is not necessarily dispositive as to the retroactive application.

Statutes that do not alter contractual or vested rights but relate only to remedies or procedure can be applied retroactively.⁷ Procedural law concerns the means and methods to apply and enforce substantive duties and rights.⁸

Statutes affecting substantive rights, liabilities, and duties cannot apply retroactively.⁹ Also, statutes impairing vested rights, creating new obligations, or imposing new penalties cannot apply retroactively.¹⁰

¹ http://www.longtermcare.gov/LTC/Main_Site/index.aspx

² Chapter 627, Part XVIII, F.S.

³ Bathing; continence; dressing; eating; toileting; and, transferring. (See also s. 627.94074(2), F.S.)

⁴ Inability to pass certain mental function tests.

⁵ *Hassen v. State Farm Mutual Automobile Ins. Co.*, 674 So.2d 106, 107 (Fla. 1996).

⁶ *Romine v. Florida Birth Related Neurological Injury Compensation Ass'n.*, 842 So.2d 148, 153 (Fla. 5th DCA 2003).

⁷ *DaimlerChrysler Corp. v. Hurst*, 949 So.2d 279 (Fla. 3rd DCA 2007).

⁸ *Romine* 842 So.2d at 154 .

⁹ *Menendez v. Progressive Express Ins. Co.*, 35 So.3d 873 (Fla. 2010).

¹⁰ *Romine* 842 So.2d at 153.

Current Situation:

Chapter 627, Part XVIII, F. S., is the Long-Term Care Insurance Act (Act). Along with Chapter 690-157, Florida Administrative Code, the Act establishes policies and procedures for the sale, servicing, and administration of long-term care insurance policies issued or delivered for issue in Florida. Per the Act, long-term care insurance may be offered to a Florida resident under a group policy issued in another state if the other state has statutory and regulatory requirements similar to those of Florida, as evidenced by information filed with the Office of Insurance Regulation (OIR) by the insurer.

In order to protect applicants from unfair or deceptive sales or enrollment practices, every insurer, health care service plan, or other entity providing long-term care insurance or benefits in Florida must submit a copy of all associated advertising and marketing material to the OIR for review or approval.¹¹ At any time, the OIR has the authority to disapprove an advertisement and enter an order requiring that use of the advertisement be discontinued.¹²

The OIR reviews data provided by the insurer for approval of any premium rate schedule increase.¹³ Premium increases for existing policy holders may not exceed the premium charged for a newly issued insurance policy, except to reflect benefit differences.¹⁴ Long-term care insurance policies may contain provisions allowing an insurer to revise the rates at the time of renewal; however, the rate revision must be on a class basis.^{15, 16} Some policies may contain the term “level premium”, in which case the insurer does not have the right to change the premium.

For a long-term care policy issued to an individual, the only renewal provision it can contain is either “guaranteed renewable” or “noncancellable”. For a “guaranteed renewable” policy, the insured has the right to continue the long-term care insurance in force by the timely payment of premiums. The insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis. Under the renewal provision of “noncancellable”, the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.¹⁷

In 2009, the Third District Court of Appeal, in a case involving a guaranteed renewable long-term care insurance policy, held that the renewal of the insurance contract through timely premium payment constituted making a new contract.¹⁸ Thus, a statutory change forbidding a particular policy provision, which was enacted subsequent to the original issue date of the guaranteed renewable contract, was incorporated into the policy upon renewal and became part of the new contract.

Effect of the bill:

HB 1053 specifies that, as applied to long-term care insurance policies, the continuation or renewal of a guaranteed renewable policy by the timely payment of required premiums does not constitute the making of a new policy or contract for any purpose. Therefore, any statutory or regulatory changes enacted after the original issue date of the guaranteed renewable policy would not be incorporated into the policy.

The bill codifies in law a definition of “guaranteed renewable” as it applies to the Long-Term Care Insurance Act. In so doing, it also codifies that any rate revision by the insurer, at the time of renewal, may only be on a class basis. Under this statutory definition, for a “guaranteed renewable” policy, the

¹¹ 690-157.115, F.A.C.

¹² s. 627.9407(2), F.S.

¹³ 690-157.113, F.A.C.

¹⁴ s. 627.9407(7)(c), F.S.

¹⁵ 690-157.005, F.A.C.

¹⁶ 690-157.104(1)(b), F.A.C.

¹⁷ 690-157.104(1), F.A.C.

¹⁸ *Bell Care Nurses Registry, Inc. v. Cont'l Cas. Co.*, 25 So.3d 13 (Fla. 3d DCA 2009).

insured has the right to continue the long-term care insurance in force by the timely payment of premiums. The insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

B. SECTION DIRECTORY:

Section 1: Amends s. 627.9404, F.S., by providing a definition of “guaranteed renewable” as it applies to the Long-Term Care Insurance Act.

Section 2: Amends s. 627.9407, F.S., as relating to benefits arising from timely payment of premium.

Section 3: Amends s. 627.9403, F.S., by conforming language.

Section 4: Amends s. 641.2018, F.S., by conforming language.

Section 5: Provides an effective date of July 1, 2012.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

2. Expenditures:
None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

2. Expenditures:
None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

- Insurers with a long-term care offering are provided benefit and cost, predictability.
- Should future legislation or regulation add a benefit which would result in a premium increase, existing policy holders would have the opportunity to avoid the increase associated with that benefit.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

- The provisions of this bill will apply to policies issued on or after the effective date. It is unclear whether the provisions will apply to policies issued prior to the bill's effective date.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.