HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1227 Long-Term Care Insurance Policies
SPONSOR(S): Schwartz
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1714

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N	Ward	Bond
2) Insurance & Banking Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Current law provides for lawsuits to collect money from a debtor, provides for legal means to collect on such judgments, and provides that certain assets of persons are not subject to those legal means of collection.

It is possible that insurance designed to pay for long term care may be subject to forced sale to satisfy a creditor's judgment. Florida has established a "Long Term Care Partnership Program" between Medicaid and private long-term care insurers "designed to encourage individuals to purchase private long-term care insurance." One of the stated purposes in the statute creating the partnership is to "alleviate the financial burden on the state's medical assistance program by encouraging the pursuit of private initiatives."

This bill amends the statutory exemptions from creditor claims to provide that long term care insurance is exempt from creditor claims.

The bill may have a positive fiscal impact on state government. The bill does not appear to have a fiscal impact on local governments.

The effective date of the bill is July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Legal Debt Collection Process

Current law provides court process for the collection of lawful debts. A creditor may sue a debtor and, if the creditor prevails, the creditor may receive a final judgment awarding money damages. If the debtor does not voluntarily pay the judgment, the creditor has several legal means for forcibly collecting on the debt, including:

- Wage garnishment.
- Garnishment of money in a bank account.
- Directing the sheriff to seize assets, sell them, and give the proceeds to the creditor.

In order to protect debtors from being destitute, current law provides that certain property is exempt from being forcibly taken by a creditor. The state constitution provides that the debtor's homestead and $1,000 of personal property is exempt. Statutory law provides numerous categories of exempt property, and federal statutory law also provides certain exemptions that apply in all of the states.[1]

Bankruptcy is means by which a person's assets are liquidated in order to pay the person's debts under court supervision. Art. 1, s. 8, cl. 4 of the United States Constitution gives Congress the right to uniformly govern bankruptcy law. Bankruptcy courts are operated by the federal government. A debtor (the bankrupt person) is not required to give up all of his or her assets in bankruptcy. Certain property is deemed "exempt" from the bankruptcy case, and may be kept by the debtor without being subject to creditor claims. The Bankruptcy Code at 11 U.S.C. s. 522 provides for exempt property in a bankruptcy case. In general, a debtor may choose to utilize the exempt property listing in state law or the exempt property of the Bankruptcy Code. However, federal law allows a state to opt-out of the federal law and thereby insist that debtors only utilize state law exemptions.[2] Florida, like most states, has made the opt-out election to prohibit the use of the federal exemptions and require that debtors may only use state law exemptions. See s. 222.20, F.S. Currently, long term care insurance is not included in these exempt assets.

Long Term Care Insurance

“Long-term care” refers to a broad range of assistive medical, personal, and social services needed by individuals who are unable to meet their basic living needs for an extended period of time, often as result of accident, illness or frailty. Frequently, such individuals demonstrate an inability to move about, take care of the basic activities of daily living, or follow medication schedules. Consequently, assistance is often necessary to help with daily household cleaning, meal preparation, shopping, bill paying, medical visits, and administration of medication, among various other tasks. Additional long-term care disabilities may be attributable to cognitive impairment associated with stroke, depression, dementia, Alzheimer’s disease, Parkinson’s disease, and other medical conditions affecting the brain.

Florida has enacted ss. 627.9401 - 627.9408, F.S.,[3] to "promote the availability of long-term care insurance policies. . . ." The Act defines a “Long-term care insurance policy” as:

> Any insurance policy or rider advertised, marketed, offered, or designed to provide coverage on an expense-incurred, indemnity, prepaid, or other basis for one or more necessary or medically necessary diagnostic, preventive, therapeutic, curing, treating,

---

[1] For example, the federal ERISA law provides that most retirement plans are exempt from creditor claims.
[2] 11 U.S.C. s. 522(b).
[3] The Long-Term Care Insurance Act.

mitigating, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital.[4]

Further, Florida has established a "Long Term Care Partnership Program" between Medicaid and private long-term care insurers "designed to encourage individuals to purchase private long-term care insurance."[5] One of the stated purposes in the statute creating the partnership is to "alleviate the financial burden on the state's medical assistance program by encouraging the pursuit of private initiatives."[6]

Effect of Changes

The bill adds to the property interests of a debtor which are exempt from legal process, including attachment, garnishment, or levy, a "debtor's interest in a long-term care insurance policy as defined in s. 627.9404." The policy furthered by the bill is one encouraged by the Long Term Care Partnership Program.[7] This bill has the effect of promoting the stated legislative purposes of the long term insurance partnership by protecting interests of debtors who require long term care.

B. SECTION DIRECTORY:

Section 1 amends s. 222.25, F.S., regarding exemptions from legal process.

Section 2 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill does not appear to have any impact on state revenues.

2. Expenditures:

   The bill may have an unknown positive impact on state expenditures. See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill does not appear to have any impact on local government revenues.

2. Expenditures:

   The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have an indirect economic impact on the private sector.

[4] Section 627.9404, F.S.
[5] The authority for this partnership is found in s. 409.9102, F.S.
[6] *Id.*
[7] *See* "Florida Long-Term Care Partnership Program: A Public-Private Partnership for Long-term Care Insurance Coverage;" http://www.fdhc.state.fl.us/Medicaid/ltc_partnership_program/index.shtml (Last visited March 13, 2013).

D. FISCAL COMMENTS:

Under this bill, individuals will be able to protect their long-term care plan from creditors' claims. This will keep some individuals from having to claim Medicaid funding for long-term care, and thus could lead to a reduction in state Medicaid expenditures.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.