HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	HB 221	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Drake and others	116 **Y's**	0 **N's**
COMPANION BILLS:	SB 520	**GOVERNOR'S ACTION:**	Pending

SUMMARY ANALYSIS

HB 221 passed the House on April 24, 2015, as SB 520.

Long-term care insurance is a type of insurance developed specifically to cover the costs of nursing homes, assisted living, home health care and other long-term care services. All insurance policies sold in Florida must be purchased from an insurance agent licensed by the Department of Financial Services. Insurance agents sell policies from insurance companies regulated by the Office of Insurance Regulation.

Under current law, an insurance company that offers long-term care insurance is required to offer the following options for nonforfeiture protection provisions: reduced paid-up insurance, extended term, shortened benefit period, or "any other benefits approved" by the Office of Insurance Regulation. This bill allows an insurance company to offer a return of premiums paid in the event of the death of the insured or a complete surrender or cancellation of the policy, in addition to the already required provisions.

This bill has no fiscal impact on the public sector.

This bill may have an indeterminate positive impact on the private sector.

Subject to the Governor's veto power, the effective date of this bill is July 1, 2015.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Current Situation of Long-term Care, Nonforfeiture Benefits, and Long-term Care Insurance

The term "long-term care" encompasses medical, social, and personal care services on a recurring or continuing basis for persons with chronic physical or mental illness, injury, or disability. Long-term care may be provided in environments ranging from institutions, such as nursing homes and assisted living facilities, to private homes. Long-term care services usually include symptomatic treatment, maintenance, and rehabilitation of patients.[1]

"Long-term care insurance policy" means "any insurance policy or rider . . . designed to provide coverage . . . for one or more necessary or medically necessary diagnostic, preventative, therapeutic, curing, treating, mitigating, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital. Long-term care insurance shall not include any insurance policy which is offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or limited health insurance coverage not otherwise defined as long-term care insurance." [2]

All insurance policies sold in Florida must be purchased from an insurance agent licensed by the Department of Financial Services. Insurance agents sell policies from insurance companies regulated by the Office of Insurance Regulation ("OIR").[3]

Generally, nonforfeiture protection provisions are contractual arrangements that are triggered when a policy ends leaving the policyholder with some benefit from paying into the policy but never using it. Upon lapse of premium payments, a nonforfeiture protection provision provides the policyholder with an option to continue the policy for a shorter period, to surrender the policy for its cash value, to continue the policy for a reduced amount, or to take some other action rather than forfeit the policy.[4]

Current law requires insurance companies to offer a nonforfeiture protection provision with long-term care insurance policies, and that provision must provide the following benefit options: reduced paid-up insurance, extended term, shortened benefit period, or any other benefits approved by OIR if all or part of a premium is not paid.[5] These benefit options must be offered by insurance companies, but the consumer is allowed to choose which options they would like to purchase for an additional premium.

Prior to 1997, the law allowed "cash surrender values which may include return of premiums," as a benefit option for a nonforfeiture protection provision.[6] The language was deleted in 1997 as a result of the passage of the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA").[7] Subsequently, federal law changed to allow "qualified long-term insurance contracts" to provide for a return of premium, but only upon the death of the insured, or upon a complete surrender or cancellation of the contract.[8] While current Florida law does not explicitly preclude the return of premiums as a benefit, the OIR interprets the removal of the prior language as a prohibition of the benefit for long-term care insurance.[9]

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[1] "Long-Term Care," MOSBY'S MEDICAL DICTIONARY (8th ed. 2009), available at: http://medical-dictionary.thefreedictionary.com/long-term+care (last visited Feb. 23, 2015).
[2] S. 627.9404(1), F.S.
[3] S. 624.401(1), F.S.
[4] "Option," BLACK'S LAW DICTIONARY (10th ed. 2014).
[5] S. 627.94072(2), F.S.
[6] S. 627.94072(2), F.S. (1996).
[7] *See* Ch. 97-179, s. 19, Laws of Fla.
[8] 26 U.S.C. § 7702B.
[9] *See* R. 69O-157.118, F.A.C.

Effect of the Bill

This bill amends the law to allow the return of premiums paid as a nonforfeiture benefit for long-term care insurance. Unlike the current benefit options for nonforfeiture protection provisions, which are mandatory, this change would permit insurers to offer an additional benefit in the form of the return of premiums paid. Similar to the current process of purchasing nonforfeiture protection benefits with long-term care insurance, consumers would have the opportunity to purchase this new benefit for an additional premium.

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:

Uncertain. To the extent that insurance companies will choose to offer the return of premiums paid as a nonforfeiture protection benefit with long-term care insurance policies, the amount of policyholders that would purchase this option and the costs or savings to insurance companies are unknown.

D. FISCAL COMMENTS:

None.