The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Fiscal Policy

BILL: SB 520

INTRODUCER: Senator Grimsley

SUBJECT: Long-term Care Insurance

DATE: April 1, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Knudson	BI	**Favorable**
2.	Hendon	Hendon	CF	**Favorable**
3.	Goedert	Hrdlicka	FP	**Pre-meeting**

I. Summary:

SB 520 allows an insurer to offer a nonforfeiture protection provision in a long-term care insurance policy that provides for the return of premium if the insured dies or the policy is completely surrendered or canceled. The bill is not expected to have a fiscal impact on the state.

II. Present Situation:

Long-term Care Insurance Policies

Long-term care insurance specifically covers the costs of nursing homes, assisted living, home health care, and other long-term care services. A long-term care insurance policy is defined as:

> Any insurance policy or rider … 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, mitigating, rehabilitative, maintenance, or personal care services provided in a setting other than an acute care unit of a hospital.[1]

A long-term care insurance policy may not be canceled, nonrenewed, or terminated because of the age or health of the policyholder.[2] The Office of Insurance Regulation (OIR) may authorize nonrenewal on a statewide basis if renewal would jeopardize the insurer's solvency or if the insurer would experience substantial and unexpected loss that could not be reasonably mitigated or remedied.[3] A long-term care policy may be canceled for nonpayment of premium. If a policy is canceled for nonpayment, the policyholder must be provided with a grace period of at least 30

[1] Section 627.9404(1), F.S.
[2] Section 627.9407(3)(a), F.S.
[3] *Id*.

days to pay the premium.[4] After the expiration of the grace period, the insurer must provide at least 30-days written notice to the policyholder and a specified secondary addressee that coverage may lapse.[5]

Nonforfeiture Provisions

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. Current law requires insurance companies to offer a nonforfeiture protection provision with long-term care policies in the form of "reduced paid-up insurance, extended term, shortened benefit period, or any other benefit approved by the [OIR] if all or part of a premium is not paid."[6] The policyholder has the option to purchase a nonforfeiture provision for an additional premium, but is not required to do so.

Since the passage of the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), qualified long-term care insurance contract premiums may be included as a deductible medical expense on Schedule A of IRS Form 1040.[7] A long-term care insurance contract does not qualify for preferred tax treatment if any refund of premium is not applied as a reduction of future premiums or an increase of future benefits.[8] However, this requirement does not apply to a refund made upon the death of the insured or the complete surrender or cancellation of the contract.[9] At the time HIPAA was passed, Florida law allowed "cash surrender values which may include return of premiums,"[10] as a benefit option for a nonforfeiture protection provision. In 1997, after the passage of HIPAA, Florida law was amended to eliminate the return of premiums as an available nonforfeiture protection provision.[11]

III. Effect of Proposed Changes:

Section 1 of the bill amends s. 627.94072(2), F.S. Current law requires insurers of long-term care policies to offer a nonforfeiture protection provision that provides for reduced paid-up insurance, an extended term, a shortened benefit period, or other approved benefits. This bill creates an additional nonforfeiture protection provision that the insurer can offer to the insured. The bill specifies that an insurer may offer a nonforfeiture provision in a long-term care insurance policy in the form of a return of premium in the event of the insured's death or upon complete surrender or cancellation of the policy.

Section 2 of the bill provides an effective date of July 1, 2015.

[4] Section 627.94073(1), F.S.
[5] Section 627.94073(2), F.S.
[6] Section 627.94072(2), F.S.
[7] See IRS Publication 502 (2014), Medical and Dental Expenses, "Long-Term Care: Qualified Long-Term Care Insurance Contracts," available at http://www.irs.gov/publications/p502/index.html (accessed on March 26, 2015).
[8] 26 U.S.C. s. 7702B(b)(1)(E).
[9] 26 U.S.C. s. 7702B(b)(2)(C).
[10] See s. 19, ch. 97-179, L.O.F.
[11] *Id*.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandate restrictions do not apply because the bill does not require counties or municipalities to spend funds, reduce counties' or municipalities' ability to raise revenue, or reduce the percentage of a state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.94072 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.