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107–128

AMENDING CHAPTER 90 OF TITLE 5, UNITED STATES CODE, RELATING TO FEDERAL LONG-TERM CARE INSURANCE

R E P O R T

OF THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

TO ACCOMPANY

H.R. 2559

TO AMEND CHAPTER 90 OF TITLE 5, UNITED STATES CODE, RELATING TO FEDERAL LONG-TERM CARE INSURANCE

DECEMBER 18, 2001.—Ordered to be printed

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AMENDING CHAPTER 90 OF TITLE 5, UNITED STATES CODE, RELATING TO FEDERAL LONG-TERM CARE INSURANCE

DECEMBER 18, 2001.—Ordered to be printed

Mr. LIEBERMAN, from the Committee on Governmental Affairs, submitted the following

R E P O R T

[To accompany H.R. 2559]

The Committee on Governmental Affairs, to which was referred the bill (H.R. 2559) to amend chapter 90 of title 5, United States Code, relating to Federal long-term care insurance, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

I. PURPOSE AND SUMMARY

The Long-Term Care Security Act (LTCSA) (Public Law 106–265) establishes a program under which qualified Federal personnel (including postal and other civilian employees and military personnel), retirees receiving an annuity, and certain family members may purchase long-term care insurance from one or more private insurance carriers. While the legislation contained broad preemption language, it did not explicitly prohibit States and localities from taxing LTCSA insurance premiums. H.R. 2559 makes the LTCSA more consistent with analogous programs under which insurance is offered to federal employees, and makes enrollment in the LTCSA program more affordable to potential enrollees, by amending the LTCSA to exempt premiums under the program from State and local taxes. The bill also expands coverage to include retired government personnel who are not yet receiving annuity payments but are entitled to a deferred annuity under Federal retirement programs.

II. BACKGROUND AND NEED FOR THE LEGISLATION

A. THE LONG-TERM CARE SECURITY ACT

Bills to provide a long-term care insurance benefit for federal employees were introduced in both Houses of Congress in the 106th

Congress. In the Senate, the Governmental Affairs Committee ordered such legislation, S. 2420, reported on June 14, 2000.[1] The Senate incorporated the language of the Committee bill into the companion House bill, H.R. 4040, and passed the House bill, which, as amended by the Senate, then passed the House with further amendment and again passed the Senate. The LTCSA was signed into law on September 19, 2000, as title I of Public Law 106–265, adding a new chapter 90 to title 5, United States Code (5 U.S.C. §§ 9001–9009).

The LTCSA requires the Office of Personnel Management (OPM) to establish and administer a program under which federal civilian (including postal) employees, military personnel and other members of the uniformed services, civilian and uniformed retirees receiving an annuity, and certain relatives will be able to purchase long-term care insurance at full cost to the policyholder. OPM will contract with one or more carriers to provide the insurance. "Long-term care" refers to a broad range of supportive, medical, personal, and social services designed for individuals who are limited in their ability to function independently on a daily basis. Long-term care needs may arise at any time due to an injury, chronic illness, or the effects of the natural aging process. Long-term care services can be provided in a nursing home, an assisted living facility, the community or in the home.

Competition among carriers for the opportunity to offer long-term care insurance under this program, together with OPM oversight, should result in affordable premiums and attractive benefit packages. OPM estimates that the program will reduce the cost of long-term care insurance premiums for covered employees by up to 20 percent. According to OPM, about 20 million people will be eligible for coverage under the LTCSA and from 300,000 to 600,000 civilian and military personnel and other eligible individuals will enroll in the program.

B. H.R. 2559

The LTCSA contains broad Federal preemption language, under which the terms of any contract under the Act will supersede and preempt any State or local law or regulation. 5 U.S.C. § 9005. This provision does not explicitly prohibit States and localities from taxing LTCSA insurance premiums. However, analogous programs under which insurance is offered to federal employees—the Federal Employees Health Benefits Program (FEHBP) and the Federal Employees Group Life Insurance Program (FEGLI)—do specifically prohibit the imposition of State and local premium taxes. 5 U.S.C. §§ 8714(c), 8909(f). Under the LTCSA, as under these other insurance programs for federal employees, OPM assumes the consumer-protection responsibility of regulating and overseeing the insurance product, which would ordinarily be the responsibility of State insurance regulators. H.R. 2559 remedies this inconsistency in the LTCSA by adding a provision, which tracks the provisions in FEHBP and FEGLI, to exempt premiums from State and local taxes.

[1] The Committee included in the legislation the provisions of the Federal Retirement Coverage Corrections Act, which provides for the correction of certain retirement coverage errors affecting federal employees.

OPM estimates that, unless H.R. 2559 is enacted, State and local premium taxes would add up to three percent to the cost of enrollment in the LTCSA program. This added cost would arise from both the direct cost of taxes and the administrative cost of complying with tax laws that vary from jurisdiction to jurisdiction across the country.

The LTCSA will not be fully implemented until late 2002. Final long-term care insurance proposals were submitted on October 15, 2001. Submitted proposals reflected the assumption that premiums would not be exempt from State and local taxes. OPM announced the selection of the winning proposal on December 18, 2001. The open season for enrollment will be late summer or early fall of 2002. Prompt passage of H.R. 2559 will help ensure that LTCSA premiums will reflect the reduced administrative costs that exemption from State and local tax collection would place on the carriers that OPM selected.

H.R. 2559 would also extend coverage to Federal employees who have left government service but are entitled to receive a deferred annuity under existing Federal retirement programs such as the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS). The LTCSA now covers federal employees, members of the uniformed services, and former federal personnel receiving retirement benefits. However, deferred annuitants—individuals who leave federal service before they are entitled to an immediate annuity, but who have worked long enough to be entitled to an annuity at a later date—are not covered by the Act. H.R. 2559 would fill this gap in coverage by extending the Act to allow deferred annuitants to participate in the program.

III. Section-by-Section Analysis

Section 1. This section amends 5 U.S.C. 9001(2) to allow all individuals over the age of 18 who are entitled to an annuity under the Civil Service Retirement System, the Federal Employees Retirement System, or any other retirement system for Federal employees to apply for group long-term care insurance through the program established in the LTCSA. The Act now only applies to retirees entitled to an immediate annuity, so the bill would make individuals entitled to a deferred annuity (or a survivor annuity based upon a deferred annuity) eligible to participate.

Section 2. This section amends 5 U.S.C. 9005 to exempt long-term care insurance policies issued through this program from premium taxes imposed by States, local governments, or the Commonwealth of Puerto Rico.

Section 3. This section makes these revisions effective retroactively as if included in the enactment of the LTCSA.

IV. Legislative History

H.R. 2559 was introduced by Rep. Scarborough on July 18, 2001. The bill was referred to the Committee on Government Reform, the Committee on the Judiciary, and the Committee on Resources. No hearings were held. The Committees on Government Reform and the Judiciary each ordered the bill reported by voice vote. Under a suspension of the rules, the House of Representatives passed H.R. 2559 on October 30, 2001 by a vote of 406 to 1.

In the Senate, the bill was referred to the Committee on Governmental Affairs on October 31, 2001, and then to the Subcommittee on International Security, Proliferation, and Federal Services on the same day. No hearings were held. The Subcommittee voted by polling letter in favor of the bill and reported it back to the full Committee. On November 14, 2001, the Committee ordered the bill reported favorably by voice vote with no member present dissenting. Committee Members present were Senators Akaka, Durbin, Cleland, Carper, Carnahan, Thompson, Voinovich, Cochran, Bunning, and Lieberman.

V. Regulatory Impact Statement

Paragraph 11(b)(1) of rule XXVI of the Standing Rules of the Senate requires that each report accompanying a bill evaluate the "regulatory impact which would be incurred in carrying out this bill." The Committee has determined that the enactment of this legislation will not have significant regulatory impact. The cost estimate supplied by the Congressional Budget Office cost estimate, set forth below, describes that the preemption of State and local taxes under the bill is an intergovernmental mandate within the meaning of the Unfunded Mandates Reform Act.

VI. Congressional Budget Office Cost Estimate

H.R. 2559—An act to amend chapter 90 of title 5, United States Code, relating to federal long-term care insurance

Summary: H.R. 2559 would expand eligibility for long-term care insurance authorized under the Long-Term Care Security Act (Public Law 106–265) to persons who had deferred their eligibility for a federal retirement annuity and who, under current law, would not be able to participate when the enrollment period opens in 2003. CBO estimates that enactment of H.R. 2559 would not have a significant effect on federal spending. Because the act would affect direct spending, pay-as-you-go procedures would apply.

H.R. 2559 would also prohibit state premium taxes on long-term care insurance offered to federal employees, members of the uniformed services, civilian and military retirees, and a number of their relatives. This preemption would be an intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that states would lose revenues totaling about $8 million annually beginning in 2003; thus, the threshold established in UMRA ($56 million in 2001, adjusted annually for inflation) would not be exceeded. The act contains no private-sector mandates as defined in UMRA.

Estimated Cost to the Federal Government: Under current law, federal retirees who are receiving an annuity will be able to participate in the long-term care insurance program for federal employees, but retirees deferring their annuity will not be eligible. H.R. 2559 would allow this group to participate. CBO estimates that about 2,000 annuitants would be newly eligible for the long-term care insurance program for federal employees because of H.R. 2559, but that only a portion would purchase coverage through the federal program. Because the federal government does not contribute to enrollees' premiums, and the insurer or insurers would be required to reimburse the Office of Personnel Management (OPM) for its expenses in setting up and administering the plan, net federal outlays would be zero over the long run.

The expenses that OPM would incur before collecting premiums from enrollees and reimbursement from the insurers would be funded by outlays from the federal government's Employees' Life Insurance Fund. H.R. 2559 would not affect the administrative costs of designing the plan and negotiating contracts with insurers. However, the federal government would incur additional costs to inform the additional annuitants of their eligibility (which would primarily consist of postage and printing additional brochures about plan choices) and the costs incurred by OPM in registering those who choose to participate. CBO estimates that these additional costs would total less than $500,000 in fiscal year 2002. The costs of this legislation fall within budget function 600 (income security).

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. Although the additional outlays from the Employees' Life Insurance Fund would be direct spending, CBO estimates that they would total less than $500,000.

Estimated impact on state, local, and tribal governments: The Long-Term Care Security Act authorized a program through the Office of Personnel Management to offer long-term care insurance to federal employees, members of the uniformed services, civilian and military retirees, and a number of their relatives. That law preempted state laws requiring certain levels of coverage or benefit requirements that would have applied to long-term care insurance offered under the program. This act would extend the preemption to cover insurance premium taxes, prohibiting states from collecting tax revenues that otherwise would apply to the policies. This preemption would be an intergovernmental mandate as defined in UMRA. CBO estimates that states would lose revenues totaling about $8 million annually beginning in 2003; thus, the threshold established in UMRA ($56 million in 2001, adjusted annually for inflation) would not be exceeded.

Almost all states levy taxes on health care premiums, and in most cases those taxes also would apply to policies providing coverage for long-term care. Premium tax rates on health insurance generally range from less than 1 percent to about 2.75 percent, with a large number at about 2 percent. CBO estimates that about 220,000 employees and retirees would take advantage of the new long-term care insurance and that about half of those individuals would have at least one eligible relative who also would purchase the insurance. Assuming an average premium of about $1,300 annually for such insurance, CBO estimates that states would lose about $8 million annually in revenues from the preemption of their premium taxes.

Estimated impact on the private sector: CBO estimates that the act would have no private-sector mandates as defined in UMRA.

Previous CBO estimate: On October 9, 2001, CBO provided an identical estimate for the versions of this bill that were ordered reported by the House Committee on the Judiciary and the House Committee on Government Reform.

Estimate prepared by: Federal costs: Charles L. Betley; Impact on state, local, and tribal governments: Leo Lex; impact on the private sector: Stuart Hagen.

Estimate approved by: Robert A. Sunshine, Assistant Director for Budget Analysis.

VII. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by H.R. 2336, as reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

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PART III—EMPLOYEES

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Subpart G—Insurance and Annuities

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CHAPTER 90—LONG-TERM CARE INSURANCE

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§9001. Definitions

For purposes of this chapter:

(1) * * *

[(2) ANNUITANT.—The term "annuitant" has the meaning such term would have under paragraph (3) of section 8901 if, for purposes of such paragraph, the term "employee" were considered to have the meaning given to it under paragraph (1) of this subsection.]

(2) ANNUITANT.—The term "annuitant" means—

(A) any individual who would satisfy the requirements of paragraph (3) of section 8901 if, for purposes of such paragraph, the term "employee" were considered to have the meaning given to it under paragraph (1) of this subsection; and

(B) any individual who—

(i) satisfies all requirements for title to an annuity under subchapter III of chapter 83, chapter 84, or any other retirement system for employees of the Government (whether based on the service of such individual or otherwise), and files application therefor;

(ii) is at least 18 years of age; and

(iii) would not (but for this subparagraph) otherwise satisfy the requirements of this paragraph.

* * * * * * *

§9005. Preemption

(a) CONTRACTUAL PROVISIONS.—The terms of any contract under this chapter which relate to the nature, provision, or extent of coverage or benefits (including payments with respect to benefits) shall supersede and preempt any State or local law, or any regulation issued thereunder, which relates to long-term care insurance or contracts.

(b) PREMIUMS.—

(1) IN GENERAL.—No tax, fee, or other monetary payment may be imposed or collected, directly or indirectly, by any State, the District of Columbia, or the Commonwealth of Puerto Rico, or by any political subdivision or other governmental authority thereof, on, or with respect to, any premium paid for an insurance policy under this chapter.

(2) RULE OF CONSTRUCTION.—Paragraph (1) shall not be construed to exempt any company or other entity issuing a policy of insurance under this chapter from the imposition, payment, or collection of a tax, fee, or other monetary payment on the net income or profit accruing to or realized by such entity from business conducted under this chapter, if that tax, fee, or payment is applicable to a broad range of business activity.

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