

## FEDERAL LONG-TERM CARE AMENDMENTS OF 2001

OCTOBER 11, 2001.—Ordered to be printed

Mr. SENSENBRENNER, from the Committee on the Judiciary,  
submitted the following

### REPORT

[To accompany H.R. 2559]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom 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.

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#### PURPOSE AND SUMMARY

The Long-Term Care Security Act (LTCSA) was established to permit qualified Federal employees to purchase private long-term care insurance at a group discount. While the legislation contained broad preemption language, it did not exempt LTCSA insurance premiums from State and local taxes. H.R. 2559 makes enrollment in the program more affordable to potential enrollees by amending the LTCSA to exempt these premiums from State and local taxes.

The bill also expands coverage to include government personnel who presently receive a deferred annuity under Federal retirement programs.

## BACKGROUND AND NEED FOR THE LEGISLATION

### THE LONG-TERM CARE SECURITY ACT

#### *Background*

Last year, the LTCSA (H.R. 4040, 106th) was introduced by Rep. Scarborough, Chairman of the Government Reform Committee's Subcommittee on Civil Service and Agency Organization. It was sequentially referred to the Government Reform Committee and to the Armed Services Committee. The measure (S. 2420 in the Senate) obtained wide bipartisan support in both Houses of Congress and was signed into law on September 19, 2000.<sup>1</sup>

The LTCSA permits Federal civilian employees, members of the uniformed services, as well as civilian and military retirees to purchase private, long-term care insurance for themselves and qualified relatives at a group discount. The Office of Personnel Management (OPM) estimates resulting savings will reduce the cost of long-term care insurance premiums for covered employees by up to 20 percent.

"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. According to OPM, about 20 million people will be eligible for coverage under the LTCSA. OPM further estimates that from 300,000 to 600,000 eligible employees will enroll in the program.

Functional dependency is generally defined as the inability to function independently, perform essential activities of daily living such as dressing, bathing, eating, transferring (e.g., from a bed to a chair), walking, or the inability to perform instrumental activities of daily living such as shopping, preparing meals, taking medicine, and housekeeping.<sup>2</sup> Assistance with these activities may require hands-on assistance or direction, instruction, or supervision from another individual. Long-term care services can be provided in a nursing home, an assisted living facility, the community or in the home.<sup>3</sup> While section 9005 of the Act contains broad Federal preemption language, the LTCSA does not specifically prohibit States and localities from taxing LTCSA insurance premiums. These premiums have been estimated to add between three and five percent to the cost of enrollment in the program.

#### *H.R. 2559*

Introduced by Rep. Scarborough on July 18, 2001, H.R. 2559 remedies this perceived oversight by amending LTCSA to exempt its premiums from State and local taxes. H.R. 2559 was referred to the Committee on the Judiciary on July 17, 2001 and to the Subcommittee on Commercial and Administrative Law on August 6,

<sup>1</sup>Pub. L. No. 106-265, 114 Stat. 762 (2000).

<sup>2</sup>H.R. REP. NO. 106-610, at 6 (2000).

<sup>3</sup>*Id.*

2001. It was discharged by the Full Committee on October 2, 2001. H.R. 2559's State and local tax exemption provision tracks the language found in both the Federal Employees Health Benefits Program (FEHBP) and the Federal Employees Group Life Insurance Program (FEGLI).<sup>4</sup> The measure also extends coverage to Federal employees who currently receive a deferred annuity under existing Federal retirement programs such as the Civil Service Retirement System (CSRS) or the Federal Employees Retirement System (FERS).

*Prevalence of Federal Legislation Limiting State Taxing Authority*

The Constitution establishes the dual sovereignty of the States and the Federal Government. One of the primary tenets of sovereignty reserved to States is the authority to define their own taxing systems. While exempting certain individuals or programs from State taxation sometimes occasions considerable opposition from States, Congress has periodically withdrawn State and local taxing authority in the exercise of its Commerce Clause authority.

There are a number of examples. Congress has provided that members of the Armed Forces are subject to taxes only in their respective States of residence, not the States in which they are stationed.<sup>5</sup> It has also exempted Members of Congress from multiple State taxes. Under the legislation, only States represented by the member have taxing jurisdiction over that member's congressional income.<sup>6</sup> In 1995, Congress passed legislation prohibiting States from collecting taxes on the qualified pension income of non-residents.<sup>7</sup>

Congress subsequently enacted legislation prohibiting Oregon from taxing residents of Washington who worked on hydroelectric facilities spanning the Columbia River. In that legislation, South Dakota residents working along the Missouri River were extended congressional protection from multiple State taxes.<sup>8</sup> This legislation also exempted Tennessee residents from paying Kentucky income taxes if they worked at Fort Campbell, Kentucky, which straddles both States.

*Timing Considerations*

The LTCSA will not be fully implemented until late 2002. Final long-term care insurance proposals were submitted on August 22, 2001. Submitted bids reflected the assumption that premiums would *not* be exempt from State and local taxes. OPM's target date for selecting a winning candidate is October 15, 2001. The open season for enrollment in this program is October 1, 2002. Prompt passage of H.R. 2559 will help ensure submitted LTCSA bids can be amended to reflect the reduced administrative costs that exemption from State and local tax collection would place on the prevailing bidder.

<sup>4</sup> See 5 U.S.C. § 8909 (f)(1) and 5 U.S.C. § 8714(c)(1) (2000).

<sup>5</sup> Act of Oct. 6, 1942, 1041 56 Stat. 777 (codified at 50 U.S.C. App. § 574).

<sup>6</sup> Act of July 19, 1977, Pub. L. No. 95-67, 91 Stat. 271 (codified at 4 U.S.C. § 113 (1994)).

<sup>7</sup> See "The State Taxation of Pension Income Act of 1995," Pub. L. No. 104-95 (1996), 109 Stat. 979 (codified at 4 U.S.C. § 11(c) (1996)).

<sup>8</sup> Pub. L. No. 105-261 (1998), codified at 4 U.S.C. §§ 114-115 (2000).

#### HEARINGS

No hearings were held on H.R. 2559.

#### COMMITTEE CONSIDERATION

On October 3, 2001, the Committee met in open session and ordered favorably reported the bill H.R. 2559 without amendment by voice vote, a quorum being present.

#### VOTE OF THE COMMITTEE

No recorded votes were taken on the bill H.R. 2559 during Committee consideration.

#### COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

#### PERFORMANCE GOALS AND OBJECTIVES

H.R. 2559 does not authorize funding. Therefore, clause 3(c) of rule XIII of the Rules of the House of Representatives is inapplicable.

H.R. 2559 is intended to make long-term care insurance coverage more affordable to eligible enrollees by exempting LTCSA premiums from State and local taxes. The bill also extends eligibility to enroll in the program to Federal employees who currently receive an annuity under existing Federal retirement programs.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 3(c)(2) of House rule XIII is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, H.R. 2559, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, October 9, 2001.

Hon. F. JAMES SENSENBRENNER, Jr., *Chairman,*  
*Committee on the Judiciary,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2559, a bill to amend chapter 90 of title 5, United States Code, relating to Federal long-term care insurance.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Charles L. Betley, who can be reached at 226-9010.

Sincerely,

DAN L. CRIPPEN, *Director*.

Enclosure

cc: Honorable John Conyers Jr.  
Ranking Member

Identical letter sent to Honorable Dan Burton.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 9, 2001.*

Hon. DAN BURTON, *Chairman,*  
*Committee on the Government Reform,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2559, a bill to amend chapter 90 of title 5, United States Code, relating to Federal long-term care insurance.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Charles L. Betley, who can be reached at 226-9010.

Sincerely,

DAN L. CRIPPEN, *Director*.

Enclosure

cc: Honorable Henry A. Waxman  
Ranking Member

Identical letter sent to Honorable F. James Sensenbrenner Jr.

*H.R. 2559—A bill 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 bill would affect direct spending, pay-as-you-go procedures would apply.

H.R. 2559 would preempt 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 bill 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 would be able to participate in the long-term care insurance program for Federal employees, but those who defer receiving their annuity are not eligible. H.R. 2559 would allow this group to participate. CBO estimates that the number of annuitants who would be newly eligible for the long-term care insurance program for Federal employees because of H.R. 2559 would be about 2,000, and of these, 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 bill 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 premium taxes on health care insurance, 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 has estimated 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 lost revenues from the preemption of their premium taxes.

#### ESTIMATED IMPACT ON THE PRIVATE SECTOR

CBO estimates that the bill would have no private-sector mandates as defined in UMRA.

#### ESTIMATE PREPARED BY:

Federal Costs: Charles L. Betley (226–9010)

Impact on State, Local, and Tribal Governments: Leo Lex (225–3220)

Impact on the Private Sector: Stuart Hagen (225–2644)

#### ESTIMATE APPROVED BY:

Peter H. Fontaine

Deputy Assistant Director for Budget Analysis

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in article I section 8, clause 3 of the Constitution.

#### SECTION-BY-SECTION ANALYSIS AND DISCUSSION

*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 purchase private long-term care insurance through the program established in the Long-Term Care Security Act, Public Law 106–265. Without this change, individuals who receive a deferred annuity (or a survivor annuity based upon a deferred annuity) would not be 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 retroactively effective.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italics, existing law in which no change is proposed is shown in roman):

## TITLE 5, UNITED STATES CODE

\* \* \* \* \*

### PART III—EMPLOYEES

\* \* \* \* \*

#### Subpart G—Insurance and Annuities

\* \* \* \* \*

#### CHAPTER 90—LONG-TERM CARE INSURANCE

\* \* \* \* \*

#### § 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.*

\* \* \* \* \*

# MARKUP TRANSCRIPT

## BUSINESS MEETING

WEDNESDAY, OCTOBER 3, 2001

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON THE JUDICIARY,  
Washington, DC.

The Committee met, pursuant to notice, at 2:00 p.m., in Room 2141, Rayburn House Office Building, Hon. F. James Sensenbrenner, Jr. [Chairman of the Committee] presiding.

Now, pursuant to notice, I call up the bill H.R. 2559, a bill to amend chapter 90 of title V of United States Code relating to Federal long-term care insurance for purposes of markup and move its favorable recommendation to the House. Without objection, the bill will be considered as read and open for amendment at any point. [The bill, H.R. 2559, follows:]

107TH CONGRESS  
1ST SESSION

# H. R. 2559

To amend chapter 90 of title 5, United States Code, relating to Federal long-term care insurance.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2001

Mr. SCARBOROUGH (for himself, Mr. DAVIS of Illinois, Mr. TOM DAVIS of Virginia, Mr. CUMMINGS, Mrs. MORELLA, and Mr. WAXMAN) introduced the following bill; which was referred to the Committee on Government Reform, and in addition to the Committees on the Judiciary, and Resources, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend chapter 90 of title 5, United States Code, relating to Federal long-term care insurance.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

### 3 **SECTION 1. DEFINITION OF AN ANNUITANT.**

4 Paragraph (2) of section 9001 of title 5, United  
5 States Code, is amended to read as follows:

6 “(2) ANNUITANT.—The term ‘annuitant’  
7 means—

1           “(A) any individual who would satisfy the  
2 requirements of paragraph (3) of section 8901  
3 if, for purposes of such paragraph, the term  
4 ‘employee’ were considered to have the meaning  
5 given to it under paragraph (1) of this sub-  
6 section; and

7           “(B) any individual who—

8               “(i) satisfies all requirements for title  
9 to an annuity under subchapter III of  
10 chapter 83, chapter 84, or any other re-  
11 tirement system for employees of the Gov-  
12 ernment (whether based on the service of  
13 such individual or otherwise), and files ap-  
14 plication therefor;

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

16               “(iii) would not (but for this subpara-  
17 graph) otherwise satisfy the requirements  
18 of this paragraph.”.

19 **SEC. 2. PREEMPTION.**

20       Section 9005 of title 5, United States Code, is  
21 amended—

22           (1) by inserting “(a) CONTRACTUAL PROVI-  
23 SIONS.—” before “The”; and

24           (2) by adding at the end the following:

25       “(b) PREMIUMS.—

1           “(1) IN GENERAL.—No tax, fee, or other mone-  
2       tary payment may be imposed or collected, directly  
3       or indirectly, by any State, the District of Columbia,  
4       or the Commonwealth of Puerto Rico, or by any po-  
5       litical subdivision or other governmental authority  
6       thereof, on, or with respect to, any premium paid for  
7       an insurance policy under this chapter.

8           “(2) RULE OF CONSTRUCTION.—Paragraph (1)  
9       shall not be construed to exempt any company or  
10      other entity issuing a policy of insurance under this  
11      chapter from the imposition, payment, or collection  
12      of a tax, fee, or other monetary payment on the net  
13      income or profit accruing to or realized by such enti-  
14      ty from business conducted under this chapter, if  
15      that tax, fee, or payment is applicable to a broad  
16      range of business activity.”.

17 **SEC. 3. EFFECTIVE DATE.**

18       The amendments made by this Act shall take effect  
19      as if included in the enactment of section 1002 of the  
20      Long-Term Care Security Act (Public Law 106–265; 114  
21      Stat. 762).

○

The Chair recognizes himself. Last year, Congress enacted the Long-Term Security Care Act introduced by Representative Scarborough, a former Member of this Committee. The measure obtained broad bipartisan support and overwhelmingly passed before being signed. The legislation established a program under which Federal civilian employees, members of the armed forces, military and civilian retirees can purchase private long-term care insurance

for themselves and qualified relatives at a group discount. According to OPM, about 25 million people will be eligible for coverage under this program when it is fully implemented late next year.

While section 9005 of the act contains broad Federal preemption language, the act does not specifically prohibit State and localities from taxing these insurance premiums. As a result, participating employees and military personnel will have to pay an additional 3 to 5 percent of the costs of enrollment to obtain coverage. This bill remedies this problem by amending the LTSCA to exempt premiums from State and local taxes. It also makes qualified Federal employees who are members of Federal retirement plans eligible for coverage under this program.

The bill was referred to Government Reform and Armed Services, but we got it because it deals with an exemption of premiums from State and local taxes.

The events of September 11 have again reminded us of the sacrifices of our uniformed services and we ought to open up this benefit to them, and I strongly urge the Committee to approve it without objection. Further opening statements will be included in the record.

Gentleman from Georgia.

Mr. BARR. I thank the Chairman. Mr. Chairman, I would like to express my strong support for H.R. 2559 and applaud the Chairman for taking steps to ensure prompt consideration of this bill. I would also like to commend former Committee Member Joe Scarborough for his efforts to secure passage of the Long-Term Care and Security Act in the last Congress and for introducing H.R. 2559 this Congress.

Military service members and their families are asked to make personal sacrifices on a regular basis. Often the costs of premiums for membership in long-term care insurance plans are prohibitive to men and women in uniform. The Long-Term Care Security Act addresses this problem by allowing members of the military and other Federal employees to purchase long term health care insurance for themselves and their families at a group discount. H.R. 2559 makes this insurance even more affordable by exempting these premiums from State and local taxes.

H.R. 2559 was referred to the Commercial and Administrative Law Subcommittee, which I chair. I applaud the Chairman for scheduling H.R. 2559 for expedited passage and urge all Members to support this important legislation supporting our military and military retirees.

Chairman SENSENBRENNER. Are there amendments? Hearing none, question occurs—the Chair notes the report and quorum is present. The question occurs on the motion to report the bill H.R. 2559 favorably. Those in favor will say aye. Opposed no. The ayes appear to have it. The ayes have it. The motion is agreed to, and the bill is favorably reported without objection.

The Chair is authorized to move to go to conference pursuant to House rules. Without objection, the staff is directed to make any technical and conforming changes and all Members will be given 2 days, as provided by House rules, in which to submit additional supplemental dissenting or minority views.

[Intervening business.]

And the Committee is adjourned.

[Whereupon, at 8:30 p.m., the Committee was adjourned.]

