

AMENDMENTS TO SENATE BILL NO. 548

Sponsor: REPRESENTATIVE R. TAYLOR

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1 Amend Title, page 1, lines 1 through 3, by striking out all
2 of said lines and inserting

3 Amending the act of May 17, 1921 (P.L.682, No.284), entitled "An
4 act relating to insurance; amending, revising, and
5 consolidating the law providing for the incorporation of
6 insurance companies, and the regulation, supervision, and
7 protection of home and foreign insurance companies, Lloyds
8 associations, reciprocal and inter-insurance exchanges, and
9 fire insurance rating bureaus, and the regulation and
10 supervision of insurance carried by such companies,
11 associations, and exchanges, including insurance carried by
12 the State Workmen's Insurance Fund; providing penalties; and
13 repealing existing laws," providing for scope of article, for
14 the definition of "long-term care insurance," for the Long-
15 Term Care Partnership Program, for authority to promulgate
16 regulations, for marketing and advertising prohibited and for
17 penalties; and further providing for coverage and
18 limitations.

19 Amend Bill, page 1, lines 6 through 18; page 2, lines 1
20 through 12, by striking out all of said lines on said pages and
21 inserting

22 Section 1. Section 1102 of the act of May 17, 1921 (P.L.682,
23 No.284), known as The Insurance Company Law of 1921, added
24 December 15, 1992 (P.L.1129, No.148), is amended to read:

25 Section 1102. Scope of Article.--This article is not
26 intended to supersede the obligations of entities subject to
27 this article to comply with the substance of other applicable
28 insurance laws insofar as they do not conflict with this
29 article, except that laws and regulations designed and intended
30 to apply to Medicare supplement insurance policies shall not be
31 applied to long-term care insurance. A policy which is not
32 advertised, marketed or offered as long-term care insurance [or
33 nursing home insurance] need not meet the requirements of this
34 article.

35 Section 2. The definition of "long-term care insurance" in
36 section 1103 of the act, amended November 30, 2004 (P.L.1690,
37 No.216), is amended to read:

38 Section 1103. Definitions.--As used in this article, the

1 following words and phrases shall have the meanings given to
2 them in this section:

3 * * *

4 "Long-term care insurance." Any insurance policy or rider
5 advertised, marketed, offered or designed to provide
6 comprehensive coverage for each covered person on an expense-
7 incurred, indemnity, prepaid or other basis for functionally
8 necessary or medically necessary diagnostic, preventive,
9 therapeutic, rehabilitative, maintenance or personal care
10 services provided in a setting other than an acute care unit of
11 a hospital. The term includes a policy, rider or prepaid home
12 health or personal care service policy which provides for
13 payment of benefits based upon cognitive impairment or the loss
14 of functional capacity. The term includes group and individual
15 policies or riders issued by insurers, fraternal benefit
16 societies, nonprofit health, hospital and medical service
17 corporations, health maintenance organizations or similar
18 organizations. The term does not include any insurance policy
19 which is offered primarily to provide basic Medicare supplement
20 coverage, basic hospital expense coverage, basic medical-
21 surgical expense coverage, hospital confinement indemnity
22 coverage, major medical expense coverage, disability income
23 protection coverage, accident-only coverage, specified disease
24 or specified accident coverage or limited benefit health
25 coverage.

26 * * *

27 Section 3. The act is amended by adding a section to read:

28 Section 1110.1. Long-Term Care Partnership Program.--(a)
29 There is hereby established the Long-Term Care Partnership
30 Program, to be administered by the Department of Public Welfare
31 in accordance with the requirements for qualified State long-
32 term care insurance partnerships. The purpose of this program is
33 to reduce future Medicaid costs for long-term care by delaying
34 or eliminating dependence on Medicaid by providing incentives
35 for individuals to ensure against the potentially substantial
36 costs that arise upon the need for long-term care.

37 (b) In order to implement the program, the Department of
38 Public Welfare shall file a State plan amendment with Centers
39 for Medicare and Medicaid Services of the United States
40 Department of Health and Human Services pursuant to Title XIX of
41 the Social Security Act (49 Stat. 620, 42 U.S.C. § 1396 et seq.)
42 within 30 days of the effective date of this section. The
43 program, including the treatment of assets for Medicaid
44 eligibility and estate recovery, shall be structured and
45 administered by the Department of Public Welfare in accordance
46 with Federal law and applicable Federal guidelines for qualified
47 State long-term care partnerships.

48 (c) The department shall require all insurers offering a
49 qualified Long-Term Care Partnership Program policy to offer to
50 exchange any policy or certificate issued between February 8,
51 2006, and the date the State plan amendment takes effect, with a
52 qualified Long-Term Care Partnership Program policy. The
53 following shall apply:

54 (1) All offers of exchange shall be subject to the outline
55 of coverage provisions set forth under section 1111 and all
56 applicable regulations.

57 (2) Policies exchanged under this provision, if there is no
58 change in coverage material to the risk, shall not be subject to
59 any medical underwriting or approval process.

1 (3) Any portion of the policy that was issued prior to the
2 exchange date shall be priced based on the policyholder's age
3 when the policy was originally issued.

4 (4) Any portion of the policy that is added as a result of
5 the exchange may be priced based on the policyholder's age at
6 the time of the exchange.

7 (5) Any addition to a policy as a result of any exchange
8 shall be subject to the right to return set forth under section
9 1110 and all applicable regulations.

10 Section 4. Sections 1112, 1113 and 1114 of the act, added
11 December 15, 1992 (P.L.1129, No.148), are amended to read:

12 Section 1112. Authority to Promulgate Regulations.--The
13 department shall promulgate reasonable regulations to establish
14 minimum standards for marketing practices, [agent] producer
15 compensation arrangements, [agent] producer testing, penalties
16 and reporting practices for long-term care insurance.

17 Section 1113. Marketing and Advertising Prohibited.--No
18 policy may be advertised, marketed or offered as long-term care
19 [or nursing home] insurance unless it complies with the
20 provisions of this article.

21 Section 1114. Penalties.--In addition to any other penalties
22 provided by the laws of this Commonwealth, an insurer or [agent]
23 producer found to have violated requirements relating to the
24 regulations of long-term care insurance or the marketing of such
25 insurance shall be subject to a civil penalty of up to three
26 times the amount of any commissions paid for each policy
27 involved in the violation or ten thousand dollars (\$10,000),
28 whichever is greater.

29 Section 5. Section 1703 of the act, added December 18, 1992
30 (P.L.1519, No.178), is amended to read:

31 Section 1703. Coverage and Limitations.--(a) This article
32 shall provide coverage to the following persons for the policies
33 and contracts specified in subsection (b):

34 (1) To persons who, regardless of where they reside, except
35 for nonresident certificate holders under group policies or
36 contracts, are the beneficiaries, assignees or payees of the
37 persons covered under paragraph (2).

38 (2) To persons who are owners of or certificate holders
39 under these policies or contracts or, in the case of unallocated
40 annuity contracts, to the persons who are the contract holders
41 and who:

42 (i) are residents; or

43 (ii) are not residents, but only under all of the following
44 conditions:

45 (A) the insurers which issued such policies or contracts are
46 domiciled in this Commonwealth;

47 (B) such insurers never held a license or certificate of
48 authority in the states in which such persons reside;

49 (C) these states have associations similar to the
50 association created by this article; and

51 (D) these persons are not eligible for coverage by those
52 associations.

53 (b) (1) This article shall provide coverage to the persons
54 specified in subsection (a) for direct, nongroup life, health,
55 annuity and supplemental policies or contracts, for certificates
56 under direct group policies and contracts and for unallocated
57 annuity contracts issued by member insurers, except as limited
58 by this article. Annuity contracts and certificates under group
59 annuity contracts include, but are not limited to, guaranteed

1 investment contracts, deposit administration contracts,
2 unallocated funding agreements, allocated funding agreements,
3 structured settlement agreements, lottery contracts and any
4 immediate or deferred annuity contracts.

5 (2) This article shall not provide coverage for any of the
6 following:

7 (i) Any portion of a policy or contract not guaranteed by
8 the insurer or under which the risk is borne by the policy or
9 contract holder.

10 (ii) Any policy or contract of reinsurance, unless
11 assumption certificates have been issued.

12 (iii) Any portion of a policy or contract to the extent that
13 the rate of interest on which it is based:

14 (A) averaged over the period of four (4) years prior to the
15 date on which the association becomes obligated with respect to
16 such policy or contract, exceeds a rate of interest determined
17 by subtracting two (2) percentage points from Moody's Corporate
18 Bond Yield Average averaged for the same four-year period or for
19 such lesser period if the policy or contract was issued less
20 than four (4) years before the association became obligated; and

21 (B) on and after the date on which the association becomes
22 obligated with respect to such policy or contract, exceeds the
23 rate of interest determined by subtracting three (3) percentage
24 points from Moody's Corporate Bond Yield Average as most
25 recently available.

26 (iv) Any plan or program of an employer, association or
27 similar entity to provide life, health or annuity benefits to
28 its employees or members to the extent that such plan or program
29 is self-funded or uninsured, including, but not limited to,
30 benefits payable by an employer, association or similar entity
31 under:

32 (A) a Multiple Employer Welfare Arrangement as defined in
33 section 514 of the Employee Retirement Income Security Act of
34 1974;

35 (B) a minimum premium group insurance plan;

36 (C) a stop-loss group insurance plan; or

37 (D) an administrative services only contract.

38 (v) Any portion of a policy or contract to the extent that
39 it provides dividends or experience rating credits or provides
40 that any fees or allowances to be paid to any person, including
41 the policyholder or contract holder, in connection with the
42 service to or administration of such policy or contract.

43 (vi) Any policy or contract issued in this Commonwealth by a
44 member insurer at a time when it was not licensed or did not
45 have a certificate of authority to issue such policy or contract
46 in this Commonwealth.

47 (vii) Any unallocated annuity contract issued to an employee
48 benefit plan protected under the Federal Pension Benefit
49 Guaranty Corporation.

50 (viii) Any portion of any unallocated annuity contract which
51 is not issued to or in connection with a specific employee, union
52 or association of natural persons benefit plan or a government
53 lottery.

54 (c) (1) The benefits for which the association may become
55 liable shall in no event exceed the lesser of:

56 (i) the contractual obligations for which the insurer is
57 liable or would have been liable if it were not an impaired or
58 insolvent insurer; or

59 (ii) (A) With respect to any one life, regardless of the

number of policies or contracts, the following shall apply:

(I) Three hundred thousand (\$300,000) dollars in life insurance death benefits, but not more than one hundred thousand (\$100,000) dollars in net cash surrender and net cash withdrawal values for life insurance.

(II) [One hundred thousand (\$100,000) dollars] Three hundred thousand (\$300,000) dollars in health insurance benefits, including any net cash surrender and net cash withdrawal values.

(III) Three hundred thousand (\$300,000) dollars in annuity benefits, including one hundred thousand (\$100,000) dollars in net cash surrender and net cash withdrawal values.

(IV) Three hundred thousand (\$300,000) dollars in long-term care insurance benefits, as defined under section 1103, including any cash surrender and net cash withdrawal values.

(B) With respect to each individual participating in a governmental retirement plan established under section 401, 403(b) or 457 of the Internal Revenue Code of 1986 covered by an unallocated annuity contract or the beneficiaries of each such individual if deceased, in the aggregate, three hundred thousand (\$300,000) dollars in annuity benefits, including one hundred thousand (\$100,000) dollars in net cash surrender and net cash withdrawal values.

(C) With respect to any one contract holder covered by any unallocated annuity contract not included in clause (B), five million (\$5,000,000) dollars in benefits, irrespective of the number of such contracts held by that contract holder.

(2) The association shall not, however, be liable to expend more than three hundred thousand (\$300,000) dollars in the aggregate with respect to any one individual under subparagraph (ii)(A) and (B) of paragraph (1).

Section 6. The amendment of section 1703(c)(1)(ii)(A)(II) and (IV) shall apply to an insolvency occurring on or after the effective date of this section.

Section 7. The amendment of section 1103 of the act shall apply to all policies issued on or after the effective date of this act.

Section 8. This act shall take effect as follows:

(1) Sections 5 and 6 of this act and this section shall take effect immediately.

(2) The remainder of this act shall take effect in 60 days.