

HOUSE BILL REPORT

SHB 1323

As Amended by the Senate

Title: An act relating to the long-term services and supports trust program.

Brief Description: Concerning the long-term services and supports trust program.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Tharinger, Macri, Simmons, Fitzgibbon, Cody, Hackney, Santos, Ortiz-Self, Lekanoff and Pollet).

Brief History:

Committee Activity:

Health Care & Wellness: 2/1/21, 2/10/21 [DPS].

Floor Activity:

Passed House: 2/23/21, 56-41.

Senate Amended.

Passed Senate: 4/10/21, 26-22.

Brief Summary of Substitute Bill

- Requires that self-employed persons who wish to elect coverage under the Long-Term Services and Supports Trust Program (Trust Program) exercise that option by January 1, 2025, or within three years of becoming self-employed for the first time.
- Authorizes federally recognized tribes to elect to collect the premium assessment for their employees under the Trust Program.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Cody, Chair; Bateman, Vice Chair; Bronoske, Davis, Harris, Macri, Riccelli, Simmons, Stonier and Tharinger.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 3 members: Representatives Caldier, Assistant Ranking Minority Member; Rude and Ybarra.

Minority Report: Without recommendation. Signed by 2 members: Representatives Schmick, Ranking Minority Member; Maycumber.

Staff: Christopher Blake (786-7392).

Background:

In 2019 the Long-Term Services and Supports Trust Program (Trust Program) was enacted to provide long-term services and supports benefits to persons who have paid into the Trust Program for a specific amount of time and who have been assessed as needing a certain amount of assistance with activities of daily living.

Beginning January 1, 2022, a premium of 0.58 percent will be assessed on the wages of all employees in Washington. Washington residents who are at least 18 years old and who have paid the premium for either: (1) three years within the last six years; or (2) for a total of 10 years, are granted "qualified individual" status. A qualified individual may become an "eligible beneficiary" upon having been assessed as requiring assistance with at least three activities of daily living. In addition, eligible beneficiaries must be at least 18 years old, must be a Washington resident, and may not have been disabled before the age of 18. Upon becoming an eligible beneficiary, a person may receive approved services in the form of benefit units that the Department of Social and Health Services pays to a long-term services and supports provider for performing services on behalf of eligible beneficiaries.

Persons who are self-employed may elect coverage under the Trust Program and may withdraw from coverage according to time frames established by the Employment Security Department. Employees who attest to having long-term care insurance may apply to the Employment Security Department for an exemption from the premium assessment.

The Trust Program is administered jointly by the Department of Social and Health Services, the Employment Security Department, and the Health Care Authority. Trust Program oversight is provided by the Long-Term Services and Supports Trust Commission which includes legislators, agency directors, and representatives from area agencies on aging, stakeholders, and consumers of approved services.

Summary of Substitute Bill:

A self-employed person who wishes to elect coverage under the Long-Term Services and Supports Trust Program (Trust Program) must exercise that option before January 1, 2025, or within three years of becoming self-employed for the first time. Once a self-employed person has elected coverage under the Trust Program, the person may not withdraw from coverage. A self-employed person who has elected coverage under the Trust Program must

continue to pay premiums until retirement or until the person is no longer self-employed. The person must file a notice with the Employment Security Department upon retirement or no longer being self-employed. In addition to performing investigations to determine compliance with the payment of premiums by employers, the Department of Employment Security must also make such determinations regarding self-employed persons.

A federally recognized tribe may elect to collect the premium assessment for its employees under the Trust Program.

Persons who were disabled before the age of 18 may qualify as an "eligible beneficiary" under the Trust Program.

It is specified that the exemption to the Trust Program for employees who have long-term care insurance applies to those who have purchased the long-term care insurance prior to the effective date of the act.

It is clarified that the requirement to have paid the premium with three of the previous six years to become a qualified individual under the Trust Program applies to payment for three of the six years prior to the date of application.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment allows a federally recognized tribe that has elected coverage under the Long-Term Services and Supports Trust Program (Trust Program) to have the option to opt out of the Trust Program.

The Senate amendment requires that the Long-Term Services and Supports Trust Commission work with insurers to develop long-term care insurance products that supplement the Trust Program's benefits.

The Senate amendment directs the Employment Security Department and the Department of Social and Health Services to provide employers with educational materials to ensure that employees are aware of the Trust Program and that the premium assessments begin on January 1, 2022. The agencies must provide information about the Trust Program and premiums on a website and make the information available in English and other primary languages which include Spanish, Vietnamese, Cambodian, Laotian, and Chinese.

The Senate amendment extends the date by which a person must purchase long-term care insurance to be eligible to opt out of the Trust Program from the effective date of the act to November 1, 2021.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill comes from recommendations from the Long-Term Services and Supports Trust Commission and is an important step in strengthening the Long-Term Services and Supports Trust Program (Trust Program). It is difficult to make actuarial determinations when it is unclear who is in and out of the program and this bill tries to provide clarity and predictability to the Trust Program. For the viability of the Trust Program, it makes sense to not allow self-employed persons to drop in and out of coverage. Higher earners need to stay in the Trust Program to maintain solvency for the long run. This bill puts guardrails in place to protect the Trust Program from adverse selection.

People with developmental disabilities should have the same access to Trust Program benefits that all workers do. It is important to eliminate the statutory inequity and legal liability associated with the exclusion of persons who were disabled prior to the age of 18.

Tribes are supportive of a pathway to opt in to the Trust Program. Without the authority to include tribal employers, over 31,000 tribal and non-tribal Washingtonians will be excluded from participation in the Trust Program.

This bill does not prevent long-term care insurers from coming up with products that fill the gaps around the Trust Program. The Trust Program will not harm the private insurance market, but could reinvigorate it through a market for supplemental coverage. The opt-out provision is critical for keeping premiums low and protecting consumers and state funds without hurting the industry.

(Opposed) These changes would require a self-employed individual who chooses to opt in to the Trust Program to be locked into it in perpetuity without an allowance for a hardship disenrollment option. It does not make sense to tell employers that the only way to avoid the premium costs is to close down the business and put people out of work. There should be a way to allow small business owners who choose to participate in the Trust Program to disenroll if they find themselves in certain circumstances. There should be a hardship exception for businesses that can demonstrate a legitimate reason to disenroll.

The long-term care insurance opt-out provision should be left alone and allowed to play itself out between now and December 31, 2022. Eliminating the opt out will hurt the public who bought policies based on the opt-out provision. People who purchase long-term care insurance contracts should have the ability to opt out of paying the premium for the Trust Program, which they may never need. This bill takes away choice for people in how they obtain their care. People within 10 years of retirement will not receive any benefits, however, people with private long-term care insurance will get the benefits, plus the added portability outside of the state. The Trust Program offers a meager benefit and by

encouraging people to purchase long-term care insurance, they will receive more benefits and decrease the burden to the state. The state will benefit by having people keep their long-term care insurance policies to delay them using their Trust Program benefits or going on to Medicaid.

Persons Testifying: (In support) Representative Tharinger, prime sponsor; Ben Veghte, Department of Social and Health Services, Aging and Long-Term Support Administration; Dan Murphy, Northwest Regional Council; Adrienne Stuart, Washington State Developmental Disabilities Council; Cathy MacCaul, American Association of Retired Persons; Madeleine Foutch, Service Employees International Union 775; Kate White Tudor, Washington Association of Area Agencies on Aging; and Brad Banks, Home Care Coalition.

(Opposed) Frank Lusk, National Association of Insurance and Financial Advisors and Washington Long Term Care, LLC; Mark Ingersoll, Washington Brokerage; Chris Bor, National Association of Insurance and Financial Advisors–Washington; John Mangan, American Council of Life Insurers; Patrick Connor, National Federation of Independent Business; William Judge, Bill Judge and Associates; and Claude Thau, Thau, Inc.

Persons Signed In To Testify But Not Testifying: None.