

SENATE BILL REPORT

ESHB 1733

As of January 24, 2022

Title: An act relating to establishing voluntary exemptions to the long-term services and supports trust program for certain populations identified in the long-term services and supports trust commission's 2022 recommendations report, specifically including exemptions only for veterans with a service-connected disability of 70 percent or higher, the spouses or domestic partners of active duty service members, persons residing outside of Washington while working in Washington, and persons working in the United States under a temporary, nonimmigrant work visa.

Brief Description: Establishing voluntary exemptions to the long-term services and supports trust program for certain populations.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Paul, Macri, Johnson, J., Leavitt, Bronoske, Chapman, Senn, Berry, Cody, Dolan, Fey, Peterson, Ryu, Santos, Shewmake, Wylie, Simmons, Callan, Chopp, Slatter, Ramos, Bergquist, Tharinger, Valdez, Thai, Pollet, Morgan, Taylor, Stonier, Ortiz-Self, Gregerson, Riccelli, Davis, Ormsby, Duerr, Orwall, Bateman, Kloba and Frame).

Brief History: Passed House: 1/19/22, 67-29.

Committee Activity: Ways & Means: 1/24/22.

Brief Summary of Bill

- Establishes exemptions from the payment of premiums under the Long-Term Services and Supports Trust Program for certain veterans, spouses and registered domestic partners of military service members, non-immigrant temporary workers, and employees who work in Washington and maintain a primary residence outside of Washington.

SENATE COMMITTEE ON WAYS & MEANS

Staff: LeighBeth Merrick (786-7445)

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.

Background: Long-Term Services and Supports Trust Program. In 2019, the Legislature established the Long-Term Services and Supports Trust Program (LTSS Trust Program), which provides up to \$36,500, plus adjustments for inflation at the direction of the LTSS Trust Commission, in lifetime benefits for eligible beneficiaries to apply to the cost of their long-term care. The LTSS Trust Program is funded through a 0.58 percent premium assessment on an employee's wages. The premium assessment begins January 1, 2022, and eligible beneficiaries may begin receiving benefits on January 1, 2025. An individual who is a Washington resident, at least 18 years old, assessed as needing assistance with at least three activities of daily living, and paid into the program for either three of the last six or years or a total for of years with no more than a five year interruption, is eligible to receive benefits.

Self-employed individuals may elect to participate in the LTSS Trust Program according to specified time frames. Employees who attest to having purchased long-term care insurance before November 1, 2021, may apply to the Employment Security Department (ESD) by December 31, 2022, to be exempt from the LTSS Trust program. An employee who received an exemption is permanently ineligible from participating in the LTSS Trust program.

The LTSS Trust Program is administered jointly by the Department of Social and Health Services, ESD, and the Health Care Authority. 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. The LTSS Trust Commission's January 1, 2022, report included recommendations for allowing residents of border states or Canada who commute to work in Washington; people working in the United States under a temporary, non-immigrant work visa; veterans with a 70 to 100 percent service-connected disability; and spouses of active-duty members of the military to opt-out of the LTSS Trust Program.

Long-Term Care Services for Veterans. Veterans with a certain level of impairment resulting from a service-connected disability may receive long-term care benefits through the federal Veteran's Administration (VA). The term veterans includes any person who served in the active military, naval, or air service during a period of war. A disability is considered to be service-connected if it was incurred or aggravated in the line of duty in the active military, naval, or air service. When determining the level of disability, the VA has a rating schedule with numerous assigned levels of disability for various injuries to all parts of the body. The ratings represent the percentage of disability that a veteran is determined to have based upon a particular injury. The rating system includes a method for combining multiple injuries to determine a single percentage of disability. Veterans with a disability rating of 70 percent or greater, and those who require nursing home services for a service-connected disability, are automatically eligible for nursing home level care through the federal VA. In addition to the nursing home program, other options are available to veterans with differing levels of eligibility and payment standards, depending on available resources.

Temporary Non-immigrant Workers. The federal government has jurisdiction over the terms and conditions for immigrants to reside in the United States. Non-citizen immigrants living permanently in the United States have immigrant status, and non-citizens who enter or stay in the United States on a temporary basis have non-immigrant status. Persons with non-immigrant status may enter the United States for tourism, business, medical treatment, or certain types of work. There are 22 different types of visas that allow persons with non-immigrant status to temporarily work in the United States. To obtain such a visa generally requires a prospective employer to file a non-immigrant petition with the United States Citizenship and Immigration Services on the temporary worker's behalf.

Summary of Bill: Four new exemption categories are established for the LTSS Trust Program. Beginning January 1, 2023, an employee may apply to ESD to be exempted from the LTSS Trust Program if they are:

- a veteran of the United States military who has been rated by the United States Department of Veterans Affairs as having a service-connected disability of at least 70 percent;
- a spouse or registered domestic partner of an active duty service member of the United States Armed Forces;
- working under a non-immigrant visa for temporary workers and employed by an employer in Washington; or
- employed by a Washington employer, but has a permanent address and primary residence out of state.

An employee who receives an exemption is permanently ineligible from receiving LTSS Trust Program benefits unless their exemption is discontinued because they no longer meet the exemption criteria. An employee who has been exempted under one of the four new categories noted above, but no longer meets the exemption criteria must notify ESD and their employer within 90 days of:

- their spouse or registered domestic partner being discharged or separated from military service, or the dissolution of their marriage or registered domestic partnership;
- their non-immigrant visa for temporary workers status being terminated and becoming a permanent resident or citizen employed in Washington; or
- establishing a permanent address within Washington as their primary residence.

Premiums must be assessed once the employee notifies their employer and ESD they no longer meet the exemption criteria. If the employee fails to begin paying premiums within 90 days of no longer meeting the exemption criteria, the employee must pay any unpaid premiums, with interest, from the date on which the premiums should have begun.

Employees who have received an exemption are responsible for notifying current and future employers they are exempt from the premium assessment. Employees are not entitled to refunds of premiums paid prior to being granted the exemption. If an employee who has

received an exemption opts or fails to notify an employer of their exemption, the employee is not entitled to a refund of premiums deducted prior to the notification. Employers must not deduct premiums once an employee has notified them of the employee's exempt status.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on January 20, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: These measures address many of the concerns that have been raised about the fairness of the program. The exemptions improve the program by making it more fair for people that wouldn't be able to access the benefit but are required to pay in. The exemptions for people living in bordering states but working in Washington are much appreciated. We ask that you consider making the benefit portable across state lines and that an exemption be provided for Catholic priests since the Catholic church provides retired priests with long-term care.

Persons Testifying: PRO: Amy Anderson, Association of Washington Business; Julie Salvi, Washington Education Association; Seamus Petrie, Washington Public Employees Association; Mario Villanueva, Washington State Catholic Conference.

Persons Signed In To Testify But Not Testifying: No one.