



## 100TH GENERAL ASSEMBLY

### State of Illinois

2017 and 2018

SB1978

Introduced 2/10/2017, by Sen. Bill Cunningham

#### SYNOPSIS AS INTRODUCED:

New Act  
30 ILCS 105/5.878 new

Creates the Home Care Consumer and Worker Protection Act. Provides that an individual performing services for a private home care provider (a home services agency, home nursing agency, or internet-based business that arranges for home care services) is presumed to be an employee unless specified conditions exist; however, a sole proprietor or partnership performing services is not considered an employee of the agency or private party upon a showing that it is a legitimate subcontractor. Makes it a violation of the Act for a private home care provider not to designate an individual as an employee unless the private home care provider complies with specified provisions. Provides that an interested party may file a complaint online through the website of the Department of Labor against a private home care provider if there is a reasonable belief that the employer is in violation of the Act. Provides that the Department shall enforce the Act and may conduct investigations, obtain documentation, and subpoena books, records, and witnesses to conduct its investigations. Prohibits discharge or other retaliation for exercising rights under the Act. Contains provisions concerning violations, penalties, private rights of action, referrals, rulemaking, and other matters. Provides that moneys received by the Department under the Act shall be deposited into the Home Care Consumer and Worker Protection Fund and amends the State Finance Act to include it as a special fund in the State treasury.

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CORRECTIONAL  
BUDGET AND  
IMPACT NOTE ACT  
MAY APPLY

FISCAL NOTE ACT  
MAY APPLY

1 AN ACT concerning employment.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Home  
5 Care Consumer and Worker Protection Act.

6 Section 5. Purpose. This Act is intended to protect  
7 consumers of home care services and the workers delivering  
8 those services by ensuring that both the consumers and the  
9 workers are receiving all affordable labor law protections and  
10 tax obligation compliances and that there is adherence to  
11 current licensure requirements and rules governing agencies  
12 employing or placing home care workers for employment.

13 Section 10. Definitions. As used in this Act:

14 "Consumer" means an individual who is the recipient of home  
15 care services from a home care worker.

16 "Department" means the Department of Labor.

17 "Director" means the Director of Labor.

18 "Employee" means a person who works in the service of  
19 another person or company under an express or implied contract  
20 for hire, under which the employer has the right to control the  
21 details of work performance for wages, salary, fee, or payment.

22 "Employer" means a person for whom an individual performs

1 or did perform any service, of whatever nature, as an employee.

2 "Home care" or "home services" means care that helps  
3 individuals maintain healthy and active lifestyles for as long  
4 as possible in the comfort of their own homes including  
5 assistance with daily living activities such as bathing,  
6 dressing, meal preparation, eating, transportation, running  
7 errands, and light housework. "Home care" or "home services"  
8 does not include services that would be required to be  
9 performed by an individual licensed under the Nurse Practice  
10 Act.

11 "Home care worker" means an individual that provides home  
12 services to a consumer in the consumer's personal residence.

13 "Home nursing agency" means an agency licensed under the  
14 Home Health, Home Services, and Home Nursing Agency Licensing  
15 Act that provides services directly in order to deliver skilled  
16 nursing and home health aide services to persons in their  
17 personal residences. A home nursing agency provides services  
18 that would be required to be performed by an individual  
19 licensed under the Nurse Practice Act. Workers for home nursing  
20 agencies are employees of the agency and the agency is  
21 responsible for ensuring that the workers are receiving all  
22 affordable labor law protections, tax obligation compliances,  
23 and adherence to licensure requirements and regulations.

24 "Home services agency" means an agency licensed under the  
25 Home Health, Home Services, and Home Nursing Agency Licensing  
26 Act that provides services to assist an individual in his or

1 her residence with activities of daily living, housekeeping,  
2 personal laundry, and companionship which is intended to enable  
3 that individual to remain safely and comfortably in their  
4 residence. Workers for home services agencies are employees of  
5 the agency and the agency is responsible for ensuring that the  
6 workers are receiving all affordable labor law protections, tax  
7 obligation compliances, and adherence to licensure  
8 requirements and regulations.

9 "Independent contractor" means an individual whose payer  
10 has the right to control or direct only the result of his or  
11 her work and not what will be done and how it will be done.  
12 Additional facts that provide evidence of the degree of control  
13 and independence can be considered when determining whether an  
14 individual is an employee or an independent contractor.

15 "Private home care provider" means a home services agency,  
16 home nursing agency, or Internet-based business that arranges  
17 for home care services for individuals residing in Illinois.

18 Section 15. Applicability; status of individuals  
19 performing service. For the purposes of this Act, an individual  
20 performing services for a private home care provider shall be  
21 presumed to be an employee unless it is shown that:

22 (1) the individual is free from control or direction  
23 over the performance of the service;

24 (2) the service performed is outside the usual course  
25 of services performed by the employer; and

1           (3) the individual is engaged in an independently  
2           established trade, occupation, profession or business.

3           A sole proprietor or partnership performing services,  
4           however, shall not be considered an employee of the agency or  
5           private party as long as it can be shown that the party is a  
6           legitimate subcontractor.

7           Section 20. Failure to properly designate or classify  
8           individuals performing services as employees. It is a violation  
9           of this Act for a private home care provider to not designate  
10          an individual as an employee under Section 15 of this Act  
11          unless the private home care provider complies with Section 15  
12          of this Act.

13          Section 25. Enforcement.

14          (a) Any interested party may file a complaint online  
15          through the Department's website against a private home care  
16          provider subject to this Act if there is a reasonable belief  
17          that the employer is in violation of this Act. It is the duty  
18          of the Department to enforce the provisions of this Act. The  
19          Department has the authority to conduct investigations and send  
20          investigators to visit and inspect the private home care  
21          provider's business locations as well as obtain any  
22          documentation related to the determination of whether an  
23          individual is an employee of the private home care provider  
24          under Section 15 of this Act. The Department may also subpoena

1 all books, records, and witnesses as needed to conduct its  
2 investigation.

3 (b) If the Department concludes that a violation of this  
4 Act has occurred, the Department may issue a cease and desist  
5 order; recommend the commencement of a civil action; collect  
6 any wages, salary, employment benefits, or other compensation  
7 denied or lost to the individual; assess civil penalties; or  
8 take any other reasonable action to eliminate the unlawful  
9 practice or remedy the effect of the violation.

10 Section 30. Retaliation. It is a violation of this Act for  
11 a private home care provider to discharge or otherwise  
12 retaliate against an individual for exercising any rights  
13 granted under this Act. It is a violation of this Act for a  
14 private home care provider to retaliate against a person for:

15 (1) making a complaint to an employer, co-worker, or  
16 community organization, before a public hearing, or to a  
17 State or federal agency;

18 (2) causing any proceeding to be instituted under this  
19 Act;

20 (3) testifying in an investigation or proceeding under  
21 this Act.

22 Section 35. Penalties.

23 (a) A private home care provider that violates any of the  
24 provisions of this Act or any rule adopted under this Act shall

1 be subject to a civil penalty not to exceed \$1,500 for each  
2 violation found in the first audit by the Department. Following  
3 a first audit, a private home care provider shall be subject to  
4 a civil penalty not to exceed \$2,500 for each repeat violation  
5 found by the Department within a 5-year period.

6 (b) For purposes of this Section, each violation of this  
7 Act for each person and for each day the violation continues  
8 shall constitute a separate and distinct violation.

9 (c) Civil penalties may be imposed and recovered by the  
10 Department in an administrative proceeding that complies with  
11 the Illinois Administrative Procedure Act or in a civil action  
12 brought by the Director or a person aggrieved by a violation of  
13 this Act or any rule adopted under this Act.

14 Section 40. Penalties recovered.

15 (a) Moneys received by the Department under this Act shall  
16 be deposited into the Home Care consumer and Worker Protection  
17 Fund, a special fund created in the State treasury.

18 (b) Moneys in the Fund shall be used, subject to  
19 appropriation by the General Assembly, by the Department for  
20 administration, investigation, and other expenses incurred in  
21 carrying out its powers and duties under this Act.

22 Section 45. Willful violations.

23 (a) Whoever willfully violates any of the provisions of  
24 this Act or any rule adopted under this Act or whoever

1 obstructs the Director, or his or her representatives in their  
2 efforts to enforce the Act shall be liable for penalties up to  
3 double the statutory amount.

4 (b) Whoever willfully violates any of the provisions of  
5 this Act or any rule adopted under this Act shall be liable to  
6 the employee for punitive damages in an amount equal to the  
7 penalties assessed in subsection (a) of this Section.

8 (c) A private home care provider that willfully violates  
9 any provision of this Act or any rule adopted under this Act  
10 commits a Class C misdemeanor. A private home care provider  
11 that commits a second or subsequent violation within a 5-year  
12 period commits a Class 4 felony.

13 Section 50. Private right of action.

14 (a) Any interested party or person aggrieved by a violation  
15 of this Act or any rule adopted under this Act may file suit  
16 within 3 years from the final date of performing services for  
17 the private home care provider. A person may file a private  
18 right of action without exhausting administrative remedies  
19 through the Department.

20 (b) A person whose rights have been violated under this Act  
21 by a private home care provider is entitled to collect:

22 (1) any wages, salary, employment benefits, or other  
23 compensation denied or lost to the person by reason of the  
24 violation, plus an equal amount in liquidated damages;

25 (2) compensatory damages and an amount up to \$500 for

1 each violation of this Act or any rule adopted under this  
2 Act;

3 (3) in the case of unlawful retaliation, all legal or  
4 equitable relief as may be appropriate; and

5 (4) attorney's fees and costs.

6 Section 55. Referral to other State agencies.

7 (a) If the Department determines that a private home care  
8 provider has violated this Act by failing to classify  
9 individuals performing services as employees, the Department  
10 must notify the following state authorities:

11 (1) Department of Employment Security;

12 (2) Department of Public Health;

13 (3) Department of Revenue;

14 (4) Office of the State Comptroller; and

15 (5) Illinois Workers' Compensation Commission.

16 (b) The notified State agency shall check such private home  
17 care provider's compliance with its tax and employment laws as  
18 well as any other related laws and rules under the agency's  
19 jurisdiction.

20 Section 60. Rulemaking. The Department may adopt  
21 reasonable rules to implement and administer this Act.

22 Section 97. The State Finance Act is amended by adding  
23 Section 5.878 as follows:

1 (30 ILCS 105/5.878 new)

2 Sec. 5.878. The Home Care Consumer and Worker Protection

3 Fund.