

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 Section 50. Private right of action.

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

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

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

20 (2) compensatory damages and an amount up to \$500 for
21 each violation of this Act or any rule adopted under this
22 Act;

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

25 (4) attorney's fees and costs.

1 Section 55. Referral to other State agencies.

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

6 (1) Department of Employment Security;

7 (2) Department of Public Health;

8 (3) Department of Revenue;

9 (4) Office of the State Comptroller; and

10 (5) Illinois Workers' Compensation Commission.

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

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

17 Section 97. The State Finance Act is amended by adding
18 Section 5.878 as follows:

19 (30 ILCS 105/5.878 new)

20 Sec. 5.878. The Home Care Consumer and Worker Protection
21 Fund.