



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB0159

Introduced 2/2/2005, by Sen. M. Maggie Crotty

SYNOPSIS AS INTRODUCED:

New Act

Creates the Home Care Consumer and Worker Protection Act. If an agency places a home care worker with a consumer to provide home care services, requires the agency to give the worker and the consumer a notice setting forth the rights and responsibilities of each of them as well as appropriate phone numbers and addresses of the Department on Aging. Authorizes the Department on Aging to investigate complaints of violations of the Act, issue cease-and-desist orders, and seek injunctive relief. Provides for a civil penalty of \$1,000 per day for each day that a violation continues. Effective January 1, 2006.

LRB094 03627 DRJ 38994 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning business.

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. The purpose of this Act is to protect
7 consumers of home care services and individuals providing
8 private, individual home care services, by ensuring that both
9 the consumers and the workers are given the ability to make
10 informed, knowing decisions regarding their status as
11 employees, independent contractors, and employers.

12 Section 10. Definitions. In this Act:

13 "Consumer" means an individual who receives home care
14 services in his or her temporary or permanent residence
15 provided by a privately employed individual.

16 "Department" means the Department on Aging.

17 "Home care services" means non-skilled care provided to an
18 individual in his or her residence for the purpose of enabling
19 that individual to remain safely and comfortably in his or her
20 own residence.

21 "Home care worker" means a worker who provides home care
22 services to a consumer in the consumer's temporary or permanent
23 residence.

24 "Person" means an individual, firm, association,
25 partnership, company, or corporation.

26 "Placement agency" means any person engaged for gain or
27 profit in the business of securing or attempting to secure (i)
28 work for hire for persons seeking work or (ii) workers for
29 employers. The term includes a private employment agency and
30 any other entity that places a worker for private hire by a
31 consumer in that consumer's residence for purposes of providing

1 home care services. The term does not include a person that
2 provides or procures temporary employment in health care
3 facilities, as defined in Section 10 of the Health Care
4 Surrogate Act, for medical personnel including, but not limited
5 to, nurses and certified nurse aides.

6 "Worker" means any person who performs work or services of
7 any kind or character for hire.

8 Section 15. Application of Act. This Act applies to every
9 placement agency as defined in this Act, except as follows:

10 (1) This Act does not apply to a health care facility
11 or agency that is regulated under another Act, including,
12 without limitation, a facility licensed under the Nursing
13 Home Care Act, the Home Health Agency Licensing Act, or the
14 Hospital Licensing Act, a supportive living facility
15 described in Section 5-5.01a of the Illinois Public Aid
16 Code, or an assisted living establishment licensed under
17 the Assisted Living and Shared Housing Act.

18 (2) This Act does not apply to a program that provides
19 services pursuant to a contract with the State or federal
20 government, including, without limitation, a program
21 providing services (i) funded by the Department on Aging
22 through the community care program or (ii) funded by the
23 Department of Human Services' Office of Rehabilitation
24 Services through the personal assistant program.

25 (3) This Act does not apply to an adult day care
26 agency.

27 (4) This Act does not apply to an organization that
28 confines its services to housecleaning services.

29 Section 20. Placement agency responsibilities.

30 (a) A placement agency must comply with the Health Care
31 Worker Background Check Act.

32 (b) A placement agency must ensure that every home care
33 worker placed by the agency for hire by a consumer has the
34 appropriate credentials and is appropriately licensed or

1 certified as required by law.

2 Section 25. Notice to consumer; consumer's liability to
3 home care worker.

4 (a) Each time home care services are initiated in a
5 consumer's home, the placement agency must give to the consumer
6 a notice that complies with Section 35. The placement agency
7 must give the notice to the consumer if the consumer is 12
8 years of age or older. The placement agency must also give the
9 consumer such a notice at least once each year thereafter as
10 long as the consumer continues to receive home care services
11 from a home care worker placed by the agency. The placement
12 agency need not give the consumer such a notice, however, when
13 another home care worker temporarily substitutes for the
14 consumer's regular home care worker.

15 (b) If the consumer has a guardian or substitute decision
16 maker, the placement agency must also give the notice to the
17 guardian or substitute decision maker. If the consumer is a
18 minor, the placement agency must also give the notice to the
19 consumer's parent or guardian.

20 (c) The consumer, or the consumer's parent, guardian, or
21 substitute decision maker, if any, must sign the notice, and
22 the placement agency must keep the signed notice on file at its
23 principal office for 7 years.

24 (d) A placement agency's failure to give a consumer the
25 notice required under this Section does not relieve the
26 consumer of any of his or her duties or obligations as an
27 employer. If a placement agency fails to give a consumer the
28 notice required under this Section and the Department
29 determines that the consumer is liable to the home care worker
30 or on the home care worker's behalf for the payment of wages,
31 taxes, workers' compensation, or unemployment insurance, the
32 consumer has a right of action against the placement agency for
33 relief including, but not be limited to, recovery of the actual
34 amounts paid by the consumer to or on behalf of the home care
35 worker, recovery of any monetary penalties incurred by the

1 consumer, and recovery of the consumer's attorney's fees and
2 costs incurred in pursuing that relief.

3 Section 30. Notice to home care worker.

4 (a) Each time a placement agency initially places a home
5 care worker in a consumer's home, the placement agency must
6 give to the home care worker a notice that complies with
7 Section 35. The placement agency need not give the home care
8 worker such a notice, however, if the home care worker is
9 temporarily substituting for the consumer's regular home care
10 worker for a period of 2 days or less.

11 (b) The consumer must sign the notice, and the placement
12 agency must keep the signed notice on file at its principal
13 office for 7 years.

14 (c) If a placement agency fails to give a home care worker
15 the notice required under this Section, the placement agency is
16 subject to penalties as provided in Section 45.

17 Section 35. Form and contents of notice. The notice given
18 to consumers under Section 25 and to home care workers under
19 Section 30 must be in the form prescribed by the Department. At
20 a minimum, the notice must include the following information:

21 (1) A description of the duties, responsibilities,
22 obligations, and legal liabilities of the placement agency
23 to the home care worker and to the consumer. The
24 description must clearly set forth the person who is
25 responsible for each of the following:

26 (A) The payment of the home care worker's wages,
27 taxes, social security, unemployment insurance, and
28 workers' compensation.

29 (B) Day-to-day supervision of the home care
30 worker.

31 (C) The assignment of duties to the home care
32 worker.

33 (D) The hiring, firing, and discipline of the home
34 care worker.

1 (E) The provision of equipment or materials for the
2 home care worker's use in providing home care services
3 to the consumer.

4 (2) A statement identifying the placement agency as an
5 employer, joint employer, leasing employer, or
6 non-employer, as applicable, along with the
7 responsibility, if any, that the placement agency will
8 assume for paying the home care worker's wages, taxes,
9 social security, overtime, workers' compensation, and
10 unemployment insurance payments.

11 (3) A statement that, regardless of the placement
12 agency's status, the consumer may be considered an employer
13 under various State and federal employment laws, and that
14 if this is the case, the consumer may be held responsible
15 for the payment of federal, State, and local taxes, social
16 security, overtime and minimum wages, unemployment
17 insurance, and workers' compensation payments.

18 (4) A list of the forms that the consumer may be
19 required by law to complete and submit as an employer.

20 (5) The penalties that may be assessed against the
21 consumer if he or she is determined to be an employer but
22 has not fulfilled his or her obligations as an employer.

23 (6) The appropriate phone numbers and addresses for the
24 Department in case the consumer or the home care worker has
25 questions concerning the contents of the notice.

26 Section 40. Investigation of complaints.

27 (a) The Department at any time may, and upon receiving a
28 complaint from an interested party shall, investigate a
29 placement agency's alleged violation of this Act or the rules
30 implementing this Act.

31 (b) In conducting an investigation under this Act, the
32 Department or the Department's authorized representative may
33 do the following:

34 (1) Examine the premises of a placement agency.

35 (2) Compel by subpoena, for examination or inspection,

1 the attendance and testimony of witnesses and the
2 production of books, payrolls, records, papers, and other
3 evidence.

4 (3) Administer oaths or affirmations to witnesses.

5 Section 45. Violation; penalty.

6 (a) After appropriate notice and investigation, and if
7 supported by the evidence, the Department may issue and cause
8 to be served on any person an order (i) to cease and desist
9 from violating this Act or the rules implementing this Act and
10 (ii) to take any further action that is determined necessary to
11 eliminate the effect of the violation.

12 (b) Whenever it appears that any person has violated a
13 valid order of the Department issued under this Act, the
14 Department may commence an action for a court order directing
15 the person to obey the order of the Department.

16 (c) In addition to any other relief authorized under this
17 Act, the Department may bring an action in a court of competent
18 jurisdiction to enjoin any person from violating this Act or
19 the rules implementing this Act.

20 (d) In addition to any other penalty authorized under this
21 Act, a placement agency that violates this Act or the rules
22 implementing this Act is subject to a civil penalty of \$1,000
23 per day for each day that the violation continues. The
24 Department may impose a civil penalty under this Section only
25 after the Department provides the following to the person
26 alleged to have committed the violation:

27 (1) Written notice of the alleged violation.

28 (2) Written notice of the person's right to request an
29 administrative hearing on the question of the alleged
30 violation.

31 (3) An opportunity to present evidence, orally or in
32 writing or both, on the question of the alleged violation
33 before an impartial hearing examiner appointed by the
34 Department.

35 (4) A written decision from the Department, based on

1 the evidence introduced at the hearing and the hearing
2 examiner's recommendations, finding that the person
3 violated this Act or the rules implementing this Act and
4 imposing the civil penalty.

5 The Attorney General may bring an action in the circuit
6 court to enforce the collection of a monetary penalty imposed
7 under this Section. The court may order that a civil penalty
8 imposed under this Section, together with any costs or
9 attorney's fees arising out of the action to collect the
10 penalties, be paid to the Department.

11 The fact that a violation has ceased does not excuse any
12 person from liability for a civil penalty arising from the
13 violation.

14 Section 50. Review under Administrative Review Law. All
15 final administrative decisions of the Department under this Act
16 are subject to judicial review under the Administrative Review
17 Law. The term "administrative decision" is defined as in
18 Section 3-101 of the Code of Civil Procedure.

19 Section 55. Rules. The Department shall adopt rules to
20 implement this Act.

21 Section 99. Effective date. This Act takes effect January
22 1, 2006.