

2005 DRAFTING REQUEST

Bill

Received: 03/04/2005

Received By: gmalaise

Wanted: As time permits

Identical to LRB:

For: Karl Van Roy (608) 266-0616

By/Representing: Tanya Hein

This file may be shown to any legislator: NO

Drafter: gmalaise

May Contact:

Add. Drafters:

Subject: Employ Priv - miscellaneous

Extra Copies:

Submit via email: YES

Requester's email: Rep.VanRoy@legis.state.wi.us

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Home care consumer and worker protection

Instructions:

See Attached--draft assembly companion to LRB-0091/2

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 03/04/2005	kfollett 03/04/2005		_____			State
/1			jfrantze 03/04/2005	_____	lemery 03/04/2005		State
/2	gmalaise 05/18/2005	kfollett 05/19/2005	pgreensl 05/19/2005	_____	lnorthro 05/19/2005		State
/3	gmalaise	kfollett	rschluet	_____	lemery		State

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	05/27/2005	06/13/2005	06/14/2005 _____		06/14/2005		
/4	gmalaise 08/15/2005	kfollett 08/17/2005	rschluet 08/17/2005 _____		sbasford 08/17/2005	sbasford 10/10/2005	

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8/1/05

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14 kjf
8/17

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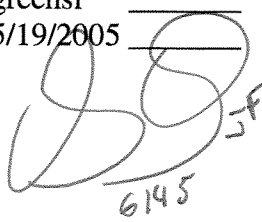
Instructions:

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13 kjf
6/13/05



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5/19/05
5/19/05
P8/19/05
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/?	gmalaise	1/16/05 3/4/05	3/4/05	Self 3/4/05			

FE Sent For:

<END>

Malaise, Gordon

From: Hein, Tanya
Sent: Friday, March 04, 2005 11:24 AM
To: Malaise, Gordon
Subject: LRB 0091 - home care placement agency

GOrdon,

We would like a companion bill drafted and jacketed for Rep. Van Roy in the Assembly. Thanks!

Tanya R. Hein
Legislative Aide

~~~~~  
State Representative Karl Van Roy  
8 West, State Capitol  
P.O. Box 8953  
Madison, WI 53708  
Tel: 608-266-0616  
Fax: 608-282-3690

|                        |  |                 |              |
|------------------------|--|-----------------|--------------|
| Post-it* Fax Note 7671 |  | Date 8-23       | # of pages 4 |
| To GORDON M. PLAISE    |  | From BETH       |              |
| Co./Dept. LRB          |  | Co. SEN. BRESKE |              |
| Phone #                |  | Phone # 6-2509  |              |
| Fax # 4-6948           |  | Fax #           |              |

999/1. Short title

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

999/2. Legislative intent

§ 2. The General Assembly intends to protect the home care services consumer and those individuals providing such private, individual services, by ensuring that both the consumer and the employee are given the ability to make informed, knowing decisions regarding their status as employees, independent contractors and employers.

999/3. Definitions

§ 3. Definitions. As used in this Act:

- (a) "Activities of daily living" means eating, dressing, bathing, toileting, transferring, or personal hygiene.
- (b) "Consumer" means an individual who receives home care services in his or her temporary or permanent residence through a privately employed individual.
- (c) "Department" means the Department of Labor.
- (d) "Director" means the Director of Labor.
- (e) "Employee" means any person performing work or services of any kind or character whatsoever for hire.
- (f) "Placement agency" means any person engaged for gain or profit in the business of securing or attempting to secure employment for persons seeking employment or employees for employers. This term shall include private employment agencies, nurse registries and any other entity that places an employee for private employment by a consumer in that consumer's residence for purposes of providing home care services.
- (g) "Home care aide" means a person employed in a person's place of residence to assist with the activities of daily living that require no medical intervention and are non-invasive.
- (h) "Home care employee" means an employee who provides home care services to a consumer in his or her temporary or permanent residence.
- (i) "Home care services" means skilled and/or non-skilled care provided to an individual in his or her residence for the purpose of enabling that individual to remain safely and comfortably in his or her own residence. Home care includes, but is not limited to, companionship, fellowship, nursing, home care aide, and homemaker services.
- (j) "Homemaker services" means the completion of household work, including cooking, cleaning and completing miscellaneous chores, that supports the smooth and safe functioning of a consumer's residence.
- (k) "Nursing service" means the assignment of a registered nurse or licensed practical nurse as defined in the Nursing and Advanced Practice Nursing Act to, for the

purpose of rendering services to a consumer under the direction or supervision of a physician or surgeon registered to practice in this state.

- (l) "Person" means any individual, firm, association, partnership, company or corporation.

**999/4. Application of the Act**

**§ 4. Application of the Act.**

This Act shall apply to all persons that meet the definition of a placement agency. Health care facilities that meet this definition, but are otherwise regulated under a separate statute shall be exempt from this Act, including nursing homes, home health care agencies, and assisted living facilities.

**999/5. Consumer notice**

**§ 5. Consumer notice.**

- (a) A placement agency shall provide a consumer with a notice of his or her rights, duties, obligations and legal liabilities as a private employer of a home care services provider. This notice shall be provided to the consumer each time a home care employee is placed in the consumer's home. A separate notice shall not be required in those instances where a home care employee is temporarily covering or substituting for the consumer's regular home care employee.
- (b) The Consumer Notice shall be on a form prescribed by the Department, and shall include, at a minimum, the following information:
  1. The duties, responsibilities, obligations and legal liabilities of the placement agency to the employee and to the consumer. Such description shall clearly set forth the consumer's responsibility (if any) for:
    - i. Day-to-day supervision of the employee;
    - ii. Assigning duties to the employee;
    - iii. Hiring, firing and discipline of the employee;
    - iv. Provision of equipment or materials for use by the employee;
    - v. Performing a criminal background check on the employee;
    - vi. Checking employee references; and,
    - vii. Ensuring credentials and appropriate licensure/certification of an employee.
  2. A statement identifying the placement agency as an employer, joint employer, leasing employer, or non-employer, as applicable, along with the responsibility it will assume (if any) for the payment of wages, taxes, social security, overtime, workers' compensation and unemployment compensation payments.
  3. A statement that, regardless of the placement agency's status, the consumer may be considered an employer under various state and federal employment laws, and that if this is the case, he or she may be held responsible for the payment of federal, state and local taxes, social security, overtime and minimum wages, unemployment and workers' compensation insurance payments.

- 4. A list of the forms that the consumer may be required by law to complete and submit as an employer.
  - 5. The penalties that may be assessed against the consumer in the event that he or she is determined to be an employer but has not fulfilled his or her obligations as an employer.
  - 6. The Department's appropriate phone number(s) and address(es), in the event the consumer has questions concerning the content of the notice.
- (c) A placement agency's failure to provide a Consumer Notice shall not relieve a consumer of any of his or her duties or obligations as an employer. However, in the event a placement agency fails to provide a Consumer Notice and the consumer is determined by the Department to be liable to the employee for payment of wages, taxes, workers' compensation or unemployment compensation, the consumer shall have a right of indemnification against the placement agency, which shall include the actual amounts paid to or on behalf of the employee, as well as the consumer's attorneys' fees and costs.

**999/6. Employee Notice**

**§ 6. Employee Notice.**

- (a) A placement agency shall provide a notice to each home care employee who is placed with a consumer that sets out the employee's legal relationship with the placement agency and the consumer. The Employee Notice shall be provided to the employee upon his or her placement in a consumer's home.
- (b) The Employee Notice shall be on a form prescribed by the Department, and shall include, at a minimum, the following information:
  - 1. The duties, responsibilities, obligations and legal liabilities the placement agency, the consumer, and the employee, in the event that employee is determined to be an independent contractor. Such description shall include the following information:
    - i. A statement as to the party responsible for the payment of the employee's wages, taxes, social security, unemployment and workers' compensation insurance;
    - ii. A statement identifying which party will be responsible for the employee's hiring, firing, discipline, day-to-day supervision, assignment of duties and provision of equipment or materials for use by the employee.
  - 2. The Department's appropriate phone number(s) and address(es), in the event the employee has questions concerning the contents of the notice.
- (c) A placement agency's failure to provide such a notice to an employee shall subject that agency to civil fines and/or penalties as set forth in this Act.

**999/7. Investigations; orders; civil penalties**

**§ 7. Investigations; orders; civil penalties.**

- (a) The Department may at any time, and shall upon receiving a complaint from any interested person, investigate a placement agency's violation of this Act.

The Director or his or her authorized representative may examine the premises of any placement agency, may compel by subpoena, for examination or inspection, the attendance and testimony of witnesses and the production of books, payrolls, records, papers and other evidence in any investigation or hearing, and may administer oaths or affirmations to witnesses.

- (b) After appropriate notice and investigation, and if supported by the evidence, the Department may issue and cause to be served on any person an order to cease and desist from violation of this Act and to take any further action that is reasonably necessary to eliminate the effect of the violation.
- (c) Whenever it appears that any person has violated a valid order of the Department issued under this Act, the Director may commence an action and obtain from the court an order directing the person to obey the order of the Department or be subject to punishment for contempt of court.
- (d) In addition to any order or action, the Department may petition a court of competent jurisdiction for an order enjoining any violation of this Act.
- (e) Any placement agency that violates this Act or the rules adopted under this Act shall be subject to a civil penalty of \$1,000.00 per day per violation. Civil penalties may be assessed by the Department in an administrative action and may, if necessary, be recovered in a civil action brought by the Director through the Attorney General of the State of Illinois or the State's attorney of any county in which the violation occurred. The court may order that the civil penalties assessed for violation of this Act, together with any costs or attorney's fees arising out of the action to collect the penalties, be paid to the Department. The fact that the violation has ceased does not excuse any person from liability for civil penalties arising from the violation.

**999/9. Illinois Administrative Procedure Act**

§ 8. Illinois Administrative Procedure Act. The Illinois Administrative Procedure Act, including the contested case provisions and the requirements of Section 10-65 of that Act shall apply to this Act.

**999/9. Review under the Administrative Review Law**

§ 9. Review under the Administrative Review law. All final administrative decisions of the Department under this Act are subject to judicial review under the Administrative Review Law, as now or hereafter amended, and its rules. Administrative decision is defined as in Section 3-101 of the Code of Civil Procedure, as now or hereafter amended.

**999/10. Rulemaking**

§ 10. Rulemaking. The Department shall adopt rules pursuant to the Illinois Administrative Procedure Act to implement this Act.

**For More Information Contact**

National Private Duty Association  
8604 Allisonville Road, Suite 260  
Indianapolis, IN 46250  
Web: [www.privatedutyhomecare.org](http://www.privatedutyhomecare.org)

Phone: 317.844.6630  
Fax: 317.576.8751  
Email: [info@privatedutyhomecare.org](mailto:info@privatedutyhomecare.org)

-2343/

Companion no change

2005 BILL

503

Regen

1 AN ACT *to amend* 105.15; and *to create* 20.445 (1) (gr) and 105.115 of the  
 2 statutes; **relating to:** requiring a home care placement agency that places a  
 3 home care worker in the residence of a home care consumer to provide notice  
 4 to the consumer concerning the rights, duties, responsibilities, and liabilities  
 5 of the consumer with respect to the worker and notice to the worker concerning  
 6 the worker's employment status, granting rule-making authority, making an  
 7 appropriation, and providing a penalty.

***Analysis by the Legislative Reference Bureau***

Under current law, the Department of Workforce Development (DWD) regulates employment agents and temporary help services. Currently, "employment agent" is defined as a person who furnishes to persons seeking employment or to employers seeking help information enabling those persons to secure employment or those employers to secure help and "temporary help service" is defined as a person employing individuals to render part-time or temporary services to, for, or under the direction of a third person.

This bill requires a home care placement agency that places a home care worker in the temporary or permanent residence of a home care consumer to provide the home care consumer with a notice of his or her rights, duties, responsibilities, and liabilities with respect to the worker. The bill requires the notice to include, at a minimum, all of the following information:



**BILL**

1. A statement specifying the duties, responsibilities, and liabilities of the home care placement agency with respect to the home care consumer and the home care worker and the duties, responsibilities, and liabilities of the home care consumer with respect to the home care worker, including the consumer's responsibilities, if any, for the day-to-day supervision of the home care worker; assigning duties to the home care worker; hiring, firing, and discipline of the home care worker; providing equipment or materials for use by the home care worker; performing a background investigation of the home care worker; and ensuring that the home care worker has any credential, license, registration, certification, permit, or approval that is required for the home care worker to provide adequate home care services for the home care consumer.

2. A statement of the employment status of the home care worker, specifically, whether the home care worker is an employee of the home care placement agency or of the home care consumer or is an independent contractor and a statement identifying which party is responsible for paying the wages or salary of the home care worker, paying federal social security taxes and state and federal unemployment contributions or taxes with respect to the home care worker, and providing worker's compensation coverage for the home care worker.

3. A statement that, notwithstanding the employment status of the home care worker specified in the notice, the home care consumer may be determined to be the employer of the home care worker for purposes of certain state and federal labor laws and that, if that is the case, the home care consumer may be held responsible for paying the wages or salary of the home care worker, paying federal social security taxes and state and federal unemployment contributions or taxes with respect to the home care worker, providing worker's compensation coverage for the home care worker, and complying with various other state and federal labor laws.

4. A list of the forms that the home care consumer may be required to complete and file if the home care consumer is determined to be the employer of the home care worker.

5. A statement of the penalties that may be assessed against the home care consumer if he or she is determined to be the employer of the home care worker and does not fulfill his or her duties and responsibilities as the employer of the home care worker.

6. A telephone number and address at which the home care consumer may contact DWD if he or she has any questions about the contents of the notice.

7. A statement acknowledging that the home care consumer has received and understands the notice and a line for the home care consumer's signature located immediately below that statement.

This bill also requires a home care placement agency that places a home care worker in the temporary or permanent residence of a home care consumer to provide the home care worker with a notice stating the employment status of the home care worker, specifically, whether the home care worker is an employee of the home care placement agency or of the home care consumer or is an independent contractor. The bill requires the notice to include, at a minimum, all of the following information:

**BILL**

1. A statement that, notwithstanding the employment status of the home care worker specified in the notice, the home care worker may be determined to be an independent contractor for purposes of certain state and federal labor laws and, if that is the case, a description of the duties, responsibilities, and liabilities of the home care placement agency and the home care consumer with respect to the home care worker and the duties, responsibilities, and liabilities of the home care worker as a result of that independent contractor status. That description must include the identity of the party who is responsible for paying the wages or salary of the home care worker, paying federal social security taxes and state and federal unemployment contributions or taxes with respect to the home care worker, and providing worker's compensation coverage for the home care worker. The description must also include: the identity of the party who is responsible for the day-to-day supervision of the home care worker; assigning duties to the home care worker; hiring, firing, and discipline of the home care worker; and providing equipment or materials for use by the home care worker.

2. A telephone number and address at which the home care consumer may contact DWD if he or she has any questions about the contents of the notice.

3. A statement acknowledging that the home care worker has received and understands the notice and a line for the home care worker's signature located immediately below that statement.

For purposes of the bill:

1. "Home care services" is defined as skilled or unskilled care, including companionship services, homemaker services, nursing services, and personal care services, provided to a person in his or her temporary or permanent residence for the purpose of enabling the person to remain safely and comfortably in that residence.

2. "Home care placement agency" is defined as a person that is engaged for profit in the business of placing home care workers in the temporary or permanent residences of home care consumers for the purpose of providing home care services to those home care consumers, including an employment agent or a temporary help service. "Home care placement agency", however, does not include any facility, organization, or service licensed or certified by or registered with the Department of Health and Family Services that places or arranges for the placement of home care workers in the temporary or permanent residences of home care consumers for the purpose of providing home care services to those home care consumers.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 20.445 (1) (gr) of the statutes is created to read:

**BILL**

1           20.445 (1) (gr) *Home care placement agency surcharge*. All moneys received  
2 from surcharges collected under s. 105.115 (4) (c), for the investigation of complaints  
3 under s. 105.115 (4) (a).

4           **SECTION 2.** 105.115 of the statutes is created to read:

5           **105.115 Notice to home care consumers and workers. (1) DEFINITIONS.**

6           In this section:

7           (a) “Companionship services” means services that provide fellowship and  
8 protection for a person who, because of advanced age or physical or mental infirmity,  
9 cannot care for his or her own needs.

10          (b) “Home care consumer” means a person who receives home care services in  
11 his or her temporary or permanent residence from a home care worker.

12          (c) “Home care placement agency” means a person that is engaged for profit in  
13 the business of placing home care workers in the temporary or permanent residences  
14 of home care consumers for the purpose of providing home care services to those  
15 home care consumers, including an employment agent engaged in the business  
16 specified in s. 105.01 (1) (intro.), a temporary help service, as defined in s. 105.01 (1)  
17 (b), or a person specified in s. 105.01 (1) (f) whose fees or charges are paid entirely  
18 by a home care consumer. “Home care placement agency” does not include an adult  
19 family home, as defined in s. 50.01 (1), a community-based residential facility, as  
20 defined in s. 50.01 (1g), a residential care apartment complex, as defined in s. 50.01  
21 (1d), a nursing home, as defined in s. 46.27 (1) (b), a hospital, as defined in s. 50.33  
22 (2), a home health agency, as defined in s. 50.49 (1) (a), a rural medical center, as  
23 defined in s. 50.50 (11), a hospice, as defined in s. 50.90 (1), or any other facility,  
24 organization, or service licensed or certified by or registered with the department of  
25 health and family services that places or arranges for the placement of home care

**BILL**

1 workers in the temporary or permanent residences of home care consumers for the  
2 purpose of providing home care services to those home care consumers.

3 (d) “Home care services” means skilled or unskilled care provided to a person  
4 in his or her temporary or permanent residence for the purpose of enabling the  
5 person to remain safely and comfortably in that residence. “Home care services”  
6 include companionship services, homemaker services, nursing services, and  
7 personal care services.

8 (e) “Home care worker” means a person who provides home care services to a  
9 home care consumer in the temporary or permanent residence of the home care  
10 consumer.

11 (f) “Homemaker services” means household work, including preparing meals,  
12 laundering clothes, making beds, cleaning, performing errands and shopping,  
13 completing other miscellaneous chores, and performing any other activities that  
14 support the smooth and safe functioning of a home care consumer’s residence.

15 (g) “Nursing services” means nursing procedures, other than personal care  
16 services, that are permitted to be performed by a registered nurse under s. 441.001  
17 (2) or by a licensed practical nurse under s. 441.001 (3).

18 (h) “Personal care services” means assistance with the activities of daily living,  
19 such as eating, dressing, bathing, personal hygiene, and ambulation, but does not  
20 include nursing services.

21 **(2) NOTICE TO HOME CARE CONSUMERS.** Whenever a home care placement agency  
22 places a home care worker in the temporary or permanent residence of a home care  
23 consumer, the home care placement agency shall provide the home care consumer  
24 with a notice of the rights, duties, responsibilities, and liabilities of the home care  
25 consumer with respect to the home care worker, except that a home care placement

**BILL**

1 agency is not required to provide that notice when placing a home care worker who  
2 is temporarily substituting for the regular home care worker of a home care  
3 consumer. The notice shall be on a form prescribed by the department and shall  
4 include, at a minimum, all of the following:

5 (a) A statement specifying the duties, responsibilities, and liabilities of the  
6 home care placement agency with respect to the home care consumer and the home  
7 care worker and the duties, responsibilities, and liabilities of the home care  
8 consumer with respect to the home care worker. The statement shall clearly specify  
9 the home care consumer's responsibility, if any, for all of the following:

- 10 1. Day-to-day supervision of the home care worker.
- 11 2. Assigning duties to the home care worker.
- 12 3. Hiring, firing, and discipline of the home care worker.
- 13 4. Providing equipment or materials for use by the home care worker.
- 14 5. Performing a background investigation of the home care worker.
- 15 6. Ensuring that the home care worker has any credential, as defined in s.  
16 440.01 (2) (a), or any other license, registration, certification, permit, or approval  
17 that is required for the home care worker to provide adequate home care services for  
18 the home care consumer.

19 (b) A statement of the employment status of the home care worker, specifically,  
20 whether the home care worker is an employee of the home care placement agency or  
21 of the home care consumer or is an independent contractor and a statement  
22 identifying which party is responsible for paying the wages or salary of the home care  
23 worker, paying federal social security taxes and state and federal unemployment  
24 contributions or taxes with respect to the home care worker, and providing worker's  
25 compensation coverage for the home care worker.

**BILL**

1 (c) A statement that, notwithstanding the employment status of the home care  
2 worker specified in the notice, the home care consumer may be determined to be the  
3 employer of the home care worker for purposes of certain state and federal labor laws  
4 and that, if that is the case, the home care consumer may be held responsible for  
5 paying the wages or salary of the home care worker, paying federal social security  
6 taxes and state and federal unemployment contributions or taxes with respect to the  
7 home care worker, providing worker's compensation coverage for the home care  
8 worker, and complying with various other state and federal labor laws.

9 (d) A list of the forms that the home care consumer may be required to complete  
10 and file if the home care consumer is determined to be the employer of the home care  
11 worker.

12 (e) A statement of the penalties that may be assessed against the home care  
13 consumer if he or she is determined to be the employer of the home care worker and  
14 does not fulfill his or her duties and responsibilities as the employer of the home care  
15 worker.

16 (f) A telephone number and address at which the home care consumer may  
17 contact the department if he or she has any questions about the contents of the notice.

18 (g) A statement acknowledging that the home care consumer has received and  
19 understands the notice provided under this subsection and a line for the home care  
20 consumer's signature located immediately below that statement. The home care  
21 placement agency shall give the home care consumer one copy of the notice signed  
22 by the home care consumer and shall retain one copy in its files.

23 **(3) NOTICE TO HOME CARE WORKERS.** Whenever a home care placement agency  
24 places a home care worker in the temporary or permanent residence of a home care  
25 consumer, the home care placement agency shall provide the home care worker with

**BILL**

1 a notice stating the employment status of the home care worker, specifically, whether  
2 the home care worker is an employee of the home care placement agency or of the  
3 home care consumer or is an independent contractor. The notice shall be on a form  
4 prescribed by the department and shall include, at a minimum, all of the following:

5 (a) A statement that, notwithstanding the employment status of the home care  
6 worker specified in the notice, the home care worker may be determined to be an  
7 independent contractor for purposes of certain state and federal labor laws and, if  
8 that is the case, a description of the duties, responsibilities, and liabilities of the  
9 home care placement agency and the home care consumer with respect to the home  
10 care worker and the duties, responsibilities, and liabilities of the home care worker  
11 as a result of that independent contractor status. That description shall include, at  
12 a minimum, all of the following information:

13 1. A statement identifying which party is responsible for paying the wages or  
14 salary of the home care worker, paying federal social security taxes and state and  
15 federal unemployment contributions or taxes with respect to the home care worker,  
16 and providing worker's compensation coverage for the home care worker.

17 2. A statement identifying which party is responsible for the day-to-day  
18 supervision of the home care worker, assigning duties to the home care worker,  
19 hiring, firing, and discipline of the home care worker, and providing equipment or  
20 materials for use by the home care worker.

21 (b) A telephone number and address at which the home care worker may  
22 contact the department if he or she has any questions about the contents of the notice.

23 (c) A statement acknowledging that the home care worker has received and  
24 understands the notice provided under this subsection and a line for the home care  
25 worker's signature located immediately below that statement. The home care

**BILL**

1 placement agency shall give the home care worker one copy of the notice signed by  
2 the home care worker and shall retain one copy in its files.

3 (4) INVESTIGATIONS, REMEDIES, AND PENALTIES. (a) If the department receives a  
4 complaint and determines that there is probable cause to believe that a home care  
5 placement agency has failed to provide to a home care consumer the notice required  
6 under sub. (2) or to provide to a home care worker the notice required under sub. (3),  
7 the department shall have the right of entry and audit under ss. 105.08 and 105.09  
8 as to the home care placement agency.

9 (b) The failure of a home care placement agency to provide the notice required  
10 under sub. (2) to a home care consumer who is determined to be the employer of a  
11 home care worker does not relieve the home care consumer of any of his or her duties,  
12 responsibilities, or liabilities as the employer of the home care worker. If a home care  
13 placement agency fails to provide the notice under sub. (2) to a home care consumer  
14 and if the home care consumer is determined to be liable for the payment of wages  
15 or salary to the home care worker, for the payment of federal social security taxes and  
16 state and federal unemployment contributions or taxes with respect to the home care  
17 worker, or for the provision of worker's compensation coverage for the home care  
18 worker, the home care consumer shall have a right of indemnification against the  
19 home care placement agency for all amounts paid as a result of that liability,  
20 including costs and reasonable actual attorney fees as may be incurred by the home  
21 care consumer in seeking that indemnification.

22 (c) Any home care placement agency that fails to provide the notice to a home  
23 care consumer required under sub. (2) or the notice to a home care worker required  
24 under sub. (3) may be penalized as provided in s. 103.005 (12) and, in addition may  
25 be required to pay a surcharge of not more than \$1,000. All moneys received as



**BILL**

1 surcharges under this paragraph shall be deposited in the general fund and credited  
2 to the appropriation account under s. 20.445 (1) (gr). Each day of continued violation  
3 constitutes a separate offense.

4 (5) RULES. The department shall promulgate rules to implement this section.

5 **SECTION 3.** 105.15 of the statutes is amended to read:

6 **105.15 General powers of department applicable; penalties.** Such  
7 investigations, classifications, and orders shall be made as provided in s. 103.005 and  
8 the penalties specified in s. 103.005 (12) shall apply to and be imposed for any  
9 violation of ss. 105.01 to ~~105.11~~ 105.115 or 105.13 to 105.15. The department may  
10 also order a person who operates an employment agency in violation of s. 105.05 (1)  
11 to make refunds as provided under s. 105.16 (2). Orders issued under this section  
12 are subject to review in the manner provided in ch. 227.

13 **SECTION 4. Nonstatutory provisions.**

14 (1) HOME CARE CONSUMER AND WORKER NOTICE; RULES; ECONOMIC IMPACT REPORT  
15 EXCEPTION. The department of workforce development shall submit in proposed form  
16 the rules required under section 105.115 (5) of the statutes, as created by this act,  
17 to the legislative council staff under section 227.15 of the statutes no later than the  
18 first day of the 6th month beginning after the effective date of this subsection.  
19 Notwithstanding section 227.137 (2) of the statutes, the secretary of administration  
20 may not require the department of workforce development to prepare an economic  
21 impact report for the rules required under section 105.115 (5) of the statutes, as  
22 created by this act.

23 **SECTION 5. Initial applicability.**

24 (1) HOME CARE CONSUMER AND WORKER NOTICE. This act first applies to a home  
25 care worker, as defined in section 105.115 (1) (e) of the statutes, as created by this

**BILL**

1 act, who is placed in the residence of a home care consumer, as defined in section  
2 105.115 (1) (b) of the statutes, as created by this act, on the effective date of this  
3 subsection.

4 **SECTION 6. Effective date.**

5 (1) HOME CARE CONSUMER AND WORKER NOTICE. This act takes effect on the first  
6 day of the 12th month beginning after publication.

7 (END)

Tanya 5/18/03

- 2343

① Apply to everyone - not just for profit <sup>inst</sup> p 4, § 12

② p 4, § 12 do not exclude adult family homes, etc

3

③ p 4, § 16 delete "temp help service"

④ Add <sup>or</sup> "liability insurance" after worker's comp

or

p 6, § 25

p 7, § 7

p 8, § 16

⑤ p 9, § 9

IF b12 does not provide disclosure to consumer or worker,

the registry becomes the employer



State of Wisconsin  
2005 - 2006 LEGISLATURE

*Other*

LRB-2343/1

GMM:kjf:jf

(2)  
RMR

**2005 BILL**

*Regen*

1 AN ACT *to amend* 105.15; and *to create* 20.445 (1) (gr) and 105.115 of the  
2 statutes; **relating to:** requiring a home care placement agency that places a  
3 home care worker in the residence of a home care consumer to provide notice  
4 to the consumer concerning the rights, duties, responsibilities, and liabilities  
5 of the consumer with respect to the worker and notice to the worker concerning  
6 the worker's employment status, granting rule-making authority, making an  
7 appropriation, and providing a penalty.

---

***Analysis by the Legislative Reference Bureau***

Under current law, the Department of Workforce Development (DWD) regulates employment agents ~~and temporary help services~~. Currently, "employment agent" is defined as a person who furnishes to persons seeking employment or to employers seeking help information enabling those persons to secure employment or those employers to secure help and "temporary help service" is defined as a person ~~employing individuals to render part-time or temporary services to, for, or under the direction of a third person.~~

This bill requires a home care placement agency that places a home care worker in the temporary or permanent residence of a home care consumer to provide the home care consumer with a notice of his or her rights, duties, responsibilities, and liabilities with respect to the worker. The bill requires the notice to include, at a minimum, all of the following information:

**BILL**

or liability insurance covering injury to

1. A statement specifying the duties, responsibilities, and liabilities of the home care placement agency with respect to the home care consumer and the home care worker and the duties, responsibilities, and liabilities of the home care consumer with respect to the home care worker, including the consumer's responsibilities, if any, for the day-to-day supervision of the home care worker; assigning duties to the home care worker; hiring, firing, and discipline of the home care worker; providing equipment or materials for use by the home care worker; performing a background investigation of the home care worker; and ensuring that the home care worker has any credential, license, registration, certification, permit, or approval that is required for the home care worker to provide adequate home care services for the home care consumer.

2. A statement of the employment status of the home care worker, specifically, whether the home care worker is an employee of the home care placement agency or of the home care consumer or is an independent contractor and a statement identifying which party is responsible for paying the wages or salary of the home care worker, paying federal social security taxes and state and federal unemployment contributions or taxes with respect to the home care worker, and providing worker's compensation coverage for the home care worker.

3. A statement that, notwithstanding the employment status of the home care worker specified in the notice, the home care consumer may be determined to be the employer of the home care worker for purposes of certain state and federal labor laws and that, if that is the case, the home care consumer may be held responsible for paying the wages or salary of the home care worker, paying federal social security taxes and state and federal unemployment contributions or taxes with respect to the home care worker, providing worker's compensation coverage for the home care worker, and complying with various other state and federal labor laws.

4. A list of the forms that the home care consumer may be required to complete and file if the home care consumer is determined to be the employer of the home care worker.

5. A statement of the penalties that may be assessed against the home care consumer if he or she is determined to be the employer of the home care worker and does not fulfill his or her duties and responsibilities as the employer of the home care worker.

6. A telephone number and address at which the home care consumer may contact DWD if he or she has any questions about the contents of the notice.

7. A statement acknowledging that the home care consumer has received and understands the notice and a line for the home care consumer's signature located immediately below that statement.

This bill also requires a home care placement agency that places a home care worker in the temporary or permanent residence of a home care consumer to provide the home care worker with a notice stating the employment status of the home care worker, specifically, whether the home care worker is an employee of the home care placement agency or of the home care consumer or is an independent contractor. The bill requires the notice to include, at a minimum, all of the following information:

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procuringu ← procuringu

**BILL**

*or liability insurance covering injury to*

1. A statement that, notwithstanding the employment status of the home care worker specified in the notice, the home care worker may be determined to be an independent contractor for purposes of certain state and federal labor laws and, if that is the case, a description of the duties, responsibilities, and liabilities of the home care placement agency and the home care consumer with respect to the home care worker and the duties, responsibilities, and liabilities of the home care worker as a result of that independent contractor status. That description must include the identity of the party who is responsible for paying the wages or salary of the home care worker, paying federal social security taxes and state and federal unemployment contributions or taxes with respect to the home care worker, and ~~providing~~ *procuring* worker's compensation ~~coverage for~~ the home care worker. The description must also include: the identity of the party who is responsible for the day-to-day supervision of the home care worker; assigning duties to the home care worker; hiring, firing, and discipline of the home care worker; and providing equipment or materials for use by the home care worker.

*procuring  
procuring*

2. A telephone number and address at which the home care consumer may contact DWD if he or she has any questions about the contents of the notice.

3. A statement acknowledging that the home care worker has received and understands the notice and a line for the home care worker's signature located immediately below that statement.

*insert  
A*

For purposes of the bill:

1. "Home care services" is defined as skilled or unskilled care, including companionship services, homemaker services, nursing services, and personal care services, provided to a person in his or her temporary or permanent residence for the purpose of enabling the person to remain safely and comfortably in that residence.

*in*

2. "Home care placement agency" is defined as a person that is engaged ~~for profit in the business of~~ placing home care workers in the temporary or permanent residences of home care consumers for the purpose of providing home care services to those home care consumers, including an employment agent ~~or a temporary help service.~~ "Home care placement agency", however, does not include any facility, organization, or service licensed or certified by or registered with the Department of Health and Family Services that places or arranges for the placement of home care workers in the temporary or permanent residences of home care consumers for the purpose of providing home care services to those home care consumers.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1

SECTION 1. 20.445 (1) (gr) of the statutes is created to read:

## BILL

1           20.445 (1) (gr) *Home care placement agency surcharge*. All moneys received  
2 from surcharges collected under s. 105.115 (4) (c), for the investigation of complaints  
3 under s. 105.115 (4) (a).

4           **SECTION 2.** 105.115 of the statutes is created to read:

5           **105.115 Notice to home care consumers and workers.** (1) DEFINITIONS.

6           In this section:

7           (a) “Companionship services” means services that provide fellowship and  
8 protection for a person who, because of advanced age or physical or mental infirmity,  
9 cannot care for his or her own needs.

10          (b) “Home care consumer” means a person who receives home care services in  
11 his or her temporary or permanent residence from a home care worker.

12          (c) “Home care placement agency” means a person that is engaged ~~for profit~~ <sup>in</sup>  
13 ~~the business of~~ placing home care workers in the temporary or permanent residences  
14 of home care consumers for the purpose of providing home care services to those  
15 home care consumers, including an employment agent engaged in the business  
16 specified in s. 105.01 (1) (intro.) ~~/ a temporary help service, as defined in s. 105.01 (1)~~  
17 ~~(b)~~ or a person specified in s. 105.01 (1) (f) whose fees or charges are paid entirely  
18 by a home care consumer. ~~“Home care placement agency” does not include an adult~~  
19 ~~family home, as defined in s. 50.01 (1), a community-based residential facility, as~~  
20 ~~defined in s. 50.01 (1g), a residential care apartment complex, as defined in s. 50.01~~  
21 ~~(1d), a nursing home, as defined in s. 46.27 (1) (b), a hospital, as defined in s. 50.33~~  
22 ~~(2), a home health agency, as defined in s. 50.49 (1) (a), a rural medical center, as~~  
23 ~~defined in s. 50.50 (11), a hospice, as defined in s. 50.90 (1), or any other facility,~~  
24 ~~organization, or service licensed or certified by or registered with the department of~~  
25 ~~health and family services that places or arranges for the placement of home care~~

**BILL**

1 ~~workers in the temporary or permanent residences of home care consumers for the~~  
2 ~~purpose of providing home care services to those home care consumers.~~

3 (d) “Home care services” means skilled or unskilled care provided to a person  
4 in his or her temporary or permanent residence for the purpose of enabling the  
5 person to remain safely and comfortably in that residence. “Home care services”  
6 include companionship services, homemaker services, nursing services, and  
7 personal care services.

8 (e) “Home care worker” means a person who provides home care services to a  
9 home care consumer in the temporary or permanent residence of the home care  
10 consumer.

11 (f) “Homemaker services” means household work, including preparing meals,  
12 laundering clothes, making beds, cleaning, performing errands and shopping,  
13 completing other miscellaneous chores, and performing any other activities that  
14 support the smooth and safe functioning of a home care consumer’s residence.

15 (g) “Nursing services” means nursing procedures, other than personal care  
16 services, that are permitted to be performed by a registered nurse under s. 441.001  
17 (2) or by a licensed practical nurse under s. 441.001 (3).

18 (h) “Personal care services” means assistance with the activities of daily living,  
19 such as eating, dressing, bathing, personal hygiene, and ambulation, but does not  
20 include nursing services.

21 **(2) NOTICE TO HOME CARE CONSUMERS.** Whenever a home care placement agency  
22 places a home care worker in the temporary or permanent residence of a home care  
23 consumer, the home care placement agency shall provide the home care consumer  
24 with a notice of the rights, duties, responsibilities, and liabilities of the home care  
25 consumer with respect to the home care worker, except that a home care placement



**BILL**

1 agency is not required to provide that notice when placing a home care worker who  
2 is temporarily substituting for the regular home care worker of a home care  
3 consumer. The notice shall be on a form prescribed by the department and shall  
4 include, at a minimum, all of the following:

5 (a) A statement specifying the duties, responsibilities, and liabilities of the  
6 home care placement agency with respect to the home care consumer and the home  
7 care worker and the duties, responsibilities, and liabilities of the home care  
8 consumer with respect to the home care worker. The statement shall clearly specify  
9 the home care consumer's responsibility, if any, for all of the following:

- 10 1. Day-to-day supervision of the home care worker.
- 11 2. Assigning duties to the home care worker.
- 12 3. Hiring, firing, and discipline of the home care worker.
- 13 4. Providing equipment or materials for use by the home care worker.
- 14 5. Performing a background investigation of the home care worker.
- 15 6. Ensuring that the home care worker has any credential, as defined in s.  
16 440.01 (2) (a), or any other license, registration, certification, permit, or approval  
17 that is required for the home care worker to provide adequate home care services for  
18 the home care consumer.

19 (b) A statement of the employment status of the home care worker, specifically,  
20 whether the home care worker is an employee of the home care placement agency or  
21 of the home care consumer or is an independent contractor and a statement  
22 identifying which party is responsible for paying the wages or salary of the home care  
23 worker, paying federal social security taxes and state and federal unemployment  
24 contributions or taxes with respect to the home care worker, and <sup>procuring</sup> ~~providing~~ worker's  
25 compensation coverage for the home care worker.

or liability insurance covering covering injury to

## BILL

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1 (c) A statement that, notwithstanding the employment status of the home care  
2 worker specified in the notice, the home care consumer may be determined to be the  
3 employer of the home care worker for purposes of certain state and federal labor laws  
4 and that, if that is the case, the home care consumer may be held responsible for  
5 paying the wages or salary of the home care worker, paying federal social security  
6 taxes and state and federal unemployment contributions or taxes with respect to the  
7 home care worker, <sup>procurin</sup> ~~providing~~ worker's compensation coverage for the home care  
8 worker, and complying with various other state and federal labor laws.

9 (d) A list of the forms that the home care consumer may be required to complete  
10 and file if the home care consumer is determined to be the employer of the home care  
11 worker.

12 (e) A statement of the penalties that may be assessed against the home care  
13 consumer if he or she is determined to be the employer of the home care worker and  
14 does not fulfill his or her duties and responsibilities as the employer of the home care  
15 worker.

16 (f) A telephone number and address at which the home care consumer may  
17 contact the department if he or she has any questions about the contents of the notice.

18 (g) A statement acknowledging that the home care consumer has received and  
19 understands the notice provided under this subsection and a line for the home care  
20 consumer's signature located immediately below that statement. The home care  
21 placement agency shall give the home care consumer one copy of the notice signed  
22 by the home care consumer and shall retain one copy in its files.

23 (3) NOTICE TO HOME CARE WORKERS. Whenever a home care placement agency  
24 places a home care worker in the temporary or permanent residence of a home care  
25 consumer, the home care placement agency shall provide the home care worker with

## BILL

## SECTION 2

1 a notice stating the employment status of the home care worker, specifically, whether  
2 the home care worker is an employee of the home care placement agency or of the  
3 home care consumer or is an independent contractor. The notice shall be on a form  
4 prescribed by the department and shall include, at a minimum, all of the following:

5 (a) A statement that, notwithstanding the employment status of the home care  
6 worker specified in the notice, the home care worker may be determined to be an  
7 independent contractor for purposes of certain state and federal labor laws and, if  
8 that is the case, a description of the duties, responsibilities, and liabilities of the  
9 home care placement agency and the home care consumer with respect to the home  
10 care worker and the duties, responsibilities, and liabilities of the home care worker  
11 as a result of that independent contractor status. That description shall include, at  
12 a minimum, all of the following information:

13 1. A statement identifying which party is responsible for paying the wages or  
14 salary of the home care worker, paying federal social security taxes and state and  
15 federal unemployment contributions or taxes with respect to the home care worker,  
16 and <sup>procuring</sup> ~~providing~~ worker's compensation coverage <sup>or liability insurance covering injury to</sup> for the home care worker.

17 2. A statement identifying which party is responsible for the day-to-day  
18 supervision of the home care worker, assigning duties to the home care worker,  
19 hiring, firing, and discipline of the home care worker, and providing equipment or  
20 materials for use by the home care worker.

21 (b) A telephone number and address at which the home care worker may  
22 contact the department if he or she has any questions about the contents of the notice.

23 (c) A statement acknowledging that the home care worker has received and  
24 understands the notice provided under this subsection and a line for the home care  
25 worker's signature located immediately below that statement. The home care

**BILL**

1 placement agency shall give the home care worker one copy of the notice signed by  
2 the home care worker and shall retain one copy in its files.

3 (4) INVESTIGATIONS, REMEDIES, AND PENALTIES. (a) If the department receives a  
4 complaint and determines that there is probable cause to believe that a home care  
5 placement agency has failed to provide to a home care consumer the notice required  
6 under sub. (2) or to provide to a home care worker the notice required under sub. (3),  
7 the department shall have the right of entry and audit under ss. 105.08 and 105.09  
8 as to the home care placement agency.

9 ~~(b) The failure of a home care placement agency to provide the notice required  
10 under sub. (2) to a home care consumer who is determined to be the employer of a  
11 home care worker does not relieve the home care consumer of any of his or her duties,  
12 responsibilities, or liabilities as the employer of the home care worker. If a home care  
13 placement agency fails to provide the notice under sub. (2) to a home care consumer  
14 and if the home care consumer is determined to be liable for the payment of wages  
15 or salary to the home care worker, for the payment of federal social security taxes and  
16 state and federal unemployment contributions or taxes with respect to the home care  
17 worker, or for the provision of worker's compensation coverage for the home care  
18 worker, the home care consumer shall have a right of indemnification against the  
19 home care placement agency for all amounts paid as a result of that liability,  
20 including costs and reasonable actual attorney fees as may be incurred by the home  
21 care consumer in seeking that indemnification.~~

22 (c) Any home care placement agency that fails to provide the notice to a home  
23 care consumer required under sub. (2) or the notice to a home care worker required  
24 under sub. (3) may be penalized as provided in s. 103.005 (12) and, in addition may  
25 be required to pay a surcharge of not more than \$1,000. All moneys received as

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**BILL**

1 surcharges under this paragraph shall be deposited in the general fund and credited  
2 to the appropriation account under s. 20.445 (1) (gr). Each day of continued violation  
3 constitutes a separate offense.

4 (5) RULES. The department shall promulgate rules to implement this section.

5 **SECTION 3.** 105.15 of the statutes is amended to read:

6 **105.15 General powers of department applicable; penalties.** Such  
7 investigations, classifications, and orders shall be made as provided in s. 103.005 and  
8 the penalties specified in s. 103.005 (12) shall apply to and be imposed for any  
9 violation of ss. 105.01 to ~~105.11~~ 105.115 or 105.13 to 105.15. The department may  
10 also order a person who operates an employment agency in violation of s. 105.05 (1)  
11 to make refunds as provided under s. 105.16 (2). Orders issued under this section  
12 are subject to review in the manner provided in ch. 227.

13 **SECTION 4. Nonstatutory provisions.**

14 (1) HOME CARE CONSUMER AND WORKER NOTICE; RULES; ECONOMIC IMPACT REPORT  
15 EXCEPTION. The department of workforce development shall submit in proposed form  
16 the rules required under section 105.115 (5) of the statutes, as created by this act,  
17 to the legislative council staff under section 227.15 of the statutes no later than the  
18 first day of the 6th month beginning after the effective date of this subsection.  
19 Notwithstanding section 227.137 (2) of the statutes, the secretary of administration  
20 may not require the department of workforce development to prepare an economic  
21 impact report for the rules required under section 105.115 (5) of the statutes, as  
22 created by this act.

23 **SECTION 5. Initial applicability.**

24 (1) HOME CARE CONSUMER AND WORKER NOTICE. This act first applies to a home  
25 care worker, as defined in section 105.115 (1) (e) of the statutes, as created by this

**BILL**

1 act, who is placed in the residence of a home care consumer, as defined in section  
2 105.115 (1) (b) of the statutes, as created by this act, on the effective date of this  
3 subsection.

4 **SECTION 6. Effective date.**

5 (1) HOME CARE CONSUMER AND WORKER NOTICE. This act takes effect on the first  
6 day of the 12th month beginning after publication.

7 (END)

**2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2343/2ins  
GMM.....

(INSERT 9-21)

(b) Any home care placement agency that fails to provide the notice required under sub. (2) or (3) shall be considered to be the employer of the home care worker and shall be liable for the payment of wages or salary to the home care worker, for the payment of federal social security taxes and state and federal unemployment contributions or taxes with respect to the home care worker, for the procurement of worker's compensation or liability insurance covering injury to the home care worker, and for the fulfillment of all other duties and responsibilities of the employer of the home care worker.

(END OF INSERT)

(INSERT A)

¶ Finally, the bill provides that any home care placement agency that fails to provide the notices required under the bill shall be considered to be the employer of the home care worker and shall be liable for the payment of wages or salary to the home care worker, for the payment of federal social security taxes and state and federal unemployment contributions or taxes with respect to the home care worker, for the procurement of worker's compensation or liability insurance covering injury to the home care worker, and for the fulfillment of all other duties and responsibilities of the employer of the home care worker.

(END OF INSERT)

## Malaise, Gordon

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**From:** Hein, Tanya  
**Sent:** Monday, May 23, 2005 4:22 PM  
**To:** Malaise, Gordon  
**Subject:** LRB 2343/2

Gordon,

*DMAN 2.001(1)3.*

We've been working with Bob Anderson At DWD on LRB 2343/2. Here are his suggestions so far:

1) Page 4 line 7 through page 5 line 10 should be under the definition section in 105.01, not in a new section of the statutes. *No - these terms only appear in that section, not in rest of chapter*

2) Page 5 Line 11 through the end -- can be in a new section like you have it --- "Notice to home care consumers and workers."

3) Page 8, line 22 -- take out the part referring to Probable cause. The department needs the ability to go into a business and check records anytime there is a complaint. The current language only lets them see records after they determine probable cause. This is NOT consistent with how DWD operates for all other complaints. It is hard to determine probable cause if they haven't been able to look at any records. They need to see the records to determine if there is probable cause.

4) Page 9 lines 3 through 10 ----- DWD changed its course from our previous conversation. They suggest we say that the homecare consumer has a right of recovery or cause of action through the department if the registry fails to provide the notice that is required. This recovery would be for all fines, penalties, social security and federal and state tax withholdings, and any monies they might have been required to pay if the worker was injured and came after the homecare consumer for money. Basically the department would help the individual get repaid for anything above and beyond straight wages. Therefore, the department would go after the money for the homecare consumer so the consumer would not have to get an attorney. (This change was requested because they thought that even though our bill says the registry is the employer if there is no disclosure, that may be in conflict with current laws regarding unemployment comp, for example, and other factors used to determine who is the employer.)

I am waiting for a phone call back from him on another question I had. It had to do with the bill providing an incentive for a home care worker to call DWD to make an complaint. Right now the bill has an incentive for a home care consumer to call and make a complaint, but I'm not sure if we currently have an incentive for the worker to call. I'll get back to you on this.

**Tanya R. Hein**

Legislative Aide

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