

State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-2343/2

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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. 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.

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:

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

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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 procuring worker's compensation or liability insurance covering injury to 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, procuring worker's compensation or liability insurance covering injury to 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:

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

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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 procuring worker's compensation or liability insurance covering injury to 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.

~~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.~~

Enact 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.

2. "Home care placement agency" is defined as a person that is engaged in 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.

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:

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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 in placing
13 home care workers in the temporary or permanent residences of home care
14 consumers for the purpose of providing home care services to those home care
15 consumers, including an employment agent engaged in the business specified in s.
16 105.01 (1) (intro.) or a person specified in s. 105.01 (1) (f) whose fees or charges are
17 paid entirely by a home care consumer.

18 (d) “Home care services” means skilled or unskilled care provided to a person
19 in his or her temporary or permanent residence for the purpose of enabling the
20 person to remain safely and comfortably in that residence. “Home care services”
21 include companionship services, homemaker services, nursing services, and
22 personal care services.

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

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

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

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

11 (2) NOTICE TO HOME CARE CONSUMERS. Whenever a home care placement agency
12 places a home care worker in the temporary or permanent residence of a home care
13 consumer, the home care placement agency shall provide the home care consumer
14 with a notice of the rights, duties, responsibilities, and liabilities of the home care
15 consumer with respect to the home care worker, except that a home care placement
16 agency is not required to provide that notice when placing a home care worker who
17 is temporarily substituting for the regular home care worker of a home care
18 consumer. The notice shall be on a form prescribed by the department and shall
19 include, at a minimum, all of the following:

20 (a) A statement specifying the duties, responsibilities, and liabilities of the
21 home care placement agency with respect to the home care consumer and the home
22 care worker and the duties, responsibilities, and liabilities of the home care
23 consumer with respect to the home care worker. The statement shall clearly specify
24 the home care consumer’s responsibility, if any, for all of the following:

25 1. Day-to-day supervision of the home care worker.

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- 1 2. Assigning duties to the home care worker.
- 2 3. Hiring, firing, and discipline of the home care worker.
- 3 4. Providing equipment or materials for use by the home care worker.
- 4 5. Performing a background investigation of the home care worker.
- 5 6. Ensuring that the home care worker has any credential, as defined in s.
- 6 440.01 (2) (a), or any other license, registration, certification, permit, or approval
- 7 that is required for the home care worker to provide adequate home care services for
- 8 the home care consumer.
- 9 (b) A statement of the employment status of the home care worker, specifically,
- 10 whether the home care worker is an employee of the home care placement agency or
- 11 of the home care consumer or is an independent contractor and a statement
- 12 identifying which party is responsible for paying the wages or salary of the home care
- 13 worker, paying federal social security taxes and state and federal unemployment
- 14 contributions or taxes with respect to the home care worker, and procuring worker's
- 15 compensation or liability insurance covering injury to the home care worker.
- 16 (c) A statement that, notwithstanding the employment status of the home care
- 17 worker specified in the notice, the home care consumer may be determined to be the
- 18 employer of the home care worker for purposes of certain state and federal labor laws
- 19 and that, if that is the case, the home care consumer may be held responsible for
- 20 paying the wages or salary of the home care worker, paying federal social security
- 21 taxes and state and federal unemployment contributions or taxes with respect to the
- 22 home care worker, procuring worker's compensation or liability insurance covering
- 23 injury to the home care worker, and complying with various other state and federal
- 24 labor laws.

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

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

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

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

15 **(3) NOTICE TO HOME CARE WORKERS.** Whenever a home care placement agency
16 places a home care worker in the temporary or permanent residence of a home care
17 consumer, the home care placement agency shall provide the home care worker with
18 a notice stating the employment status of the home care worker, specifically, whether
19 the home care worker is an employee of the home care placement agency or of the
20 home care consumer or is an independent contractor. The notice shall be on a form
21 prescribed by the department and shall include, at a minimum, all of the following:

22 (a) A statement that, notwithstanding the employment status of the home care
23 worker specified in the notice, the home care worker may be determined to be an
24 independent contractor for purposes of certain state and federal labor laws and, if
25 that is the case, a description of the duties, responsibilities, and liabilities of the

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1 home care placement agency and the home care consumer with respect to the home
2 care worker and the duties, responsibilities, and liabilities of the home care worker
3 as a result of that independent contractor status. That description shall include, at
4 a minimum, all of the following information:

5 1. A statement identifying which party is responsible for paying the wages or
6 salary of the home care worker, paying federal social security taxes and state and
7 federal unemployment contributions or taxes with respect to the home care worker,
8 and procuring worker's compensation or liability insurance covering injury to the
9 home care worker.

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

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

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

21 (4) INVESTIGATIONS, REMEDIES, AND PENALTIES. (a) ^{alleging} If the department receives a
22 ~~complaint and determines that there is probable cause to believe that a home care~~
23 ~~placement agency has failed to provide to a home care consumer the notice required~~
24 ~~under sub. (2) or to provide to a home care worker the notice required under sub. (3),~~

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1 the department shall have the right of entry and audit under ss. 105.08 and 105.09
2 as to the home care placement agency.

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

11 (c) Any home care placement agency that fails to provide the notice to a home
12 care consumer required under sub. (2) or the notice to a home care worker required
13 under sub. (3) may be penalized as provided in s. 103.005 (12) and, in addition may
14 be required to pay a surcharge of not more than \$1,000. All moneys received as
15 surcharges under this paragraph shall be deposited in the general fund and credited
16 to the appropriation account under s. 20.445 (1) (gr). Each day of continued violation
17 constitutes a separate offense.

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

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

20 **105.15 General powers of department applicable; penalties.** Such
21 investigations, classifications, and orders shall be made as provided in s. 103.005 and
22 the penalties specified in s. 103.005 (12) shall apply to and be imposed for any
23 violation of ss. 105.01 to ~~105.11~~ 105.115 or 105.13 to 105.15. The department may
24 also order a person who operates an employment agency in violation of s. 105.05 (1)

105.115
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1 to make refunds as provided under s. 105.16 (2). Orders issued under this section
2 are subject to review in the manner provided in ch. 227.

SECTION 4. Nonstatutory provisions.

3
4 (1) HOME CARE CONSUMER AND WORKER NOTICE; RULES; ECONOMIC IMPACT REPORT
5 EXCEPTION. The department of workforce development shall submit in proposed form
6 the rules required under section 105.115 (5) of the statutes, as created by this act,
7 to the legislative council staff under section 227.15 of the statutes no later than the
8 first day of the 6th month beginning after the effective date of this subsection.
9 Notwithstanding section 227.137 (2) of the statutes, the secretary of administration
10 may not require the department of workforce development to prepare an economic
11 impact report for the rules required under section 105.115 (5) of the statutes, as
12 created by this act.

SECTION 5. Initial applicability.

13
14 (1) HOME CARE CONSUMER AND WORKER NOTICE. This act first applies to a home
15 care worker, as defined in section 105.115 (1) (e) of the statutes, as created by this
16 act, who is placed in the residence of a home care consumer, as defined in section
17 105.115 (1) (b) of the statutes, as created by this act, on the effective date of this
18 subsection.

SECTION 6. Effective date.

19
20 (1) HOME CARE CONSUMER AND WORKER NOTICE. This act takes effect on the first
21 day of the 12th month beginning after publication.

22 (END)

D-Note

2005-2006 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

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(INSERT 9-10)

(a) 1. A home care consumer who is not provided with the notice required under sub. (2) or a home care worker who is not provided with the notice required under sub. (3) may file a complaint with the department no later than 2 years after the date on which the home care placement agency was required to provide the notice. If the department receives a complaint that is timely filed, the department shall investigate the complaint, attempt, on behalf of the home care consumer, to recover the payment under par. (b), and attempt to recover the penalty and surcharge under par. (c). In investigating a complaint filed under this paragraph, the department shall have the right of entry and audit under ss. 105.08 and 105.09 as to the home care placement agency.

2. If the department does not recover payment under par. (b) within 180 days after a complaint is filed, the department shall refer the complaint to the department of justice, which may bring an action in circuit court on behalf of the home care consumer to recover the payment.

3. If the department of justice does not bring an action under subd. 2. within 120 days after the complaint is referred to it, the home care consumer may bring an action in circuit court to recover the payment under par. (b). If the home care consumer prevails in the action, he or she shall also recover costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

4. An action under subd. 2. shall be commenced within one year after the department of workforce development refers the complaint to the department of justice under subd. 2. or be barred.

(b) If a home care placement agency fails to provide the notice under sub. (2) to a home care consumer and if the home care consumer is determined to be liable for the payment of federal social security taxes or state or federal unemployment contributions or taxes with respect to the home care worker, for the provision of worker's compensation or liability insurance covering injury to the home care worker, for the payment of any fine or penalty imposed on the home care consumer for noncompliance with any state or federal labor law with respect ~~to~~^{to} the home care worker, or for any injury to the home care worker, the home care consumer may recover, as provided in par. (a), all amounts paid by the home care consumer as a result of that liability.

(END OF INSERT)

(INSERT 10-12)

Insert 10-02

SECTION 1. 893.99 of the statutes is created to read:

893.99 Home care consumer notification. An action arising under s.

105.115 (4) (b) is subject to the limitations under s. 105.115 (4) (a) 4.

(END OF INSERT)

(INSERT A)

all amounts paid by

Finally, the bill requires DWD to attempt to recover, on behalf of a home care consumer who is not provided with the notice required under the bill and who is determined to be liable for the payment of federal social security taxes or state or federal unemployment contributions or taxes with respect to the home care worker, for the provision of worker's compensation or liability insurance covering injury to the home care worker, for the payment of any fine or penalty imposed on the home care consumer for noncompliance with any state or federal labor law with respect to the home care worker, or for any injury to the home care worker, all amounts paid by the home care consumer as a result of that liability.

(END OF INSERT)

For ; 1)

; 2)

; 3)

; or 4)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2343/3dn
GMM...:kgf

Date

Tanya:

In reviewing this draft, please note all of the following: ^{105.115}

1. The definitions created in this draft appear only in s. 105.115 and nowhere else in ch. 105. Accordingly, the proper place for those definitions is at the beginning of s. 105.115 and not at the beginning of ch. 105.
2. I used as a template for the civil action portion of the draft, s. 105.115 (4) (a), the civil action provisions of the plant closing law, s. 109.07 (4).

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-2343/3dn
GMM:kjf:rs

June 14, 2005

Tanya:

In reviewing this draft, please note all of the following:

1. The definitions created in this draft appear only in s. 105.115 and nowhere else in ch. 105. Accordingly, the proper place for those definitions is at the beginning of s. 105.115 and not at the beginning of ch. 105.
2. I used as a template for the civil action portion of the draft, s. 105.115 (4) (a), the civil action provisions of the plant closing law, s. 109.07 (4).

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.state.wi.us

Malaise, Gordon

From: Hein, Tanya
Sent: Monday, August 08, 2005 1:16 PM
To: Malaise, Gordon
Subject: Lrb 2343/3 - home care bill

Attachments: Suggested Draft changes - Bob Anderson.doc

Gordon,

We have been working with Bob Anderson at DWD on how we should go about writing this legislation. Attached is his suggested language mirroring other labor standards legislation and we approve of this language and framework. Bob's draft puts in a statute of limitations of 2 years. He said that 2-3 years is standard. I'm checking with others to see if we prefer 3 to 2, but otherwise this is fine.

Bob also stated that we do not need the paragraph on surcharges. So please remove those parts from your draft.

One question came up as to the definition of home care placement agency. Right now it says "person." Is that sufficient to cover partnerships, corporations, government entities, organizations, etc.? Bob said to ask you about that. He thought that it would be sufficient.

Yes "person" 990.01(26) includes all p'ships, assoc's & bodies corp. & pol. etc



Suggested Draft changes - Bob ...

Thanks for your help, and let me know if you have any questions or need clarification.

Tanya R. Hein
Legislative Aide

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

§105.11(4)(a) A home care consumer who is not provided with the notice required under sub. (2) or a home care worker who is not provided the notice required under sub. (3) may either file a complaint with the department or in civil court no later than 2 years after the date on which the home care placement agency was required to provide the notice.

(4)(b) If the department finds a home care placement agency has failed to provide a home care consumer with the notice required under sub. (2) and the home care consumer is found liable for the payment of social security taxes, unemployment taxes, liable for workers' compensation or liability insurance or any penalties assessed to the home care consumer for not providing or paying these benefits, the department may recover from the home care placement agency an amount equal to the total cost of these liabilities on behalf of the home care consumer. If the home care placement agency doesn't voluntarily pay the amount found due in damages, the department may sue the home care placement agency on behalf of the home care consumer and the court shall award an amount equal to the damages suffered plus an additional amount equal to 50% of the damages to be paid by the home care placement agency to the home care consumer.

(4)(c) If a home care consumer chooses to directly file their claim in court if the court finds a home care agency has failed to provide a home care consumer with the notice required under sub. (2) and the home care consumer is found liable for the payment of social security taxes, unemployment taxes, liable for workers' compensation or liability insurance or any penalties assessed to the home care consumer for not providing or paying these benefits, the court shall recover from the home care placement agency an amount equal to the total cost of these liabilities on behalf of the home care consumer.

(4)(d) If the department finds a home care placement <sup>that</sup> agency failed to provide a home care worker with the notice required under sub. (3) and the home care worker is determined to be self-employed and liable for the self-employment tax under social security and/or injured in employment, the department shall assess the home care placement agency the costs incurred by the home care worker due to these liabilities. If the home care placement agency doesn't voluntarily pay the amount found due in damages, the department may sue the home care placement agency on behalf of the home care worker and the court shall award an amount equal to the damages suffered plus an additional amount equal to 50% of the damages to be paid by the home care placement agency to the home care worker.

(4)(e) If a home care worker chooses to directly file their claim in court if the court finds a home care agency has failed to provide a home care worker with the notice required under sub. (2) and the home care worker is found liable for the payment of social security taxes or any penalties assessed to the home care worker for not paying these taxes or injured while working, the court shall recover from the home care placement agency an amount equal to the total cost of these liabilities on behalf of the home care worker.



I believe the above approach addresses several concerns. It eliminates the problem of redefining who is the employer when notice is not given. It also creates a couple of incentives for people to file complaints with the department. The previous draft really didn't have any incentive for a consumer or worker to file a complaint with the DWD. This version basically offers free case processing. It also means if the matter does go to court they could potentially collect 150% of their damages. This court related penalty is really designed to provide an encouragement to the home care placement agency to accept the department's investigation findings and settle the case rather than litigating every case. This approach has worked well with the current child labor statute and the wage clam statute.

## Malaise, Gordon

---

**From:** Hein, Tanya  
**Sent:** Monday, August 08, 2005 1:40 PM  
**To:** Malaise, Gordon  
**Subject:** RE: Lrb 2343/3 - home care bill

Gordon,

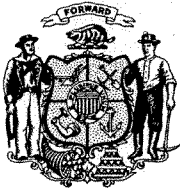
Regarding my previous email, let's make the statute of limitations 3 years. Thanks!

Tanya R. Hein  
Legislative Aide  
Rep. Karl Van Roy

-----Original Message-----

**From:** Malaise, Gordon  
**Sent:** Monday, August 08, 2005 1:16 PM  
**To:** Hein, Tanya  
**Subject:** Out of Office AutoReply: Lrb 2343/3 - home care bill

I will be out of the office until Tuesday, August 9, 2005. I will reply to your message when I return. If your message is urgent, please call our main line at 266-3561 and your call be referred to an attorney for attention and response.



State of Wisconsin  
2005 - 2006 LEGISLATURE

Soon

LRB-2343/3

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2005 BILL

Regen

1 AN ACT *to amend* 105.15; and *to create* 20.445 (1) (gr), 105.115 and 893.99 of  
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7 ~~appropriation, and providing a penalty.~~

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

Under current law, the Department of Workforce Development (DWD) regulates employment agents. 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.

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:

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

**BILL**

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 procuring worker's compensation or liability insurance covering injury to 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, procuring worker's compensation or liability insurance covering injury to 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:

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

**BILL**

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 procuring worker's compensation or liability insurance covering injury to 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.

*of a home care worker*  
Finally, the bill requires DWD to attempt to recover all amounts paid by a home care consumer, who is not provided with the notice required under the bill and who is determined to be liable for: 1) the payment of federal social security taxes or state or federal unemployment contributions or taxes with respect to the home care worker; 2) the provision of worker's compensation or liability insurance covering injury to the home care worker; 3) the payment of any fine or penalty imposed on the home care consumer for noncompliance with any state or federal labor law with respect to the home care worker; or 4) any injury to the home care worker. *permits*

*Final 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.

2. "Home care placement agency" is defined as a person that is engaged in 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.

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 in placing  
13 home care workers in the temporary or permanent residences of home care  
14 consumers for the purpose of providing home care services to those home care  
15 consumers, including an employment agent engaged in the business specified in s.  
16 105.01 (1) (intro.) or a person specified in s. 105.01 (1) (f) whose fees or charges are  
17 paid entirely by a home care consumer.

18 (d) "Home care services" means skilled or unskilled care provided to a person  
19 in his or her temporary or permanent residence for the purpose of enabling the  
20 person to remain safely and comfortably in that residence. "Home care services"  
21 include companionship services, homemaker services, nursing services, and  
22 personal care services.

23 (e) "Home care worker" means a person who provides home care services to a  
24 home care consumer in the temporary or permanent residence of the home care  
25 consumer.

**BILL**

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

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

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

11 (2) NOTICE TO HOME CARE CONSUMERS. Whenever a home care placement agency  
12 places a home care worker in the temporary or permanent residence of a home care  
13 consumer, the home care placement agency shall provide the home care consumer  
14 with a notice of the rights, duties, responsibilities, and liabilities of the home care  
15 consumer with respect to the home care worker, except that a home care placement  
16 agency is not required to provide that notice when placing a home care worker who  
17 is temporarily substituting for the regular home care worker of a home care  
18 consumer. The notice shall be on a form prescribed by the department and shall  
19 include, at a minimum, all of the following:

20 (a) A statement specifying the duties, responsibilities, and liabilities of the  
21 home care placement agency with respect to the home care consumer and the home  
22 care worker and the duties, responsibilities, and liabilities of the home care  
23 consumer with respect to the home care worker. The statement shall clearly specify  
24 the home care consumer’s responsibility, if any, for all of the following:

25 1. Day-to-day supervision of the home care worker.

**BILL**

1           2. Assigning duties to the home care worker.

2           3. Hiring, firing, and discipline of the home care worker.

3           4. Providing equipment or materials for use by the home care worker.

4           5. Performing a background investigation of the home care worker.

5           6. Ensuring that the home care worker has any credential, as defined in s.  
6 440.01 (2) (a), or any other license, registration, certification, permit, or approval  
7 that is required for the home care worker to provide adequate home care services for  
8 the home care consumer.

9           (b) A statement of the employment status of the home care worker, specifically,  
10 whether the home care worker is an employee of the home care placement agency or  
11 of the home care consumer or is an independent contractor and a statement  
12 identifying which party is responsible for paying the wages or salary of the home care  
13 worker, paying federal social security taxes and state and federal unemployment  
14 contributions or taxes with respect to the home care worker, and procuring worker's  
15 compensation or liability insurance covering injury to the home care worker.

16           (c) A statement that, notwithstanding the employment status of the home care  
17 worker specified in the notice, the home care consumer may be determined to be the  
18 employer of the home care worker for purposes of certain state and federal labor laws  
19 and that, if that is the case, the home care consumer may be held responsible for  
20 paying the wages or salary of the home care worker, paying federal social security  
21 taxes and state and federal unemployment contributions or taxes with respect to the  
22 home care worker, procuring worker's compensation or liability insurance covering  
23 injury to the home care worker, and complying with various other state and federal  
24 labor laws.



**BILL**

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

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

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

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

15 **(3) NOTICE TO HOME CARE WORKERS.** Whenever a home care placement agency  
16 places a home care worker in the temporary or permanent residence of a home care  
17 consumer, the home care placement agency shall provide the home care worker with  
18 a notice stating the employment status of the home care worker, specifically, whether  
19 the home care worker is an employee of the home care placement agency or of the  
20 home care consumer or is an independent contractor. The notice shall be on a form  
21 prescribed by the department and shall include, at a minimum, all of the following:

22 (a) A statement that, notwithstanding the employment status of the home care  
23 worker specified in the notice, the home care worker may be determined to be an  
24 independent contractor for purposes of certain state and federal labor laws and, if  
25 that is the case, a description of the duties, responsibilities, and liabilities of the

**BILL**

1 home care placement agency and the home care consumer with respect to the home  
2 care worker and the duties, responsibilities, and liabilities of the home care worker  
3 as a result of that independent contractor status. That description shall include, at  
4 a minimum, all of the following information:

5 1. A statement identifying which party is responsible for paying the wages or  
6 salary of the home care worker, paying federal social security taxes and state and  
7 federal unemployment contributions or taxes with respect to the home care worker,  
8 and procuring worker's compensation or liability insurance covering injury to the  
9 home care worker.

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

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

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

21 ~~(4) INVESTIGATIONS, REMEDIES, AND PENALTIES. (a) 1. A home care consumer who~~  
22 ~~is not provided with the notice required under sub. (2) or a home care worker who is~~  
23 ~~not provided with the notice required under sub. (3) may file a complaint with the~~  
24 ~~department no later than 2 years after the date on which the home care placement~~  
25 ~~agency was required to provide the notice. If the department receives a complaint~~

*or commence an action  
in circuit court*

**BILL**

1 that is timely filed, the department shall investigate the complaint, attempt, on  
 2 behalf of the home care consumer, to recover the payment under par. (b), and attempt  
 3 ~~to recover the penalty and surcharge under par. (c).~~ In investigating a complaint filed  
 4 under this paragraph, the department shall have the right of entry and audit under  
 5 ss. 105.08 and 105.09 as to the home care placement agency.

6 2. ~~If the department does not recover payment under par. (b) within 180 days~~  
 7 ~~after a complaint is filed, the department shall refer the complaint to the department~~  
 8 ~~of justice, which may bring an action in circuit court on behalf of the home care~~  
 9 ~~consumer to recover the payment.~~

10 3. ~~If the department of justice does not bring an action under subd. 2. within~~  
 11 ~~120 days after the complaint is referred to it, the home care consumer may bring an~~  
 12 ~~action in circuit court to recover the payment under par. (b). If the home care~~  
 13 ~~consumer prevails in the action, he or she shall also recover costs under ch. 814 and~~  
 14 ~~notwithstanding s. 814.04 (1), reasonable attorney fees.~~

15 4. ~~An action under subd. 2. shall be commenced within one year after the~~  
 16 ~~department of workforce development refers the complaint to the department of~~  
 17 ~~justice under subd. 2. or be barred.~~

18 (2) (b) ~~If a home care placement agency fails to provide the notice under sub. (2)~~  
 19 ~~to a home care consumer and if the home care consumer is determined to be liable~~  
 20 ~~for the payment of federal social security taxes or state or federal unemployment~~  
 21 ~~contributions or taxes with respect to the home care worker, for the provision of~~  
 22 ~~worker's compensation or liability insurance covering injury to the home care~~  
 23 ~~worker, for the payment of any fine or penalty imposed on the home care consumer~~  
 24 ~~for noncompliance with any state or federal labor law with respect to the home care~~  
 25 ~~worker, or for any injury to the home care worker, the home care consumer may~~

or home care worker

subd. 2

par (b)

par (b) or (c)

the department finds that

a home care consumer with

has failed

request

that

**BILL**

1 recover, as provided in par. (a), all amounts paid by the home care consumer as a  
2 result of that liability.

3 (c) Any home care placement agency that fails to provide the notice to a home  
4 care consumer required under sub. (2) or the notice to a home care worker required  
5 under sub. (3) may be penalized as provided in s. 103.005 (12) and, in addition may  
6 be required to pay a surcharge of not more than \$1,000. All moneys received as  
7 surcharges under this paragraph shall be deposited in the general fund and credited  
8 to the appropriation account under s. 20.445 (1) (gr). Each day of continued violation  
9 constitutes a separate offense.

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

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

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

19 SECTION 4. 893.99 of the statutes is created to read:

20 **893.99 Home care consumer notification.** An action arising under s.  
21 105.115 (4) <sup>(a)</sup> ~~(b)~~ is subject to the limitations under s. 105.115 (4) (a) ~~(b)~~.

22 SECTION 5. Nonstatutory provisions.

23 (1) HOME CARE CONSUMER AND WORKER NOTICE; RULES; ECONOMIC IMPACT REPORT  
24 EXCEPTION. The department of workforce development shall submit in proposed form  
25 the rules required under section 105.115 (5) of the statutes, as created by this act,

Handwritten notes: "Ins" and "10-9" with arrows pointing to lines 8 and 9.

**BILL**

1 to the legislative council staff under section 227.15 of the statutes no later than the  
2 first day of the 6th month beginning after the effective date of this subsection.  
3 Notwithstanding section 227.137 (2) of the statutes, the secretary of administration  
4 may not require the department of workforce development to prepare an economic  
5 impact report for the rules required under section 105.115 (5) of the statutes, as  
6 created by this act.

**SECTION 6. Initial applicability.**

7  
8 (1) HOME CARE CONSUMER AND WORKER NOTICE. This act first applies to a home  
9 care worker, as defined in section 105.115 (1) (e) of the statutes, as created by this  
10 act, who is placed in the residence of a home care consumer, as defined in section  
11 105.115 (1) (b) of the statutes, as created by this act, on the effective date of this  
12 subsection.

**SECTION 7. Effective date.**

13  
14 (1) HOME CARE CONSUMER AND WORKER NOTICE. This act takes effect on the first  
15 day of the 12th month beginning after publication.

16 (END)

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

LRB-2343/4ins  
GMM:.....

10-9  
(Insert ~~9-10~~)

(4) INVESTIGATIONS, REMEDIES, AND PENALTIES. (a) A home care consumer who is not provided with the notice required under sub. (2) or a home care worker who is not provided with the notice required under sub. (3) may either file a complaint with the department or commence an action in circuit court to recover from the home care placement agency the payment under par. (b) or (c) no later than 3 years after the date on which the home care placement agency was required to provide the notice. If the department receives a complaint that is timely filed, the department shall investigate the complaint and attempt, on behalf of the home care consumer or home care worker, to recover the payment under par. (b) or (c). In investigating a complaint filed under this paragraph, the department shall have the right of entry and audit under ss. 105.08 and 105.09 as to the home care placement agency.

(b) 1. If the department finds that a home care placement agency has failed to provide a home care consumer with the notice required under sub. (2) and that the home care consumer is liable for the payment of federal social security taxes or state or federal unemployment contributions or taxes with respect to the home care worker, for the provision of worker's compensation or liability insurance covering injury to the home care worker, for the payment of any fine or penalty imposed on the home care consumer for noncompliance with any state or federal labor law with respect to the home care worker, or for any injury to the home care worker, the department may recover from the home care placement agency, on behalf of the home care consumer, an amount equal to the total cost of those liabilities.

2. If the home care placement agency does not pay the amount specified in subd. 1. within 30 days after demand by the department, the department may commence

a civil action on behalf of the home care consumer to collect that amount, and the circuit court may order the home care placement agency to pay to the home care consumer that amount, plus an additional amount equal to 50 percent of that amount, together with costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

3. In the case of a home care consumer who commences an action in circuit court under par. (a), if the circuit court finds that the home care placement agency has failed to provide the home care consumer with the notice required under sub. (2) and that the home care consumer is liable for the payment of federal social security taxes or state or federal unemployment contributions or taxes with respect to the home care worker, for the provision of worker's compensation or liability insurance covering injury to the home care worker, for the payment of any fine or penalty imposed on the home care consumer for noncompliance with any state or federal labor law with respect to the home care worker, or for any injury to the home care worker, the court may order the home care placement agency to pay to the home care consumer an amount equal to the total cost of those liabilities, together with costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

(c) 1. If the department finds that a home care placement agency has failed to provide a home care worker with the notice required under sub. (3), that the home care worker is an independent contractor, and that the home care worker is liable for the payment of federal self-employment social security taxes or has sustained an injury as a result of performing home care services, the department may recover from the home care placement agency, on behalf of the home care worker, an amount equal to the total cost of that liability or the total amount of damages sustained as a result of that injury.

2. If the home care placement agency does not pay the amount specified in subd. 1. within 30 days after demand by the department, the department may commence a civil action on behalf of the home care worker to collect that amount, and the circuit court may order the home care placement agency to pay to the home care worker that amount, plus an additional amount equal to 50 percent of that amount, together with costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

3. In the case of a home care worker who commences an action in circuit court under par. (a), if the circuit court finds that the home care placement agency has failed to provide the home care worker with the notice required under sub. (3), that the home care worker is an independent contractor, and that the home care worker is liable for the payment of federal self-employment social security taxes or has sustained an injury as a result of performing home care services, the court may order the home care placement agency to pay to the home care worker an amount equal to the total cost of that liability or the total amount of damages sustained as a result of that injury, together with costs under ch. 814 and, notwithstanding s. 814.04 (1), reasonable attorney fees.

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(INSERT A)

Finally, the bill permits a home care consumer or home care worker who is not provided with the notice required under the bill to file a complaint with DWD or commence an action in circuit court to recover from the home care placement agency certain liabilities and damages incurred by the home care consumer or home care worker. Specifically, a home care consumer may recover: 1) the amount of any federal social security taxes or state or federal unemployment contributions or taxes paid with respect to the home care worker; 2) the cost of providing worker's compensation or liability insurance covering injury to the home care worker; 3) the amount of any fine or penalty imposed on the home care consumer for noncompliance with any state or federal labor law with respect to the home care worker; and 4) the amount of any liability incurred for any injury to the home care worker. Similarly,



a home care worker who is found to be an independent contractor may recover: 1) the amount of any federal self-employment social security taxes paid by the home care worker; and 2) the amount of any damages sustained as a result of any injury suffered while performing home care services. If a home care placement agency does not pay an amount determined by DWD within 30 days after demand by DWD, DWD may commence an action to recover that amount, and the circuit court may order the home care placement agency to pay to the home care consumer or home care worker that amount, plus an additional amount equal to 50 percent of that amount, together with costs and attorney fees.

**(END OF INSERT)**

**(END)**

**Basford, Sarah**

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**From:** Hein, Tanya  
**Sent:** Monday, October 10, 2005 10:30 AM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-2343/4 Topic: Home care consumer and worker protection

It has been requested by <Hein, Tanya> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 05-2343/4 Topic: Home care consumer and worker protection