



House of Representatives

File No. 672

General Assembly

February Session, 2010

(Reprint of File No. 141)

Substitute House Bill No. 5110
As Amended by House Amendment
Schedules "A" and "B"

Approved by the Legislative Commissioner
April 29, 2010

***AN ACT CONCERNING CRIMINAL BACKGROUND CHECKS FOR
EMPLOYEES OF HOMEMAKER-COMPANION AGENCIES AND HOME
HEALTH AGENCIES.***

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 20-670 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2010*):

3 As used in sections 20-670 to 20-680, inclusive, as amended by this
4 act:

5 (1) "Certificate" means a certificate of registration issued under
6 section 20-672, as amended by this act.

7 (2) "Commissioner" means the Commissioner of Consumer
8 Protection or any person designated by the commissioner to
9 administer and enforce the provisions of sections 20-670 to 20-680,
10 inclusive, as amended by this act.

11 (3) "Companion services" means nonmedical, basic supervision
12 services to ensure the well-being and safety of a person in such

13 person's home.

14 (4) "Employee" means any person employed by, or who enters into a
15 contract to perform services for, a homemaker-companion agency,
16 including, but not limited to, temporary employees, pool employees
17 and independent contractors.

18 (5) "Homemaker services" means nonmedical, supportive services
19 that ensure a safe and healthy environment for a person in such
20 person's home, such services to include assistance with personal
21 hygiene, cooking, household cleaning, laundry and other household
22 chores.

23 (6) "Homemaker-companion agency" means any public or private
24 organization, employing one or more persons that is engaged in the
25 business of providing companion services or homemaker services.
26 Homemaker-companion agency shall not include a home health care
27 agency, as defined in subsection (d) of section 19a-490, or a
28 homemaker-home health aide agency, as defined in subsection (e) of
29 section 19a-490.

30 (7) "Service plan" means a written document provided by a
31 homemaker-companion agency to a person utilizing services provided
32 by such agency, that specifies the anticipated scope, type, frequency
33 and duration of homemaker or companion services that are to be
34 provided by such agency for the benefit of the person.

35 (8) "Comprehensive background check" means a background
36 investigation performed by the homemaker-companion agency, that
37 includes, but is not limited to: (A) A review of the employment
38 application prepared by the agency and completed by the applicant;
39 (B) an in-person interview of the applicant; (C) verification of the
40 applicant's Social Security number; (D) if the position applied for
41 within the agency requires licensure on the part of the applicant,
42 verification that the required license is in good standing; (E) a check of
43 the registry established and maintained pursuant to section 54-257; (F)
44 a review of criminal conviction information obtained through a search

45 of current criminal matters of public record in this state based on the
46 applicant's name and date of birth; (G) if the applicant has resided in
47 this state less than three years prior to the date of the application for
48 employment, a review of criminal conviction information from the
49 state or states where such applicant resided during such three-year
50 period; and (H) a review of any other information that the agency
51 deems necessary in order to evaluate the suitability of the applicant for
52 the position.

53 Sec. 2. Subsection (a) of section 20-672 of the 2010 supplement to the
54 general statutes is repealed and the following is substituted in lieu
55 thereof (*Effective October 1, 2010*):

56 (a) Any person seeking a certificate of registration as a homemaker-
57 companion agency shall apply to the Commissioner of Consumer
58 Protection, in writing, on a form provided by the commissioner. The
59 application shall include the applicant's name, residence address,
60 business address, business telephone number and such other
61 information as the commissioner may require. An applicant shall also
62 be required to submit to state and national criminal history records
63 checks in accordance with section 29-17a and to certify under oath to
64 the commissioner that: (1) Such agency complies with the
65 requirements of section 20-678, as amended by this act, concerning
66 employee comprehensive background checks, (2) such agency
67 provides all persons receiving homemaker or companion services with
68 a written individualized contract or service plan that specifically
69 identifies the anticipated scope, type, frequency and duration of
70 homemaker or companion services provided by the agency to the
71 person, (3) such agency maintains a surety bond, and (4) all records
72 maintained by such agency shall be open, at all reasonable hours, for
73 inspection, copying or audit by the commissioner.

74 Sec. 3. Subsection (a) of section 20-675 of the general statutes is
75 repealed and the following is substituted in lieu thereof (*Effective*
76 *October 1, 2010*):

77 (a) The Commissioner of Consumer Protection may revoke, suspend
78 or refuse to issue or renew any certificate of registration as a
79 homemaker-companion agency or place an agency on probation or
80 issue a letter of reprimand for: (1) Conduct by the agency, or by an
81 employee of the agency while in the course of employment, of a
82 character likely to mislead, deceive or defraud the public or the
83 commissioner; [or] (2) engaging in any untruthful or misleading
84 advertising; or (3) failing to perform a comprehensive background
85 check of an applicant for employment as required by section 20-678, as
86 amended by this act.

87 Sec. 4. (NEW) (*Effective October 1, 2010*) (a) As used in this section,
88 "comprehensive background check" means a background investigation
89 performed by a home health agency, as defined in subsection (k) of
90 section 19a-490 of the general statutes, that includes, but is not limited
91 to: (1) A review of the employment application prepared by the agency
92 and completed by the applicant; (2) an in-person interview of the
93 applicant; (3) verification of the applicant's Social Security number; (4)
94 if the position applied for within the agency requires licensure on the
95 part of the applicant, verification that the required license is in good
96 standing; (5) a check of the registry established and maintained
97 pursuant to section 54-257 of the general statutes; (6) a review of
98 criminal conviction information obtained through a search of current
99 criminal matters of public record in this state based on the applicant's
100 name and date of birth; (7) if the applicant has resided in this state less
101 than three years prior to the date of the application for employment, a
102 review of criminal conviction information from the state or states
103 where such applicant resided during such three-year period; and (8) a
104 review of any other information that the agency deems necessary in
105 order to evaluate the suitability of the applicant for the position.

106 (b) Each home health agency shall require that any employee of
107 such agency hired on or after October 1, 2010, submit to a
108 comprehensive background check. In addition, each home health
109 agency shall require that any employee of such agency hired on or
110 after October 1, 2010, complete and sign a form disclosing whether

111 such employee was subject to any decision imposing disciplinary
112 action by a licensing agency in any state, the District of Columbia, a
113 United States possession or territory or a foreign jurisdiction. Any
114 employee of a home health agency hired on or after October 1, 2010,
115 who makes a false statement regarding such prior disciplinary action
116 with intent to mislead the home health agency shall be guilty of a class
117 A misdemeanor.

118 (c) (1) No home health agency shall deny employment to any person
119 solely because of a prior conviction of a crime, unless the home health
120 agency determines that such person is not suitable for the position of
121 employment sought based on a review by the home health agency of
122 (A) the nature of the crime and its relationship to the position for
123 which the person has applied, (B) information pertaining to the degree
124 of rehabilitation of the person, and (C) the time elapsed since the
125 conviction or the person's release from prison. If a home health agency
126 denies employment to a person because of a prior conviction of a
127 crime, the home health agency shall provide the person with a written
128 rejection letter, sent by registered mail, stating what evidence was
129 reviewed and why the home health agency rejected the person.

130 (2) No home health agency shall use, distribute or disseminate any
131 record of arrest that did not result in conviction or any record of
132 conviction that has been erased of a person seeking employment with
133 the home health agency to determine the person's suitability for the
134 position of employment sought.

135 Sec. 5. Section 20-678 of the general statutes is repealed and the
136 following is substituted in lieu thereof (*Effective October 1, 2010*):

137 (a) Each homemaker-companion agency shall require that any
138 employee of such agency hired on or after October 1, 2006, submit to a
139 comprehensive background check. In addition, each homemaker-
140 companion agency shall require that any employee of such agency
141 hired on or after October 1, 2006, complete and sign a form which
142 contains questions as to whether the current or prospective employee

143 was convicted of a crime involving violence or dishonesty in a state
 144 court or federal court in any state; or was subject to any decision
 145 imposing disciplinary action by a licensing agency in any state, the
 146 District of Columbia, a United States possession or territory or a
 147 foreign jurisdiction. Any employee of a homemaker-companion
 148 agency hired on or after October 1, 2006, who makes a false written
 149 statement regarding such prior criminal convictions or disciplinary
 150 action with intent to mislead the homemaker-companion agency shall
 151 be guilty of a class A misdemeanor.

152 (b) (1) No homemaker-companion agency shall deny employment
 153 to any person solely because of a prior conviction of a crime, unless the
 154 homemaker-companion agency determines that such person is not
 155 suitable for the position of employment sought based on a review by
 156 the homemaker-companion agency of (A) the nature of the crime and
 157 its relationship to the position for which the person has applied, (B)
 158 information pertaining to the degree of rehabilitation of the person,
 159 and (C) the time elapsed since the conviction or the person's release
 160 from prison. If a homemaker-companion agency denies employment
 161 to a person because of a prior conviction of a crime, the homemaker-
 162 companion agency shall provide the person with a written rejection
 163 letter, sent by registered mail, stating what evidence was reviewed and
 164 why the homemaker-companion agency rejected the person.

165 (2) No homemaker-companion agency shall use, distribute or
 166 disseminate any record of arrest that did not result in conviction or any
 167 record of conviction that has been erased of a person seeking
 168 employment with the homemaker-companion agency to determine the
 169 person's suitability for the position of employment sought.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2010	20-670
Sec. 2	October 1, 2010	20-672(a)
Sec. 3	October 1, 2010	20-675(a)
Sec. 4	October 1, 2010	New section

Sec. 5	<i>October 1, 2010</i>	20-678
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The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
Public Safety, Dept.	GF - Revenue Impact	Minimal	Minimal

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill is anticipated to generate relatively few additional records and background checks by the Department of Public Safety. As such, there is no cost to process the additional requests and any revenue gain from the \$50 application fee would be less than \$1,000 annually.

House "A" (LCO 3545) and House "B" (LCO 4465) are technical or clarifying in nature and result in no fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sHB 5110 (as amended by House "A" and "B")******AN ACT CONCERNING CRIMINAL BACKGROUND CHECKS FOR EMPLOYEES OF HOMEMAKER-COMPANION AGENCIES AND HOME HEALTH AGENCIES.*****SUMMARY:**

This bill revises the laws concerning background checks for homemaker-companion and home health agencies. It:

1. requires a homemaker-companion agency applicant to submit to state and national criminal history record checks;
2. allows the Department of Consumer Protection (DCP) commissioner to revoke, suspend, or deny registration certificates if a homemaker-companion agency fails to perform a comprehensive background check of any applicant for employment;
3. requires home health agency employees hired on or after October 1, 2010 to submit to a comprehensive background check, sign a written form regarding prior disciplinary action, and face a penalty for making a false statement;
4. prohibits, with exceptions, both kinds of agencies from denying employment to someone solely because of a prior conviction; and
5. defines the term "comprehensive background check."

*House Amendment "A" limits the application of the penalty for making false statements made to agencies.

*House Amendment "B" prohibits, with certain exceptions, both types of agencies from denying someone employment because of a prior conviction.

EFFECTIVE DATE: October 1, 2010

DEFINITIONS

The bill defines "comprehensive background check" to mean a background investigation performed by a home health or homemaker-companion agency that includes:

1. a review of the applicant's employment application;
2. an in-person interview of the applicant;
3. verification of the applicant's Social Security number;
4. if the position requires the applicant's licensure, verification that the required license is in good standing;
5. a check of the Department of Public Safety's sex offender registry;
6. a review of criminal conviction information obtained through an in-state public records search based on the applicant's name and date of birth;
7. if the applicant has lived in the state less than three years before the employment application date, a review of criminal conviction information in any state where the applicant lived during those three years; and
8. a review of any additional information the agency deems necessary to evaluate the applicant's suitability for the position.

Current law does not define "comprehensive background check," specify particular procedures, or identify who must conduct one. (In practice, background checks vary in terms of their scope, complexity,

and the years covered, among other things. They may include checks of any or all of the following: criminal history, credit, professional license, employment, and education records.)

HOMEMAKER-COMPANION AGENCIES

Applicant Criminal History Record Checks

The bill requires anyone applying to DCP for a homemaker-companion agency registration certificate to submit to state and national criminal history record checks. By law, these checks must be requested through the State Police Bureau of Identification.

Current law requires applicant agencies to certify under oath that all employees hired after October 1, 2006 have (1) submitted to a comprehensive background check and (2) signed a written form regarding prior criminal convictions or disciplinary actions. An employee who makes a false statement about prior convictions or disciplinary actions is guilty of a class A misdemeanor for which the penalty is up to one year in prison, a fine up to \$2,000, or both. The bill requires the false statement to have been made with the intent to mislead the agency.

Denial of Employment Because of Prior Conviction Prohibited

The bill prohibits a homemaker-companion agency from denying an applicant employment solely because he or she has a prior conviction. But it permits an agency to deny employment if, after review, it determines the person is not suitable for the position. The review must include:

1. the nature of the crime and its relationship to the position,
2. information about the person's rehabilitation, and
3. the time since the conviction or the person's release from prison.

An agency that denies someone employment because of a prior conviction must send the person a written rejection letter by registered mail stating the evidence it reviewed and its reasons for rejection.

The bill prohibits an agency, in determining a person's suitability for employment, from using, distributing, or disseminating any record of (1) arrest that did not result in conviction or (2) conviction that has been erased.

Registration Issuance and Denial Procedures

The bill adds an agency's failure to perform a comprehensive background check of an employment applicant to the conditions under which the DCP commissioner may revoke, suspend, or deny registration certificates; place registrants on probation; or issue letters of reprimand. Current law allows the commissioner to take any of these actions for (1) agency conduct (or that of an employee in the course of employment) likely to mislead, deceive, or defraud the public or the commissioner or (2) untruthful or misleading advertising.

HOME HEALTH AGENCIES

Employee Background Checks

Under the bill, a home health agency must require all employees hired on or after October 1, 2010 to submit to a comprehensive background check. The bill also requires these employees to complete and sign a form disclosing whether they were subject to any disciplinary action by a licensing agency in another state, the District of Columbia, a U.S. possession or territory, or a foreign jurisdiction. An employee who makes a false written statement about prior disciplinary action is, under the bill, guilty of a Class A misdemeanor, for which the penalty is up to one year in prison, a fine up to \$2,000, or both.

Denial of Employment Because of Prior Conviction Prohibited

The bill applies to home health agencies the same provisions on denying employment to people with prior convictions that it establishes for homemaker-companion agencies.

COMMITTEE ACTION

Select Committee on Aging

Joint Favorable Substitute Change of Reference

Yea 11 Nay 0 (02/18/2010)

Public Health Committee

Joint Favorable

Yea 29 Nay 0 (03/15/2010)

Judiciary Committee

Joint Favorable

Yea 32 Nay 9 (04/07/2010)

General Law Committee

Joint Favorable

Yea 17 Nay 0 (04/12/2010)