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March 9, 2015

Committee on Labor and Public Employees
Testimony Regarding **RB 990**
Consumer Protection in the Home Care Industry

Dear Members of the Committee:

I am here today **in support of Proposed Bill No. 990 as amended** in the submitted amendment and I thank you for the opportunity to submit my comments.

My name is Kenneth Gurin and for the past 5 years, I have been President of the CT Chapter of the Home Care Association of America. Additionally, I have been in the Home Care Industry for almost 13 years as owner of an employment based agency registered with the Department of Consumer Protection

Obtaining homecare for themselves or a family member should not be fraught with the transference of risks and obligations to the consumer generally borne by the entity providing or arranging such care. The Consumer should not be forced into becoming an "Accidental Employer".

Over the past several years, our association has sponsored legislation that would try to protect the worker and consumer and provide that employer based responsibilities be borne by the entity placing a caregiver in the home. **Objection to these bills have raised issues that are not within the purview of the committee** and serve to distract from the issues at hand, providing for the employee in terms of workers compensation, unemployment insurance and minimum wage is the purpose of our proposed legislation (copy attached).

In the testimony filed by the HCAOA, the arguments made are detailed. Few discuss issues of the worker or the client.

Additionally, no mention was made as to the plight of the consumer except as relates to affordability of the lower cost alternative (Registry).

- The consumer is interested in obtaining care for themselves or a loved one.
- Few if any have as an objective to become the employer of the caregiver
- An uninsured workers injury **jeopardizes the assets of the consumer up to and including their home.**
- Unpaid unemployment insurance, after a claim is made by an unemployed caregiver opens the consumer to retroactive bills for unpaid unemployment insurance and may invite more bills and levies by other taxing jurisdictions.
- If none of the disastrous events occur, the consumer, if intent on being compliant with laws will be faced with other insurance and tax payments that will no longer make the registry model the low cost alternative it once appeared.

In none of the testimonies of those in opposition to the previous proposals of legislation, do the respondents take exception to the use of the term employee. **Failure to note would be acquiescence THAT THE CAREGIVERS ARE IN FACT EMPLOYEES OF SOMEONE**. Definition as to who is the actual employer is the only question.

As no one party has stepped forward to definitively declare themselves the employer, each scenario depends upon either a novice employer who may or may not report payments to the caregiver or the caregiver (contractor) who, if no recorded income or liabilities are on file with the state or IRS must decide if he or she will be compliant and declare and pay the taxes. **Few working arrangements leave the roles of employer and employee so vague. Nor are there many which gives one the choice to comply or not with rules that virtually all others who work must follow. Forcing either of these groups into a role they should not be in is an unfair imposition upon the senior and a disservice to the caregiver.**

We urge the committee that this bill with our proposed amendment should be voted favorably and we will be happy to continue to work with DOL and this committee to make this bill move forward.

Thank you for the opportunity to provide this testimony.

Kenneth Gurin
Owner

Senate Bill 990-proposed amendment – Changes shown are CAPITALIZED

Section 1. (NEW) (*Effective October 1, 2015*) (a) Notwithstanding the provisions of section 20-679a of the general statutes, as amended by this act, no consumer who receives (1) homemaker services, as defined in section 20-670 of the general statutes, (2) homemaker-home health aide services, as defined in section 19a-490 of the general statutes, or (3) companion services, as defined in section 20-670 of the general statutes, provided by (A) a homemaker-companion agency, as defined in section 20-670 of the general statutes, (B) a homemaker-home health aide agency, as defined in

section 19a-490 of the general statutes, or (C) a registry, as defined in section 20-670 of the general statutes, OR AN OWNER OR OCCUPANT OF THE PREMISES WHERE ANY SUCH SERVICES ARE PROVIDED, shall be deemed the employer of any individual referred to, supplied to or placed with such consumer by such agency or registry to provide the services described in subdivisions (1) to (3), inclusive, of this subsection.

(b) Notwithstanding the provisions of section 20-679a of the general statutes, as amended by this act, no consumer shall be liable, during the duration of time any individual provides any service described in subdivisions (1) to (3), inclusive, of subsection (a) of this section to such consumer, for (1) payment of contributions for the purposes of compliance with chapter 567 of the general statutes, in relation to such individual, (2) payment of workers' compensation insurance for the purposes of chapter 568 of the general statutes, in relation to such individual, or (3) payment of wages for the purposes of compliance with chapter 558 of the general statutes, in relation to such individual WITHOUT SUFFICIENT EVIDENCE OF (A) COMPLIANCE WITH THE WORKERS' COMPENSATION INSURANCE CLASSIFICATION CODE 8835 PUBLIC HEALTH NURSING, OR ITS EQUIVALENT, AS IDENTIFIED BY THE NATIONAL COUNCIL ON COMPENSATION INSURANCE, (B) THE SELF-INSURANCE REQUIREMENTS OF SUBSECTION (B) OF SECTION 31-284 OF THE GENERAL STATUTES, OR (C) STATE UNEMPLOYMENT INSURANCE RECORDS SHOWING THAT SUCH INSURANCE WAS REPORTED AND PAID ON BEHALF OF THE SAME CLASS OF WORKER PURSUANT TO CHAPTER 567 OF THE GENERAL STATUTES. THE HOMEMAKER-COMPANION AGENCY, HOMEMAKER-HOME HEALTH AIDE AGENCY OR REGISTRY THAT PROVIDES SUCH SERVICES SHALL BE LIABLE FOR PAYMENT OF SUCH CONTRIBUTIONS, INSURANCE OR WAGES.

(c) Any consumer who receives any service described in subdivisions (1) to (3), inclusive, of subsection (a) of this section provided by an individual referred to, supplied to or placed with such consumer by an agency or registry described in subparagraphs (A) to (C), inclusive, of subsection (a) of this section, AND AN OWNER OR OCCUPANT OF THE PREMISES WHERE ANY SUCH SERVICES ARE PROVIDED, shall be immune from civil liability for any damage, injury or financial harm ARISING OUT OF AN INJURY to such individual WHEN PROVIDING CARE TO THE CONSUMER resulting from any act, error or omission of the consumer, unless such damage, injury or financial harm was caused by the reckless, wilful or wanton misconduct of the consumer. AND (ii) THE OWNER OR OCCUPANT OF THE PREMISES SHALL NOT BE IMMUNE FROM CIVIL LIABILITY FOR ANY DAMAGE, INJURY OR FINANCIAL HARM ARISING OUT OF AN INJURY TO SUCH WHEN PROVIDING CARE TO THE CONSUMER WHERE SUCH HARM WAS CAUSED BY THE RECKLESS, WILFUL OR WANTON

MISCONDUCT OF THE OWNER OR OCCUPANT OR A CONDITION PRESENT IN A COMMON AREA OF THE PREMISES, OPEN TO THE PUBLIC OR IN THE CARE, CUSTODY OR CONTROL OF A PARTY OTHER THAN THE OWNER OR OCCUPANT.

Sec. 2. Subsection (b) of section 20-679a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2015*):

(b) Each notice provided to a consumer pursuant to subsection (a) of this section shall be written in plain language and shall comply with the plain language standard detailed in section 42-152. Such notice shall include a statement identifying the registry as an employer, joint employer, leasing employer or nonemployer, as applicable, along with a statement advising the consumer he or she may be considered an employer under law and, if that is the case, the consumer may be held responsible for the payment of federal and state taxes, Social Security, overtime and minimum wage, unemployment, workers' compensation insurance payments and any other applicable payment required under state or federal law, <u>except as excluded under section 1 of this act</u>. The notice shall also include a statement that the consumer should consult a tax professional if he or she is uncertain about his or her responsibility for the payment of such taxes or payments.