



House of Representatives

General Assembly

File No. 231

February Session, 2016

House Bill No. 5368

House of Representatives, March 29, 2016

The Committee on Labor and Public Employees reported through REP. TERCYAK of the 26th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING HOMEMAKER SERVICES AND HOMEMAKER COMPANION AGENCIES.

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

1 Section 1. (NEW) (*Effective January 1, 2017*) For purposes of chapter
2 567 of the general statutes, a homemaker-companion agency, as
3 defined in section 20-670 of the general statutes, registry, as defined in
4 section 20-670 of the general statutes, or homemaker-home health aide
5 agency, as defined in section 19a-490 of the general statutes, shall be
6 deemed the employer of any individual such agency or registry
7 supplies or refers to a consumer, as defined in section 3 of this act, to
8 provide (1) homemaker services, as defined in section 20-670 of the
9 general statutes, (2) companion services, as defined in section 20-670 of
10 the general statutes, or (3) homemaker-home health aide services, as
11 defined in section 19a-490 of the general statutes, and such agency or
12 registry shall be liable for the payment of unemployment contributions
13 for such individual during the duration of time he or she provides said
14 services to the consumer.

15 Sec. 2. (NEW) (*Effective January 1, 2017*) For purposes of chapter 558
16 of the general statutes, a homemaker-companion agency, as defined in
17 section 20-670 of the general statutes, registry, as defined in section 20-
18 670 of the general statutes, or homemaker-home health aide agency, as
19 defined in section 19a-490 of the general statutes, shall be deemed the
20 employer of any individual such agency or registry supplies or refers
21 to a consumer, as defined in section 3 of this act, to provide (1)
22 homemaker services, as defined in section 20-670 of the general
23 statutes, (2) companion services, as defined in section 20-670 of the
24 general statutes, or (3) homemaker-home health aide services, as
25 defined in section 19a-490 of the general statutes, and such agency or
26 registry shall be responsible for the payment of wages to such
27 individual during the duration of time he or she provides said services
28 to the consumer.

29 Sec. 3. (NEW) (*Effective January 1, 2017*) (a) As used in this section:

30 (1) "Homemaker-companion agency" means homemaker-
31 companion agency, as defined in section 20-670 of the general statutes;

32 (2) "Registry" means registry, as defined in section 20-670 of the
33 general statutes;

34 (3) "Homemaker-home health aide agency" means homemaker-
35 home health aide agency, as defined in section 19a-490 of the general
36 statutes;

37 (4) "Homemaker services" means homemaker services, as defined in
38 section 20-670 of the general statutes;

39 (5) "Companion services" means companion services, as defined in
40 section 20-670 of the general statutes;

41 (6) "Homemaker-home health aide services" means homemaker-
42 home health aide services, as defined in section 19a-490 of the general
43 statutes;

44 (7) "Consumer" means an individual receiving homemaker services,

45 companion services or homemaker-home health aide services from a
46 homemaker-companion agency, registry or homemaker-home health
47 aide agency; and

48 (8) "Covered provider" means a homemaker-companion agency,
49 registry or homemaker-home health aide agency providing
50 homemaker services, companion services or homemaker-home health
51 aide services.

52 (b) For purposes of chapter 568 of the general statutes, any
53 individual a covered provider supplies or refers to a consumer to
54 provide homemaker services, companion services or homemaker-
55 home health aide services shall be deemed an employee of (1) such
56 covered provider, except as provided in subdivision (2) of this
57 subsection, and such covered provider, regardless of the number of
58 hours the individual works, shall be liable for compensation under
59 chapter 568 of the general statutes for such individual during the
60 duration of time he or she provides said services to the consumer, and
61 (2) such consumer solely for the purposes of subsection (a) of section
62 31-284 of the general statutes, and such consumer shall be deemed to
63 be in compliance with subsection (b) of said section, except that the
64 requirements of subsection (b) of said section shall be the
65 responsibility of the covered provider.

66 (c) The consumer's exemption from liability under subsection (a) of
67 section 31-284 of the general statutes, including any liability for third-
68 party lawsuits commenced pursuant to subsection (a) of section 31-293
69 of the general statutes, shall be extended to (1) members of the
70 consumer's immediate family or household, and (2) any individual
71 acting as a conservator of the person, as defined in section 45a-644 of
72 the general statutes or acting under other legal authority to make
73 decisions for the consumer regarding their medical or personal care.

74 Sec. 4. Subdivision (9) of section 31-275 of the general statutes is
75 repealed and the following is substituted in lieu thereof (*Effective*
76 *January 1, 2017*):

- 77 (9) (A) "Employee" means any person who:
- 78 (i) Has entered into or works under any contract of service or
79 apprenticeship with an employer, whether the contract contemplated
80 the performance of duties within or without the state;
- 81 (ii) Is a sole proprietor or business partner who accepts the
82 provisions of this chapter in accordance with subdivision (10) of this
83 section;
- 84 (iii) Is elected to serve as a member of the General Assembly of this
85 state;
- 86 (iv) Is a salaried officer or paid member of any police department or
87 fire department;
- 88 (v) Is a volunteer police officer, whether the officer is designated as
89 special or auxiliary, upon vote of the legislative body of the town, city
90 or borough in which the officer serves;
- 91 (vi) Is an elected or appointed official or agent of any town, city or
92 borough in the state, upon vote of the proper authority of the town,
93 city or borough, including the elected or appointed official or agent,
94 irrespective of the manner in which he or she is appointed or
95 employed. Nothing in this subdivision shall be construed as affecting
96 any existing rights as to pensions which such persons or their
97 dependents had on July 1, 1927, or as preventing any existing custom
98 of paying the full salary of any such person during disability due to
99 injury arising out of and in the course of his or her employment;
- 100 (vii) Is a member of the armed forces of the state while in the
101 performance of military duty, whether paid or unpaid for such
102 military duty, in accordance with the provisions of section 27-17, 27-18
103 or 27-61; or
- 104 (viii) Is elected to serve as a probate judge for a probate district
105 established in section 45a-2.

106 (B) "Employee" shall not be construed to include:

107 (i) Any person to whom articles or material are given to be treated
108 in any way on premises not under the control or management of the
109 person who gave them out;

110 (ii) One whose employment is of a casual nature and who is
111 employed otherwise than for the purposes of the employer's trade or
112 business;

113 (iii) A member of the employer's family dwelling in his house; but,
114 if, in any contract of insurance, the wages or salary of a member of the
115 employer's family dwelling in his house is included in the payroll on
116 which the premium is based, then that person shall, if he sustains an
117 injury arising out of and in the course of his employment, be deemed
118 an employee and compensated in accordance with the provisions of
119 this chapter;

120 (iv) [Any] Except as provided in section 3 of this act, any person
121 engaged in any type of service in or about a private dwelling provided
122 he is not regularly employed by the owner or occupier over twenty-six
123 hours per week;

124 (v) An employee of a corporation who is a corporate officer and
125 who elects to be excluded from coverage under this chapter by notice
126 in writing to his employer and to the commissioner; or

127 (vi) Any person who is not a resident of this state but is injured in
128 this state during the course of his employment, unless such person (I)
129 works for an employer who has a place of employment or a business
130 facility located in this state at which such person spends at least fifty
131 per cent of his employment time, or (II) works for an employer
132 pursuant to an employment contract to be performed primarily in this
133 state.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>January 1, 2017</i>	New section
Sec. 2	<i>January 1, 2017</i>	New section
Sec. 3	<i>January 1, 2017</i>	New section
Sec. 4	<i>January 1, 2017</i>	31-275(9)

LAB *Joint Favorable*

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 17 \$	FY 18 \$
Labor Dept.	UCF - Cost/Revenue Gain	Net Revenue Gain	Net Revenue Gain
Labor Dept.	Various - Revenue Gain	Potential	Potential

Note: UCF=Unemployment Compensation Fund; Various=Various

Municipal Impact: None

Explanation

There is a net revenue gain to the Unemployment Compensation Fund associated with the bill's provisions. The revenue gain is associated with businesses covered under the bill paying unemployment compensation taxes. This is partially offset by the payment of benefits to workers who would be eligible for benefits under the bill's provisions. The extent of the net revenue gain is unclear, as it is not known how many of these businesses are currently not paying unemployment taxes or how many workers to whom the bill would extend eligibility for unemployment benefits to.

There is an additional potential revenue gain to various Department of Labor funds, including the General Fund, associated with the bill's provisions regarding wage laws. The bill expands the population of businesses and workers over which wage laws apply. To the extent that this increases the number of fines levied, there would be a revenue increase.

Lastly, the provisions of the bill will result in a cost born by the home health agencies and registries and not the state's Medicaid program.

The Out Years

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

OLR Bill Analysis**HB 5368*****AN ACT CONCERNING HOMEMAKER SERVICES AND HOMEMAKER COMPANION AGENCIES.*****SUMMARY:**

This bill brings homemaker-companion agencies, registries, and homemaker-home health aide agencies under the unemployment compensation, wage, and workers' compensation laws. It designates the agencies and registries as the employers of the individuals they supply or refer for homemaker, companion, or homemaker-home health aide services. It thus makes them responsible for meeting an employer's obligations under these laws (e.g., paying unemployment taxes, meeting minimum and overtime wage requirements, and obtaining workers' compensation insurance). Under current law, a consumer receiving these services could be required to meet these obligations as the homemaker's, companion's, or homemaker-home health aide's employer.

The bill requires the agencies and registries to provide their homemakers, companions, and homemaker-home health aides with workers' compensation coverage regardless of how many hours they work. Under current law, individuals who work in a private dwelling are not required to be covered by workers' compensation unless the dwelling's owner or occupier regularly employs them for at least 26 hours per week. The bill also provides an employer's liability protection under workers' compensation law to the consumer receiving homemaker, companion, or homemaker-home health aide services from the agencies and registries.

EFFECTIVE DATE: January 1, 2017

HOMEMAKER AND COMPANION SERVICES

Under existing law and the bill, homemaker services are nonmedical, supportive services that ensure a safe and healthy environment in a person's home (e.g., assistance with personal hygiene, cooking, or household chores). Companion services are nonmedical, basic supervision services to ensure a person's well-being and safety in his or her home.

Homemaker-companion agencies are public or private organizations that provide homemaker or companion services. Registries are individuals or businesses that supply or refer homemakers or companions who are (1) partially or totally compensated directly by the consumer or (2) treated, referred to as, or considered independent contractors.

HOMEMAKER-HOME HEALTH AIDE SERVICES

Under existing law and the bill, homemaker-home health aide services are in-home supportive services similar to homemaker services but provided under a registered nurse's supervision. Homemaker-home health aide agencies are public or private organizations that provide these services. They do not include home health care agencies, which provide professional nursing services available 24 hours per day.

WORKERS' COMPENSATION LIABILITY

By law, an employee generally cannot sue his or her employer over a work-related injury if the employer maintained the required workers' compensation insurance for the employee. The bill requires the agencies and registries to provide the insurance but gives this liability protection to the consumers receiving homemaker, companion, or homemaker-home health aide services from the agencies or registries. (It is unclear if the agency or registry also receives this liability protection.) The bill also extends this protection, including from liability for third-party suits, to a consumer's (1) immediate family or household, (2) probate court-appointed conservator, and (3) legally authorized medical or personal care decision maker.

BACKGROUND***Related Bills***

SB 210 (File 55), reported favorably by the Labor and Public Employees Committee, requires the state to provide workers' compensation coverage for personal care attendants (PCAs) who provide home care to consumers in state-funded programs regardless of how many hours they work in a consumer's home.

SB 393, reported favorably by the Labor and Public Employees Committee, among other things, changes the threshold for when employers must provide workers' compensation coverage for domestic workers to whenever a worker earns \$1,000 in quarterly wages.

sHB 5586, reported favorably by the Human Services Committee, requires the social services commissioner to obtain workers' compensation coverage for PCAs providing services in certain state-funded programs regardless of how many hours they work in a consumer's home.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 8 Nay 4 (03/10/2016)