

Aging Committee JOINT FAVORABLE REPORT

Bill No.: SB-974

Title: AN ACT CONCERNING HOMEMAKER AND COMPANION SERVICES.

Vote Date: 3/11/2021

Vote Action: Joint Favorable Change of Reference to Human Services

PH Date: 3/9/2021

File No.:

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SPONSORS OF BILL:

Aging Committee

REASONS FOR BILL:

This bill seeks to classify individuals referred by homemaker-companion registries as employees of the registries. Also, it would expand the requirements (such as providing a safe work environment, filing IRS information, providing workers compensation insurance) of consumers who employ homemaker-companions. Currently, some of these items are not spelled out to the consumer, which can create an unsafe work environment for a caregiver. Additionally, it would exempt noncompete contracts of six months or less from a prohibition on noncompete contracts. This would protect the registries' investments in the hiring and training of caregivers, and in the long run would maintain the level made available to the residents.

RESPONSE FROM ADMINISTRATION/AGENCY:

Dept of Social Services: The Dept opposes this legislation. Under current statute any "covenant not to compete" related to homemaker companion or home health services is deemed to be against public policy and thus void and unenforceable. The raised bill would exclude from the definition of "covenant not to compete" any agreement that restricts the right of an individual to solicit from any client, employee or vendor of a homemaker-companion agency, provided such agreement is limited in duration to six months. They oppose language that would exclude "non-solicitation" agreements from the definition of "covenant not to compete". The raised bill would potentially allow a homemaker-companion agency to prevent a care giver from providing continued services for any client simply by including a "non-solicitation clause" in the contract with the caregiver.

NATURE AND SOURCES OF SUPPORT:

Mark McGoidrick, Chairman, Home Care Assoc. of America, Connecticut: They submitted testimony in support of this bill with amendments. They would support an amendment striking sections 1 and 2a and offer an explanation in their testimony. They also offered extensive comments about the way the bill amends the ban on noncompete agreements to that many agencies have with caregivers and that it may have unintended consequences that would include limiting access care for the very persons it was intended to protect. They would also support an amendment to sec. 3 which would clarify the law concerning non-solicitation agreement in home care. "Covenant not to compete" does not include any contract or agreement that restricts the right of an individual to solicit from any client or employee of a homemaker-companion agency, as defined in section 20-670, home health care agency, as defined in section 19a-490, or home health aide agency, as defined in section 19a-490, provided such contract or agreement is limited in duration to no more than six months. Any covenant not to compete is against public policy and shall be void and unenforceable.

Tracy Wodatch, President and CEO, The Connecticut Assoc. for Health Care at Home: They support this proposal as it allows non-solicitation agreements in the home health and homemaker-companion industries. These agreements prevent employees from taking their existing clients away from their current employers and it is a protection that makes sense and helps to ensure a sustainable business model with consistent and knowledgeable staff.

Dave Harrison, Owner, Right at Home: They submitted testimony in support of this legislation. Registries would be required to notify consumers of home care service that the consumer is responsible for reporting to the IRS compensation paid to caregivers. This amendment would allow for proper notice to consumers of home care services for their own protection. The bill also amends the ban on noncompete agreements and would help clarify that home-care agencies would be able to enforce certain, limited non-solicitation agreements that many agencies have with caregivers. They suggest that the bill would do an excellent job at properly balancing the competing interests at stake.

Marie Cerino, Owner, Seniors Helping Seniors, Mystic CT.: Their testimony was in support of this bill with certain amendments. The bill would require registries to notify elderly consumers of home care that they are responsible for reporting compensation paid to individuals to the IRS and that consumers are legally liable for work-related injuries, including that individuals must be covered by worker's compensation or other insurance. It should also be amended to clarify that home care agencies would be able to enforce certain limited non-solicitation agreements. It has been a standard, lawful practice for businesses to permit narrow, short term non-solicitation provisions to protect their business assets and practices. They believe that the recent state budget provision that adopted the ban on non-solicitation agreements was overly broad. This bill amended properly balances the competing interests at stake without disruption home care agency owners' ability to operate their businesses.

NATURE AND SOURCES OF OPPOSITION:

John Shulansky, Director, ELderChoice of Connecticut, LLC,: His testimony was in opposition to this bill. He pointed out that he has testified on this proposal numerous times in

the past. The comments point out that some of the changes are unnecessary, misleading, and in some cases, not legal. The testimony indicated that except for a cursory background check, the state has no requirement to be a care provider and that as a matter of public policy is unconscionable. They go on to say that the state needs to establish a minimum skill set for care providers. He suggests that "the elephant in the room" is that home care is the hot potato between the Dept. of Public health and the Dept. of Consumer Protection and this needs to be reviewed by a "real working group" and not a "political task force."

**Reported by: Richard Ferrari, Assistant Clerk
Richard O'Neil, Assistant Clerk
Joe Perkus, Clerk**

Date: 3/23/2021