

1-1 By: Janek S.B. No. 1649
1-2 (In the Senate - Filed March 8, 2007; March 21, 2007, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 27, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 27, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1649 By: Nichols

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to temporary change of ownership licenses for nursing home
1-11 facilities.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 242.0336, Health and Safety Code, is
1-14 amended by amending Subsections (a) and (c) through (g) and adding
1-15 Subsections (b-1) through (b-5), (c-1), and (d-1) to read as
1-16 follows:

1-17 (a) For purposes of this section, a temporary change of
1-18 ownership license is a temporary 90-day license issued to an
1-19 applicant who proposes to become the new operator of an institution
1-20 existing on the date the application is filed.

1-21 (b-1) Except as provided by Subsection (b-2), the
1-22 department may not issue a temporary change of ownership license
1-23 before the 31st day after the date the department has received both:

1-24 (1) the application for the license; and

1-25 (2) notification, in writing, of the intent of the
1-26 institution's existing license holder to transfer operation of the
1-27 institution to the applicant beginning on a date specified by the
1-28 applicant.

1-29 (b-2) Notwithstanding Section 242.0335, the department
1-30 shall establish criteria under which the department may waive the
1-31 30-day requirement or the notification requirement of Subsection
1-32 (b-1). The criteria may include the occurrence of forcible entry
1-33 and detainer, death, or divorce or other events that affect the
1-34 ownership of the institution by the existing license holder.

1-35 (b-3) After receipt of an application or written
1-36 notification described by Subsection (b-1), the department may
1-37 place a hold on payments to the existing license holder in an amount
1-38 not to exceed the average of the monthly vendor payments paid to the
1-39 facility, as determined by the department. The department shall
1-40 release funds to the previous license holder not later than the
1-41 120th day after the date on which the final reporting requirements
1-42 are met and any resulting informal reviews or formal appeals are
1-43 resolved. The department may reduce the amount of funds released to
1-44 the previous license holder by the amount owed to the department or
1-45 the Health and Human Services Commission under the previous license
1-46 holder's Medicaid contract or license.

1-47 (b-4) The executive commissioner of the Health and Human
1-48 Services Commission shall adopt rules for the department that
1-49 define a change of ownership. In adopting the rules, the executive
1-50 commissioner shall consider:

1-51 (1) the proportion of ownership interest that is being
1-52 transferred to another person;

1-53 (2) the addition or removal of a stockholder, partner,
1-54 owner, or other controlling person;

1-55 (3) the reorganization of the license holder into a
1-56 different type of business entity; and

1-57 (4) the death or incapacity of a stockholder, partner,
1-58 or owner.

1-59 (b-5) The executive commissioner may adopt rules for the
1-60 department that require a license holder to notify the department
1-61 of any change, including a change that is not a change of ownership,
1-62 as that term is defined by rules adopted under Subsection (b-4).
1-63 Nothing in this section prevents the department from acting under

2-1 Section 242.061 or any other provision of this chapter.

2-2 (c) The department shall issue or deny a temporary change of
2-3 ownership license not later than the 31st [30th] day after the date
2-4 of receipt of the completed application. The effective date of a
2-5 temporary change of ownership license issued under this section is
2-6 the date requested in the application unless:

2-7 (1) the department does not receive the application
2-8 and written notification described by Subsection (b-1) at least 30
2-9 days before that date; and

2-10 (2) no waiver under Subsection (b-2) applies.

2-11 (c-1) If the department does not receive the application and
2-12 written notification required by Subsection (b-1) at least 30 days
2-13 before the effective date requested in the application and
2-14 Subsection (b-2) does not apply, the effective date of the
2-15 temporary change of ownership license is the 31st day after the date
2-16 the department receives both the application and the notification.

2-17 (d) Except as provided in Subsection (d-1), after [After]
2-18 the department issues a temporary change of ownership license to
2-19 the applicant, the department shall conduct an inspection or survey
2-20 of the nursing facility under Section 242.043 as soon as reasonably
2-21 possible. During the period between the issuance of the temporary
2-22 license and the inspection or survey of the nursing facility or desk
2-23 review under Subsection (d-1), the department may not place a hold
2-24 on vendor payments to the temporary license holder.

2-25 (d-1) The department shall establish criteria under which a
2-26 desk review of the facility's compliance with applicable
2-27 requirements may be substituted for the on-site inspection or
2-28 survey under Subsection (d).

2-29 (e) After conducting an inspection or survey under
2-30 Subsection (d) or a desk review under Subsection (d-1), the
2-31 department shall issue a license under Section 242.033 to the
2-32 temporary change of ownership license holder if the nursing
2-33 facility passes the desk review, inspection, or survey and the
2-34 applicant meets the requirements of Section 242.033. If the
2-35 nursing facility fails to pass the desk review, inspection, or
2-36 survey or the applicant fails to meet the requirements of Section
2-37 242.033, the department may:

2-38 (1) place a hold on vendor payments to the temporary
2-39 change of ownership license holder; and

2-40 (2) take any other action authorized under this
2-41 chapter.

2-42 (f) If the applicant meets the requirements of Section
2-43 242.033 and the nursing facility passes a desk review, [an] initial
2-44 inspection, or [a] subsequent inspection before the temporary
2-45 change of ownership license expires, the license issued under
2-46 Section 242.033 is considered effective on the date the department
2-47 determines under Subsection (c) or (c-1) [requested in the
2-48 application for a temporary change of ownership].

2-49 (g) A temporary change of ownership license issued under
2-50 Subsection (b) expires on the 90th [91st] day after the effective
2-51 date established under Subsection (c) or (c-1) [date the license
2-52 was issued].

2-53 SECTION 2. As soon as practicable after the effective date
2-54 of this Act, the executive commissioner of the Health and Human
2-55 Services Commission shall adopt the rules required by Section
2-56 242.0336, Health and Safety Code, as amended by this Act.

2-57 SECTION 3. This Act applies only to a temporary change of
2-58 ownership license application received by the Department of Aging
2-59 and Disability Services on or after September 1, 2007. An
2-60 application received by the department before September 1, 2007, is
2-61 governed by the law in effect at the time the application is
2-62 received, and the former law is continued in effect for that
2-63 purpose.

2-64 SECTION 4. This Act takes effect September 1, 2007.

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