

Suspending limitations on conference committee jurisdiction, S.B. No. 344 (Carona/Davis of Harris)

By: Carona

S.R. No. 1177

SENATE RESOLUTION

BE IT RESOLVED by the Senate of the State of Texas, 80th Legislature, Regular Session, 2007, That Senate Rule 12.03 be suspended in part as provided by Senate Rule 12.08 to enable the conference committee appointed to resolve the differences on Senate Bill No. 344 (additional exit conference required following inspection, survey, or investigation of, and temporary change of ownership licenses for, certain facilities) to consider and take action on the following matter:

Senate Rules 12.03(3) and (4) are suspended to permit the conference committee to add the following:

SECTION 2. Section 242.0336, Health and Safety Code, is amended by amending Subsections (a) and (c) through (g) and adding Subsections (b-1) through (b-5), (c-1), and (d-1) to read as follows:

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

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

- (1) the application for the license; and
- (2) notification, in writing, of the intent of the institution's existing license holder to transfer operation of the institution to the applicant beginning on a date specified by the applicant.

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

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

Medicaid contract or license.

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

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

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

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

(4) the death or incapacity of a stockholder, partner, or owner.

(b-5) The executive commissioner may adopt rules for the department that require a license holder to notify the department of any change, including a change that is not a change of ownership, as that term is defined by rules adopted under Subsection (b-4). Nothing in this section prevents the department from acting under Section 242.061 or any other provision of this chapter.

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

(1) the department does not receive the application and written notification described by Subsection (b-1) at least

30 days before that date; and

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

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

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

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

(e) After conducting an inspection or survey under Subsection (d) or a desk review under Subsection (d-1), the department shall issue a license under Section 242.033 to the temporary change of ownership license holder if the nursing facility passes the desk review, inspection, or survey and the

applicant meets the requirements of Section 242.033. If the nursing facility fails to pass the desk review, inspection, or survey or the applicant fails to meet the requirements of Section 242.033, the department may:

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

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

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

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

Explanation: The addition of the SECTION to the bill is necessary to address a temporary change of ownership licenses for certain facilities.

Senate Rules 12.03(3) and (4) are suspended to permit the committee to add the following:

SECTION 7. (a) As soon as practicable after the effective date of this Act, the executive commissioner of the

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Health and Human Services Commission shall adopt the rules required by Section 242.0336, Health and Safety Code, as amended by this Act.

(b) The changes in law made by this Act to Section 242.0336, Health and Safety Code, apply only to a temporary change of ownership license application received by the Department of Aging and Disability Services on or after September 1, 2007. An application received by the department before September 1, 2007, is governed by the law in effect at the time the application is received, and the former law is continued in effect for that purpose.

Explanation: The addition of this provision is necessary to properly implement the addition of SECTION 2 to the conference committee report.

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President of the Senate

I hereby certify that the above Resolution was adopted by the Senate on May 26, 2007.

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Secretary of the Senate