

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 731

Short Title: Long Term Care Managers.

(Public)

Sponsors: Senators Walker; Daniel, Hunt, Martin of Guilford, Marvin, Perdue, Richardson, Speed, Tally, and Ward.

Referred to: Human Resources.

April 22, 1991

1 A BILL TO BE ENTITLED
2 AN ACT FOR THE APPOINTMENT OF TEMPORARY MANAGERS FOR LONG
3 TERM CARE FACILITIES.

4 The General Assembly of North Carolina enacts:

5 Section 1. Chapter 131E of the General Statutes is amended by adding
6 Article 13 as follows:

7 **“ARTICLE 13.**

8 **“TEMPORARY MANAGEMENT OF LONG TERM CARE FACILITIES.**

9 **“§ 131E-230. Legislative findings.**

10 The General Assembly finds that:

11 (1) The inadequate operation of a long term care facility can have
12 devastating effects on the residents;

13 (2) The closure of a long term care facility, even a poor one, can have
14 adverse effects on the residents, especially if the closure and transfer
15 of residents is done hastily;

16 (3) There is need of a clear procedure for the court appointment of a
17 temporary manager to assure the proper operation of a long term care
18 facility until a regular manager (new or original) is prepared to
19 properly operate the facility, or until the residents can be humanely
20 transferred to a proper alternative setting; and

21 (4) The long term operation of a long term care facility by a temporary
22 manager is not desirable.

23 **“§ 131E-231. Definitions.**

1 As used in this Article, unless otherwise specified:

2 (1) 'Long term care facility' means a nursing home or a domiciliary home,
3 whether or not the domiciliary home is operated as part of a nursing
4 home.

5 (2) 'Resident' means a person who has been admitted to a long term care
6 facility.

7 **"§ 131E-232. Who may petition.**

8 The Department of Human Resources may petition a court of competent jurisdiction
9 to appoint a temporary manager to operate a long term care facility.

10 **"§ 131E-233. Grounds for appointment.**

11 The court may appoint a temporary manager upon the filing of a petition for one or
12 more of the following grounds:

13 (1) A violation that creates a substantial risk that death or serious physical
14 harm to a resident will occur or such harm has occurred, together with
15 the probability that the facility will not or cannot immediately remedy
16 the violation;

17 (2) The long term care facility is operating without a license;

18 (3) The license of the long term care facility has been suspended or
19 revoked or the long term care facility is closing or intends to close and:
20 (i) adequate arrangements for relocating residents have not been made,
21 or (ii) quick relocation would not be in the best interest of the
22 residents;

23 (4) The procedures for nonrenewal or revocation by the Department of
24 Human Resources of the long term care facility's license have been
25 initiated and violations in the long term care facility result in
26 conditions that create a substantial risk that death or serious physical
27 harm to a resident will occur;

28 (5) The inability, for financial reasons, to assure adequate care;

29 (6) A previous court order has been issued requiring respondent to act or
30 refrain from acting in a manner directly affecting the care of the
31 residents and respondent has failed to comply with the court order.

32 **"§ 131E-234. Procedures for appointment.**

33 The procedure for petitioning a court for an appointment of a temporary manager,
34 including service of process, shall be in accordance with the North Carolina Rules of
35 Civil Procedure. If personal service of a copy of the petition cannot be made with due
36 diligence upon the respondent, service may be made upon the respondent by posting a
37 copy of the summons and petition in a conspicuous place within the long term care
38 facility, and sending a copy of the summons and petition to the respondent by registered
39 mail at his last known address. Service shall be complete upon filing a return of service
40 with the clerk of courts. A hearing shall be held within 20 days of service.

41 **"§ 131E-235. Candidates for temporary managers.**

42 As petitioner for temporary management, the Department of Human Resources shall
43 nominate at least one candidate for temporary manager and shall give the name,
44 address, and qualifications of each nominee. The Department of Human Resources

1 shall maintain a list of persons qualified to act as temporary managers, but the
2 Department is not required to nominate from that list.

3 **"§ 131E-236. Temporary manager; powers and duties.**

4 A temporary manager appointed under this section:

- 5 (1) May exercise those powers and shall perform those duties set out by
6 the court;
- 7 (2) Shall operate the long term care facility in compliance with this act
8 and assure the safety of the residents and the delivery of services to
9 them;
- 10 (3) May operate the facility under a temporary license issued by the
11 Department of Human Resources in the event that the license of the
12 original operator has been revoked or suspended or was never issued;
- 13 (4) Shall have the same rights to possession of the building in which the
14 long term care facility is located and of all goods and fixtures at the
15 time the petition for temporary management is filed as the respondent
16 would have had if the temporary manager had not been appointed.
17 The temporary manager shall take such action as is necessary to
18 protect or conserve the assets or property of which the temporary
19 manager takes possession, or the proceeds of any transfer thereof, and
20 may use them only in the performance of the powers and duties set
21 forth in this section and by order of the court;
- 22 (5) May use the building, fixtures, furnishings, and any accompanying
23 consumable goods in the provision of care and services to residents
24 and to any other persons receiving services from the long term care
25 facility at the time the petition for temporary management was filed.
26 The temporary manager shall collect payment for all goods and
27 services provided to residents or others during the period of the
28 temporary management at the same rate and method of payment as
29 was charged by the respondent at the time the petition for temporary
30 management was filed, unless a different rate is set by the court;
- 31 (6) May correct or eliminate any deficiency in the structure or furnishings
32 of the long term care facility that endangers the safety or health of
33 residents while they remain in the long term care facility, provided the
34 total cost of correction does not exceed one thousand dollars (\$1,000);
- 35 (7) Shall submit to the court a plan as provided in G.S. 131E-237 for
36 correction or elimination of any deficiency in the structure or
37 furnishings of the long term care facility that endangers the safety or
38 health of residents while they remain in the long term care facility, if
39 such corrections are estimated to exceed one thousand dollars
40 (\$1,000), and shall carry out the plan with any modification as
41 approved by the court;
- 42 (8) May let contracts and hire agents and employees to carry out the
43 powers and duties created under this section;

- 1 (9) Except as specified in G.S. 131E-238, shall honor all leases,
2 mortgages, and secured transactions governing the building in which
3 the long term care facility is located an all goods and fixtures in the
4 building of which the temporary manager has taken possession, but, in
5 the case of a rental agreement, only to the extent of payments that are
6 for the use of the property during the period of the temporary
7 management, or, in the case of a purchase agreement, come due during
8 the period of the temporary management;
- 9 (10) Shall have full power to direct, manage, and discharge employees of
10 the long term care facility, subject to any contract rights they may
11 have;
- 12 (11) If transfer of the residents is necessary, shall cooperate with the
13 Department of Human Resources and/or local Departments of Social
14 Services in carrying out the transfer of residents to an alternative
15 placement; and
- 16 (12) Shall be entitled to and shall take possession of all property or assets of
17 residents in the possession of the respondents. The temporary manager
18 shall preserve all property, assets, and records of residents of which the
19 temporary manager takes possession and shall provide for the prompt
20 transfer of the property, assets, and records to the alternative
21 placement of any transferred resident.

22 **"§ 131E-237. Plan for correction of deficiencies in excess of one thousand dollars**
23 **(\$1,000).**

24 (a) If the temporary manager determines that it is necessary to correct a
25 deficiency estimated by the temporary manager to cost in excess of one thousand dollars
26 (\$1,000), the temporary manager shall submit to the court a written plan that contains
27 the following:

- 28 (1) A description of the deficiency that requires correction;
29 (2) A description of the method proposed by the temporary manager for
30 correction of the deficiency; and
31 (3) An estimate of the cost of the correction.

32 (b) A copy of the plan shall be served upon the petitioner and the respondent
33 within three days after the submission of the plan to the court.

34 (c) Upon the written request of a party within seven days after the submission of
35 the plan to the court, a hearing on the proposed plan of correction shall be held. If a
36 hearing is requested by a party, the hearing shall be held within 14 days of the written
37 request. The petitioner, respondent, and temporary manager shall have the opportunity
38 to present evidence at the hearing regarding the proposed plan. Upon hearing the
39 evidence, the court may approve the plan, modify the plan, or, if the court determines as
40 a result of the evidence that the alleged deficiency does not require correction, it may
41 reject the plan.

42 (d) If no party requests a hearing on the plan, the court may order the temporary
43 manager to proceed to implement the plan.

1 (e) Upon written petition, affidavits, and any other evidence submitted to the
2 court showing that violations in the long term care facility have resulted in conditions
3 that present an imminent danger, the court may approve **ex parte** a written plan of the
4 temporary manager to correct a deficiency of the long term care facility. Notice of the
5 plan and the **ex parte** order shall be served upon the parties within 24 hours after
6 issuance of the **ex parte** order approving the plan. A hearing on the plan shall be held
7 within three days after service of the notice. Upon hearing the evidence presented at the
8 hearing, the court may continue, modify, or reject further implementation of the written
9 plan.

10 **§ 131E-238. Payment to temporary manager.**

11 (a) A person who is served with notice of an order of the court appointing a
12 temporary manager and of the temporary manager's name and address shall be liable to
13 pay the temporary manager for any goods or services provided by the temporary
14 manager after the date of the order if the person would have been liable for the goods or
15 services as supplied by the respondent or agent of the respondent. The temporary
16 manager shall give a receipt for each payment and shall keep a copy of each receipt on
17 file. The temporary manager shall deposit amounts received in a special account and
18 shall use this account for all disbursements.

19 (b) The temporary manager may bring an action to enforce the liability created
20 by subsection (a) of this section. Proof of payment to the temporary manager is as
21 effective in favor of the person making the payment as payment of the amount to the
22 person who, but for this subsection, would have been entitled to receive the sum so paid.

23 (c) A resident may not be discharged, nor may any contract or rights be forfeited
24 or impaired, nor may forfeiture or liability be increased, by reason of an omission to pay
25 a respondent, licensee, or other person a sum paid to the temporary manager.

26 **§ 131E-239. Avoidance of preexisting leases, mortgages, and contracts.**

27 (a) A temporary manager shall not be required to honor any lease, mortgage,
28 secured transaction, or other wholly or partially executory contract entered into by the
29 respondent, licensee, or administrator of the long term care facility if:

30 (1) The person seeking payment under the agreement was a respondent or
31 a licensee or administrator of the long term care facility or was an
32 affiliate of respondent or a licensee or administrator at the time the
33 agreement was made; or

34 (2) The rental price, or rate of interest required to be paid under the
35 agreement was substantially in excess of a reasonable rental price or
36 rate of interest at the time the contract was entered into.

37 (b) If the temporary manager is in possession of real estate or goods subject to a
38 lease, mortgage, security interest, or other contract which the temporary manager is
39 permitted to avoid under subsection (a) of this section, and if the real estate or goods are
40 necessary for the continued operation of the long term care facility under this section,
41 the temporary manager may apply to the court to set a reasonable rental price or rate of
42 interest to be paid by the temporary manager during the duration of the temporary
43 management. The court shall hold a hearing on the application within 15 days after

1 receipt of the application. The temporary manager shall send notice of the application
2 to any known owners of the property involved at least 10 days prior to the hearing.

3 (c) Payment by the temporary manager of the amount determined by the court to
4 be reasonable is a defense to any action against the temporary manager for payment or
5 for possession of the goods or real estate subject to the lease, mortgage, security
6 interest, or other contract involved by any person who received such notice, but the
7 payment does not relieve the obligee of liability for the difference between the amount
8 paid by the temporary manager and the amount due under the original lease, mortgage,
9 or security interest involved.

10 **"§ 131E-240. Bond and contingency fund.**

11 (a) The Department of Human Resources shall establish and collect a reasonable
12 bond to be posted by the licensee as a condition of licensure or relicensure. The initial
13 bond payment for all long term care facilities shall be due within three months of the
14 effective date of this Article. The interest on all such bond money shall be deposited in
15 a temporary management contingency fund.

16 (b) Upon a showing that expenses of the temporary management exceed the
17 operating funds of the long term care facility, the court, in its discretion, may order that
18 the Department of Human Resources pay to the temporary manager proceeds from the
19 licensee's bond and the temporary management contingency fund, in that order, for the
20 following:

21 (1) Payment of the expenses of the temporary manager incurred with
22 respect to implementation of a court-approved plan for correction of
23 deficiencies in excess of one thousand dollars (\$1,000); and

24 (2) Compensation of the temporary manager.

25 **"§ 131E-241. Review and termination of temporary management.**

26 (a) The operations and continuing need for a temporary manager shall be
27 reviewed by the court every 30 days following the appointment of the temporary
28 manager.

29 (b) The court shall order the termination of the temporary management upon a
30 showing that the goals of the temporary management have been met.

31 (c) When a facility is returned to its owner, the court may impose conditions to
32 assure compliance with applicable laws and regulations.

33 **"§ 131E-242. Compensation of temporary manager.**

34 The court shall set the compensation of the temporary manager.

35 **"§ 131E-243. Accounting lien for expenses.**

36 (a) Within 30 days after termination of the temporary management, the
37 temporary manager shall give the court a complete accounting of:

38 (1) All property of which the temporary manager has taken possession;

39 (2) All funds collected under this section; and

40 (3) Expenses of the temporary management.

41 (b) If the operating funds collected by the temporary management exceed the
42 reasonable expenses of the temporary management, the court shall order payment of the
43 surplus to the respondent, after reimbursement of funds drawn from the contingency
44 fund. If the operating funds are insufficient to cover the reasonable expenses of the

1 temporary management, the respondent shall be liable for the deficiency. The
2 respondent may apply to the court to determine the reasonableness of any expenses of
3 the temporary management. The respondent shall not be responsible for expenses in
4 excess of what the court finds to be reasonable. Payment recovered from the respondent
5 shall be used to reimburse the contingency fund for amounts drawn by the temporary
6 manager.

7 (c) The court may order that the Department of Human Resources shall have a
8 lien for any reasonable costs of the temporary management which are not covered by
9 the operating funds collected by the temporary manager and for any funds paid out of
10 the contingency fund during the temporary management upon any beneficial interest,
11 direct or indirect, of any respondent in the following property:

12 (1) The building in which the long term care facility is located;

13 (2) The land on which the long term care facility is located;

14 (3) Any fixtures, equipment, or goods used in the operation of the long
15 term care facility; or

16 (4) The proceeds from any conveyance of property described in
17 subdivisions (1), (2), and (3) of this subsection made by the respondent
18 within one year prior to the filing of the petition for temporary
19 management.

20 (d) The lien provided for in this section is superior to any lien or other interest
21 that originates subsequent to the filing of a petition for temporary management under
22 this section, except for a construction or mechanic's lien arising out of work performed
23 with the express consent of the temporary manager.

24 (e) The clerk of the court for the county in which the long term care facility is
25 located shall record the filing of the petition for temporary management in the lien
26 docket opposite the names of the respondents, licensees, and administrator named in the
27 petition.

28 (f) Within 60 days after termination of the temporary management, the
29 temporary manager shall file a notice of any lien created under this section. If the lien is
30 on real property, the notice shall be filed with the clerk of the court of the county in
31 which the long term care facility is located and entered on the lien docket. If the lien is
32 on personal property, the lien shall be filed with the person against whom the lien is
33 claimed, and shall state the name of the temporary manager, the dates of the petition for
34 temporary management, the termination of temporary management, a description of the
35 property involved, and the amount claimed. No lien shall exist under this section
36 against any person, on any property, or for any amount not specified in the notice filed
37 under this section.

38 **§ 131E-244. Obligations of licensee.**

39 Nothing in this section shall be deemed to relieve any respondent, licensee, or
40 administrator of a long term care facility placed in temporary management of any civil
41 or criminal liability incurred, or any duty imposed by law, by reason of acts of
42 omissions of the respondent, licensee, or administrator prior to the appointment of a
43 temporary manager under this section. Nothing contained in this section shall be
44 construed to suspend during the temporary management any obligation of the

1 respondent, licensee, or administrator for payment of taxes or other operating and
2 maintenance expenses of the facility nor the respondent, licensee, or administrator or
3 any other person for the payment of mortgages or liens. No licensee or administrator
4 shall be held professionally liable for acts or omissions of the temporary manager or the
5 temporary manager's employees during the term of the temporary management."

6 Sec. 2. This act becomes effective October 1, 1991.