

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2104 Session of
1991

INTRODUCED BY VEON, DeWEESE, FREEMAN, OLASZ, McNALLY, MELIO,
COLAIZZO, FAJT, TRELLO, GIGLIOTTI, KOSINSKI, BELFANTI,
LAUGHLIN AND MIHALICH, NOVEMBER 12, 1991

REFERRED TO COMMITTEE ON LABOR RELATIONS, NOVEMBER 12, 1991

AN ACT

1 Amending the act of June 22, 1970 (P.L.378, No.122), entitled
2 "An act concerning nursing homes; providing for the licensing
3 of persons charged with the general administration of such
4 homes; prescribing the powers and duties of the State Board
5 of Examiners of Nursing Home Administrators; fixing fees and
6 making certain acts unlawful," further providing for
7 temporary and automatic suspensions; providing for
8 disciplinary proceedings; providing for appointment of
9 masters; and adding a definition of "permanent replacement."

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

12 Section 1. Section 2 of the act of June 22, 1970 (P.L.378,
13 No.122), known as the Nursing Home Administrators License Act,
14 is amended by adding a definition to read:

15 Section 2. Definitions.--As used in this act:

16 * * *

17 (9) "Permanent replacement" means a person, other than a
18 continuously employed management person, who offers himself for
19 employment during a labor dispute or an individual recruited or
20 hired by a nursing home administrator to replace an employe
21 involved in a labor dispute.

1 Section 2. Section 8.1(b) of the act, amended December 20,
2 1985 (P.L.375, No.106), is amended to read:

3 Section 8.1. Temporary and Automatic Suspensions.--* * *

4 (b) A license issued under this act shall automatically be
5 suspended upon:

6 (1) the legal commitment to an institution of a licensee
7 because of mental incompetency from any cause upon filing with
8 the board a certified copy of such commitment[,];

9 (2) conviction of a felony under the act of April 14, 1972
10 (P.L.233, No.64), known as "The Controlled Substance, Drug,
11 Device and Cosmetic Act," or conviction of an offense under the
12 laws of another jurisdiction, which, if committed in
13 Pennsylvania, would be a felony under "The Controlled Substance,
14 Drug, Device and Cosmetic [Act."] Act";

15 (3) the hiring, employment, recruitment or use of permanent
16 replacements during a legal strike or when employees are involved
17 in a collective bargaining dispute.

18 As used in this section the term "conviction" shall include a
19 judgment, an admission of guilt or a plea of nolo contendere.
20 Automatic suspension under this subsection shall not be stayed
21 pending any appeal of a conviction. Restoration of such license
22 shall be made as hereinafter provided in the case of revocation
23 or suspension of such license.

24 * * *

25 Section 3. Section 12(a) of the act is amended by adding a
26 paragraph to read:

27 Section 12. Disciplinary Proceedings.--(a) The license
28 and/or registration of any person practicing or offering to
29 practice nursing home administration may be revoked or
30 suspended, or such licensee may be reprimanded, censured or

1 otherwise disciplined in accordance with the provisions of this
2 section upon decision and after due hearing in any of the
3 following cases:

4 * * *

5 (7) Upon proof that the administrator of the nursing home
6 hired, employed, recruited or used permanent replacements during
7 a legal strike or when employees were, or currently are, involved
8 in a collective bargaining dispute.

9 * * *

10 Section 4. Section 14.1 of the act, added December 20, 1985
11 (P.L.375, No.106), is amended to read:

12 Section 14.1. Injunction Against Unlawful Practice.--(a) It
13 shall be unlawful for any person to practice or attempt to offer
14 to practice nursing home administration, as defined in this act,
15 without having at the time of so doing a valid, unexpired,
16 unrevoked and unsuspended license issued under this act. The
17 unlawful practice of nursing home administration as defined in
18 this act may be enjoined by the courts on petition of the board
19 or the Commissioner of Professional and Occupational Affairs. In
20 any such proceeding it shall not be necessary to show that any
21 person is individually injured by the actions complained of. If
22 the respondent is found guilty of the unlawful practice of
23 nursing home administration, the court shall enjoin him or her
24 from so practicing unless and until he or she has been duly
25 licensed. Procedure in such cases shall be the same as in any
26 other injunction suit. The remedy by injunction hereby given is
27 in addition to any other civil or criminal prosecution and
28 punishment.

29 (b) When a nursing home administrator violates sections
30 8.1(b)(3) and 12(a)(7) of this act, the board shall appoint a

1 qualified master to assume operation of the facility and provide
2 proper care for the nursing home residents. The master shall
3 assume all accounting, administrative and operational duties
4 during the labor dispute, at the owner's expense, until the
5 labor dispute has been settled through collective bargaining.
6 During the time period that the master assumes the duties
7 established in this section, he shall audit the records of the
8 nursing home and determine if temporary replacement employe
9 costs are less than those of employees involved in the labor
10 dispute. If the master determines that the costs of employing
11 the temporary replacements is less than the employees involved in
12 the labor dispute, the difference shall be returned to the
13 Commonwealth through accounting procedures established by the
14 board.

15 (c) To ensure that the nursing home has sufficient funds to
16 operate during the time period established in subsection (b),
17 the master may suspend all administrative and management salary
18 payments, compensation and nonessential expenses and remit the
19 accrued balance back to the board through accounting procedures
20 established by the board.

21 Section 5. Within 120 days of the effective date of this
22 act, the board shall adopt regulations and standards necessary
23 to carry out the amendments or additions of sections 2(9),
24 8.1(b), 12(a) and 14.1 of the act.

25 Section 6. This act shall take effect immediately.