

BILL

No. 25 of 2003

An Act to amend *The Personal Care Homes Act*

(Assented to _____, 2003)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

Short title

1 This Act may be cited as *The Personal Care Homes Amendment Act, 2003*.

S.S. 1989-90, c.P-6.01 amended

2 *The Personal Care Homes Act* is amended in the manner set forth in this Act.

Section 2 amended

3 Section 2 is amended:

(a) **by repealing clause (a) and substituting the following:**

“(a) ‘**administrator**’ means an administrator appointed pursuant to section 14.1 or 14.11;

“(a.1) ‘**court**’ means the Court of Queen’s Bench;

“(a.2) ‘**department**’ means the department over which the minister presides”;

(b) **by adding the following clause after clause (e):**

“(e.1) ‘**prescribed**’ means prescribed in the regulations”; **and**

(c) **by adding the following clause after clause (f):**

“(g) ‘**security**’ means, except in subsection 14.1(5), a bond or other security required to be furnished by an applicant for a licence or a renewed licence pursuant to subsection 8.1(2) or (3)”.

Section 4 amended

4 Section 4 is amended:

(a) **in clause (a) by striking out “prescribed” and substituting “approved”;**

(b) **by striking out “and” after clause (b);**

(c) **by adding “and” after clause (c); and**

(d) **by adding the following clause after clause (c):**

“(d) if required to do so pursuant to section 8.1, furnish security in the prescribed form and prescribed amount”.

New section 8.1

5 The following section is added after section 8:**“Security****8.1(1) In this section:**

(a) **‘existing personal care home’** means a personal care home for which, on the coming into force of this section, there is a valid licence;

(b) **‘new personal care home’** means a proposed personal care home or a personal care home for which, on the coming into force of this section, there is no valid licence.

(2) On and after the coming into force of this section, an applicant for a licence for a new personal care home that is intended to accommodate 21 or more residents must, as part of the applicant’s application:

(a) file a bond in the prescribed form and amount; or

(b) provide security in any other prescribed form and amount.

(3) If required to do so by the regulations, a licensee of an existing personal care home in any category prescribed for the purposes of this subsection must, as part of the licensee’s application for renewal of the licence:

(a) file a bond in the prescribed form and amount; or

(b) provide security in any other prescribed form and amount.

(4) If the minister considers it to be appropriate to do so, the minister may exempt:

(a) an applicant for a licence from the requirement to file a bond or provide security set out in subsection (2); or

(b) a licensee from the requirement to file a bond or provide security set out in subsection (3).

(5) A bond required pursuant to clause (2)(a) or (3)(a) must be issued by an insurer licensed pursuant to *The Saskatchewan Insurance Act* to transact guarantee insurance.

(6) Notwithstanding section 14, if a bond filed pursuant to clause (2)(a) or (3)(a) or other security provided pursuant to clause (2)(b) or (3)(b) is no longer in effect, the licensee’s licence is automatically suspended.

(7) If a licence is automatically suspended pursuant to subsection (6), the minister shall, within 15 days, provide written notice to the licensee of the suspension.

(8) Notwithstanding that the Crown in right of Saskatchewan has not suffered any loss or damage:

- (a) every bond filed pursuant to clause (2)(a) or (3)(a) must be construed as being a penal bond; and
- (b) if any bond is forfeited pursuant to subsection (9), the amount due and owing as a debt to the Crown in right of Saskatchewan by the person bound by the bond must be determined as if the Crown had suffered a loss or damage that would entitle the Crown to be indemnified to the maximum amount of liability set out in the bond.

(9) Every bond filed pursuant to clause (2)(a) or (3)(a) is forfeited on the demand of the minister if the minister has reason to believe that:

- (a) the licensee:
 - (i) has ceased to function or is otherwise unable to carry out the duties of the licensee relating to the operation of the personal care home or the care of the residents of the personal care home; and
 - (ii) has not provided the department with notice of intention to discontinue operation of the personal care home as required by the regulations;
- (b) the licensee has failed to comply with the requirements of this Act, the regulations or the terms and conditions of his or her licence and that failure to comply is of a sufficiently serious nature to warrant the suspension or cancellation of the licensee's licence; or
- (c) all of the following apply:
 - (i) the licensee has committed an offence pursuant to the *Criminal Code* against the person or involving fraud or theft or conspiracy to commit an offence involving fraud or theft; and
 - (ii) the offence mentioned in subclause (i) is of a sufficiently serious nature to warrant the suspension or cancellation of the licensee's licence.

(10) If the minister has reason to believe that any of the grounds set out in clauses (9)(a) to (c) exists, the minister may, in accordance with the regulations, demand recourse to any other security provided pursuant to clause (2)(b) or (3)(b).

(11) On a demand of the minister pursuant to subsection (10), the amount of the proceeds of the security is forfeited to the Crown in right of Saskatchewan.

(12) The minister may, by order, direct that any moneys recovered pursuant to a forfeited bond, or any moneys obtained by recourse to other security, be paid over in accordance with and on the conditions set forth in the order to an administrator appointed pursuant to section 14.1 or 14.11 with respect to the personal care home of the person named in the bond or other security or to an agent of the administrator.

(13) Any moneys not paid over pursuant to an order of the minister made pursuant to subsection (12) must, after the payment of any expenditures incurred by the minister in connection with the forfeiture of the bond or the recourse to the other security or by the administrator in carrying out the duties of the administrator, be refunded to the surety or obligor pursuant to the bond or other security”.

Section 12 amended

6 The following subsection is added after subsection 12(2):

“(3) If any record or information relating to the personal care home is stored or otherwise contained in a computer or other electronic system of information storage, the licensee or any other person having control of the computer or system shall:

- (a) give the minister or a person appointed pursuant to subsection 11(1) unfettered access to the computer or system for the purpose of obtaining a full copy of the information in any form that the minister or person appointed pursuant to subsection 11(1) requires; and
- (b) provide the minister or a person appointed pursuant to subsection 11(1) with any assistance that the minister or a person appointed pursuant to subsection 11(1) requires in gaining access to the information, including instruction in the use of the computer or system and provision of any access codes that may be required”.

New sections 14.1 to 14.9

7 The following sections are added after section 14:

“Appointment of administrator

14.1(1) The minister may appoint an administrator to act in the place of the licensee of a personal care home if the minister has reason to believe that:

- (a) the licensee:
 - (i) has ceased to function or is otherwise unable to carry out the duties of the licensee relating to the operation of the personal care home or the care of the residents of the personal care home; and
 - (ii) has not provided the department with written notice of intention to discontinue operation of the personal care home as required by the regulations;
- (b) the licensee has failed to comply with the requirements of this Act, the regulations or the terms and conditions of his or her licence and that failure to comply is of a sufficiently serious nature to warrant the suspension or cancellation of the licensee’s licence; or
- (c) the licensee has committed an offence pursuant to the *Criminal Code* against the person or involving fraud or theft or conspiracy to commit an offence involving fraud or theft, and the offence is of a sufficiently serious nature to warrant the suspension or cancellation of the licensee’s licence.

- (2) Subject to this section and sections 14.11 to 14.9, the minister may set the terms and conditions governing the powers and duties of an administrator.
- (3) The minister shall appoint an administrator for a term not exceeding six months, but may extend the term of an appointment if, in the opinion of the minister, there are exceptional circumstances that make the extension necessary.
- (4) The minister may determine the remuneration and reimbursement of expenses payable to an administrator.
- (5) An administrator may be appointed without security.
- (6) The minister may, at any time, terminate the appointment of an administrator and:
 - (a) appoint another administrator; or
 - (b) either:
 - (i) return control of the assets and the operation of the personal care home to the licensee; or
 - (ii) if the licensee is not the owner of the assets, return control of the assets to the owner.

“Application to court to appoint administrator

14.11(1) Notwithstanding section 14.1, the minister may apply to a judge of the court for an order to appoint an administrator to act in the place of the licensee of a personal care home.

- (2) The minister shall cause a copy of the application to be served on the following:
 - (a) the licensee;
 - (b) if the owner of the personal care home is not the licensee, the owner; and
 - (c) the regional health authority in which the personal care home is located.
- (3) On an application pursuant to this section, the court may make the order applied for, and may make any additional orders that the court considers appropriate, if the court is satisfied that it is in the best interests of the residents to do so and:
 - (a) the licensee:
 - (i) has ceased to function or is otherwise unable to carry out the duties of the licensee relating to the operation of the personal care home or the care of the residents of the personal care home; and
 - (ii) has not provided the department with written notice of intention to discontinue operation of the personal care home as required by the regulations;

- (b) the licensee has failed to comply with the requirements of this Act, the regulations or the terms and conditions of his or her licence and that failure to comply is of a sufficiently serious nature to warrant the suspension or cancellation of the licensee's licence; or
 - (c) the licensee has committed an offence pursuant to the *Criminal Code* against the person or involving fraud or theft or conspiracy to commit an offence involving fraud or theft, and the offence is of a sufficiently serious nature to warrant the suspension or cancellation of the licensee's licence.
- (4) The minister shall cause every order made pursuant to subsection (3) appointing an administrator to be provided, in any manner that the minister considers appropriate, to the following:
- (a) every employee of the personal care home;
 - (b) every resident of the personal care home or, if any resident has a personal decision-maker within the meaning of *The Adult Guardianship and Co-decision-making Act*, to the personal decision-maker of the resident.
- (5) The court may make an order appointing an administrator for a term not exceeding six months.
- (6) Notwithstanding subsection (5), the minister may apply for an order to appoint an administrator for a period greater than six months, and the court may make the order applied for.
- (7) The court may impose any terms and conditions that it considers necessary on an administrator appointed pursuant to this section.

“Duties of administrator

14.2(1) An administrator shall carry out all of the obligations of the licensee relating to the operation of the personal care home and the care of the residents of the personal care home.

(2) Subject to any exemption granted pursuant to clause 18(b), an administrator shall operate the personal care home in accordance with this Act and the regulations.

“Powers of administrator

14.21(1) On the appointment of an administrator:

- (a) the administrator:
 - (i) has all the powers and duties of the licensee with respect to the personal care home; and
 - (ii) has control of all assets of the licensee that are necessary for, or are used in, the operation of the personal care home; and
- (b) if the licensee is a corporation, the administrator has all the powers and duties of the directors and officers of the corporation with respect to the personal care home.

(2) An administrator may delegate any of the powers vested in the administrator.

(3) While the powers and duties of a licensee or the directors or officers of a licensee are vested in an administrator, the licensee, directors or officers, as the case may be, shall not exercise those powers or carry out those duties.

“Duties of licensee

14.3(1) On the appointment of an administrator, the licensee, any persons who act on the instructions of the licensee and any persons who have been given notice of the appointment of the administrator shall immediately grant access to the personal care home and to all possessions, assets and property that are necessary for the operation of the personal care home and the care of the residents of the personal care home.

(2) The licensee, any persons who act on the instructions of the licensee and any persons who have been given notice of the appointment of the administrator shall immediately deliver to the administrator:

(a) all real and personal property that is:

(i) owned or leased by the licensee or any partnership, firm or subsidiary corporation that is owned or controlled, directly or indirectly, by the licensee; and

(ii) used in connection with the personal care home;

(b) all books, records, documents and information of every kind relating to the personal care home; and

(c) all moneys, cheques, post-dated cheques, credit vouchers and remittances of every kind received at any time in relation to the personal care home.

(3) If any record or information relating to the personal care home is stored or otherwise contained in a computer or other electronic system of information storage, the licensee or any other person having control of the computer or system shall:

(a) give the administrator unfettered access to the computer or system for the purpose of obtaining a full copy of the information in any form that the administrator requires; and

(b) provide the administrator with any assistance that the administrator requires in gaining access to the information, including instruction in the use of the computer or system and provision of any access codes that may be required.

“Payments to administrator by residents

14.31 If an administrator is appointed with respect to a personal care home, a resident of the personal care home shall pay to the administrator all fees and charges that are due or accruing due pursuant to the resident's agreement with the licensee.

“Debts, etc., of licensee

14.4(1) Notwithstanding any other Act or law, an administrator is not liable for any debts or obligations incurred by the licensee.

(2) Without limiting the generality of subsection (1), section 83 of *The Labour Standards Act* does not apply to an administrator, and the vesting in an administrator of the powers of a licensee and the transfer of the operation of a personal care home to an administrator does not constitute a sale, lease, transfer or other disposition of the business of a licensee for the purposes of that section.

“Application for directions

14.41(1) An administrator may, at any time, apply to the court for directions respecting any matter relating to the powers or duties of the administrator.

(2) Subject to subsection (3), the administrator shall cause a copy of the application to be served on the following:

- (a) the licensee;
- (b) if the owner of the personal care home is not the licensee, the owner; and
- (c) the regional health authority in which the personal care home is located.

(3) An application pursuant to subsection (1) may be made *ex parte* if there is an imminent risk to the health, safety or well-being of the residents.

(4) Subject to subsection (5), on an application pursuant to subsection (1), the court may make any orders that it considers appropriate.

(5) No order as to costs shall be made against the administrator.

“Exemption from certain statutory requirements

14.5(1) Subject to subsection (2), an administrator is not required to comply with the provisions of *The Business Corporations Act*, *The Non-profit Corporations Act, 1995* or *The Co-operatives Act, 1996* that require a corporation or any director or other officer of the corporation to do any act or thing.

(2) An administrator shall comply with the requirements of any statutory provisions designated by the minister.

“Expenses of administration, etc.

14.6(1) Any costs incurred by an administrator in carrying out his or her duties, including the administrator’s remuneration and reimbursement for expenses, may be paid out of the following, in order of priority:

- (a) moneys derived by the administrator from the operation of the personal care home of the licensee;
- (b) moneys derived from the realization of the security furnished by the licensee;
- (c) moneys appropriated by the Legislature for that purpose.

(2) If an administrator pays any costs incurred in carrying out his or her duties out of moneys appropriated by the Legislature for that purpose, those costs are a debt due to the Crown by the licensee and may be recovered by the minister in the manner authorized by *The Financial Administration Act, 1993* or in any other manner authorized by law.

“Exemption from seizure, etc.

14.7 While the powers and duties of a licensee or the directors or officers of a licensee are vested in an administrator, all assets of the licensee that are necessary for, or are used in, the operation of the personal care home are exempt from execution, seizure and attachment.

“Priority, other claims

14.8(1) All moneys derived by the administrator from the operation of the personal care home of the licensee shall be applied in payment of the costs incurred by an administrator in carrying out his or her duties, including the administrator’s remuneration and reimbursement for expenses, prior to any other claims.

(2) No person with a claim against a licensee has any right to, or interest in, any moneys derived from the realization of the security furnished by the licensee or any moneys appropriated by the Legislature for the purposes of section 14.6.

“Approval of accounts

14.9(1) If an administrator is winding up the operation of a personal care home, the administrator shall apply to the court for approval of the final accounts after paying or making adequate provision for all claims with respect to the operation of the personal care home.

(2) If an administrator is returning the operation of a personal care home to the licensee or transferring the operation of the personal care home to a new licensee, the administrator shall apply to the court for approval of the final accounts after paying or making adequate provision for all claims with respect to the operation of the personal care home during the period of the administrator’s appointment.

(3) If the court approves the final accounts rendered by an administrator pursuant to subsection (1) or (2), the court shall:

- (a) issue directions with respect to the custody or disposal of the documents and records respecting the personal care home and the residents of the personal care home; and
- (b) discharge the administrator”.

Section 16 amended

8 Section 16 is amended:

- (a) by adding “an administrator,” after “the department,”; and
- (b) by adding “administrator,” after “, department,”.

Section 19 amended**9 Section 19 is amended:****(a) by adding the following clauses after clause (e):**

“(e.1) for the purposes of subsection 8.1(3), prescribing categories of existing personal care homes and requiring the licensees of personal care homes in those categories, on and from a prescribed date, to provide a bond or other security;

“(e.2) prescribing and governing the form and amount of a bond or other security to be provided pursuant to section 8.1;

“(e.3) governing recourse to a security in any form other than a bond”;

and

(b) by adding the following clause after clause (p):

“(p.1) prescribing any other matter or thing that is required or authorized by this Act to be prescribed in the regulations”.

Coming into force

10 This Act comes into force on proclamation.