

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 1546

7 H.P. 1165

House of Representatives, May 3, 1983

8 Submitted by the Department of Human Services pursuant to Joint Rule  
9 24.

10 Referred to the Committee on Judiciary. Sent up for concurrence and  
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Kelleher of Bangor.

11 Cosponsors: Representative Richard of Madison and Senator Brown of  
Washington.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT to Authorize Court Appointed  
18 Receivers.  
19

20 Be it enacted by the People of the State of Maine as  
21 follows:

22 22 MRSA c. 1666-A is enacted to read:

23 CHAPTER 1666-A

24 APPOINTMENT OF RECEIVERS

25 §7931. Policy

26 It is the purpose of this chapter to develop a  
27 mechanism whereby the concept of receivership can be  
28 utilized for the protection of residents in long-term  
29 care facilities.

30 §7932. Definitions

1       As used in this chapter, unless the context indi-  
2       cates otherwise, the following terms have the follow-  
3       ing meanings.

4       1. Emergency. "Emergency" means a situation,  
5       physical condition or one or more practices, methods  
6       or operations which presents imminent danger of death  
7       or serious physical or mental harm to residents,  
8       including, but not limited to, imminent or actual  
9       abandonment of an occupied facility.

10      2. Facility. "Facility" means any boarding care  
11      facility subject to licensure pursuant to chapters  
12      1663 and 1665 and any skilled nursing or intermediate  
13      care facility or unit subject to licensure pursuant  
14      to chapter 405.

15      3. Habitual violation. "Habitual violation"  
16      means a violation of state or federal law which, due  
17      to its repetition, presents a reasonable likelihood  
18      of serious physical or mental harm to residents.

19      4. Licensee. "Licensee" means any person or any  
20      other legal entity, other than a receiver appointed  
21      under section 7933, who is licensed or required to be  
22      licensed to operate a facility.

23      5. Owner. "Owner" means the holder of the title  
24      to the real estate in which the facility is main-  
25      tained.

26      6. Resident. "Resident" means any person who  
27      lives in and receives services or care in a long-term  
28      care facility.

29      7. Substantial violation. "Substantial viola-  
30      tion" means a violation of state or federal law which  
31      presents a reasonable likelihood of serious physical  
32      or mental harm to residents.

33      8. Transfer trauma. "Transfer trauma" means the  
34      combination of medical and psychological reactions to  
35      abrupt physical transfer that may increase the risk  
36      of grave illness or death.

37      §7933. Appointment of receiver

1        1. Grounds for appointment. The following cir-  
2 cumstances shall be grounds for the appointment of a  
3 receiver to operate a long-term care facility.

4        A. A facility intends to close but has not  
5 arranged at least 30 days prior to closure for  
6 the orderly transfer of its residents.

7        B. An emergency exists in a facility which  
8 threatens the health, security or welfare of res-  
9 idents.

10       C. A facility is in substantial or habitual  
11 violation of the standards of health, safety or  
12 resident care established under state or federal  
13 regulations to the detriment of the welfare of  
14 the residents.

15       This remedy is in addition to, and not in lieu of,  
16 the power of the department to revoke, suspend or  
17 refuse to renew a license under the Maine Administra-  
18 tive Procedure Act, Title 5, chapter 375.

19       2. Who may bring action. The department may  
20 bring an action in Superior Court requesting the  
21 appointment of a receiver.

22       3. Procedure for hearing. The procedure for a  
23 hearing shall be as follows.

24       A. The court shall hold a hearing not later than  
25 10 days after the action is filed, unless all  
26 parties agree to a later date. Notice of the  
27 hearing shall be served on both the owner and the  
28 licensee not less than 5 days before the hearing.  
29 If either the owner or the licensee cannot be  
30 served, the court shall specify the alternative  
31 notice to be provided. The department shall post  
32 notice, in a form approved by the court, in a  
33 conspicuous place in the facility, for not less  
34 than 3 days before the hearing. After the hear-  
35 ing, the court may appoint a receiver if it finds  
36 that any one of the grounds for appointment set  
37 forth is satisfied.

38       B. A temporary receiver may be appointed with or  
39 without notice to the owner or licensee if it

appears by verified complaint or affidavit that an emergency exists in the facility which must be remedied immediately to insure the health, safety and welfare of the residents. The temporary appointment of a receiver without notice to the owner or licensee may be made only if the court is satisfied that the petitioner has made a diligent attempt to provide reasonable notice under the circumstances. Upon appointment of a temporary receiver, the department shall proceed forthwith to make service as provided in paragraph A, and a hearing shall be held within 10 days, unless all parties agree to a later date. If the department does not proceed with the petition, the court shall dissolve the temporary receivership. On 2 days' notice to the receiver, all parties and the department, or on such shorter notice as the court may prescribe, the owner or licensee may appear and move the dissolution or modification of an order appointing a receiver which has been entered without notice, and in that event the court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

4. Who may be appointed receiver. The court may appoint any person deemed appropriate by the court to act as receiver, except any state employee. The court may remove a receiver for good cause.

5. Compensation of receiver. The court shall set a reasonable compensation for the receiver and may require the receiver to furnish a bond with such surety as the court may require. Any expenditures shall be paid from the revenues of the facility.

#### §7934. Powers and duties of the receiver

1. Powers and duties. A receiver appointed pursuant to this chapter shall have such powers as the court may direct to operate the facility and to remedy the conditions which constituted grounds for the receivership, to protect the health, safety and welfare of the residents and to preserve the assets and property of the residents, the owner and the licensee. On notice and hearing, the court may issue a writ of possession in behalf of the receiver, for specified facility property.

1 The receiver shall make reasonable efforts to notify  
2 residents and family that the facility is placed in  
3 receivership. The owner and licensee shall be  
4 divested of possession and control of the facility  
5 during the period of receivership under such condi-  
6 tions as the court shall specify. With the court's  
7 approval, the receiver shall have specific authority  
8 to:

9 A. Remedy violations of federal and state regu-  
10 lations governing the operation of the facility;

11 B. Hire, direct, manage and discharge any  
12 employees, including the administrator of the  
13 facility;

14 C. Receive and expend in a reasonable and pru-  
15 dent manner the revenues of the facility due  
16 during the 30-day period preceding the date of  
17 appointment and becoming due thereafter;

18 D. Continue the business of the home and the  
19 care of residents;

20 E. Correct or eliminate any deficiency of the  
21 facility which endangers the safety or health of  
22 the residents, provided that the total cost of  
23 the correction does not exceed \$3,000. The court  
24 may order expenditures for this purpose in excess  
25 of \$3,000 on application from the receiver; and

26 F. Exercise such additional powers and perform  
27 such additional duties, including regular ac-  
28 countings, as the court deems appropriate.

29 2. Revenues of the facility. Revenues of the  
30 facility shall be handled as follows.

31 A. The receiver shall apply the revenues of the  
32 facility to current operating expenses and, sub-  
33 ject to the following provisions, to debts incur-  
34 red by the licensee prior to the appointment of  
35 the receiver. The receiver shall ask the court  
36 for direction in the treatment of debts incurred  
37 prior to appointment where such debts appear  
38 extraordinary, of questionable validity, or unre-  
39 lated to the normal and expected maintenance and

1 operation of the facility, or where payment of  
2 the debts will interfere with the purposes of the  
3 receivership. Priority shall be given by the  
4 receiver to expenditures for current direct resi-  
5 dent care. Revenues held by or owing to the  
6 receiver in connection with the operation of the  
7 facility shall be exempt from attachment and  
8 trustee process, including process served prior  
9 to the institution of receivership proceedings.

10 B. The receiver may correct or eliminate any  
11 deficiency of the facility which endangers the  
12 safety or health of the resident, provided that  
13 the total costs of the correction does not exceed  
14 \$3,000. On application by the receiver, the  
15 court may order expenditures for this purpose in  
16 excess of \$3,000. The licensee or owner may apply  
17 to the court to determine the reasonableness of  
18 any expenditure over \$3,000 by the receiver.

19 C. In the event that the receiver does not have  
20 sufficient funds to cover expenses needed to pre-  
21 vent or remove jeopardy to the residents, the  
22 receiver may petition the court for permission to  
23 borrow for those purposes. Notice of the  
24 receiver's petition to the court for permission  
25 to borrow shall be given to the owner, the licen-  
26 see and the department. The court may, after  
27 hearing, authorize the receiver to borrow money  
28 upon specified terms of repayment and to pledge  
29 security, if necessary, if the court determines  
30 that the facility should be closed, and that the  
31 expenditure is necessary to prevent or remove  
32 jeopardy to residents for the limited period of  
33 time that they are awaiting transfer. The pur-  
34 pose of this provision is to protect residents  
35 and to prevent the closure of facilities which,  
36 under proper management, are likely to be viable  
37 operations. This section shall not be construed  
38 as a method of financing major repair or capital  
39 improvements to facilities which have been  
40 allowed to deteriorate because the owner or  
41 licensee has been unable or unwilling to secure  
42 financing by conventional means.

43 D. The receiver may apply for funds available  
44 under section 7935. These funds shall be

1       expended only upon the terms and conditions  
2       specified by the department.

3       3. Avoidance of preexisting leases, mortgages  
4       and contracts. A receiver may not be required to  
5       honor any lease, mortgage, secured transaction or  
6       other contract entered into by the owner or licensee  
7       of the facility if the court finds that:

8           A. The person seeking payment under the agree-  
9           ment has an ownership interest in the facility or  
10          was related to the licensee or the facility by  
11          any significant degree of common ownership or  
12          control at the time the agreement was made; or

13          B. The rental, price or rate of interest re-  
14          quired to be paid under the agreement is in  
15          excess of a reasonable rental, price or rate of  
16          interest.

17       If the receiver is in possession of real estate or  
18       goods subject to a lease, mortgage or security inter-  
19       est which the receiver is permitted to avoid and if  
20       the real estate or goods are necessary for the con-  
21       tinued operation of the facility, the receiver may  
22       apply to the court to set a reasonable rental, price  
23       or rate of interest to be paid by the receiver during  
24       the term of the receivership. The court shall hold a  
25       hearing on the application within 15 days, and the  
26       receiver shall send notice of the application to any  
27       known owners and mortgagees of the property at least  
28       10 days before the hearing. Payment by the receiver  
29       of the amount determined by the court to be reason-  
30       able is a defense to any action against the receiver  
31       for payment or for the possession of the subject  
32       goods or real estate by any person who received such  
33       notice.

34       Notwithstanding this subsection, there shall be no  
35       foreclosure or eviction during the receivership by  
36       any person where the foreclosure or eviction would,  
37       in view of the court, serve to defeat the purpose of  
38       the receivership.

39       4. Closing of the facility. The receiver may  
40       not close the facility without leave of the court.  
41       In ruling on the issue of closure, the court shall  
42       consider:



1 A. The rights and best interests of the resi-  
2 dents;

3 B. The availability of suitable alternative  
4 placements;

5 C. The rights, interest and obligations of the  
6 owner and licensee;

7 D. The licensure status of the facility; and

8 E. Any other factors which the court deems rele-  
9 vant.

10 When a facility is closed, the receiver shall provide  
11 for the orderly transfer of residents to mitigate  
12 transfer trauma.

13 §7935. Special Revolving Fund

14 A Special Revolving Fund is established in this  
15 section for the purpose of providing financial sup-  
16 port for receivers to perform the functions enumer-  
17 ated in section 7934, subsection 1. The Special  
18 Revolving Fund may only be utilized for expenditures  
19 which cannot be satisfied by resources already in the  
20 possession of the receiver or 3rd party loans. Any  
21 balance remaining at the end of the fiscal year shall  
22 be carried forward to be used for the same purpose.  
23 The department may grant such loans from the fund  
24 upon terms and conditions as will both further the  
25 purposes of this section and give adequate assurance  
26 of repayment. The department may require the  
27 receiver to give a security interest in facility  
28 property in his possession.

29 §7936. Termination of receivership

30 The receivership shall terminate when the court  
31 certifies that the conditions which prompted the  
32 appointment have been corrected or, in the case of a  
33 discontinuance of operation, when the residents are  
34 safely relocated. The court shall review the neces-  
35 sity of the receivership at least semiannually.

36 A receivership shall not be terminated in favor  
37 of the former or the new licensee, unless such person

1 assumes all obligations incurred by the receiver and  
2 provides collateral or other assurances of payment  
3 deemed sufficient by the court.

4 §7937. Liability of receiver

5 No person may bring suit against a receiver  
6 appointed under section 7933 without first securing  
7 leave of the court. Except in cases of gross negli-  
8 gence or intentional wrongdoing, the receiver is lia-  
9 ble in his official capacity only and any judgment  
10 rendered shall be satisfied out of receivership  
11 assets. The State, or any department, agency, offi-  
12 cier or employee thereof, shall be immune from suit on  
13 any and all tort or contract claims seeking recovery  
14 of damages arising out of actions undertaken by a  
15 receiver.

16 §7938. Court order to have effect of license

17 An order appointing a receiver under section 7933  
18 shall have the effect of a license for the duration  
19 of the receivership. The receiver shall be responsi-  
20 ble to the court for the conduct of the facility  
21 during the receivership, and any violation of regula-  
22 tions governing the conduct of the facility, if not  
23 promptly corrected, shall be reported by the depart-  
24 ment to the court.

25 §7939. Rule-making authority to implement receiver-  
26 ship law

27 The department may adopt regulations as neces-  
28 sary, pursuant to the Maine Administrative Procedure  
29 Act, Title 5, chapter 375, to implement this chapter.

30 STATEMENT OF FACT

31 Currently, there is no mechanism for continuing  
32 the operation of a long-term care facility whose  
33 operators have demonstrated an unwillingness or  
34 inability to comply with state licensing standards.  
35 This bill provides the department with an alternative  
36 to the issuance of a conditional license, which re-  
37 quires the operator to make needed corrections, and  
38 to the revocation of a facility's license.

This bill authorizes receivership proceedings to be brought by the Department of Human Services when the welfare of facility residents is in jeopardy. Court hearings must be conducted within 10 days of a petition for receivership. Ex parte proceedings may be held only in the event of an emergency.

The court may appoint any responsible person, other than a state employee, to be the receiver. The receiver is allowed to operate the facility essentially as an owner under court supervision.

3103040183