

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 519
Human Resources Committee Substitute Adopted 4/12/89

Short Title: Continuing Care Centers.

(Public)

Sponsors:

Referred to:

March 20, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO CONTINUE REGISTRATION AND DISCLOSURE BY AND TO
3 PROVIDE FOR FINANCIAL EVALUATION OF CONTINUING CARE
4 FACILITIES.

5 The General Assembly of North Carolina enacts:

6 Section 1. Chapter 58 of the General Statutes is amended by adding a new
7 Article to read:

8 **“ARTICLE 50.**

9 **“REGISTRATION, DISCLOSURE, CONTRACT, AND FINANCIAL**
10 **MONITORING REQUIREMENTS FOR CONTINUING CARE FACILITIES.**

11 **“§ 58-765. Definitions.**

12 As used in this Article, unless otherwise specified:

- 13 (1) ‘Continuing care’ means the furnishing to an individual other than an
14 individual related by blood, marriage, or adoption to the person
15 furnishing the care, of lodging together with nursing services, medical
16 services, or other health related services, pursuant to an agreement
17 effective for the life of the individual or for a period in excess of one
18 year.
- 19 (2) ‘Entrance fee’ means a payment that assures a resident a place in a
20 facility for a term of years or for life.
- 21 (3) ‘Facility’ means the place or places in which a provider undertakes to
22 provide continuing care to an individual.

- 1 (4) 'Health related services' means, at a minimum, nursing home
2 admission or assistance in the activities of daily living, exclusive of the
3 provision of meals or cleaning services.
- 4 (5) 'Living unit' means a room, apartment, cottage, or other area within a
5 facility set aside for the exclusive use or control of one or more
6 identified residents.
- 7 (6) 'Provider' means the promoter, developer, or owner of a continuing
8 care facility, whether a natural person, partnership, or other
9 unincorporated association, however organized, trust, or corporation,
10 of an institution, building, residence, or other place, whether operated
11 for profit or not, or any other person, that solicits or undertakes to
12 provide continuing care under a continuing care facility contract, or
13 that represents himself or itself as providing continuing care of 'life
14 care.'
- 15 (7) 'Resident' means a purchaser of, a nominee of, or a subscriber to, a
16 continuing care contract.
- 17 (8) 'Hazardous financial condition' means a provider is insolvent or in
18 eminent danger of becoming insolvent.

19 **"§ 58-766. License.**

20 (a) No provider shall engage in the business of providing continuing care in this
21 State without a license to do so obtained from the Commissioner as provided in this
22 Article.

23 (b) The application for a license shall be filed with the Department by the
24 provider on forms prescribed by the Department and within a period of time prescribed
25 by the Department; and shall include all information required by the Department
26 pursuant to rules adopted by it under this Article including, but not limited to, the
27 disclosure statement meeting the requirements of this Article and other financial and
28 facility development information required by the Department. The application for a
29 license must be accompanied by an application fee of two hundred dollars (\$200.00).

30 (c) Upon receipt of the complete application for a license in proper form, the
31 Department shall, within 10 business days, issue a notice of filing to the applicant.
32 Within 90 days of the notice of filing, the Department shall enter an order issuing the
33 license or rejecting the application.

34 (d) If the Commissioner determines that any of the requirements of this Article
35 have not been met, the Commissioner shall notify the applicant that the application must
36 be corrected within 30 days in such particulars as designated by the Commissioner. If
37 the requirements are not met within the time allowed, the Commissioner may enter an
38 order rejecting the application, which order shall include the findings of fact upon which
39 the order is based and which shall not become effective until 20 days after the end of the
40 30-day period. During the 20-day period, the applicant may petition for reconsideration
41 and is entitled to a hearing.

42 (e) If a facility is accredited by a process approved by the Commissioner as
43 substantially equivalent to the requirements of this section, then the facility shall be

1 deemed to have met the requirements of this section and the Commissioner shall issue a
2 license to the facility.

3 (f) The Commissioner may, on an annual basis or on a more frequent basis if he
4 deems it to be necessary, in addition to the annual disclosure statement revision required
5 by G.S. 58-771, require every licensed provider to file with the Department any of the
6 information provided by G.S. 58-766(b) for new licensure that the Commissioner,
7 pursuant to rules adopted by him under this Article, determines is needed for review of
8 licensed providers.

9 **"§ 58-767. Revocation of license.**

10 (a) The license of a provider shall remain in effect until revoked after notice and
11 hearing, upon written findings of fact by the Commissioner, that the provider has:

- 12 (1) Willfully violated any provision of this Article or of any rule or order
13 of the Commissioner;
- 14 (2) Failed to file an annual disclosure statement or standard form of
15 contract as required by this Article;
- 16 (3) Failed to deliver to prospective residents the disclosure statements
17 required by this Article;
- 18 (4) Delivered to prospective residents a disclosure statement that makes an
19 untrue statement or omits a material fact and the provider, at the time
20 of the delivery of the disclosure statement, had actual knowledge of
21 the misstatement or omission;
- 22 (5) Failed to comply with the terms of a cease and desist order; or
23 (6) Has been determined by the Commissioner to be in a hazardous
24 financial condition.

25 (b) Findings of fact in support of revocation shall be accompanied by an explicit
26 statement of the underlying facts supporting the findings.

27 (c) If the Commissioner has good cause to believe that the provider is guilty of a
28 violation for which revocation could be ordered, the Commissioner may first issue a
29 cease and desist order. If the cease and desist order is not or cannot be effective in
30 remediating the violation, the Commissioner may, after notice and hearing, order that the
31 license be revoked and surrendered. Such a cease and desist order may be appealed to
32 the Superior Court of Wake County in the manner provided by G.S. 58-54.8.

33 **"§ 58-768. Sale or transfer of ownership.**

34 No license is transferable, and no license issued pursuant to this Article has value for
35 sale or exchange as property. No provider or other owning entity shall sell or transfer
36 ownership of the facility, or enter into a contract with a third-party provider for
37 management of the facility, unless the Commissioner approves such transfer or contract.

38 **"§ 58-769. Disclosure statement.**

39 (a) At the time of, or prior to, the execution of a contract to provide continuing
40 care, or at the time of, or prior to, the transfer of any money or other property to a
41 provider by or on behalf of a prospective resident, whichever occurs first, the provider
42 shall deliver a current disclosure statement to the person with whom the contract is to be
43 entered into, the text of which shall contain at least:

- 1 (1) The name and business address of the provider and a statement of
2 whether the provider is a partnership, corporation, or other type of
3 legal entity.
- 4 (2) The names and business addresses of the officers, directors, trustees,
5 managing or general partners, any person having a ten percent (10%)
6 or greater equity or beneficial interest in the provider, and any person
7 who will be managing the facility on a day-to-day basis, and a
8 description of these persons' interests in or occupations with the
9 provider.
- 10 (3) The following information on all persons named in response to
11 subdivision (2) of this section:
- 12 a. A description of the business experience of this person, if any,
13 in the operation or management of similar facilities;
- 14 b. The name and address of any professional service firm,
15 association, trust, partnership, or corporation in which this
16 person has, or which has in this person, a ten percent (10%) or
17 greater interest and which it is presently intended shall currently
18 or in the future provide goods, leases, or services to the facility,
19 or to residents of the facility, of an aggregate value of five
20 hundred dollars (\$500.00) or more within any year, including a
21 description of the goods, leases, or services and the probable or
22 anticipated cost thereof to the facility, provider, or residents or a
23 statement that this cost cannot presently be estimated; and
- 24 c. A description of any matter in which the person (i) has been
25 convicted of a felony or pleaded **nolo contendere** to a felony
26 charge, or been held liable or enjoined in a civil action by final
27 judgment, if the felony or civil action involved fraud,
28 embezzlement, fraudulent conversion, or misappropriation of
29 property; or (ii) is subject to a currently effective injunctive or
30 restrictive court order, or within the past five years, had any
31 State or federal license or permit suspended or revoked as a
32 result of an action brought by a governmental agency or
33 department, if the order or action arose out of or related to
34 business activity of health care, including actions affecting a
35 license to operate a foster care facility, nursing home,
36 retirement home, home for aged, or facility subject to this
37 Article or a similar law in another state.
- 38 (4) A statement as to whether the provider is, or is not affiliated with, a
39 religious, charitable, or other nonprofit organization, the extent of the
40 affiliation, if any, the extent to which the affiliate organization will be
41 responsible for the financial and contract obligations of the provider,
42 and the provision of the Federal Internal Revenue Code, if any, under
43 which the provider or affiliate is exempt from the payment of income
44 tax.

- 1 (5) The location and description of the physical property or properties of
2 the facility, existing or proposed, and to the extent proposed, the
3 estimated completion date or dates, whether construction has begun,
4 and the contingencies subject to which construction may be deferred.
- 5 (6) The services provided or proposed to be provided pursuant to contracts
6 for continuing care at the facility, including the extent to which
7 medical care is furnished, and a clear statement of which services are
8 included for specified basic fees for continuing care and which
9 services are made available at or by the facility at extra charge.
- 10 (7) A description of all fees required of residents, including the entrance
11 fee and periodic charges, if any. The description shall include:
- 12 a. A statement of the fees that will be charged if the resident
13 marries while at the facility, and a statement of the terms
14 concerning the entry of a spouse to the facility and the
15 consequences if the spouse does not meet the requirements for
16 entry;
- 17 b. The circumstances under which the resident will be permitted to
18 remain in the facility in the event of possible financial
19 difficulties of the resident;
- 20 c. The terms and conditions under which a contract for continuing
21 care at the facility may be canceled by the provider or by the
22 resident, and the conditions, if any, under which all or any
23 portion of the entrance fee will be refunded in the event of
24 cancellation of the contract by the provider or by the resident or
25 in the event of the death of the resident prior to or following
26 occupancy of a living unit;
- 27 d. The conditions under which a living unit occupied by a resident
28 may be made available by the facility to a different or new
29 resident other than on the death of the prior resident; and
- 30 e. The manner by which the provider may adjust periodic charges
31 or other recurring fees and the limitations on these adjustments,
32 if any; and, if the facility is already in operation, or if the
33 provider or manager operates one or more similar continuing
34 care locations within this State, tables shall be included
35 showing the frequency and average dollar amount of each
36 increase in periodic charges, or other recurring fees at each
37 facility or location for the previous five years, or such shorter
38 period as the facility or location may have been operated by the
39 provider or manager.
- 40 (8) The health and financial condition required for an individual to be
41 accepted as a resident and to continue as a resident once accepted,
42 including the effect of any change in the health or financial condition
43 of a person between the date of entering into a contract for continuing
44 care and the date of initial occupancy of a living unit by that person.

- 1 (9) The provisions that have been made or will be made, if any, to provide
2 reserve funding or security to enable the provider to perform its
3 obligations fully under contracts to provide continuing care at the
4 facility, including the establishment of escrow accounts, trusts, or
5 reserve funds, together with the manner in which these funds will be
6 invested, and the names and experience of any individuals in the direct
7 employment of the provider who will make the investment decisions.
- 8 (10) Financial statements of the provider certified to by an independent
9 public accountant as of the end of the most recent fiscal year or such
10 shorter period of time as the provider shall have been in existence. If
11 the provider's fiscal year ended more than 120 days prior to the date
12 the disclosure statement is recorded, interim financial statements as of
13 a date not more than 90 days prior to the date of recording the
14 statement shall also be included, but need not be certified to by an
15 independent certified public accountant.
- 16 (11) A summary of a report of an actuary, updated at least every five years,
17 that estimates the capacity of the provider to meet its contractual
18 obligation to the residents. Disclosure statements of continuing care
19 facilities established prior to January 1, 1988, do not need an actuarial
20 report or summary until January 1, 1993.
- 21 (12) For proposed or development stage facilities, a statement of the
22 anticipated sources and uses of funds, including but not limited to:
- 23 a. An estimate of the cost of the acquisition of the facility or, if the
24 facility is to be constructed, an estimate of the cost of the
25 acquisition of the land and construction cost of the facility;
- 26 b. An estimate of the marketing and resident acquisition costs to
27 be incurred prior to commencement of operations;
- 28 c. An estimate of related costs such as financing fees, legal
29 expenses, feasibility study fees and any other development costs
30 which the provider anticipates to incur or become obligated for
31 prior to the commencement of operations;
- 32 d. A description of any equity capital to be received by the
33 facility;
- 34 e. A description of any long-term financing for the purchase or
35 construction of the facility;
- 36 f. An estimate of the total life occupancy fees to be received from
37 or on behalf of, residents at, or prior to, commencement of
38 operations;
- 39 g. A description of any other funding sources which the provider
40 anticipates using to fund any start-up losses or to provide
41 reserve funds to assure full performance of the obligations of
42 the provider under contracts for the provision of continuing
43 care; and

- 1 h. Note disclosure detailing all significant assumptions used in the
2 preparation of the statement of sources and uses of funds,
3 including but not limited to: information regarding the
4 requirements for the refund of residents life occupancy fees, if
5 any, as required in the contracts for continuing care; a
6 description of the provider's anticipated accounting method
7 used in the recognition of revenue from life occupancy fees; all
8 pertinent details of long-term financing to include interest rate,
9 repayment terms, and, if applicable, loan covenants; and all
10 pertinent details regarding the financing costs and repayment
11 terms of other financing sources.
- 12 (13) Forecast statements of revenues and expenses and cash flows for the
13 facility for each of the next five fiscal years, including but not limited
14 to:
- 15 a. Detail of revenues and support to include the following
16 categories as a minimum: members' residency charges,
17 amortization of life occupancy fees, guests' meals and lodging,
18 health center routine services, health center special services,
19 health center adjustments and allowances, investment income,
20 contributions for restricted projects and gifts and bequests;
21 b. Detail of operating expenses to include the following categories
22 as a minimum: health center, dietary, housekeeping,
23 maintenance, administration, development and marketing,
24 depreciation, and interest; and
25 c. Note disclosure detailing all significant assumptions used in the
26 preparation of the statements of revenues and expenses and cash
27 flows, including but not limited to: information regarding the
28 requirements for the refund of residents' life occupancy fees, if
29 any, as required in the contracts for continuing care; a
30 description of the provider's accounting method used in the
31 recognition of revenue from life occupancy fees; a schedule of
32 residency charges anticipated to be charged, including
33 estimated occupancy percentages and the effect, if any, of
34 government subsidies for health care services to be provided
35 pursuant to the contracts for continuing care; all pertinent
36 details of long-term financing, to include interest rate,
37 repayment terms, and, if applicable, loan covenants; an estimate
38 of any reserves that might be required for the replacement of
39 equipment or furnishings or anticipated major structural repairs
40 or additions; and all pertinent details regarding the financing
41 costs and repayment terms of other financing sources.
- 42 (14) The estimated number of residents of the facility to be provided
43 services by the provider pursuant to the contract for continuing care.

1 (15) Any other material information concerning the facility or the provider
2 which, if omitted, would lead a reasonable person not to enter into this
3 contract.

4 (b) The cover page of the disclosure statement shall state, in a prominent
5 location and in boldface type, the date of the disclosure statement, the last date through
6 which that disclosure statement may be delivered if not earlier revised, and that the
7 delivery of the disclosure statement to a contracting party before the execution of a
8 contract for the provision of continuing care is required by this Article but that the
9 disclosure statement has not been reviewed or approved by any government agency or
10 representative to ensure accuracy or completeness of the information set out.

11 (c) A copy of the standard form of contract for continuing care used by the
12 provider shall be attached to each disclosure statement.

13 (d) The Commissioner, by rules adopted by him under this Article, may prescribe
14 a standardized format for the disclosure statement required by this section.

15 **§ 58-770. Contract for continuing care; specifications.**

16 (a) Each contract for continuing care shall provide that:

17 (1) The party contracting with the provider may rescind the contract
18 within 30 days following the later of the execution of the contract or
19 the receipt of a disclosure statement that meets the requirements of this
20 section, in which event any money or property transferred to the
21 provider, other than periodic charges specified in the contract and
22 applicable only to the period a living unit was actually occupied by the
23 resident, shall be returned in full, and the resident to whom the
24 contract pertains is not required to move into the facility before the
25 expiration of the 30-day period; and

26 (2) If a resident dies before occupying a living unit in the facility, or if, on
27 account of illness, injury, or incapacity, a resident would be precluded
28 from occupying a living unit in the facility under the terms of the
29 contract for continuing care, the contract is automatically canceled and
30 the resident or legal representative of the resident shall receive a
31 refund of all money or property transferred to the provider, less (i)
32 those nonstandard costs specifically incurred by the provider or facility
33 at the request of the resident and described in the contract or an
34 addendum thereto signed by the resident, and (ii) a reasonable service
35 charge, if set out in the contract, not to exceed the greater of one
36 thousand dollars (\$1,000) or two percent (2%) of the entrance fee.

37 (b) Each contract shall include provisions that specify the following:

38 (1) The total consideration to be paid;

39 (2) Services to be provided;

40 (3) The procedures the provider shall follow to change the resident's
41 accommodation if necessary for the protection of the health or safety
42 of the resident or the general and economic welfare of the residents;

43 (4) The policies to be implemented if the resident cannot pay the periodic
44 fees;

- 1 (5) The terms governing the refund of any portion of the entrance fee in
2 the event of discharge by the provider or cancellation by the resident;
- 3 (6) The policy regarding increasing the periodic fees;
- 4 (7) The description of the living quarters;
- 5 (8) Any religious or charitable affiliations of the provider and the extent, if
6 any, to which the affiliate organization will be responsible for the
7 financial and contractual obligations of the provider;
- 8 (9) Any property rights of the resident;
- 9 (10) The policy, if any, regarding fee adjustments if the resident is
10 voluntarily absent from the facility; and
- 11 (11) Any requirement, if any, that the resident apply for Medicaid, public
12 assistance, or any public benefit program.

13 **"§ 58-771. Annual disclosure statement revision.**

14 (a) Within 150 days following the end of each fiscal year, the provider shall file
15 with the Commissioner a revised disclosure statement setting forth current information
16 required pursuant to G.S. 58-769. The provider shall also make this revised disclosure
17 statement available to all the residents of the facility. This revised disclosure statement
18 shall include a narrative describing any material differences between (i) the forecast
19 statements of revenues and expenses and cash flows or other forecast financial data filed
20 pursuant to G.S. 58-769 as a part of the disclosure statement recorded most immediately
21 subsequent to the start of the provider's most recently completed fiscal year and (ii) the
22 actual results of operations during that fiscal year, together with the revised forecast
23 statements of revenues and expenses and cash flows or other forecast financial data
24 being filed as a part of the revised disclosure statement. A provider may also revise its
25 disclosure statement and have the revised disclosure statement recorded at any other
26 time if, in the opinion of the provider, revision is necessary to prevent an otherwise
27 current disclosure statement from containing a material misstatement of fact or omitting
28 a material fact required to be stated therein. Only the most recently recorded disclosure
29 statement, with respect to a facility, and in any event, only a disclosure statement dated
30 within one year plus 150 days prior to the date of delivery, shall be considered current
31 for purposes of this Article or delivered pursuant to G.S. 58-769.

32 (b) The annual disclosure statement required to be filed with the Commissioner
33 under this section shall be accompanied by an annual filing fee of one hundred dollars
34 (\$100.00).

35 **"§ 58-772. Escrow, collection of deposits.**

36 (a) A provider shall establish an escrow account with (i) a bank, (ii) a trust
37 company, or (iii) another person or entity agreed upon by the provider and the resident.
38 The terms of this escrow account shall provide that the total amount of any entrance fee
39 received by the provider prior to the date the resident is permitted to occupy a living
40 unit in the facility be placed in this escrow account. These funds may be released only
41 as follows:

- 42 (1) If the entrance fee applies to a living unit that has been previously
43 occupied in the facility, the entrance fee shall be released to the

1 provider when the living unit becomes available for occupancy by the
2 new resident;

3 (2) If the entrance fee applies to a living unit which has not previously
4 been occupied by any resident, the entrance fee shall be released to the
5 provider when the escrow agent is satisfied that:

6 a. Construction or purchase of the living unit has been completed
7 and an occupancy permit, if applicable, covering the living unit
8 has been issued by the local government having authority to
9 issue such permits;

10 b. A commitment has been received by the provider for any
11 permanent mortgage loan or other long-term financing, and any
12 conditions of the commitment prior to disbursement of funds
13 thereunder have been substantially satisfied; and

14 c. Aggregate entrance fees received or receivable by the provider
15 pursuant to binding continuing care retirement community
16 contracts, plus the anticipated proceeds of any first mortgage
17 loan or other long-term financing commitment are equal to not
18 less than ninety percent (90%) of the aggregate cost of
19 constructing or purchasing, equipping, and furnishing the
20 facility plus not less than ninety percent (90%) of the funds
21 estimated in the statement of anticipated source and application
22 of funds submitted by the provider as that part of the disclosure
23 statement required by G.S. 58-769, to be necessary to fund
24 start-up losses and assure full performance of the obligations of
25 the provider pursuant to continuing care retirement community
26 contracts.

27 (b) Upon receipt by the escrow agent of a request by the provider for the release
28 of these escrow funds, the escrow agent shall approve release of the funds within five
29 working days unless the escrow agent finds that the requirements of subsection (a) of
30 this section have not been met and notifies the provider of the basis for this finding.
31 The request for release of the escrow funds shall be accompanied by any documentation
32 the fiduciary requires.

33 (c) If the provider fails to meet the requirements for release of funds held in this
34 escrow account within a time period the escrow agent considers reasonable, these funds
35 shall be returned by the escrow agent to the persons who have made payment to the
36 provider. The escrow agent shall notify the provider of the length of this time period
37 when the provider requests release of the funds.

38 (d) An entrance fee held in escrow may be returned by the escrow agent to the
39 person who made payment to the provider at any time upon receipt by the escrow agent
40 of notice from the provider that this person is entitled to a refund of the entrance fee.

41 **"§ 58-773. Right to organization.**

42 (a) A resident living in a facility registered under this Article has the right of self-
43 organization, the right to be represented by an individual of his own choosing, and the

1 right to engage in concerted activities to keep informed on the operation of the facility
2 in which he is a resident or for other mutual aid or protection.

3 (b) The board of directors or other governing body of a continuing care facility or
4 its designated representative shall hold annual meetings with the residents of the
5 continuing care facility for free discussions of subjects including, but not limited to,
6 income, expenditures, and financial trends and problems as they apply to the facility and
7 discussions of proposed changes in policies, programs, and services. Residents shall be
8 entitled to at least seven days advance notice of each meeting. An agenda and any
9 materials that will be distributed by the governing body at the meetings shall remain
10 available upon request to residents.

11 **"§ 58-774. Rehabilitation or liquidation.**

12 (a) If, at any time, the Commissioner determines, after notice and an opportunity
13 for the provider to be heard, that:

14 (1) A portion of an entrance fee escrow account required to be maintained
15 under this Article has been or is proposed to be released in violation of
16 this Article;

17 (2) A provider has been or will be unable, in such a manner as may
18 endanger the ability of the provider, to fully perform its obligations
19 pursuant to contracts for continuing care, to meet the projected
20 financial data previously filed by the provider;

21 (3) A provider has failed to maintain the escrow account required under
22 this Article; or

23 (4) A facility is bankrupt or insolvent, or in imminent danger of becoming
24 bankrupt or insolvent;

25 the Commissioner may apply to the Superior Court of Wake County or to the federal
26 bankruptcy court that may have previously taken jurisdiction over the provider or
27 facility for an order directing the Commissioner or authorizing the Commissioner to
28 appoint a trustee to rehabilitate or to liquidate a facility.

29 (b) An order to rehabilitate a facility shall direct the Commissioner or trustee to
30 take possession of the property of the provider and to conduct the business thereof,
31 including the employment of such managers or agents as the Commissioner or trustee
32 may deem necessary and to take such steps as the Court may direct toward removal of
33 the causes and conditions which have made rehabilitation necessary.

34 (c) If, at any time, the Court finds, upon petition of the Commissioner, trustee or
35 provider, or on its own motion, that the objectives of an order to rehabilitate a facility
36 have been accomplished and that the facility can be returned to the provider's
37 management without further jeopardy to the residents of the facility, the Court may,
38 upon a full report and accounting of the conduct of the facility's affairs during the
39 rehabilitation and of the facility's current financial condition, terminate the rehabilitation
40 and, by order, return the facility and its assets and affairs to the provider's management.

41 (d) If, at any time, the Commissioner determines that further efforts to
42 rehabilitate the provider would be useless, the Commissioner may apply to the Court for
43 an order of liquidation.

44 (e) An order to liquidate a facility:

1 (1) May be issued upon application of the Commissioner whether or not
2 there has been issued a prior order to rehabilitate the facility.

3 (2) Shall act as a revocation of the license of the facility under this Article.

4 (3) Shall include an order directing the Commissioner or a trustee to
5 marshal and liquidate all of the provider's assets located within this
6 State.

7 (f) In applying for an order to rehabilitate or liquidate a facility, the
8 Commissioner shall give due consideration in the application to the manner in which the
9 welfare of persons who have previously contracted with the provider for continuing care
10 may be best served.

11 (g) An order for rehabilitation under this section shall be refused or vacated if the
12 provider posts a bond, by a recognized surety authorized to do business in this State and
13 executed in favor of the Commissioner on behalf of persons who may be found entitled
14 to a refund of entrance fees from the provider or other damages in the event the provider
15 is unable to fulfill its contracts to provide continuing care at the facility, in an amount
16 determined by the Court to be equal to the reserve funding that would otherwise need to
17 be available to fulfill such obligations.

18 **"§ 58-775. Investigations and subpoenas.**

19 (a) The Commissioner may make such public or private investigations within or
20 outside of this State as necessary (i) to determine whether any person has violated or is
21 about to violate any provision of this Article, (ii) to aid in the enforcement of this
22 Article, or (iii) to verify statements contained in any disclosure statement filed or
23 delivered under this Article.

24 (b) For the purpose of any investigation or proceeding under this Article, the
25 Commissioner may require or permit any person to file a statement in writing, under
26 oath or otherwise, as to any of the facts and circumstances concerning the matter to be
27 investigated.

28 (c) For the purpose of any investigation or proceeding under this Article, the
29 Commissioner or his designee has all the powers given to him for insurance companies.
30 He may administer oaths and affirmations, subpoena witnesses, compel their
31 attendance, take evidence, and require the production of any books, papers,
32 correspondence, memoranda, agreements, or other documents or records deemed
33 relevant or material to the inquiry, all of which may be enforced in the Superior Court
34 of Wake County.

35 **"§ 58-776. Examinations; financial statements.**

36 The Commissioner or his designee may, in the Commissioner's discretion, visit a
37 facility offering continuing care in this State to examine its books and records.
38 Expenses incurred by the Commissioner in conducting examinations under this section
39 shall be paid by the facility examined. The provisions of G.S. 58-16, 58-16.1, 58-16.2,
40 58-18, 58-21, 58-22, 58-25, 58-25.1, and 58-63 apply to this Article and are hereby
41 incorporated by reference.

42 **"§ 58-777. Agreements as preferred claims on liquidation.**

1 In the event of liquidation of a provider, all continuing care agreements executed by
2 the provider shall be deemed preferred claims against all assets owned by the provider;
3 provided, however, such claims shall be subordinate to any secured claim.

4 **"§ 58-778. Rule-making authority; reasonable time to comply with rules.**

5 (a) The Commissioner is authorized to promulgate rules to carry out and enforce
6 the provisions of this Article.

7 (b) Any provider who is offering continuing care may be given a reasonable
8 time, not to exceed one year from the date of publication of any applicable rules
9 promulgated pursuant to this Article, within which to comply with the rules and to
10 obtain a license.

11 **"§ 58-779. Civil liability.**

12 (a) A provider who enters into a contract for continuing care at a facility without
13 having first delivered a disclosure statement meeting the requirements of G.S. 58-769 to
14 the person contracting for this continuing care, or enters into a contract for continuing
15 care at a facility with a person who has relied on a disclosure statement that omits to
16 state a material fact required to be stated therein or necessary in order to make the
17 statements made therein, in light of the circumstances under which they are made, not
18 misleading, shall be liable to the person contracting for this continuing care for actual
19 damages and repayment of all fees paid to the provider, facility, or person violating this
20 Article, less the reasonable value of care and lodging provided to the resident by or on
21 whose behalf the contract for continuing care was entered into prior to discovery of the
22 violation, misstatement, or omission or the time the violation, misstatement, or omission
23 should reasonably have been discovered, together with interest thereon at the legal rate
24 for judgments, and court costs and reasonable attorney fees.

25 (b) Liability under this section exists regardless of whether the provider or person
26 liable had actual knowledge of the misstatement or omission.

27 (c) A person may not file or maintain an action under this section if the person,
28 before filing the action, received a written offer of a refund of all amounts paid the
29 provider, facility, or person violating this Article together with interest at the rate
30 established monthly by the Commissioner of Banks pursuant to G.S. 24-1.1(3), less the
31 current contractual value of care and lodging provided prior to receipt of the offer, and
32 if the offer recited the provisions of this section and the recipient of the offer failed to
33 accept it within 30 days of actual receipt.

34 (d) An action may not be maintained to enforce a liability created under this
35 Article unless brought before the expiration of three years after the execution of the
36 contract for continuing care that gave rise to the violation.

37 **"§ 58-780. Criminal penalties.**

38 Any person who willfully and knowingly violates any provision of this Article is
39 guilty of a misdemeanor and shall, upon conviction, be fined not more than ten thousand
40 dollars (\$10,000) or imprisoned not more than one year, or both. The Commissioner
41 may refer such evidence as is available concerning violation of the Article or of any rule
42 or order hereunder to the Attorney General or a district attorney who may, with or
43 without such reference institute the appropriate criminal proceedings under this Article.

1 Nothing in this Article limits the power of the State to punish any person for any
2 conduct that constitutes a crime under any other statute.

3 **"§ 58-781. Advisory Committee.**

4 There shall be a nine member Continuing Care Advisory Committee appointed by
5 the Commissioner. The Committee shall consist of at least two residents of continuing
6 care communities, two representatives of the North Carolina Association of Nonprofit
7 Homes for the Aging, one individual who is a certified public accountant and is licensed
8 to practice in this State, one individual skilled in the field of architecture or engineering,
9 and one individual who is a health care professional."

10 Sec. 2. Article 12 of Chapter 131E of the General Statutes is repealed.

11 Sec. 3. There is appropriated from the General Fund to the Department of
12 Insurance for fiscal year 1989-90 the sum of one hundred fifty thousand dollars
13 (\$150,000) for the purpose of employing or retaining persons to administer the
14 provisions of this act. This act shall not become effective unless such monies are
15 appropriated.

16 Sec. 4. In the event any provision of this act is held to be invalid by any court
17 of competent jurisdiction, the court's holding as to that provision shall not affect the
18 validity or operation of other provisions of this act; and to that end the provisions of this
19 act are severable.

20 Sec. 5. Nothing in this Article shall be construed to affect the authority of the
21 Department of Human Resources otherwise provided by law to license or regulate any
22 health service facility of domiciliary service facility.

23 Sec. 6. Section 3 of this act and this section are effective upon ratification.
24 The remaining sections of this act shall become effective January 1, 1990.