

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 519

Short Title: Continuing Care Centers.

(Public)

Sponsors: Senators Johnson of Wake; and Ballance.

Referred to: Human Resources.

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 **"§ 58-766. License.**

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

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

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

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

39 (e) If a facility is accredited by a process approved by the Commissioner as
40 substantially equivalent to the requirements of this section, then the facility shall be
41 deemed to have met the requirements of this section and the Commissioner shall issue a
42 license to the facility.

43 **"§ 58-767. Revocation of license.**

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

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

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

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

24 **"§ 58-768. Sale or transfer of ownership.**

25 No license is transferable, and no license issued pursuant to this Article has value for
26 sale or exchange as property. No provider shall sell or transfer ownership of the
27 facility, or enter into a contract with a third-party provider for management of the
28 facility, unless the Commissioner approves such transfer or contract.

29 **"§ 58-769. Disclosure statement.**

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

- 35 (1) The name and business address of the provider and a statement of
36 whether the provider is a partnership, corporation, or other type of
37 legal entity.
38 (2) The names and business addresses of the officers, directors, trustees,
39 managing or general partners, any person having a ten percent (10%)
40 or greater equity or beneficial interest in the provider, and any person
41 who will be managing the facility on a day-to-day basis, and a
42 description of these persons' interests in or occupations with the
43 provider.

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

- 1 (7) A description of all fees required of residents, including the entrance
2 fee and periodic charges, if any. The description shall include:
3 a. A statement of the fees that will be charged if the resident
4 marries while at the facility, and a statement of the terms
5 concerning the entry of a spouse to the facility and the
6 consequences if the spouse does not meet the requirements for
7 entry;
8 b. The circumstances under which the resident will be permitted to
9 remain in the facility in the event of possible financial
10 difficulties of the resident;
11 c. The terms and conditions under which a contract for continuing
12 care at the facility may be canceled by the provider or by the
13 resident, and the conditions, if any, under which all or any
14 portion of the entrance fee will be refunded in the event of
15 cancellation of the contract by the provider or by the resident or
16 in the event of the death of the resident prior to or following
17 occupancy of a living unit;
18 d. The conditions under which a living unit occupied by a resident
19 may be made available by the facility to a different or new
20 resident other than on the death of the prior resident; and
21 e. The manner by which the provider may adjust periodic charges
22 or other recurring fees and the limitations on these adjustments,
23 if any; and, if the facility is already in operation, or if the
24 provider or manager operates one or more similar continuing
25 care locations within this State, tables shall be included
26 showing the frequency and average dollar amount of each
27 increase in periodic charges, or other recurring fees at each
28 facility or location for the previous five years, or such shorter
29 period as the facility or location may have been operated by the
30 provider or manager.
31 (8) The health and financial conditions required for an individual to be
32 accepted as a resident and to continue as a resident once accepted,
33 including the effect of any change in the health or financial condition
34 of a person between the date of entering into a contract for continuing
35 care and the date of initial occupancy of a living unit by that person.
36 (9) The provisions that have been made or will be made, if any, to provide
37 reserve funding or security to enable the provider to perform its
38 obligations fully under contracts to provide continuing care at the
39 facility, including the establishment of escrow accounts, trusts, or
40 reserve funds, together with the manner in which these funds will be
41 invested, and the names and experience of any individuals in the direct
42 employment of the provider who will make the investment decisions.
43 (10) Certified financial statements of the provider, including (i) a balance
44 sheet as of the end of the most recent fiscal year and (ii) income

1 statements for the three most recent fiscal years of the provider or such
2 shorter period of time as the provider shall have been in existence. If
3 the provider's fiscal year ended more than 120 days prior to the date
4 the disclosure statement is recorded, interim financial statements as of
5 a date not more than 90 days prior to the date of recording the
6 statement shall also be included, but need not be certified to by an
7 independent certified public accountant.

8 (11) A summary of a report of an actuary, updated every five years, that
9 estimates the capacity of the provider to meet its contractual obligation
10 to the residents. Disclosure statements of continuing care facilities
11 established prior to January 1, 1988, do not need an actuarial report or
12 summary until January 1, 1993.

13 (12) If operation of the facility has not yet commenced, a statement of the
14 anticipated source and application of the funds used or to be used in
15 the purchase or construction of the facility, including but not limited
16 to:

17 a. An estimate of the cost of purchasing or constructing and
18 equipping the facility including such related costs as financing
19 expense, legal expense, land costs, occupancy development
20 costs, and all other similar costs the provider expects to incur or
21 become obligated for prior to the commencement of operations;

22 b. A description of any mortgage loan or other long-term
23 financing intended to be used for the financing of the facility,
24 including the anticipated terms and costs of this financing;

25 c. An estimate of the total entrance fees to be received from, or on
26 behalf of, residents at, or prior to, commencement of operation
27 of the facility; and

28 d. An estimate of the funds, if any, that are anticipated to be
29 necessary to fund start-up losses and provide reserve funds to
30 assure full performance of the obligations of the provider under
31 contracts for the provision of continuing care.

32 (13) Pro forma annual income statements for the facility for a period of not
33 less than five fiscal years, including:

34 a. A beginning cash balance consistent with the certified income
35 statement required by subdivision (10) of this section or, if
36 operation of the facility has not commenced, consistent with the
37 statement of anticipated source and application of funds
38 required by subdivision (12);

39 b. Anticipated earnings on cash reserves, if any;

40 c. Estimates of net receipts from entrance fees, other than entrance
41 fees included in the statement of source and application of
42 funds required by subdivision (12) less estimated entrance fee
43 refunds, if any, and including a description of the actuarial basis

1 and method of calculation for the projection of entrance fees
 2 receipts;

3 d. An estimate of gifts or bequests, if any, that are to be relied on
 4 to meet operating expenses;

5 e. A projection of estimated income from fees and charges other
 6 than entrance fees, showing individual rates presently
 7 anticipated to be charged and including a description of the
 8 assumptions used for calculating the estimated occupancy rate
 9 of the facility and the effect on the income of the facility of
 10 government subsidies for health care services, if any, to be
 11 provided pursuant to the contracts for continuing care;

12 f. A projection of estimated operating expenses of the facility,
 13 including a description of the assumptions used in calculating
 14 the expenses, and separate allowances, if any, for the
 15 replacement of equipment and furnishings and anticipated
 16 major structural repairs or additions; and

17 g. An estimate of annual payments of principal and interest
 18 required by any mortgage loan or other long-term financing
 19 arrangement relating to the facility.

20 (14) The estimated number of residents of the facility to be provided
 21 services by the provider pursuant to the contract for continuing care.

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

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

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

34 **"§ 58-770. Contract for continuing care; specifications.**

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

36 (1) The party contracting with the provider may rescind the contract
 37 within 30 days following the later of the execution of the contract or
 38 the receipt of a disclosure statement that meets the requirements of this
 39 section, in which event any money or property transferred to the
 40 provider, other than periodic charges specified in the contract and
 41 applicable only to the period a living unit was actually occupied by the
 42 resident, shall be returned in full, and the resident to whom the
 43 contract pertains is not required to move into the facility before the
 44 expiration of the 30-day period; and

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

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

13 (1) The total consideration to be paid;

14 (2) Services to be provided;

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

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

20 (5) The terms governing the refund of any portion of the entrance fee in
21 the event of discharge by the provider or cancellation by the resident;

22 (6) The policy regarding increasing the periodic fees;

23 (7) The description of the living quarters;

24 (8) Any religious or charitable affiliations of the provider and the extent, if
25 any, to which the affiliate organization will be responsible for the
26 financial and contractual obligations of the provider;

27 (9) Any property rights of the resident;

28 (10) The policy, if any, regarding fee adjustments if the resident is
29 voluntarily absent from the facility; and

30 (11) Any requirement, if any, that the resident apply for Medicaid, public
31 assistance, or any public benefit program.

32 **"§ 58-771. Annual disclosure statement revision.**

33 (a) Within 150 days following the end of each fiscal year, the provider shall file
34 with the Commissioner a revised disclosure statement setting forth current information
35 required pursuant to G.S. 58-769. The provider shall also make this revised disclosure
36 statement available to all the residents of the facility. This revised disclosure statement
37 shall include a narrative describing any material differences between (i) the prospective
38 financial statements or projected financial data filed in response to G.S. 58-769 as a part
39 of the disclosure statement recorded most immediately subsequent to the start of the
40 provider's most recently completed fiscal year, together with the revised prospective
41 financial statements being filed as a part of the revised disclosure statement. A provider
42 may also revise its disclosure statement and have the revised disclosure statement
43 recorded at any other time if, in the opinion of the provider, revision is necessary to
44 prevent an otherwise current disclosure statement from containing a material

1 misstatement of fact or omitting a material fact required to be stated therein. Only the
2 most recently recorded disclosure statement, with respect to a facility, and in any event,
3 only a disclosure statement dated within one year plus 150 days prior to the date of
4 delivery, shall be considered current for purposes of this Article or delivered pursuant to
5 G.S. 58-769.

6 (b) The annual disclosure statement required to be filed with the Commissioner
7 under this section shall be accompanied by an annual filing fee of one hundred dollars
8 (\$100.00).

9 **"§ 58-772. Escrow, collection of deposits.**

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

16 (1) If the entrance fee applies to a living unit that has been previously
17 occupied in the facility, the entrance fee shall be released to the
18 provider when the living unit becomes available for occupancy by the
19 new resident;

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

23 a. Construction or purchase of the living unit has been completed
24 and an occupancy permit, if applicable, covering the living unit
25 has been issued by the local government having authority to
26 issue such permits;

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

31 c. Aggregate entrance fees received or receivable by the provider
32 pursuant to binding continuing care retirement community
33 contracts, plus the anticipated proceeds of any first mortgage
34 loan or other long-term financing commitment are equal to not
35 less than ninety percent (90%) of the funds estimated in the
36 statement of anticipated source and application of funds
37 submitted by the provider as that part of the disclosure
38 statement required by G.S. 58-769, to be necessary to fund
39 start-up losses and assure full performance of the obligations of
40 the provider pursuant to continuing care retirement community
41 contracts.

42 (b) Upon receipt by the escrow agent of a request by the provider for the release
43 of these escrow funds, the escrow agent shall approve release of the funds within five
44 working days unless the escrow agent finds that the requirements of subsection (a) of

1 this section have not been met and notifies the provider of the basis for this finding.
2 The request for release of the escrow funds shall be accompanied by any documentation
3 the fiduciary requires.

4 (c) If the provider fails to meet the requirements for release of funds held in this
5 escrow account within a time period the escrow agent considers reasonable, these funds
6 shall be released to the provider. The escrow agent shall notify the provider of the
7 length of this time period when the provider requests release of the funds.

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

11 **"§ 58-773. Right to organization.**

12 (a) A resident living in a facility registered under this Article has the right of self-
13 organization, the right to be represented by an individual of his own choosing, and the
14 right to engage in concerted activities to keep informed on the operation of the facility
15 in which he is a resident or for other mutual aid or protection.

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

24 **"§ 58-774. Rehabilitation or liquidation.**

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

- 27 (1) A portion of an entrance fee escrow account required to be maintained
28 under this Article has been or is proposed to be released in violation of
29 this Article;
- 30 (2) A provider has been or will be unable, in such a manner as may
31 endanger the ability of the provider, to fully perform its obligations
32 pursuant to contracts for continuing care, to meet the projected
33 financial data previously filed by the provider;
- 34 (3) A provider has failed to maintain the escrow account required under
35 this Article; or
- 36 (4) A facility is bankrupt or insolvent, or in imminent danger of becoming
37 bankrupt or insolvent;

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

42 (b) An order to rehabilitate a facility shall direct the Commissioner or trustee to
43 take possession of the property of the provider and to conduct the business thereof,
44 including the employment of such managers or agents as the Commissioner or trustee

1 may deem necessary and to take such steps as the Court may direct toward removal of
2 the causes and conditions which have made rehabilitation necessary.

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

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

13 (e) An order to liquidate a facility:

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

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

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

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

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

31 **"§ 58-775. Investigations and subpoenas.**

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

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

41 (c) For the purpose of any investigation or proceeding under this Article, the
42 Commissioner or his designee has all the powers given to him for insurance companies.
43 He may administer oaths and affirmations, subpoena witnesses, compel their
44 attendance, take evidence, and require the production of any books, papers,

1 correspondence, memoranda, agreements, or other documents or records deemed
2 relevant or material to the inquiry, all of which may be enforced in the Superior Court
3 of Wake County.

4 **"§ 58-776. Examinations; financial statements.**

5 The Commissioner or his designee may, in the Commissioner's discretion, visit a
6 facility offering continuing care in this State to examine its books and records.
7 Expenses incurred by the Commissioner in conducting examinations under this section
8 shall be paid by the facility examined. The provisions of G.S. 58-16, 58-16.1, 58-16.2,
9 58-18, 58-21, 58-22, 58-25, 58-25.1, and 58-63 apply to this Article and are hereby
10 incorporated by reference.

11 **"§ 58-777. Agreements as preferred claims on liquidation.**

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

15 **"§ 58-778. Rule making authority; reasonable time to comply with rules.**

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

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

22 **"§ 58-779. Civil liability.**

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

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

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

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

4 **"§ 58-780. Criminal penalties.**

5 Any person who willfully and knowingly violates any provision of this Article is
6 guilty of a misdemeanor and shall, upon conviction, be fined not more than ten thousand
7 dollars (\$10,000) or imprisoned not more than one year, or both. The Commissioner
8 may refer such evidence as is available concerning violation of the Article or of any rule
9 or order hereunder to the Attorney General or a district attorney who may, with or
10 without such reference institute the appropriate criminal proceedings under this Article.
11 Nothing in this Article limits the power of the State to punish any person for any
12 conduct that constitutes a crime under any other statute.

13 **"§ 58-781. Advisory Committee.**

14 There shall be a nine member Continuing Care Advisory Committee appointed by
15 the Commissioner. The Committee shall comprise at least two residents of continuing
16 care communities, two representatives of the North Carolina Association of Nonprofit
17 Homes for the Aging, one individual who is a certified public accountant and is licensed
18 to practice in this State, one individual skilled in the field of architecture or engineering,
19 and one individual who is a health care professional."

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

21 Sec. 3. There is appropriated from the General Fund to the Department of
22 Insurance for fiscal year 1989-90 the sum of one hundred fifty thousand dollars
23 (\$150,000) for the purpose of employing or retaining persons to administer the
24 provisions of this act. This act shall not become effective unless such monies are
25 appropriated.

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

30 Sec. 5. The remaining sections of this act shall become effective January 1,
31 1990. Section 3 of this act and this section are effective upon ratification.