

COMMITTEE ON INSURANCE AND RETIREMENT

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2331

(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 20-1801, Arizona Revised Statutes, is amended to
3 read:

4 20-1801. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Assets of a life care facility" means those assets held in the
7 name of the life care facility only.

8 2. "CONTRACT HOLDER" MEANS A PERSON WHO ENTERS INTO A LIFE CARE
9 CONTRACT WITH A PROVIDER OR WHO IS DESIGNATED, IN A LIFE CARE CONTRACT, TO
10 BE A PERSON PROVIDED WITH SERVICES IN THE PERSON'S PRIVATE RESIDENCE WITH THE
11 RIGHT TO FUTURE ACCESS TO SERVICES, BOARD AND LODGING IN A FACILITY.

12 ~~2.~~ 3. "Department" means the department of insurance.

13 ~~3.~~ 4. "Director" means the director of the department of insurance.

14 ~~4.~~ 5. "Entrance fee" means an initial or deferred transfer to a
15 provider of a sum of money or property, made or promised to be made by a
16 person entering into a life care contract, which assures a resident **OR**
17 **CONTRACT HOLDER** of services pursuant to a life care contract.

18 ~~5.~~ 6. "Facility":

19 (a) Means a place or places in which a provider undertakes to provide
20 a resident with nursing services, medical services or health-related
21 services, in addition to board and lodging, for a term in excess of one year
22 or for life pursuant to a life care contract.

23 (b) **DOES NOT INCLUDE A CONTRACT HOLDER'S PRIVATE RESIDENCE.**

24 ~~6.~~ 7. "Life care contract" means a contract to provide to a person
25 for the duration of such person's life or for a term in excess of one year
26 nursing services, medical services or health-related services, as defined in
27 section 36-401, in addition to board and lodging for such person in a
28 facility **OR SERVICES IN THE PERSON'S PRIVATE RESIDENCE WITH THE RIGHT TO**
29 **FUTURE ACCESS TO SERVICES, BOARD AND LODGING IN A FACILITY**, conditioned upon
30 the transfer of an entrance fee to the provider of such services in addition
31 to or in lieu of the payment of regular periodic charges for the care and
32 services involved.

33 ~~7.~~ 8. "Living unit" means an apartment, room or other area within a
34 facility set aside for the exclusive use of one or more identified residents.

35 ~~8.~~ 9. "Manager" means a corporation, partnership, association, joint
36 stock company, trust, or any other unincorporated organization which is

1 contracted with to manage the residential section or health related section,
2 or both, of a life care facility.

3 ~~9.~~ 10. "Permit" means a permit to enter into life care contracts
4 issued by the department of insurance.

5 ~~10.~~ 11. "Promoter" means the primary person who is employed to consult
6 or to promote the establishment of a life care facility.

7 ~~11.~~ 12. "Provider" means a person who provides services pursuant to a
8 life care contract.

9 ~~12.~~ 13. "Resident" means a person who enters into a life care contract
10 with a provider or who is designated, in a life care contract, to be a person
11 provided with services, board and lodging **IN A LIVING UNIT OR AT A FACILITY.**

12 Sec. 2. Section 20-1802, Arizona Revised Statutes, is amended to read:

13 **20-1802. Permit required; application; definition**

14 A. No person may solicit or enter into a life care contract as a
15 provider or as a provider extend the term of an existing life care contract
16 except pursuant to this chapter.

17 B. To qualify for a permit to enter into life care contracts with
18 respect to a particular facility **OR TO PROVIDE SERVICES IN A CONTRACT**
19 **HOLDER'S PRIVATE RESIDENCE WITH THE OBLIGATION TO PROVIDE FUTURE ACCESS TO**
20 **SERVICES, BOARD AND LODGING TO THE CONTRACT HOLDER IN A FACILITY,** a person
21 shall file an application for a permit with the department on permit
22 application forms provided by the department that shall include as an exhibit
23 a copy of the proposed form of life care contract to be entered into with
24 residents at each facility **AND THE PROPOSED FORM OF LIFE CARE CONTRACT TO BE**
25 **ENTERED INTO WITH CONTRACT HOLDERS TO PROVIDE SERVICES AT A CONTRACT HOLDER'S**
26 **PRIVATE RESIDENCE WITH THE RIGHT TO FUTURE ACCESS TO SERVICES, BOARD AND**
27 **LODGING AT EACH FACILITY.** The application shall contain the following
28 information:

29 1. The name and business address of the applicant.

30 2. The name, the address and a description of the physical property of
31 the facility.

32 3. The terms and conditions of the life care contracts to be used by
33 the applicant, including the services to be provided to residents **AND**
34 **CONTRACT HOLDERS,** pursuant to the contract and the fees or charges to be paid
35 by residents **AND CONTRACT HOLDERS,** including the method of payment of the
36 fees or charges.

37 4. If the applicant is not an individual, such as a corporation,
38 partnership or trust, a statement naming the fiscal year end date that is the
39 last day of a calendar month and the type of legal entity and listing the
40 interest and extent of such interest of each principal in the entity.

1 5. If the applicant is not an individual, a biographical affidavit on
2 a form approved by the director for each of the members of the board of
3 directors, officers, trustees or managing partners.

4 6. The estimated number of residents of the facility to be provided
5 services by the applicant pursuant to the life care contracts **AND THE**
6 **ESTIMATED NUMBER OF CONTRACT HOLDERS WHO WILL RECEIVE SERVICES IN THEIR**
7 **PRIVATE RESIDENCES WITH THE RIGHT TO FUTURE ACCESS TO SERVICES, BOARD AND**
8 **LODGING AT THE FACILITY.**

9 7. A statement of the provisions that have been made or will be made
10 to provide reserve funding or security by the provider to enable the provider
11 to fully perform the provider's obligations pursuant to life care contracts,
12 including the establishment of escrow accounts, accounts in financial
13 institutions, trusts or reserve funds.

14 8. A statement as to whether the applicant was or is affiliated with a
15 religious, charitable or other nonprofit organization, the extent of any
16 affiliation and the extent to which the affiliate organization will be
17 responsible for the financial and contract obligations of the applicant.

18 9. If the applicant is a subsidiary corporation or the affiliate of
19 another corporation, a statement identifying the parent corporation or the
20 other affiliate corporation and the primary activities of the parent or other
21 affiliate corporation.

22 10. A description of the business experience of the provider in the
23 operation of similar facilities and, if the facility will be managed on a
24 day-to-day basis by a corporation or organization other than the provider, a
25 description of the business experience of the manager in the operation or
26 management of similar facilities.

27 11. A statement as to whether the applicant, a promoter, a principal, a
28 parent or subsidiary corporation or an affiliate has had any injunctive or
29 restrictive order of a court of record, or any suspension or revocation of
30 any state or federal license or permit, arising out of or relating to
31 business activity or health care applied against it, including without
32 limitation actions affecting a license to operate a foster care facility, a
33 health care institution, a retirement home or a home for the aged.

34 12. A statement of any periodic rates to be initially paid by residents
35 **AND CONTRACT HOLDERS**, the method by which the rates are determined and the
36 manner by which the provider may adjust the rates in the future. If the
37 facility is already in operation, or if the provider operates one or more
38 similar facilities within this state, the statement must include tables
39 showing the frequency and average dollar amount of each increase in periodic
40 rates at each facility for the previous five years or any shorter period as
41 the facility may have been operated by the provider. **IF A PROVIDER IS**
42 **PROVIDING SERVICES TO A CONTRACT HOLDER IN THE PERSON'S RESIDENCE, THE**

1 STATEMENT MUST INCLUDE THE FREQUENCY AND AVERAGE DOLLAR AMOUNT OF EACH
2 INCREASE IN PERIODIC RATES FOR CONTRACT HOLDERS FOR THE PREVIOUS FIVE YEARS
3 OR ANY SHORTER PERIOD AS THE PROVIDER HAS BEEN PROVIDING SERVICES TO CONTRACT
4 HOLDERS IN THEIR PRIVATE RESIDENCES.

5 13. A statement of the terms and conditions under which a life care
6 contract may be canceled by the provider or resident OR CONTRACT HOLDER,
7 including any health and financial conditions required for a person to
8 continue as a resident OR CONTRACT HOLDER and any conditions under which all
9 or any portion of the entrance fee will be refunded by the provider.

10 14. If construction or purchase of the facility has not yet been
11 completed, a statement of the anticipated source and application of the
12 monies to be used in the purchase or construction, including all of the
13 following:

14 (a) An estimate of the cost of purchasing or constructing and
15 equipping the facility including related costs as financing expense, legal
16 expense, land costs, occupancy development costs and all other similar costs
17 that the provider expects to incur or become obligated for before the
18 commencement of operations.

19 (b) An estimate of the total entrance fees to be received from
20 residents on completion of occupancy.

21 (c) A description of any mortgage loan or other long-term financing
22 intended to be used for the financing of the facility, including the
23 anticipated terms and costs of the financing.

24 (d) An estimate of any funds that are anticipated to be necessary to
25 fund start-up losses and to assure full performance of the obligations of the
26 provider pursuant to life care contracts including any reserve fund escrow
27 required by the director pursuant to section 20-1806.

28 15. Certified financial statements of the provider, promoter and
29 manager as of a date not more than ninety days before the date the permit
30 application is filed, that shall include a balance sheet and the related
31 statements of income, retained earnings or equity and changes in financial
32 position for the three most recent fiscal years or any shorter period of time
33 as the provider, promoter or manager has been in existence. Each of these
34 statements shall be prepared in accordance with generally accepted accounting
35 principles and reported on by a certified public accountant in accordance
36 with generally accepted auditing standards. If the fiscal year ended more
37 than ninety days before the date of filing, the provider shall include an
38 income statement, that need not be certified, covering the period between the
39 date the fiscal year ended and a date not more than ninety days before the
40 date the application is filed.

41 16. A feasibility study that shall include a financial forecast of the
42 life care facility estimating the most probable financial position, results

1 of operations and changes in financial position for the immediately
2 succeeding five year period. The feasibility study must set forth the
3 actuarial assumptions for determining that the project has sufficient
4 revenues and funds, including reserves, for the project to continue as a
5 viable operating concern. The study must include all of the following:

6 (a) Beginning cash balance, and in the event that operation of the
7 facility has not yet commenced, the beginning cash balance shall be
8 consistent with the statement of anticipated source and application of funds
9 described in paragraph 14.

10 (b) Anticipated earnings on cash reserves.

11 (c) Estimates of net receipts from entrance fees, other than entrance
12 fees included in the statement of source and application of funds required
13 under paragraph 14, less estimated entrance fee refunds and a description of
14 the actuarial basis and method of calculation for the projection of entrance
15 fee receipts.

16 (d) An estimate of gifts or bequests if any are to be relied on to
17 meet operating expenses.

18 (e) A projection of estimated income from fees and charges other than
19 entrance fees, showing individual rates presently anticipated to be charged,
20 including a description of the assumptions used for calculating the effect on
21 the income of the facility of subsidized health services to be provided
22 pursuant to the life care contracts.

23 (f) A projection of estimated operating expenses of the facility **AND**
24 **FOR PROVIDING SERVICES IN CONTRACT HOLDERS' PRIVATE RESIDENCES**, including a
25 description of the assumptions used in calculating the expenses, and separate
26 allowances for the replacement of equipment and furnishings and anticipated
27 major structural repairs or additions.

28 (g) An estimate of annual payments of principal and interest required
29 by any mortgage loan or other long-term financing.

30 17. An actuarial study prepared by a qualified actuary to be submitted
31 with the feasibility study for the purpose of demonstrating that the project
32 has sufficient revenues and funds, including reserves, for the project to
33 continue as a viable operating concern. The actuarial study shall include a
34 cash flow projection, an evaluation of the adequacy of current pricing
35 structures and an analysis of the long-term relationship between the
36 project's assets and liabilities.

37 18. If the feasibility study required by paragraph 16 indicates that
38 the provider will have cash balances over and above two months' projected
39 operating expenses of the facility, a description of the manner in which the
40 reserve funds will be invested and the persons who will be making the
41 investment decisions.

1 C. The application shall be signed under oath by the chief executive
2 officer of the applicant.

3 D. Copies of the escrow agreements executed with an escrow agent
4 pursuant to sections 20-1804 and 20-1806 shall be recorded as exhibits to the
5 application.

6 E. The life care contract shall provide that any person entering into
7 the contract shall have a period of seven days within which to rescind the
8 life care contract without penalty or further obligation beginning with the
9 first full calendar day following the last to occur of the execution of the
10 contract, the payment of an initial sum of money as a deposit or application
11 fee or receipt of a copy of the provider's most recent annual report if the
12 provider has filed an annual report with the director pursuant to section
13 20-1807, or, if the provider has not filed an annual report, a copy of the
14 provider's application. In the event of a rescission, all money or property
15 paid or transferred by the person shall be fully refunded by the provider. A
16 person shall not be required to move into a facility **OR BEGIN RECEIVING**
17 **SERVICES IN THE PERSON'S PRIVATE RESIDENCE** until after the expiration of the
18 seven-day rescission period.

19 F. The director may charge an applicant the fee prescribed in section
20 20-167 for processing the application filed pursuant to subsection B of this
21 section.

22 G. Nothing in this article requires the director to determine the
23 actual financial condition of any life care contract provider. The approval
24 of a permit indicates only that the entity appears to be financially viable
25 based on the information provided to the director.

26 H. For the purposes of this section, "principal" means any person or
27 entity having a ten per cent or more financial interest or, if the legal
28 entity is a trust, each beneficiary of the trust holding a ten per cent or
29 more beneficial interest.

30 Sec. 3. Section 20-1803, Arizona Revised Statutes, is amended to read:
31 20-1803. Issuance of permit

32 A. The director shall review applications for completeness and issue a
33 report of deficiencies to the applicant within sixty days of receipt of the
34 application. The director shall issue a permit to the provider within thirty
35 days of the receipt of a completed application and exhibits and payment of
36 the fee by the applicant, and proof of compliance by the applicant with the
37 provisions of sections 20-1804 and 20-1806. If the applicant has already
38 paid the fee as a part of the process to receive a provisional permit under
39 subsection E of this section, this subsection does not establish an
40 additional fee. The director shall issue an order refusing the permit if the
41 applicant does not meet the requirements therefor. The permit shall be
42 subject to the conditions imposed pursuant to sections 20-1804 through

1 20-1806 allowing the provider to enter into life care contracts with respect
2 to the number of living units and facility **AND THE NUMBER OF CONTRACT HOLDERS**
3 **TO BE PROVIDED SERVICES IN THEIR PRIVATE RESIDENCES** described in the
4 application.

5 B. A permit issued under this section shall remain in full force,
6 subject to the provisions of this chapter.

7 C. A permit issued pursuant to this section shall contain, in a
8 prominent location, a statement that the issuance of a permit pursuant to
9 section 20-1803 does not constitute approval, recommendation or endorsement
10 by the department or director, nor does such a permit evidence the accuracy
11 or completeness of the information set out in the application or the annual
12 report of the provider.

13 D. All permits shall be nontransferable.

14 E. The director shall review an application for a provisional permit
15 for completeness and issue a report of deficiencies to the applicant within
16 sixty days of receipt of the application. The director may grant an
17 applicant a provisional permit within thirty days of the receipt of a
18 completed application and exhibits and payment of the fee by the applicant if
19 the applicant has submitted an application containing the information
20 required in ~~paragraphs 1 through 15 of subsection B of~~ section 20-1802,
21 **SUBSECTION B, PARAGRAPHS 1 THROUGH 15**. Under the provisional permit, the
22 applicant may solicit reservations for residences in the facility **AND**
23 **RESERVATIONS FOR THE PROVISION OF SERVICES IN PRIVATE RESIDENCES** and collect
24 deposits therefor. The applicant shall establish a trust account in which
25 all reservation deposits shall be placed. The person entering into the
26 contract for a reservation may rescind the agreement at any time prior to
27 entering into the life care contract. In the event the reservation agreement
28 is rescinded, all money or property, including accrued interest thereon,
29 shall be returned to the person.

30 Sec. 4. Section 20-1804, Arizona Revised Statutes, is amended to read:
31 **20-1804. Entrance fee escrow**

32 A. As a condition for the issuance of a permit pursuant to section
33 20-1803, the director shall require that the provider establish an escrow
34 account with a licensed agent which provides that all of any entrance fee
35 received by the provider prior to the date the resident is permitted to
36 occupy his or her living unit in the facility **OR THE DATE THE CONTRACT HOLDER**
37 **IS TO BEGIN RECEIVING SERVICES IN HIS OR HER PRIVATE RESIDENCE** be placed in
38 escrow with a bank, trust company or other escrow agent approved by the
39 director, subject to the condition that such funds may be released only as
40 follows:

1 1. IF THE ENTRANCE FEE APPLIES TO A CONTRACT HOLDER WHO WILL BE
2 RECEIVING SERVICES IN HIS OR HER PRIVATE RESIDENCE, THE ENTRANCE FEE SHALL BE
3 RELEASED TO THE PROVIDER AT SUCH TIME AS THE LIFE CARE CONTRACT COMMENCES.

4 ~~1.~~ 2. If the entrance fee applies to a living unit which has been
5 previously occupied in the facility, the entrance fee shall be released to
6 the provider at such time as the living unit becomes available for occupancy
7 by the new resident.

8 ~~2.~~ 3. If the entrance fee applies to a living unit which has not
9 previously been occupied by any resident, the entrance fee, or that portion
10 of the entrance fee not to be held in escrow pursuant to section 20-1806,
11 shall be released to the provider at such time as the director is satisfied
12 that all of the following conditions exist:

13 (a) Construction or purchase of the facility has been substantially
14 completed and an occupancy permit covering the living unit has been issued by
15 the local government having authority to issue such permits.

16 (b) A commitment has been received by the provider for any permanent
17 mortgage loan or other long-term financing described in the statement of
18 anticipated source and application of funds submitted by the provider as part
19 of its permit application, and any conditions of the commitment prior to
20 disbursement of funds thereunder have been substantially satisfied.

21 (c) Aggregate entrance fees received or receivable by the provider
22 pursuant to binding life care contracts, plus the anticipated proceeds of any
23 first mortgage loan or other long-term financing commitment are equal to not
24 less than ninety per cent of the aggregate cost of constructing or
25 purchasing, equipping and furnishing the facility plus not less than ninety
26 per cent of the funds estimated in the statement of anticipated source and
27 application of funds submitted by the provider as part of its permit
28 application, to be necessary to fund start-up losses and assure full
29 performance of the obligations of the provider pursuant to life care
30 contracts.

31 B. If the funds in an escrow account required to be established under
32 subsection A are not released within such time as provided by rules and
33 regulations issued by the director, then such funds shall be returned by the
34 escrow agent to the persons who had made payment to the provider.

35 C. An entrance fee held in escrow may be returned by the escrow agent
36 to the person or persons who had made payment to the provider at any time
37 upon receipt by the escrow agent of notice from the provider that such person
38 is entitled to a refund of the entrance fee.

39 D. Nothing in this section shall be interpreted as requiring the
40 escrow of any nonrefundable application fee, designated as such in the permit
41 application required by section 20-1802, received by the provider from a
42 prospective resident OR CONTRACT HOLDER.

1 Sec. 5. Section 20-1805, Arizona Revised Statutes, is amended to read:
2 20-1805. Recording of lien by director

3 A. The director shall, as a condition to granting a permit to an
4 applicant, record with the county recorder of any county a notice of lien
5 against the facility's properties on behalf of all residents **AND CONTRACT**
6 **HOLDERS** who enter into life care contracts with the applicant to secure
7 performance of the provider's obligations to residents **AND CONTRACT HOLDERS**
8 pursuant to life care contracts.

9 B. From the time of such recording there exists a lien for an amount
10 equal to the reasonable value of services to be performed under a life care
11 contract in favor of each resident **AND CONTRACT HOLDER** on the land and
12 improvements of the facility's properties owned by the provider, not exempt
13 from execution, which are listed in the notice of lien filed pursuant to
14 subsection C of this section and which are located in the county in which the
15 notice of lien is recorded.

16 C. The lien shall be perfected by the director by executing by
17 affidavit the notice and claim of lien, which shall contain:

18 1. The legal description of the lands and improvements to be charged
19 with a lien.

20 2. The name of the owner of the property affected.

21 3. A statement providing that the lien has been filed by the director
22 pursuant to section 20-1805.

23 D. The lien may be released or partially released at the request of
24 the applicant if, in the judgment of the director, such release or partial
25 release inures to the benefit of the residents **AND CONTRACT HOLDERS** and the
26 performance of the provider's obligations to the residents **AND CONTRACT**
27 **HOLDERS**.

28 E. The lien may be foreclosed by civil action. Any number of persons
29 claiming liens against the same property pursuant to this section may join in
30 the same action. If separate actions are commenced, the court may
31 consolidate such actions. The court shall, as part of the costs, allow
32 reasonable attorney's fees for each claimant who is a party to the action.

33 F. In a civil action filed pursuant to this section, the judgment
34 shall be given in favor of each resident **AND CONTRACT HOLDER** having a lien
35 who has joined in the foreclosure action for the amount equal to the
36 reasonable value of services to be performed under a life care contract in
37 favor of each resident **AND CONTRACT HOLDER**. The court shall order the
38 sheriff to sell any property subject to the lien at the time judgment is
39 given, in the same manner as real and personal property is sold on
40 execution. The lien for the reasonable value of services to be performed
41 under a life care contract shall be on equal footing with claims of other
42 residents **AND CONTRACT HOLDERS**. If a sale is ordered and the property sold

1 and the proceeds of the sale are not sufficient to discharge all liens of
2 residents AND CONTRACT HOLDERS against the property, the proceeds shall be
3 prorated among the respective residents AND CONTRACT HOLDERS.

4 G. The liens provided for in this section are preferred to all liens,
5 mortgages or other encumbrances upon the property attaching subsequently to
6 the time the lien is recorded and are preferred to all unrecorded liens,
7 mortgages and other encumbrances. The amount secured by any lien having
8 priority to the lien filed pursuant to this section may not be increased
9 without prior approval of the director.

10 H. The director shall file a release of the lien upon proof of
11 complete performance of all obligations to residents AND CONTRACT HOLDERS
12 pursuant to life care contracts.

13 I. The director may subordinate any lien filed pursuant to this
14 section to the lien of a first mortgage or other long-term financing obtained
15 by the provider, regardless of the time at which the subsequent lien
16 attaches.

17 Sec. 6. Section 20-1807, Arizona Revised Statutes, is amended to read:
18 20-1807. Annual report; civil penalty

19 A. Each year not later than ninety days after the last day of the
20 provider's fiscal year, each provider shall file with the department an
21 annual report accompanied by the fee prescribed in section 20-167. The
22 annual report shall include the information required by section 20-1802,
23 subsection B, except that the information required by section 20-1802,
24 subsection B, paragraphs 5, 15 and 17 shall be filed in accordance with the
25 provisions of subsection C of this section. The annual report need not
26 include the information required by section 20-1802, subsection B, paragraph
27 16. The annual report shall be made on forms provided by the department.
28 The annual report and any amendment to the annual report shall be signed
29 under oath by the chief executive officer of the provider. For good cause,
30 the director may extend the due date for a provider to file its annual report
31 and pay the required fee.

32 B. A provider shall amend its annual report on file with the
33 department at any time, without the payment of any additional fee, if an
34 amendment is necessary to prevent the annual report from containing a
35 material misstatement of fact or omitting to state a material fact required
36 to be stated.

37 C. Any provider, manager or promoter shall comply with the
38 requirements of this section as follows:

39 1. Information required by section 20-1802, subsection B, paragraph 5
40 shall be filed:

41 (a) Immediately on the substitution or installation of a member of the
42 board of directors or an officer, trustee or managing partner different from

1 the information disclosed in the provider's application or submission
2 pursuant to subdivision (b).

3 (b) Every three years after the initial filing of the biographical
4 affidavit by the provider.

5 2. Certified financial statements required by section 20-1802,
6 subsection B, paragraph 15 for the two most recent fiscal years shall be
7 filed with the annual report by the provider and manager only. The certified
8 financial statements of the promoter shall be filed with the annual report
9 unless the promoter is not currently employed by the provider.

10 3. The actuarial study required by section 20-1802, subsection B,
11 paragraph 17 shall be filed by the provider on a triennial basis beginning
12 with the year in which resident occupancy began at the facility **OR CONTRACT**
13 **HOLDERS BEGAN RECEIVING SERVICES** pursuant to the permit issued to the
14 provider. The director may require a provider to file an actuarial study on
15 a more frequent basis if the director deems it necessary and may adjust
16 subsequent triennial filings accordingly.

17 D. A provider shall not change the fiscal year end date disclosed
18 pursuant to section 20-1802, subsection B, paragraph 4 without the prior
19 approval of the director. The director shall approve the change if the
20 commissioner of the internal revenue service grants a request for a change of
21 a fiscal year pursuant to 26 United States Code section 442.

22 E. Assets shall be reported at values determined pursuant to sections
23 20-511 through 20-515. If the director deems it necessary to value any real
24 estate the director may employ one or more competent appraisers for that
25 purpose, and the reasonable expense shall be borne by the provider.

26 F. The director may assess and collect a civil penalty of not more
27 than twenty-five dollars for each day the annual report is late against a
28 provider who fails to file the annual report timely accompanied by the
29 required fee.

30 Sec. 7. Section 20-1808, Arizona Revised Statutes, is amended to read:

31 **20-1808. Ratio of assets to liabilities; report; rehabilitation**
32 **of provider**

33 A. The provider shall possess assets in the first year of operation
34 equal to at least seventy-five per cent of the unamortized endowment fees
35 plus all other liabilities including long-term debt. The unamortized
36 endowment fees shall be based on life expectancy of purchasers. Thereafter,
37 the provider shall at all times possess assets in an amount sufficient to
38 assure full performance of the obligations of the provider pursuant to life
39 care contracts including any reserve fund escrow required by the director
40 pursuant to section 20-1806.

41 B. If revenues or funds including reserves are inadequate or projected
42 to be inadequate pursuant to the annual report or an actuarial report or if

1 the provider does not meet the requirements of subsection A of this section,
2 the director may employ an independent management consultant experienced in
3 the operation of life care facilities, at the expense of the provider, who
4 shall examine the financial structure and operations of the provider and make
5 recommendations on remedial action to the director. The director shall not
6 be bound by such recommendations.

7 C. At any time the director receives notice from the escrow agent that
8 section 20-1806 has not been complied with, or at any other time when the
9 director has reason to believe that the provider is in a financially unsound
10 or unsafe condition, or that its condition is such that it may otherwise be
11 unable to fully perform its obligations pursuant to life care contracts, or
12 when the provider fails to implement the director's recommendations as a
13 result of a management consultant's report or when it is obvious to the
14 director that to obtain the services of a financial consultant under
15 subsection B of this section would be futile, the director, through the
16 attorney general, shall apply to the superior court in the county in which
17 the provider's facility is located for an order directing him to assume
18 management and possession of the provider's facility and to rehabilitate the
19 provider to enable it to fully perform its obligation pursuant to life care
20 contracts. The court shall act upon the application upon notice to the
21 provider, and any objection to the petition shall be filed with the court
22 within the time prescribed by such notice.

23 D. If the court upon hearing finds that the provider is in a
24 financially unsound or unsafe condition or that its condition is such that it
25 may otherwise be unable to fully perform its obligations pursuant to life
26 care contracts, the court shall issue an order directing the director to take
27 possession of the property of the provider and to conduct the business
28 thereof, and to take such steps toward removal of the causes and conditions
29 which have made rehabilitation necessary, as the court may direct. The order
30 shall include a provision directing the issuance of a notice of the
31 rehabilitation proceedings to the residents at such facility , TO THE
32 PROVIDER'S CONTRACT HOLDERS and to such other interested persons as the court
33 shall direct.

34 E. Appointment of the director to rehabilitate a provider shall
35 authorize the director to:

36 1. Take possession of and preserve, protect and recover any assets,
37 books and records or property of the provider, including claims or causes of
38 action belonging to or which may be asserted by the provider and to deal with
39 such property in his own name in the capacity as director, and purchase at
40 any sale any real estate or other asset upon which the provider may hold any
41 lien or encumbrance or in which it may have an interest.

1 2. File, prosecute and defend or compromise any suit or suits which
2 have been filed or which may thereafter be filed by or against such provider
3 which are deemed by the director to be necessary to protect the provider or
4 the residents OR CONTRACT HOLDERS or any property affected thereby.

5 3. Take possession of and deposit and invest any of the provider's
6 available funds.

7 4. Pay all expenses of the rehabilitation.

8 5. Exercise such other powers and duties as may be provided by order
9 of the court.

10 6. Appoint managers, supervisors or employees necessary to properly
11 manage and operate the provider and the provider's facility.

12 7. Take possession of and, with the prior approval of the court, sell,
13 exchange, lease, mortgage or otherwise dispose of any property of the
14 provider by public sale, bidding or otherwise.

15 8. With the prior approval of the court, borrow money with or without
16 security for the purpose of facilitating the rehabilitation of the provider.

17 9. Perform all duties of the provider.

18 10. Reject any executory contract to which the provider is a party.

19 11. Withdraw any sums remaining in the escrow account established
20 pursuant to section 20-1806 for the purpose of rehabilitating the provider's
21 facility.

22 F. The court may at any time during a rehabilitation proceeding issue
23 such other instructions or orders as are deemed necessary to aid the director
24 in the rehabilitation proceeding.

25 G. The director, or any interested person upon due notice to the
26 director, at any time may apply to the court for an order terminating the
27 rehabilitation proceedings and permitting the provider to resume possession
28 of its property and the conduct of its business, but no such order shall be
29 granted except when, after a full hearing, the court has determined that the
30 purposes of the proceeding have been fully accomplished and that the facility
31 can be returned to the provider's management without further jeopardy to the
32 residents of the facility, creditors, owners of the facility, and to the
33 public. An order terminating the rehabilitation proceeding shall be based
34 upon a full report and accounting by the director of the conduct of the
35 provider's officers during the rehabilitation and of the provider's current
36 financial condition.

37 H. If at any time the director deems that further efforts to
38 rehabilitate the provider would be useless, he may report to the court and
39 apply for an order of liquidation and dissolution pursuant to title 10,
40 chapter 14, article 3, if a corporation, or may apply for other appropriate
41 relief for dissolving the provider and winding up its affairs. An order

1 directing the liquidation or dissolution of the provider shall act as a
2 revocation of the provider's permit issued pursuant to section 20-1803.

3 I. In connection with the rehabilitation proceedings, the director may
4 appoint one or more special deputy directors of insurance to act for him and
5 may employ such counsel, clerks or assistants as he deems necessary. The
6 compensation of the special deputies, counsel, clerks or assistants and any
7 expenses of taking possession of the provider's facility and of conducting
8 the proceedings shall be set by the director, subject to approval of the
9 court, and shall be paid out of the funds or assets of the provider."

10 Amend title to conform

and, as so amended, it do pass

PHIL LOVAS
Chairman

2331-se-ir
2/18/14
H:laa